LICENSE AGREEMENT

BETWEEN

Affiniti Ferry Point, LLC

AND

CITY OF NEW YORK
DEPARTMENT OF
PARKS & RECREATION

for

THE OPERATION, MANAGEMENT AND MAINTENANCE OF AN 18-HOLE JACK NICKLAUS SIGNATURE GOLF COURSE, LIGHTED DRIVING RANGE, CLUBHOUSE AND ANCILLARY FACILITIES AT FERRY POINT PARK,

THE BRONX, NEW YORK

X126-GC

DATED: October ___**, 2021**

TABLE OF CONTENTS

LICENSE AGREEMENT ("License," "License Agreement" or "Agreement") made this _____ day of _____between the City of New York (the "City") acting by and through the New York City Department of Parks & Recreation ("Parks"), whose address is The Arsenal, 830 Fifth Avenue, New York, New York 10065, and Affiniti Ferry Point, LLC, whose address is 6716 Jamestown Drive, Alpharetta, GA 30005 Parks, the City and Licensee are sometimes hereinafter referred to collectively as the "Parties" or individually as a "Party."

WITNESSETH:

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

WHEREAS, the 18-hole Golf Course, Lighted Driving Range, Clubhouse, and Ancillary Facilities ("Licensed Premises") is located on City-owned parkland, located in the borough of the Bronx known as Ferry Point Park, and is property under the jurisdiction and control of Parks; and

WHEREAS, the Commissioner of Parks ("Commissioner") seeks a concessionaire to provide for the operation, management, and maintenance of the Licensed Premises for the accommodation and use by the public; and

WHEREAS, Parks complied with the requirements of the Franchise and Concession Review Committee ("FCRC") for the selection of a concessionaire, through a negotiated concession procedure, and to award a Concession (as hereinafter defined) for the operation, management, and maintenance of the Licensed Premises upon the terms and conditions contained herein; and

WHEREAS, Licensee desires to operate, manage and maintain the Licensed Premises for the benefit of the public at Ferry Point Park, 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, management and maintenance of the Licensed Premises.

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

1. GRANT OF LICENSE

1.1 (a) Parks hereby grants to Licensee and Licensee hereby accepts from Parks a license to operate, manage and maintain the Licensed Premises as a First Class Tournament Quality Daily Fee Golf Course for the use and enjoyment of the general public in accordance with the provisions herein and to the satisfaction of the Commissioner.

(b) In order to provide the Licensee sufficient time to prepare the Licensed Premises for use by the public, November 15, 2021 to no later than March 31, 2022 of the first year of the

Term will be considered an "Interim Period," during which time the Licensed Premises will be closed to the general public and no revenue generating activities can take place. During the Interim Period, Licensee will, at its sole cost and expense, use and maintain the Licensed Premises as set forth in this License; however, Licensee will not be permitted to collect Gross Receipts or conduct other revenue generating activities. Licensee may, during the Interim Period, accept deposits for future outings and special events without such acceptance triggering an end to the Interim Period; however, deposits accepted during the Interim Period will be considered Gross Receipts immediately on April 1, 2022, or sooner end of the Interim Period. During the Interim Period, Licensee will not be required to deposit funds into the Capital Reserve Fund. Licensee will be required to fulfill all other obligations pursuant to this license, including but not limited to, indemnifying the City and obtaining insurance pursuant to sections 19 and 20 of this License. Upon written approval from Parks, Licensee may end the Interim Period sooner than March 31, 2022. As of April 1, 2022, or sooner end of the Interim Period, the Licensed Premises will be open to the public, Licensee will be required to pay its license fees to the City as set forth in Section 4, contribute to the Capital Reserve Fund, and fulfill all other obligations required under this License Agreement.

(c) Licensee's obligation to take all reasonable steps to potentially attract professional tournaments hosted by the Professional Golfers' Association ("PGA") and similar organizations to the Licensed Premises and to conduct itself so as not to unreasonably impair that attractiveness is a material component of Licensee's obligation to manage, maintain and operate the course as a First Class Tournament Quality Daily Fee Golf Course.

(d) 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, maintenance, and management of the Licensed Premises.

(e) The Licensed Premises, as described in **Exhibit A**, includes the Golf Course; Practice Facility, which includes the Driving Range; Clubhouse, which includes a Food Service Facility and Pro-Shop; Maintenance Building; Rain Shelter; Irrigation Pond; Primary and Supplemental Parking Lots; and Temporary Clubhouse (collectively, "Golf Course Facilities" or the "Concession").

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, manage and maintain the Licensed Premises in accordance with the terms of this License and to perform the Capital Improvements required by this License Agreement. In order to be in compliance with this License Agreement, Licensee must fulfill all of the obligations contained herein. The Commissioner may deem as a default Licensee's failure to fulfill any of its obligations herein for any reason.

(a) The Licensee agrees as a material term that any work or construction at the Licensed Premises by Licensee (w) shall comply with applicable Environmental Laws and Governmental Approvals, (x) shall be performed in accordance with the ULURP No. C000090 MCX determination dated December 22, 1999 and the SEQRA/CEQR assessment dated April 27, 2005 (as modified by all subsequent technical memoranda prepared pursuant to SEQRA/CEQR, including, the Technical Environmental Assessment for the Ferry Point Park Recreation Facility, dated February 11, 2002, as amended September 29, 2004; Technical Environmental Assessment for Ferry Point Recreation Facility, dated November 16, 2004; and Environmental Assessment Statement, dated September 30, 1999, as well as any subsequent

technical memoranda prepared by Parks with input from Licensee) for Ferry Point Park, subject to Section 11.14, as may be modified from time to time in accordance with applicable Legal Requirements, (y) will not otherwise require additional ULURP review, (z) will not otherwise require additional SEQRA or CEQR review, except to the extent applicable Legal Requirements require additional SEQRA or CEQR review with respect to Licensee's operation of the Licensed Premises (including construction obligations), including the use of pesticides and fertilizers in the operation of the Licensed Premises and (aa) shall comply with the requirements of the Americans with Disabilities Act ("ADA") and all other similarly applicable Legal Requirements with respect to the ADA. If Licensee fails in any material respect to perform any other work or construction at the Licensed Premises, in each case in accordance with clauses (w), (x), (y), (z) and (aa) of this Section 1.2, such failure shall be deemed a material breach of this License Agreement. However, (i) the City agrees that Licensee is not required to comply with SEQRA/CEQR, the DEC Part 360 Permit or any other applicable laws to the extent Licensee's non-compliance is caused by Licensee's failure to comply with the statement contained in the SEQRA/CEQR assessment dated April 27, 2005 for Ferry Point Park that herbicides or pesticides will not be used at the Licensed Premises, that Parks acknowledges was made in error, and (ii) Licensee's failure to comply with SEQRA/CEQR, the DEC Part 360 Permit or any other applicable laws for the reasons set forth in the previous clause (i) of this sentence shall not be a breach of this Agreement. In no event shall Licensee cause any threshold of the major concession rules promulgated by the City Planning Commission, codified in 62 RCNY Chapter 7, to be exceeded, or take any action under this Agreement that would require the preparation of an Environmental Impact Statement under SEQRA or CEQR.

(b) Licensee may not engage in any activity inconsistent with the current DEC Part 360 Permit prior to receipt by the parties of written approval from DEC or issuance of a new permit.

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

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

1.5 Any business or trade name which Licensee proposes to use in identifying the Licensed Premises or any part of the Licensed Premises shall be subject to the prior written approval of the Commissioner. Parks may require that the City own the portion of any name selected by Licensee for use at the Licensed Premises that indicates Parks property or a preexisting facility name. 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. Parks reserves the right to approve of any name selected by the Licensee for the Concession. The City is the owner of the designation and trademark "Ferry

Point" and "Ferry Point Park" and variations thereof, and all other designations and trademarks of Parks, including Parks signage and the distinctive Parks leaf logo, together with the goodwill that is symbolized by such names, trademarks, service marks, designations and identifications. All intellectual property rights in the Licensed Premises, "Ferry Point" and "Ferry Point Park" names, and any other names, trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property that identify Parks are the sole property of the City ("City IP"). Licensee may use the names "Ferry Point" and/or "Ferry Point Park" in connection with its operations under this License Agreement only to identify the location of the Licensed Premises, and any other use of the names "Ferry Point" and/or "Ferry Point Park" or any other City IP may be only pursuant to a separate written agreement between the City and Licensee. Upon expiration or earlier termination of this License Agreement, Licensee shall immediately stop the use of any and all City IP.

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

(b) Licensee recognizes and acknowledges that the City IP and the City's name and reputation are the exclusive property of the City and that they communicate to the public, worldwide, a reputation for high standards of quality and service, which reputation and goodwill have been and continue to be unique to the City. Licensee further recognizes and acknowledges that the City IP has acquired secondary meaning in the mind of the public. The City IP shall not be used in connection with any illegal, illicit, or immoral purpose or activity, or in any manner which would be inconsistent with or damaging to the City's name and reputation. The City shall have the right to terminate the license granted by this Section 1.5 immediately, upon written notice, in the event that any part of the City IP is used by Licensee in connection with any illegal, illicit, or immoral activity. In addition, in the event that any City IP is used by Licensee in any way which, in the reasonable judgment of the Commissioner, is inconsistent with or damaging to the City's name or reputation, the Commissioner shall so notify Licensee in writing and the Commissioner shall have the right to terminate this License immediately upon written notice to Licensee. Licensee acknowledges that failure to do so shall cause immediate and irreparable harm to the City and the City shall be entitled to equitable relief in the event that use of City IP does not immediately cease upon termination or expiration of this Agreement. Any failure to do so shall constitute a material breach of this Agreement by Licensee and be cause for immediate termination. The right to terminate the Agreement pursuant to this Section 1.5(b) is in addition to any other rights to terminate set forth in this Agreement.

(c) Licensee shall use the City IP only in the manner specified by the City. Licensee acknowledges and agrees that all use of and goodwill in the City IP shall inure to the sole benefit of the City. Except for the rights granted under this Agreement, Licensee shall not acquire any rights in the City IP by virtue of any use it makes of the City IP. Licensee shall not attempt to register the City IP alone or as part of any other trademark, service mark, trade name, or

corporate identifier (including without limitation its own trademark), nor shall Licensee use, adopt as its own, or attempt to register any marks, names, domain names, designations, or indicia that are the same as or similar to the City IP except to the extent that such use is preapproved in advance in writing by the City and any marks, names, domain names, designations or indicia that are the same as or similar to the City IP are used, adopted or registered for the benefit of the City, and are assigned to the City, at the expiration or termination of this Agreement.

(d) Licensee acknowledges that, from time to time and without notice to Licensee, it may be necessary or desirable for the City to modify certain elements of the City IP, to include additional elements to the City IP, or to discontinue use of some or all of the elements of the City IP. Accordingly, the City does not represent or warrant that the City IP or any elements thereof will be maintained or used in any particular fashion by the City. Any new elements or modifications to existing elements used by the City following the execution of this Agreement may be included in, or deleted from (as applicable), the City IP at the sole discretion of the City. Licensee agrees to comply with the City's written request to include such elements as, or to delete such elements from, the City IP within a reasonable period of time from Licensee' receipt of such written request.

1.6 (a) The City represents, and Licensee acknowledges, that the Licensed Premises is a Jack Nicklaus Signature golf course.

(b) Pursuant to that certain Nicklaus Design Golf Design Subcontract Agreement ("Nicklaus Subcontract") between the City, Sanford Golf Design and Nicklaus Design, LLC ("Nicklaus Design"), a copy of which is annexed hereto as **Exhibit H**, the City has the right to use the Endorsement, as defined in the Nicklaus Subcontract, including, without limitation, the names "Nicklaus Design," "Jack Nicklaus Signature," "Jack Nicklaus," and certain other intangible rights of Nicklaus Design. The City licenses its rights under Section 5 of the Nicklaus Subcontract to Licensee in connection with the operation, advertising, marketing and promotion of the Golf Course, provided that in no event shall Licensee be responsible for the payment of any fees and expenses payable under the Nicklaus Subcontract, except that Licensee shall pay actual third party out-of-pocket expenses, such as shipping and postage costs, if any, incurred by Nicklaus Design in connection with any request for consent or approval of Nicklaus Design by Licensee pursuant to the Nicklaus Subcontract or this Agreement. The City represents that pursuant to the Nicklaus Subcontract, the City has a license to use the Endorsement and to sublicense the Endorsement to Licensee as provided herein. Licensee acknowledges receipt of a copy of the Nicklaus Subcontract, and agrees to conduct Licensee's activities under this Agreement in accordance with (x) the applicable terms and conditions set forth in Section 5, Section 10, and Section 11 (but subject to Section 14 of this License Agreement), of the Nicklaus Subcontract and (y) any other Sections of the Nicklaus Subcontract that are applicable to Licensee's operation of the Licensed Premises as contemplated by this License Agreement and within the control of Licensee. Wherever Licensee shall be required to obtain the consent of Nicklaus Design, the Licensee must first obtain the consent of the City as to the substance of the matter before obtaining consent of Nicklaus Design.

(b) The Licensee has provided Nicklaus Design with a written acknowledgement of its receipt of a copy of the Nicklaus Subcontract, which is attached hereto as **Exhibit H**, together with its written agreement to conduct its activities under this Agreement in accordance with the applicable provisions of the Nicklaus Subcontract, and to maintain the integrity of the Golf Course at Ferry Point Park as designed by Nicklaus Design (such written acknowledgement, the

"Nicklaus Acknowledgement"). Licensee shall not be required to comply with any amendments to the Nicklaus Subcontract attached hereto as **Exhibit H** without Licensee's prior written consent to any such amendments (such consent not to be unreasonably withheld).

(c) Licensee shall not use the Endorsement to advertise, publicize, market or promote the Concession, without in each instance either (i) having obtained the express prior written approval of Nicklaus Design, and providing Parks with evidence of such approval, and (ii) having obtained the express prior written approval of Parks, which approval shall be granted by Parks in the event that Nicklaus Design approves the use of the Endorsement. In the event Licensee requests the approval of Parks to use the Endorsement, Parks shall submit such request to Nicklaus Design and use good faith efforts to cause Nicklaus Design to respond to such request within ten (10) business days in accordance with the Nicklaus Subcontract and shall approve such request within five (5) days after such request is approved by Nicklaus Design.

(d) Any agreement that Licensee proposes to enter into that would involve the use of the Endorsement must receive the prior written approval of Parks and Nicklaus Design in accordance with the terms of the Nicklaus Subcontract and this Section 1.6.

(e) In the event Licensee uses the Endorsement in violation of Section 5 of the Nicklaus Subcontract or this Section 1.6, such use shall constitute a material breach of this License Agreement and Licensee shall cease such use of the Endorsement immediately upon notice from Parks. In addition, the City may elect to immediately terminate this License Agreement and/or the license given herein to Licensee to use the Endorsement if such violation is not cured within ten (10) days after notice from the City to Licensee. Such notice shall be given in accordance with Section 36 herein and shall be deemed given when delivered if by hand or one day after mailing if sent by overnight courier.

2. DEFINITIONS

2.1 As used throughout this License Agreement, 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(n) 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 his designee.

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

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

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

(h) "Environment" shall mean all air, water vapor, surface water, groundwater, drinking water supply or land, including land surface or subsurface, and includes all fish, wildlife, biota and all other natural resources.

(i) "Environmental Conditions" shall mean (i) any land settlement that is significantly more extensive than settlement that typically occurs at new golf courses or adversely affects playability of the Golf Course, (ii) the presence of leachate, landfill gases, municipal solid waste, or Hazardous Substances in, on, under or about the Licensed Premises by reason of the prior use of the Licensed Premises as a Landfill or caused by the City, or (iii) the failure of the Licensed Premises to comply with Environmental Laws at the time of or at any time prior to the commencement of the License or during the Term of the License.

(j) "Environmental Laws" shall mean all federal, state or local environmental, land use, health, chemical use, safety and sanitation laws, statutes, ordinances, rules, regulations and codes, as in effect on the date hereof or promulgated hereafter, relating to the protection of the Environment and/or governing the discharge of pollutants or the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances, including but not limited to the Resource Conservation and Recovery Act of 1976 as amended ("RCRA"), the Clean Air Act as amended, the Clean Water Act as amended, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended ("CERCLA"), the Toxic Substances Control Act, as amended, and federal, state or local laws, ordinances, rules or regulations similar to or based upon the foregoing, as the same are in effect on the date hereof or promulgated hereafter.

(k) "Expendable Equipment" shall mean all equipment, other than Fixed Equipment, provided by Licensee.

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

(m) "First Class Tournament Quality Daily Fee Golf Course" shall mean a golf course, and its facilities, which meet or exceed all the operational, physical and other requirements set forth herein and which shall be capable of attracting professional tournaments hosted by the Professional Golfers' Association and similar organizations.

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

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

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

(o) "Governmental Approvals" shall mean, collectively: (a) any and all approvals, permits, inspections, reviews and licenses required by federal, state and local laws, rules, regulations and orders, including, without limitation, all applicable Environmental Laws, which are or may become necessary for the design, development, construction and operation of any portion of the Licensed Premises, including, without limitation, any Certificate of Occupancy sign-offs, public assembly permits, New York City Department of Health and Mental Hygiene ("DOHMH") permits, Fire Department of New York City ("FDNY") certificates and all other permits and approvals including, but not limited to, New York City Department of Environmental Protection ("DEP"), New York State Department of Environmental Conservation ("DEC"), New York State Historic Preservation Office, New York City Landmarks Preservation Commission and/or other government agency approvals and permits necessary for the use and operation of any portion of the Licensed Premises; (b) any and all environmental tests, reviews and studies required by any applicable Environmental Law or zoning regulations, including without limitation, the Uniform Land Use Review Procedure ("ULURP"), the State Environmental Quality Review Act ("SEQRA") and the City Environmental Quality Review ("CEQR") required in conjunction with the design, development and construction of any portion of the Licensed Premises, and (c) any and all approvals, permits, inspections, reviews and licenses required by federal, state and local laws, rules, regulations and orders by reason of the prior use of the Licensed Premises as a Landfill.

(p) **(i)** "Gross Receipts" shall include, without limitation, all funds or receipts of any kind received by Licensee from or in connection with its operations at the Licensed Premises, without deduction or set-off of any kind, from the sale or provision of merchandise, food and beverages, or services of any kind, including but not limited to those categories set forth in

Section 4, 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. The total surcharge payment (number of rounds played, other than rounds played by Juniors, multiplied by $4.00) shall be deducted from Greens Fees, in calculating the percentage fee payable to the City under Section 4.1(a). Gross Receipts shall include any orders placed or made at the Licensed Premises, although delivery of merchandise or services may be made outside or away from the Licensed Premises, and shall include all receipts of Licensee for orders taken at the Licensed Premises by Licensee for services to be rendered by Licensee in the future either at or outside of the Licensed Premises. For example, if Licensee receives a $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. Gross Receipts shall include the net income received by Licensee in connection with any media now known or hereinafter created, in the United States and internationally, of on-site golf tournaments at the Licensed Premises, whether by network, cable, time delayed broadcast, pay per view or other device or system for contemporaneous viewing of on-site golf tournaments at the Licensed Premises provided, however, the following shall not be included within Gross Receipts, any pass-through fees or costs collected by Licensee on behalf of a third-party broadcaster.

(iii) Gross Receipts shall also include all sales made by any other operator or operators using the Licensed Premises, under a properly authorized sublicense or subcontract agreement, as provided in Section 14 of this License Agreement, provided that Gross Receipts shall also include Licensee's income from rental and sublicense or subcontracting fees and commissions Licensee receives in connection with all services provided by Licensee's subcontractors or sublicensees unless otherwise approved in writing by Parks.

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

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

Licensee. "Regular Salary" for purposes of this subsection shall mean the set hourly wage for the applicable employee.

(b) With respect to catered events, a "Gratuity" shall be an amount no greater than 20% of the catering food and beverage sales for the event, provided that such Gratuity is a charge that: (i) is separately stated on the bill or invoice given to Licensee's customer, (ii) is specifically designated as a gratuity, or purports to be a gratuity, and (iii) is paid over by Licensee in total to its employees (other than management) who actually provide services at the event, and who are primarily engaged in the serving of food or beverages to guests, patrons or customers, including, but not limited to, wait staff, bartenders, captains, bussing personnel, and similar staff. Licensee shall provide documentation reasonably satisfactory to Parks to prove that Gratuities were paid to employees in addition to their regular salaries, and were otherwise in accordance with the foregoing provisions. "Regular Salary" for purposes of this subsection shall mean the set hourly wage for the applicable employee. Such documentation shall be signed and verified by an officer of Licensee.

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

(q) "Hazardous Substances" shall mean, without regard to amount or concentration (i) any element, compound, gas or chemical that is defined, listed or otherwise classified as a toxic pollutant, toxic or hazardous substance, extremely hazardous substance or chemical, hazardous material, hazardous waste, medical waste, biohazardous or infectious waste, or special waste under any Environmental Laws; (ii) petroleum, petroleum-based or petroleum-derived products; (iii) any substance that poses a present or potential hazard to human health or the Environment, including, without limitation, any substance containing polychlorinated biphenyls, asbestos, lead, urea formaldehyde, radon gas; methane or other gases or leachate, (iv) any other substance that by law, rule or regulation, whether federal, state or local, requires special handling in its collection, storage, treatment or disposal; or (v) any highly combustible substance, provided, however that all chemicals and other material used in the ordinary course of maintenance of a golf course will not be considered Hazardous Substances.

(r) **"**Legal Requirements**"** shall mean all laws, statutes, ordinances, orders, rules and regulations, directives and requirements of all federal, state, county, regional, local or municipal governments (including any agency or political subdivision of any of the foregoing), any governmental or quasi-governmental agency, authority (including stamp and registration authorities), board, public utility, bureau, commission, department, instrumentality, or public body, and any person with jurisdiction exercising executive, legislative, judicial (including any court or tribunal), regulatory or administrative functions of or pertaining to government or quasi-governmental issues, which are or may be applicable to the Licensed Premises or any part thereof or related thereto, whether now or hereafter in force including building codes and zoning regulations and ordinances.

(s) "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.

(**t**) "Notice to Proceed" shall mean a written notice from Parks with the commencement date of the term of the License.

(u) "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.

(v) "Year" or "Operating Year" shall both refer to the period between the Commencement Date (or its anniversary in any year other than Year 1) and the day before the anniversary of such date in the immediately following calendar year.

3. TERM

3.1 This License shall become effective upon Parks giving the Licensee a written Notice to Proceed following registration with the Comptroller. The Term of the Concession shall commence upon the date in the written Notice to Proceed ("Commencement Date"), and shall terminate no later than thirteen (13) years days from the Commencement Date ("Termination Date" or "Expiration Date"). The period between the Commencement Date and Termination Date shall be the License Term ("Term"). Licensee may not commence business operations at the Licensed Premises prior to the Commencement Date.

3.2 Notwithstanding any language contained herein, this License is terminable at will by the Commissioner at any time, however, a decision to terminate may not be made in an arbitrary and capricious manner. Such termination shall be effective after twenty-five (25) days written notice is sent to Licensee. In the event of such termination, Licensee shall not be obligated to make payments set forth in Section 4 beyond such early termination date, except for balances outstanding and unpaid as of the effective date of termination. The Commissioner, the City, its employees and agents shall not be liable for damages to Licensee in the event that this License is terminated by Commissioner as provided for herein.

3.3 Parks may terminate this License for cause as follows:

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

regulation or order follows thereafter, Commissioner, by notice in writing, may revoke and terminate this License, such revocation and termination to be immediately effective on the mailing thereof. In the event the Licensee disputes termination of the License, either for cause or at will, the Licensee agrees that it will not seek judicial review of the termination unless and until Licensee appeals the termination, in writing, to the Commissioner for a final administrative review decision, and further, agrees to resort exclusively to judicial review of the Commissioner's final administrative decision through a New York State Article 78 proceeding.

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

(c) If Licensee uses the Endorsement in violation of Section 5 of the Nicklaus Subcontract or Section 1.6 of this License Agreement and Licensee fails to cure such violation within ten (10) days after notice from City to Licensee;

(d) If Licensee fails to maintain the Golf Course to a quality level consistent with the reasonable standards of a Jack Nicklaus Signature golf course.

(e) Nothing contained in paragraphs (a) through (d) above shall be deemed to imply or be construed to represent an exclusive enumeration of the reasons for which the Commissioner may terminate this License, but any termination for "cause" shall explicitly state the grounds for such termination.

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

3.5 In the event Commissioner terminates this License Agreement in accordance with Section 3.3 above, any property of the Licensee on the Licensed Premises, may be held and used by Commissioner in order to operate the Licensed Premises during the balance of the calendar year and may be held and used thereafter until all indebtedness of the Licensee hereunder, at the time of termination of this License, is paid in full.

3.6 Licensee agrees that upon the expiration or sooner termination of this License, it shall immediately cease all operations pursuant to this License and shall vacate the Licensed Premises without any further notice by the City and without resort to any judicial proceeding by the City. Upon the expiration or sooner termination of this License Agreement, the City reserves the right to take possession of the Licensed Premises without notice to Licensee, and may use peaceable self-help, without court order or other judicial approval. Parks may re-enter and repossess the Licensed Premises without being liable to indictment, prosecution or damages therefor.

3.7 Licensee shall, upon the expiration or sooner termination of this License, remove all personal property from the Licensed Premises and leave the Licensed Premises in as good or better condition as at the Commencement Date, reasonable wear and tear excepted. In the event that Licensee does not remove its personal property within 45 calendar days, of any notice sent

to Licensee under the terms thereof, Licensee shall remain liable to the City for all damages, including, but not limited to damage to the Licensed Premises, and the cost of removal or disposal of all personal property remaining at the Licensed Premises. Pursuant to Section 4.4 herein, City may use the Security Deposit to recover such damages in whole or in part. Any personal property remaining on the Licensed Premises after the expiration or sooner termination of this License shall be deemed abandoned by Licensee, and may be disposed of or retained by Licensor, at its sole discretion, without any further notice.

3.8 If this License Agreement is terminated as provided in Section 3.3 hereof:

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

(b) Licensee shall pay to Parks all fees payable under this License Agreement by Licensee to Parks to the Termination Date and Licensee shall remain liable for fees thereafter falling due on the respective dates when such fees would have been payable but for the termination of this License Agreement, provided the Licensed Premises are not re-licensed or re-permitted, which Parks shall extend its reasonable efforts to accomplish, 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.

3.9 No receipt of moneys by Parks from Licensee 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. 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.

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

4. PAYMENT TO CITY

4.1 Licensee shall make payments to the City for each Operating Year in an amount equal to the greater of (1) the minimum annual fee ("Minimum Annual Fee") set forth below or (2) (i) the

annual percentage of Gross Receipts derived from the operation of the Licensed Premises (the "Percentage Fee"), as set forth below:

Operating Year	Minimum Annual Fee		Percentage Fee
1	$300,000.00		7%
2	$300,000.00		7%
3	$300,000.00		7%
4	$300,000.00		7%
5	$300,000.00		7%
6	$300,000.00		7%
7	$300,000.00		7%
8	$300,000.00		7%
9	$300,000.00		8%
10	$300,000.00		8%
11	$300,000.00		9%
12	$300,000.00		9%
13	$300,000.00		10%

(a) As an accommodation to Licensee, for the period of the License Agreement beginning November 15, 2021 through April 1, 2022 in Operating Year one (1), Licensee shall pay the Minimum Annual Fee of $300,000 in five (5) equal monthly installments of $60,000 beginning July 1, 2022 through November 1, 2022. If at the end of Operating Year 1, Licensee's Annual Gross Receipts exceeds the minimum annual payments due of $300,000.00, all percentage fees due pursuant to this License shall be paid within sixty (60) days following the end of the Operating Year. Beginning in Operating Year 2 and continuing thereafter for the Term of the License Agreement, Licensee shall pay the Minimum Annual Fee of $300,000.00 to the City in eight (8) equal monthly installments $37,500.00 for the period April through November. If at the end of each Operating Year, Licensee's Annual Gross Receipts exceeds the minimum annual payments due of $300,000.00, all percentage fees shall be thereafter paid within sixty (60) days following the end of each Operating Year.

(b) Licensee shall make deposits to a Capital Reserve Fund (as hereinafter defined) in accordance with Section 6.21 herein.

(c) Where patrons present Licensee with valid proof of event deposits, pro shop credits, memberships, locker fees, gift certificates, or other such items prepaid to Trump Ferry Point LLC during Operating Year one (1), for which the Licensee has not received the relevant deposits or payments, the Licensee can honor such items, subject to Parks approval not to be unreasonable withheld or delayed, and Parks will credit such items honored by the Licensee against the Licensee's fees during Operating Year one (1) only.

4.2 (a) The Minimum Annual Fee payable during each Operating Year shall be paid to the City in accordance with the Schedule of Minimum Annual Fee Payments to be provided by Parks upon its giving the Notice to Proceed. Each monthly payment is due and payable on the date specified on the Schedule of Minimum Annual Fee Payments regardless of whether Licensee has received a bill for it from Parks. A surcharge of $4.00 per person per round of golf played at the Licensed Premises (other than by Juniors) is included in the approved rates set forth in **Exhibit C** hereto and shall be paid by Licensee to City. The $4.00 surcharge is separate from, and in addition to, the Minimum Annual Fee. The calculation of percentage fees payable to the City shall be based on gross revenue exclusive of surcharge payment.

(b) On or before the thirtieth (30^{th}) day following the end of each quarter of each Operating Year, Licensee shall submit to Parks, in a format acceptable to Parks, a report of rounds of golf played at the Golf Course during the preceding quarter, signed and verified by an officer of Licensee.

4.3 Late charges shall be assessed on any payment that is overdue for more than ten (10) days. In the event that payment of any License fees, percentage fees or any other charges shall become overdue for ten calendar 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 $1,000.00, due on the 1st day of the month must be received no later than the tenth (10^{th}) day of the month. If no payment is received, a 2% late charge in the amount of $20.00 will be assessed on the 11th day of the month. If such late fee(s) and all arrearages (including prior two percent (2%) charges) are not paid in full by the tenth (10^{th}) day of the month following the month in which it shall be due, or is already past due, an additional charge of two percent (2%) of the total of such fee and arrears shall be added thereto and shall be payable and collectable with the next monthly license fee installment. Failure to abide by the terms of this Article shall be presumed to be a failure to substantially comply with the terms, conditions and covenants of this License Agreement and shall be a default hereunder. No failure by Commissioner to bill Licensee for late charges shall constitute a waiver by Commissioner of such late charges or his right to enforce the provisions of this Article. If any local, state or federal law or regulation which limits the rate of interest which can be charged pursuant to this Article is enacted, the rate of interest set forth in this Article shall not exceed the maximum rate permitted under such law or regulation.

4.4 (a) Upon affixing its signature to this License, Licensee shall deposit with the City the amount of $75,000.00 as its security deposit ("Security Deposit"). The Security Deposit may

be in the form of an interest-bearing instrument or other format approved by Parks. In the event the Security Deposit is in the form of an interest-bearing instrument, Licensee may collect or receive any interest earned on such instrument. The Security Deposit shall be held by the City as security for the full, faithful and prompt performance of and compliance with each and every term and condition of this License to be observed and performed by the Licensee. The Security Deposit shall remain with the City throughout the Term of this License.

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

(c) If any fees or other charges or sums payable by Licensee to the City shall be overdue and unpaid or should the City make payments on behalf of the Licensee, or should the Licensee fail to perform any of the terms of this License, including but not limited to the completion of the minimum capital improvement requirement as set forth in Section 6.1, then Parks may, at its option, and without prejudice to any other remedy which the City may have on account thereof, after ten (10) days' notice, appropriate and apply the Security Deposit or as much thereof as may be necessary to compensate the City toward the payment of License fees, late charges, liquidated damages or other sums due from the Licensee or towards any loss, damage or expense sustained by the City resulting from such default on the part of Licensee. In such event, the Licensee shall restore the Security Deposit to the original sum deposited within five (5) business days after written demand therefor. In the event Licensee shall fully and faithfully comply with all of the terms, covenants and conditions of this License and pay all License fees and other charges and sums payable by Licensee to the City, the Security Deposit shall be returned to Licensee upon the surrender of the Licensed Premises by the Licensee in compliance with the provisions of this License.

4.5 (a) On or before the thirtieth (30^{th}) day following each month of each Operating Year, Licensee shall submit to Parks, in a form annexed hereto as **Exhibit B** or other form satisfactory to Parks, a statement of Gross Receipts, signed and verified to be true and correct by an officer of Licensee, reporting any Gross Receipts generated under this License Agreement during the preceding month. Each of the reports referenced in the preceding two sentences shall report the Gross Receipts generated at the Licensed Premises in the following categories:

Greens Fees	(a) Gross Receipts from rates and charges made at the point of sale related to the rounds of golf played at the Licensed Premises; and (b) Total Surcharge Payment (number of golf rounds played, other than rounds played by Juniors, multiplied by the $4.00 surcharge); and (c) Gross Receipts from Greens Fees portion of Outings, Tournaments, and League Play; and
Golf Cart Rentals	Gross Receipts from rates and charges made at the point of sale related to the rental of golf carts at the Licensed Premises; and
Golf Club Rentals	Gross Receipts from rates and charges made at the point of sale related to the rental of golf clubs at the Licensed Premises; and

Lessons	Net Receipts from rates and charges made at the point of sale related to golf lessons at the Licensed Premises less expenses for such lessons; and
ID Cards	Gross Receipts from rates and charges made at the point of sale related to the sale of resident ID cards at the Licensed Premises; and
Club Repair	Gross Receipts from rates and charges made at the point of sale related to the repair of golf clubs at the Licensed Premises; and
Locker Rentals	Gross Receipts from rates and charges made at the point of sale related to the rental of lockers at the Licensed Premises; and
Pro Shop	Gross Receipts from rates and charges made at the point of sale related to the Pro Shop at the Licensed Premises; and
Golf Reservations	Gross Receipts from rates and charges made at the point of sale related to golf reservations at the Licensed Premises; and
Secured Parking	Gross Receipts from rates and charges made at the point of sale related to secured parking at the Licensed Premises; and
Food Service Facility	Gross Receipts from rates and charges made at the point of sale related to the Food Service Facility at the Licensed Premises; and
Vending Machines	Gross Receipts from placement and operation of vending machines at the Licensed Premises; and
Driving Range	Gross Receipts from rates and charges made at the point of sale related to the buckets of balls provided at the Driving Range at the Licensed Premises; and
Permitted Sponsorship Activity	Gross Receipts from any sponsorship activity; and
Broadcasting	Net Receipts from the broadcasting of on-site golf tournaments at Licensed Premises as provided for in this License Agreement; and
Special Events	(a) Gross Receipts from merchandising, food and beverage sales at outings, tournaments and Licensee's Special Events (b) Gross Receipts from administrative fees from outings, tournaments and Licensee's Special Events
Sublicense Gross Receipts	All Sublicense Gross Receipts generated at and realized from any Sublicensed Operator's operation at the Licensed Premises.
Sublicense Fee	All Sublicense Fees paid to Licensee by any Sublicensed Operator.

Miscellaneous	All other Gross Receipts generated at and realized from Licensee's operation of the Licensed Premises.

(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^{th}) day following the end of each Operating Year, Licensee shall submit to Parks a detailed income and expense statement pertaining to operations under this License, signed and verified by an officer of Licensee. The reports referenced in the preceding sentence shall be in such format as Parks shall reasonably approve.

4.7 (a) Licensee, during the Term of this License, shall maintain, and shall cause any sub-licensee to maintain, a revenue control system to ensure the accurate and complete recording of all revenues, in a form and manner acceptable to the City. This revenue control system must maintain detailed sales information from each sales transaction. Specifically, sales information must be recorded electronically, via a computerized point-of-sale system, and must include, but is not limited to, details on each sales transaction, the item(s) sold, time, date of sale and price of the item sold. Regarding Licensee's Special Events, Licensee must also document each of Licensee's Special Events via signed sequentially pre-numbered contracts that capture event information, including the time and date of the event, the number of attendees and required payment. Licensee shall also establish a dedicated bank account for all deposits related to this Concession's generated revenue. Additionally, all books and records maintained pursuant to this License Agreement shall be conveniently segregated from other business matters of Licensee and shall include, but not be limited to: all federal, state and local tax returns and schedules of the Licensee; records of daily bank deposits of the entire receipts from transactions in, at, on or from the Licensed Premises; sales slips, daily dated cash register receipts, and sales books; and duplicate bank deposit slips and bank statements. All accounting and internal control related records shall be maintained for a minimum of ten (10) years after the date of creation of the record.

(b) Licensee shall use such accounting and internal control methods and procedures and keep such additional books and records as are reasonably acceptable to 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 Agreement, 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 ten (10) years from the date of creation of the record or until seven (7) years after expiration or termination of the License.

(c) The failure or refusal of the Licensee to furnish any of the statements required to be furnished under this Section 4.7 within thirty (30) days after notice, the failure or refusal of the Licensee to maintain adequate internal controls within thirty (30) days after notice or the

failure to keep any of the records as required by this Section 4.7 or the existence of any unexplained discrepancy in the amount of fees required to be paid hereunder, as disclosed by audit conducted by Parks or the Comptroller, of more than five percent (5%) in any two out of three 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 Agreement and a default hereunder, which shall entitle Parks, at its option, to terminate this License Agreement. 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 reasonably 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 years (multiplied by the applicable CPI) to replace any missing monthly records, provided that the prior year's month is the same month for which records are missing. For example, if April 2027's gross receipts are missing and the highest April gross receipts occurred in April 2024, then April 2027's "revised" gross receipts shall be calculated using April 2024's figures multiplied by the applicable CPI increases during that period. Licensee shall pay any assessment based upon such reasonable projections by Parks or the Comptroller within fifteen (15) days after receipt thereof, and the failure to do so shall constitute an additional substantial violation of this License and a default hereunder.

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

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

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

5. RIGHT TO AUDIT

5.1 Parks, the Comptroller and other authorized representatives of the City shall have the right to examine or audit the records, books of account and data of the Licensee for the purpose of examination, audit, review or any purpose they deem necessary. Licensee shall also permit the inspection by Parks, Comptroller or other duly authorized representatives of the City of any equipment used by Licensee, including, but not limited to, cash registers and recording

machines, and all reports or data generated from or by the equipment. Licensee shall cooperate fully and assist Parks, the Comptroller or any other duly authorized representative of the City in any examination or audit thereof. In the event that the Licensee's books and records, including supporting documentation, are situated at a location fifty (50) miles or more from the City, the records must be brought to the City for examination and audit or Licensee must pay the food, board and travel costs incidental to two (2) auditors conducting such examination or audit at said location.

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

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

6. CAPITAL IMPROVEMENTS

6.1 (a) Licensee shall expend or cause to be expended during the Term of this License a minimum of $900,000.00 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 in accordance with designs and plans approved by Parks and other government agencies having jurisdiction. Notwithstanding the foregoing, Licensee is permitted to make additional Capital Improvements, provided, however, Licensee first obtains the express written consent of the Commissioner, which shall not be unreasonably withheld. 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 must provide ADA accessibility throughout the Licensed Premises, including, but not limited to, installing ADA accessible counters in the Food Service Facility area, installing ramps, as needed, and providing ADA signage. Licensee shall comply with all City, state, and federal requirements to provide safe and accessible recreational opportunities for everyone, including persons with disabilities. Licensee is encouraged to exceed accessibility requirements whenever possible, and not simply provide the minimum level required.

6.2 (a) At Parks' discretion, Licensee may be required to provide a construction security deposit, in an amount and format approved by Parks, to ensure that all capital work is completed. If required, this security deposit, preferably in the form of a letter of credit, must be in place before any capital work commences.

(b) Upon affixing its signature to this License Agreement, Licensee shall pay to the City the amount of $9,000.00 representing one percent (1%) of the cost of the minimum

guaranteed Capital Improvements described in Section 6.1 above, as a fee for design review by Parks personnel (the "Design Review Fee").

(c) To guarantee prompt payment of moneys due to a contractor or his or her subcontractors and to all persons furnishing labor or materials to the contractor or his or her subcontractors in the prosecution of any Capital Improvement Project with an estimated cost exceeding two hundred fifty thousand dollars ($250,000.00), Licensee shall post or cause to be posted a payment bond or other form of undertaking approved by Parks in the amount of one hundred percent (100%) of the cost of such Capital Improvement Project before commencing such work. Such bond or other undertaking shall be in a form acceptable to Parks. For purposes of this provision, a "Capital Improvement Project" shall mean a set of Capital Improvements that are reasonably related in time and purpose as determined by Parks in its sole discretion. 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 I**, 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 amount expended by Licensee on Capital Improvements shall be determined by the Commissioner based upon construction documents, invoices, labor time sheets, canceled checks, credit card receipts, bank statements, and such other supporting documents or other data as the Commissioner may reasonably require. Expenditures for ordinary repairs and maintenance shall not be considered Capital Improvements; however, expenditures for Capital Improvements reflected in **Exhibit D** shall be included in the total cost in addition to architectural/engineering fees incurred by the Licensee. In making the determination of the total cost of Capital Improvements, Commissioner may request any information he reasonably believes would be helpful to make such a determination. Licensee shall forward such information to the Commissioner upon his request. Licensee shall spend or cause to be expended the entire amount required to complete the Capital Improvements described in Section 6.1, including any amount needed above any estimated cost shown. In the event Licensee performs all Capital Improvements for less than the amount listed in Section 6.1 herein, any excess monies will be remitted to the City as additional License fees. If Licensee fails to expend the amount listed in Section 6.1 herein by the date of expiration or sooner termination of this License, the City may also require any unexpended monies to be remitted to the City as additional License fees. Parks reserves the right to determine whether certain repairs and material purchases can be accepted as capital improvements.

6.4 Licensee shall proceed in good faith and with due diligence to complete all necessary Capital Improvements in accordance with the schedule set forth in **Exhibit D**. Licensee shall complete or cause to be completed all Capital Improvements so that the services to the public contemplated herein may commence and continue, unless such work cannot be completed due to circumstances beyond the control of Licensee as determined by the Commissioner, including acts of God, war, enemies or hostile government actions, pandemics, epidemics; other states of emergency declared by the City, state or federal government, revolutions, insurrection, riots, civil commotion, strikes, fire or other casualty. In such situations, the Licensee shall propose for the Commissioner's approval (which shall not be unreasonably withheld) a revised completion

schedule adjusted to reflect the duration of such delay, and if approved, Licensee shall complete such Capital Improvements in accordance with such approved revised schedule. In the event Licensee fails to finally complete a particular improvement by the date specified for completion in **Exhibit D**, Licensee may be required to pay the City liquidated damages of One Hundred Dollars ($100.00) per day until the outstanding improvement is completed, provided that such failure is not the result of delay by Parks or any City, state, or federal permitting authority and provided further that Parks has given Licensee a notice to cure such failure to complete and Licensee has failed to cure within the period specified in such notice. In the event of any delay by Parks or any City, state, or federal permitting authority, the date specified for completion of the item affected by the delay shall be adjusted to reflect the duration of such delay. Licensee's failure to comply with the schedule for Capital Improvements for a period of thirty (30) days following written notice shall constitute a default upon which Commissioner may terminate this License Agreement by giving thirty (30) days' written notice. In the event of unforeseen circumstances that could not have been reasonably anticipated affecting construction conditions at the Licensed Premises, the scope of the work may be modified with the prior written approval of Parks, provided that in no event shall Licensee expend or cause to be expended less than $900,000 for Capital Improvements.

6.5 (a) Licensee shall pay all applicable fees and shall submit to Parks, the New York City Department of Buildings ("DOB"), the New York City Public Design Commission, and all other agencies having jurisdiction, for prior written approval, all designs, plans, specifications, schematics, working and mechanical drawings, which shall be signed and sealed by a registered architect or licensed professional engineer, who will oversee the entire construction project. Licensee shall submit the architect's or engineer's qualifications to Parks for prior written approval. All designs, plans, specifications, schematics, and working and mechanical drawings shall be in such detail as Parks shall require. All necessary permits and approvals for capital work must be obtained from DOB, including, but not limited to, obtaining a construction permit, Certificate of Occupancy, public assembly permit and letters of no objection, as needed. All designs, outdoor signage, capital work and construction will require prior written approval from Parks, the Public Design Commission of the City of New York, the New York State Historic Preservation Office, the New York City Landmarks Preservation Commission (if applicable), DOB and any other agency having jurisdiction. All designs and construction to be performed on the structure shall be prepared by licensed architects or engineers and will require prior written approval from Parks. All work shall be undertaken in accordance with the plans, specifications, schematics, and working and mechanical drawings approved in writing in advance by Parks. The supervising architect or engineer is required to ensure that all construction conforms to the plans approved by Parks. The Licensee shall be required to provide Parks with all plans and specifications upon completion of the construction documents. No Capital Improvement shall be deemed Finally Completed until the Commissioner certifies in writing that the Capital Improvement has been completed to his satisfaction. The Commissioner's determination as to whether the Capital Improvements are Finally Complete shall not be unreasonably delayed.

6.6 At Parks' request, upon certification by Parks of Final Completion by Licensee of the Capital Improvements required herein, Licensee shall provide Parks with one complete set of final, approved "AS-DESIGNED" plans in a format reasonably acceptable to Parks. Acceptable manual drafting methods include ink or plastic film pencil. Right reading fixed line photo on 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 also, prior to commencing work, obtain all other necessary Governmental Approvals, permits, and licenses. Licensee will also be responsible for obtaining, amending and complying with the Certificate of Occupancy, sign-offs, public assembly permits, Department of Health and Mental Hygiene ("DOHMH") permits, Fire Department of New York City ("FDNY") certificates and all other permits and approvals including, but not limited to, New York City Department of Environmental Protection ("DEP"), New York State Department of Environmental Conservation ("DEC"), New York State Historic Preservation Office, New York City Landmarks Preservation Commission and/or other government agency approvals and permits necessary for any alterations to the existing premises. Licensee shall notify Commissioner of the specific date on which construction shall begin. Licensee shall use reasonable efforts to minimize the extent to which the public use of Ferry Point Park is disrupted in connection with its construction, installation, operation and maintenance activities at the Licensed Premises.

6.8 Licensee shall perform all Capital Improvements in accordance with all federal, state, and City laws, rules, regulations, orders, and industry standards, and with materials as set forth in the approved plans, specifications, schematics, working and mechanical drawings. All equipment and materials installed as part of the Capital Improvements shall be new or like-new, free of defects, of high grade and quality, suitable for the purpose intended and furnished in ample quantities to prevent delays. If available, Licensee shall obtain, in Licensee's name, all manufacturer's warranties and guarantees for all such equipment and materials included in its Capital Improvements, as applicable. Licensee shall assign to the City all guarantees and other warranties with respect to any portion of the Licensee's Capital Improvements when and if, as set forth in this License Agreement, the City exercises its option to take title to such equipment and materials, as may be requested by the City from time to time. Licensee shall execute and deliver to the City any documents reasonably requested by the City in order to enable the City to enforce such guarantees and warranties or exercise other rights or remedies. All of the City's rights and title and interest in and to said manufacturers' warranties and guaranties may be assigned by the City to any subsequent licensees of the Licensed Premises.

6.9 As required by Section 24-216 of the New York City Administrative Code, devices and activities which will be operated, conducted, constructed or manufactured pursuant to this License and which are subject to the provisions of the New York City Noise Control Code (the "Code") shall be operated, conducted, constructed or manufactured without causing a violation

of such Code. Such devices and activities shall incorporate advances in the art of noise control developed for the kind and level of noise emitted or produced by such devices and activities in accordance with regulations issued pursuant to federal, state, and City laws, rules, regulations and orders.

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

6.11 No temporary storage or other ancillary structures and staging areas may be erected and maintained on 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. Licensee shall report dead and diseased trees to Parks, and upon Parks' request, will remove them. Any attachments to the trees, such as lights, will not be permitted.

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

6.14 Licensee shall provide written notice to Commissioner when it believes that the Capital Improvements are Substantially Completed. After receiving such notice, Commissioner shall inspect such Capital Improvements. After such inspection Commissioner and Licensee shall jointly develop a single final list of incomplete and outstanding items incorporating all findings from such inspection concerning all work not completed to the satisfaction of 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, must furnish the Commissioner with a certified statement, issued by Licensee, detailing the actual costs of construction. Accompanying such statement shall be construction documents, bills, invoices, labor time books, accounts payable, daily reports, bank deposit books, bank statements, checkbooks and canceled checks. Licensee shall maintain accurate books and records of account of construction costs, which shall be segregated from other accounts, and shall itemize and specify those costs attributable to the Licensed Premises to permit audit by Parks or the New York City Comptroller upon request.

6.16 Licensee shall provide Parks with evidence of 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 pay, bond, or otherwise obtain a satisfaction of lien from the lienor within thirty (30) business days of receipt of lien by License. Upon Final Completion of all Capital Improvements Parks shall return to Licensee the unused balance of any construction security provided to the City.

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 year period subsequent to the date of the Final Completion of such Capital Improvements. Failure to comply with this Section 6.17 shall constitute a default and may result in the termination of this License.

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

6.19 Upon installation, title to all construction, renovation, improvements, and fixtures made to the Licensed Premises as well as to all furnishings, finishes, and equipment accepted by Parks as Capital Improvements shall vest in and thereafter belong to the City at the City's option, which may be exercised at any time after the Substantial Completion of their construction, renovation, improvement, affixing, placement or installation. To the extent the City chooses not to exercise its option with respect to any of the construction, renovation, improvements, equipment or fixtures made to the Licensed Premises, it shall be the responsibility of Licensee, at the termination or expiration of this License, to remove such equipment and restore the Licensed Premises to the satisfaction of the Commissioner at the sole cost and expense of the Licensee.

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

6.21 (a) Licensee shall establish a dedicated account ("Capital Reserve Fund") with an institutional lender ("Depository") selected by Licensee and satisfactory to Parks that shall be available exclusively to pay directly, or to reimburse Licensee for its payment of costs of Capital Improvements, major repairs and replacements of and purchases of new improvements or equipment for or at the Licensed Premises approved by Parks ("Eligible Work"), but not for ordinary repair and maintenance. For purposes of insuring that the provisions of this Section 6.21 are complied with, Licensee's agreement with Depository shall be subject to the prior written approval of Parks. Commencing in Operating Year 1, Licensee shall make deposits to the Capital Reserve Fund calculated in accordance with the following table:

Operating Year	Reserve Fund Deposit
1 – 10	3% of Gross Receipts
11 – 12	2% of Gross Receipts

On or before the thirtieth (30th) day after the end of each quarter of each Operating Year commencing in Operating Year 1 and until the end of Operating Year 12, Licensee shall deposit to the Capital Reserve Fund an amount equal to the applicable Capital Reserve Fund deposit for the prior quarter. Such Capital Reserve Fund deposits shall not be deducted from total Gross Receipts. Licensee shall use reasonable efforts to ensure that the Capital Reserve Fund is expended to depletion during the Term of this License Agreement for the purposes outlined herein and for Concession projects mutually agreeable to Parks and Licensee.

(b) Licensee shall not be entitled to use the Capital Reserve Fund without obtaining Parks' written consent, which consent shall not be unreasonably withheld. Except as otherwise set forth in this Agreement, all Eligible Work that constitutes additional Capital Improvements at the Licensed Premises shall be subject to Parks' approval.

(c) Disbursements from the Capital Reserve Fund shall be made as follows:

(i) Subject to Section 6.21(b) above, Parks shall instruct Depository to pay to Licensee promptly (but in any event no later than five (5) business days after Licensee has submitted all information necessary to qualify for a disbursement) such amounts out of the Capital Reserve Fund as necessary to pay for amounts paid or then payable by Licensee for Eligible Work, upon application to be submitted by Licensee to Parks showing the cost of labor and the cost of materials, fixtures and equipment that either have (A) been incorporated in the Eligible Work since the last previous application and paid for or then payable by Licensee, or (B) not been incorporated in the Eligible Work but have been purchased since the last previous application and paid for or then payable by Licensee.

(ii) It shall be a condition precedent to each disbursement of the Capital Reserve Fund, that Licensee submit to Parks, a certificate of the Architect/Engineer, if applicable, or a certificate signed and verified by the managing member or other duly authorized officer of Licensee, stating that:

(A) The sum then requested to be withdrawn either has been paid by Licensee or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated), who will render or furnish or have rendered or furnished services or materials for the work, and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such persons with respect thereto, and stating, in reasonable detail, the progress of the Eligible Work up to the date of the certificate; and

(B) The costs for which sums have been requested have not yet been paid or covered in any previous requisition for Capital Reserve Funds; and

(C) The sum then requested does not exceed the cost of the services and materials described in the certificate; and

(D) The materials, fixtures and equipment, for which payment is being requested, to the extent applicable, are equal in quality to the items being restored or replaced and in substantial accordance with the approved plans for the Eligible Work (if such plans are required pursuant to this License Agreement).

(d) Licensee shall provide to Parks, an annual report detailing the deposits and balance of the Capital Reserve Fund. In addition, the reports shall include all disbursements from the Capital Reserve Fund as well as the Eligible Work financed by such disbursements.

(e) Upon the expiration or earlier termination of this License Agreement other than for cause, Licensee shall be entitled to retain the remainder of the Capital Reserve Fund.

7. ALTERATIONS

7.1 (a) Licensee may alter the Licensed Premises only in accordance with the requirements of subsection (b) of this Section 7.1. Capital Improvements shall not include routine maintenance and repairs required to be performed in the normal course of management and operation of the Licensed Premises which may be undertaken by Licensee without approval by Nicklaus Design, Parks and/or the City. Alterations shall become property of the City, at its option, upon their attachment, installation or affixing.

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

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

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

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

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

(d) (i) With regard to the Golf Course (but subject to Section 7.1(d)(ii) below), pursuant to the Nicklaus Subcontract, no substantial changes can be made to the Golf Course without the prior written approval of Nicklaus Design. Licensee acknowledges and agrees that Licensee shall obtain (x) a written determination from Nicklaus Design as to whether any proposed Alterations or Capital Improvements to the Golf Course are substantial in nature, and, if so, the express prior written approval of Nicklaus Design to such Alterations or Capital Improvements; and (y) the express prior written approval of Parks prior to making any Alterations or Capital Improvements to the Golf Course. Licensee shall request approval to commence Alterations or Capital Improvements from Parks and shall simultaneously provide Parks with copies of the documents together with the determination and approval, if required, from Nicklaus Design as described herein.

(ii) Licensee shall have the right from time to time to make Capital Improvements or Alterations with regard to the Clubhouse, shelter houses, sanitary facilities, drinking fountains, maintenance facilities, irrigation system, storm drainage system, dams, bridges, walls, cart paths, utility lines or other similar improvements, facilities or structures incidental to the Golf Course, subject to the prior written approval of the Commissioner. Notwithstanding anything to the contrary contained in Section 7.1(d)(i), Licensee is not required to obtain the approval of Nicklaus Design in connection with the Capital Improvements or

Alterations described in this Section 7.1(d)(ii). Parks shall have the right, but not the obligation, to submit any such request for approval to make such Alterations or Capital Improvements to Nicklaus Design for its written approval.

8. FIXED AND EXPENDABLE EQUIPMENT

8.1 Except for and without limiting the City's and Parks' obligations under this Agreement, Licensee shall, at its sole cost and expense and to the reasonable satisfaction of Commissioner, provide and replace, if necessary, all equipment materials and supplies necessary for the operation of this License, and put, keep, repair, preserve and maintain in good order all equipment found on, placed in, installed in or affixed to the Licensed Premises.

8.2 City has title to all Fixed Equipment on the Premises as of the date of Notice to Proceed. Title to any Additional Fixed Equipment and to all construction, renovation, or improvements made to the Licensed Premises shall vest in and belong to the City at the City's option, which option may be exercised at any time after the substantial completion of the affixing of said equipment or the substantial completion of such construction, renovation or improvement. To the extent the City chooses not to exercise such option, at the termination or expiration of this License, the Licensee shall, at its sole cost and expense and to the satisfaction of Commissioner, be responsible for removing such equipment and restoring the Licensed Premises to Parks in a condition as good as or better than at the commencement of this License Agreement.

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

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

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

8.6 Licensee acknowledges that it is acquiring this License to use the Licensed Premises and Fixed Equipment thereon solely in reliance on its own investigation, that no representations, warranties or statements have been made by the City concerning the fitness thereof, and that by taking possession of the Licensed Premises and Fixed Equipment, Licensee accepts them in their present condition "as is." Licensee further acknowledges and accepts Nonconforming Work "as is." "Nonconforming Work" shall mean installation of non-approved, non-conforming 100 psi irrigation pipe, Pressure Reducing Valves (PRVs) and Filters on holes 2 (tees, greens and fairways), 11 (tees, greens and fairways) and 7 (fairway only).

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 prior to fully vacating the Licensed Premises

9. UTILITIES

9.1 Parks makes no representations regarding the adequacy of utilities currently in place at the Licensed Premises. Licensee will be required to connect to and/or upgrade any existing utility service or create a new utility system and obtain the appropriate permits and approvals. This includes establishing a dedicated meter and/or submeter that captures electricity usage on the Licensed Premises and an account with Con Edison (or other relevant providers) as appropriate. Licensee will be required to pay for all utility costs, excluding water usage, connected with its operations at the Licensed Premises during the Term. These utility costs include, but are not limited to, electricity as well as paying all 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. The City will pay all costs for water usage at the Licensed Premises. Licensee is strictly prohibited from unauthorized use of utilities used, operated, or owned by the City, without the prior written approval of Parks.

9.2 Licensee shall have the right to provide separate metering for its sublicensees, and upon notice to the City of such separate metering, City shall accept separate payments for utilities from such sublicensees, provided that it is expressly understood that such payment arrangement is made solely as an accommodation to Licensee and in no way relieves Licensee of its obligation to ensure full payment of such costs in accordance with this License Agreement.

9.3 Licensee, at its sole cost and expense, shall maintain, repair and replace as needed (i) all utility systems, connections and equipment or any other materials or items located at or above the surface of the Licensed Premises, and (ii) the irrigation and related systems and any other golf related utility system, connection or equipment or any other golf related materials or items located below the surface of the Licensed Premises and above the layer of municipal solid waste, so long as such maintenance, repairs and replacement can be performed using ordinary means and methods without having to disturb or excavate the layer of municipal solid waste, provided however that Licensee shall perform such maintenance, repairs and replacement even when such work requires the disturbance or excavation of the layer of municipal solid waste (and in such cases Licensee, at the City's sole expense, shall additionally dispose of the municipal solid waste, as applicable, in compliance with applicable Legal Requirements; the DEC Part 360 Permit, as applicable; the DEC Deed [defined as any declaration of covenants and restrictions recorded against the Licensed Premises pursuant to the DEC Part 360 Permit], as applicable; and all applicable Environmental Laws) to the extent it becomes necessary to disturb or excavate the layer of municipal solid waste in performing its obligations under this Agreement, and (iii) the electric conduits, wires, connections and equipment associated with the irrigation and related systems and any other golf related utility system, connection or equipment, which may be within or partially within the municipal solid waste, so long as such maintenance, repairs and

replacement can, in each case, be performed using ordinary means and methods without having to disturb or excavate the layer of municipal solid waste (provided however that Licensee shall perform such maintenance, repairs and replacement even when such work requires the disturbance or excavation of the layer of municipal solid waste (and in such cases Licensee shall additionally dispose of the municipal solid waste, as applicable, in compliance with applicable Legal Requirements, the DEC Part 360 Permit (as applicable), the DEC Deed (as applicable) and all applicable Environmental Laws, at the City's sole expense) to the extent it becomes necessary to disturb or excavate the layer of municipal solid waste in performing its obligations under this Agreement.

9.4 In no event shall Licensee be responsible for any maintenance, repairs or replacements of any utility systems, connections or equipment or any other materials or items located below the surface of the Licensed Premises that are operated and/or controlled by any governmental agency or authority other than Parks, including the Emerson Avenue concrete sewer operated by the DEP.

10. OPERATIONS

10.1 (a) (i) Licensee, at its sole cost and expense, shall operate, manage and maintain the Licensed Premises, including the Golf Course Facilities, and Clubhouse consistent with a First Class Tournament Quality Daily Fee Golf Course and to a quality level consistent with the reasonable standards of a Jack Nicklaus Signature golf course, and in conformance with any and all Environmental Laws as they relate to general maintenance and care of the Licensed Premises for the use and enjoyment of the general public, and in such manner as the Commissioner shall prescribe and as permitted by, and in compliance with, all laws, rules, regulations and orders of government agencies having jurisdiction. Licensee may only operate when the park in which the Licensed Premises is located is open. The exact hours and days of operation of all operations at the Licensed Premises are subject to Parks' prior written approval, such consent not to be unreasonably withheld or delayed.. 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, such consent not to be unreasonably withheld or delayed.. 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 request is granted by the Commissioner, Licensee will continue to be responsible for all other obligations under this License Agreement, including the payment of all License fees.

(ii) Exhibit C includes the golf rates ("Greens Fees") that have been approved by Parks. Licensee is permitted to increase the greens fees annually as of April 1 each year based on the CPI; however, any greater increase is subject to Parks' prior written approval, which shall not be unreasonably withheld. Parks will notify Licensee in writing of the approved annual CPI increase prior to April 1st each year.

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

(i) Installing snow fencing around water bodies on the Licensed Premises by

the first week the average temperature is below freezing each winter and removing all snow fencing at the end of each winter.

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

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

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

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

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

(e) Licensee may place tables, chairs, and umbrellas at the Licensed Premises. The design, color, placement, and number of all tables, chairs, umbrellas, and Food Service Facility equipment at the Licensed Premises are subject to Parks' prior written approval, such consent not to be unreasonably withheld or delayed. Licensee must ensure free and open public access to any outdoor seating areas, provided however that access to any outdoor seating area where alcoholic beverages are served may be restricted to comply with Section 10.1(f) of this License Agreement and the requirements of the New York State Liquor Authority or other agency having jurisdiction.

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

(g) Licensee must operate and maintain a Clubhouse at the Licensed Premises, which includes a Food Service Facility and Pro Shop. In operating the Clubhouse, the Licensee shall maintain adequate inventory to ensure that there is a constant a supply of food and beverages during operating hours.

(h) Licensee must operate a Pro Shop in the Clubhouse at the Licensed Premises for the sale of merchandise, supplies and equipment. The size and location of the Pro Shop are subject to Parks' prior written approval, which shall not be unreasonably withheld. All merchandise, supplies, and equipment to be sold at the Pro Shop and the proposed prices of those items are subject to Parks' prior written approval. With respect to the sale of merchandise at the Licensed Premises, Licensee recognizes that the City is the trademark owner of various marks and has licensed the use of those trademarks for use on certain designated merchandise. If Licensee wants to sell merchandise that uses the City's trademarks, Licensee must purchase that merchandise from

authorized licensees of the City. Parks will not permit the sale of merchandise promoting musicians, entertainers, sports figures, cartoon characters, commercial products or non-park-related events. The knowing sale of counterfeit or unlicensed merchandise at the Licensed Premises will result in the immediate termination of this License Agreement and forfeiture of the Security Deposit.

(i) With Parks' prior written approval (which shall not be unreasonably withheld), Licensee may install or have installed vending machines at the Licensed Premises for snack and beverage service. In the event that Licensee places vending machines at the Licensed Premises, Licensee will be required to comply with the Citywide Beverage Vending Machines Standards and Standards for Food Vending Machines, attached hereto as **Exhibits E-1** and **E-2** respectively. Licensee shall remove any vending machine at the direction of the Commissioner. In addition, the beverage and/or food standards may be changed during the Term of the License. In the event that Licensee installs vending machines on the Licensed Premises, the Licensee will be required to comply with any new and/or changed food or beverage standards in the operation of all vending machines at the Licensed Premises. Notwithstanding the foregoing, if the implementation of such new or changed standards will result in a material adverse effect on Licensee's costs, upon submission to Parks of documentation satisfactory to Parks demonstrating such effect, Licensee and Parks may amend this License as agreed between Parks and Licensee. If Licensee fails to comply with any new and/or changed food or beverage standards, as directed by Parks, Licensee shall remove any vending machines on the Licensed Premises.

(j) Licensee shall, at its sole cost and expense, and to the satisfaction of Parks, provide a sufficient number of golf carts, including a sufficient number of ADA-compliant golf carts, for use on the golf course. Licensee is encouraged to use energy efficient golf carts, if economically feasible, on the golf course. Licensee shall maintain all golf carts in good condition, replacing them as necessary throughout the length of the Term.

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

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

(b) Licensee shall not use in its operations any polystyrene packaging or food containers. Licensee shall not, in its operations, sell single-use rigid plastic bottles containing a beverage with a capacity of twenty-one (21) fluid ounces or less. Plastic bottle alternatives, such as aluminum or boxed containers, are permitted.

(c) Licensee is prohibited from selling or serving any beverages in glass bottles or shatterproof containers on (i) the Golf Course, and (ii) outside of the Clubhouse and its associated patios, except when table service or catered events are approved by Parks.

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

10.4 Licensee, at its sole cost and expense, shall obtain, possess and display prominently at the Licensed Premises all approvals, permits, licenses, and certificates (including amendments

thereto) that may be required for the operation and maintenance of the Licensed Premises in accordance with all applicable federal, state, and City laws, rules and regulations. Licensee shall operate and occupy the Licensed Premises in accordance with all applicable law and shall, at its sole cost and expense, obtain all approvals, licenses, permits and certificates (including amendments thereto) that may be required to operate the Licensed Premises in accordance with applicable law, including any necessary Certificate(s) of Occupancy. Licensee shall at all times operate the Licensed Premises in accordance with the provisions of any required licenses or permits. In the event that, at the Commencement Date or at any time during the Term, Licensee does not have a Certificate of Occupancy because one is not legally required, then Licensee shall obtain a "Letter of No Objection" from DOB. Furthermore, in the event that, at the Commencement Date, or at any time during the Term, Licensee does not have a Certificate of Occupancy, where required, and does not have a "Letter of No Objection," Licensee may conduct its operations in temporary structures that have been approved by Parks. Licensee shall obtain any necessary licenses and permits for such temporary structures before the commencement of operations. However, if in such situation, Licensee nonetheless chooses not to conduct such operations in temporary structures, then such operations shall not take place unless and until Licensee has obtained the necessary Certificate(s) of Occupancy, if required, or "Letter(s) of No Objection." Nothing in this Section 10.4 shall limit Licensee's obligation to pay the fees due under this License Agreement. Licensee is required to obtain a Temporary Certificate of Occupancy for the installation and operation of temporary structures.

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

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

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

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

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

10.9 Licensee shall promptly notify Parks within twenty-four (24) hours, in writing, of any major accidents, unusual incidents, 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.

10.10 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.

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

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

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

10.13 Under no circumstances shall Licensee be permitted to place advertisements on the exterior of its Concession area or on any building or structure at the Licensed Premises. Licensee is prohibited from displaying, placing, or permitting the placement of advertisements in the Licensed Premises without the prior written approval of Parks. The advertising of alcoholic beverages shall not be permitted, but Licensee may display signage approved by Parks setting forth its offerings of alcoholic beverages. Licensee shall not advertise any product brands without Parks' prior written approval. Any prohibited material displayed or placed shall be immediately removed by Licensee upon notice from Parks at Licensee's sole cost and expense. The design and placement of all signage posted at the Licensed Premises, including any signage which includes Licensee's name, trade name(s) or logo(s), shall be subject to Parks' prior written approval, shall be appropriately located, and shall state that the Licensed Premises are a New York City Department of Parks & Recreation concession operated by Licensee. A sample of each new sign shall be sent for Parks' approval to Parks' Revenue Division, The Arsenal, Central Park, 830 Fifth Avenue, New York, NY 10065. Any prohibited material displayed or placed

shall be immediately removed by Licensee upon notice from Parks, at Licensee's sole cost and expense.

10.14 Licensee shall, at its sole cost and expense, post throughout the Licensed Premises such signs as may be necessary to direct patrons to its services and facilities. The placement, design and content of all directional signage is subject to Parks' prior written approval. Such signs shall include the necessary wording and arrows to direct patrons to Licensee's attendants. If Licensee contemplates placing any signs off-site, such as on nearby highways or streets, it shall be Licensee's responsibility to obtain any necessary approvals or permits from any governmental agency having jurisdiction over such highways, streets or locations. The design and content of all such signs are subject to Commissioner's reasonable prior approval.

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

10.16 Should the Commissioner decide that Licensee is not operating the Licensed Premises in a satisfactory manner, Commissioner may in writing order Licensee to improve operations or correct such conditions as Commissioner may deem unsatisfactory. In the event that Licensee fails to comply with such written notice or respond in a manner reasonably satisfactory to Commissioner within the timeframe set forth in said notice, subject to unavoidable delays beyond the reasonable control of Licensee, notwithstanding any other provisions herein, then Commissioner may terminate this License.

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

10.18 Intentionally omitted.

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

10.20 Licensee shall operate the Licensed Premises in accordance with all applicable FDNY codes.

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

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

1. Filing an Appeal

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

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

2. Adjudication of Appeal

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

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

10.22 Intentionally omitted.

10.23 Parks makes no representations that there is adequate storage space at the Licensed Premises. Licensee shall be responsible, at its sole cost and expense, for obtaining any additional storage space required for operation of the Concession granted hereby. Licensee shall not store any equipment or supplies at the Licensed Premises without the prior written approval of Parks,

which shall not be unreasonably withheld. No item shall be placed upon any public space, including the ground adjacent to the Licensed Premises without Parks' prior written approval. Licensee shall store all outdoor equipment on a nightly basis and anytime its operations at the Licensed Premises are closed.

10.24 Licensee shall have a sufficient number of staff available at the Licensed Premises during regular operating hours to ensure proper operation of the Concession as a First Class Tournament Quality Daily Fee Golf Course. Parks reserves the right to require that all staff wear uniforms that have been approved in writing by Parks.

10.25 The Licensee shall, at its sole cost and expense, provide safe, environmentally efficient lighting throughout the Licensed Premises. The Licensee shall replace bulbs within ten (10) days of the reported outages.

10.26 Licensee shall comply with all laws, rules and regulations of appropriate agencies, including DEP, regarding noise levels, and Licensee shall be responsible for payment of any and all fees or royalties to the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), or such other entity as they may require for such music or music programming. Licensee may operate and play sound equipment and music only at a sound level reasonably acceptable to the Commissioner. Any musical programming or other types of entertainment must be approved in advance in writing by Parks. A cabaret license and concerts will be strictly prohibited at the Licensed Premises.

10.27 Licensee shall comply with Parks' policy for tournaments, outings, and league play at all Parks' golf courses as set forth below:

(a) No golf course may be closed for an entire day for the purposes of holding any tournament, outing, or league play event without the prior written approval of Parks. Any request to close a golf course for an entire day must be submitted at least sixty (60) days in advance of the date of the proposed event;

(b) No more than ten percent (10%) of the amount of available starting times in any calendar year may be scheduled for tournaments, outings, or league play events;

(c) No more than fourteen percent (14%) of the amount of available starting times in any given month may be scheduled for tournaments, outing, or league play events.

The guidelines above reflect Parks' policy regarding tournaments, outings and league play as of the date of this License Agreement. However, Parks reserves the right to modify these guidelines at any time, including but not limited, to support the Licensee hosting tournaments by the PGA and similar organizations on the Licensed Premises. At Parks' request, Licensee shall provide an annual list of all tournament outings to ensure these guidelines are adhered to.

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

(a) Licensee shall promote and conduct a junior development or youth program with scholarship and fee-based membership. Such programs shall include, but not be limited to the following components: teaching programs, special tournaments, exhibitions, clinics and league play. Licensee shall develop and promote a Junior Golf Program for high school and college

students. Parks encourages the Licensee to cooperate with local school golf coaches and athletic directors to establish a schedule to accommodate school athletic programs.

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

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

10.30 Licensee agrees to employ reasonable preventative maintenance techniques to discourage errant golf balls outside of the Licensed Premises.

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

10.32 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**.

10.33 Licensee shall operate and occupy the Licensed Premises in accordance with all applicable laws and, as applicable, the provisions of the DEC Part 360 Permit, the DEC Deed, any informal approval from DEC or new permit as described in Section 1.2, and any other licenses or permits required by Legal Requirements.

10.34 The City represents and warrants that (i) attached as **Exhibit J** is an accurate and complete copy of the DEC Part 360 Permit and (ii) attached as **Exhibit K** is the Ferry Point Park East Post Construction Custodial Care Plan.

10.35 Licensee acknowledges that pursuant to Section 4(A) of the Nicklaus Subcontract, Nicklaus Design has the right, at Nicklaus Design's cost, to have the Golf Course inspected by Nicklaus Design's staff agronomist or an independent agronomist selected by Nicklaus Design at any time and from time to time during the Term in order to review and assist in resolving agronomic issues which, in the reasonable opinion of Nicklaus Design, may adversely affect the proper grow-in of turf surfaces or otherwise impact the ability to maintain the quality of the Golf Course as required under the Nicklaus Subcontract. In order to effectuate this provision, Licensee agrees that it shall provide access to the Licensed Premises to such staff agronomist and/or independent agronomist.

10.36 Licensee shall, at its sole cost and expense, provide any lighting, music, music programming and sound equipment which Licensee determines may be necessary for its operations under this License Agreement. Installation of additional fixed lighting or fixed sound

equipment by the Licensee on the Licensed Premises, including on the lighted Driving Range, shall require the prior written approval of the Commissioner, not to be unreasonably withheld.

10.37 Licensee, or a sublicensee approved by Parks to operate the parking facility, may charge for parking in the parking area at the Licensed Premises at such rates as may be approved in advance in writing by Parks.

10.38 The Greens Fees listed in **Exhibit C** apply to residents of the five (5) boroughs of New York City and may be adjusted as provided in **Exhibit C**. Licensee may institute a surcharge for non-residents, which shall be subject to the prior written approval of Parks if such non-resident fees are more than the amounts permitted on **Exhibit C**. In addition, Licensee may issue New York City resident ID cards ("Resident ID Cards"), which Resident ID Cards may be used at City owned golf courses citywide, for a fee listed on **Exhibit C**, which fees are subject to change upon the reasonable prior written approval of the Commissioner, which approval shall be granted if such fees are consistent with other City golf courses.

10.39 Licensee shall address the geese population related to the Licensed Premises according to the following:

(a) In connection with the City's goose mitigation efforts at the Licensed Premises, Licensee agrees solely to (a) cause one (1) member of Licensee's staff to be trained in wildlife hazard management, (b) post and maintain "no feeding" signs at the Clubhouse, the Maintenance Building, the parking areas at the Licensed Premises, and (c) cause one (1) representative of Licensee to attend any bi-annual wildlife meeting between Parks, the Department of Environmental Protection and the Federal Aviation Administration ("FAA") where Parks has provided Licensee with reasonable advance written notice of such meeting (the foregoing activities, collectively the "Licensee Goose Related Activities"). Parks acknowledges and agrees that Licensee shall not be required to bear more than a minimal expense in connection with the Licensee Goose Related Activities. The City shall promptly provide to Licensee a copy of any Wildlife Hazard Management Plan that the City or Parks develops with the FAA and any amendments thereto.

(b) The City acknowledges and agrees that the City shall be responsible at its cost and expense for all wildlife hazard mitigation and monitoring measures, including without limitation, the monitoring and mitigation of geese populations at the Licensed Premises (and any lethal removal of geese), in each case, in accordance with all Legal Requirements, including, without limitation, any requirements of the FAA.

11. MAINTENANCE, SANITATION AND REPAIRS

11.1 (a) Licensee shall, at its sole cost and expense (or through arrangements with third parties), operate and maintain the Licensed Premises in good and safe condition and in accordance with industry standards, as a First Class Tournament Quality Daily Fee Golf Course and a Jack Nicklaus Signature golf course. This includes, but is not limited to, the maintenance and repair of the entire Licensed Premises, all interior and exterior structures, building systems, restrooms utility systems and connections, sewer systems and connections, equipment, lighting, sidewalks, paved areas, vaults, gutters, curbs, and fixtures. In addition, Licensee must keep all signs and structures on the Licensed Premises in good condition and free of graffiti. The erecting

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

(b) Licensee will be responsible for all year-round pruning, landscaping, maintenance and all general grounds maintenance at the Licensed Premises. Licensee shall take all necessary measures to ensure the durability of the golf course throughout the Term. Licensee shall provide an adequate number of annual and seasonal staff in order to maintain the course in excellent condition, as a First Class Tournament Quality Daily Fee Golf Course, to the quality level consistent with a Jack Nicklaus Signature golf course. In maintaining the course, Licensee shall use as guidelines the standards of a Jack Nicklaus Signature golf course for turf management and golf course maintenance, as well as best management practices to minimize the use of fertilizers, herbicides, and pesticides, particularly in areas near any water bodies including the ponds. At Parks' request, Licensee shall, at its sole cost and expense, provide qualified agronomist(s) to ensure that the Golf Course is maintained in compliance with turf management and golf course maintenance to the quality level consistent with a Jack Nicklaus Signature golf course. Licensee shall, at its sole cost and expense, operate and maintain the existing irrigation system at the Licensed Premises in good and working order. This shall include the repair and replacement of all equipment and material as needed, including the booster pump system, lake lift pump system, electrical system, weather station, radio system, computer system, control, decoder and/or satellite system, irrigation heads and lines, pump house structure and all other associated equipment and material in accordance with operation and maintenance manuals. Each fall, Licensee shall winterize the entire system, and, each spring, Licensee shall start up, pressurize and fill the system. Licensee shall repair any leaks, replace any damaged or missing irrigation heads, and maintain all equipment and pump houses in a clean and orderly manner. In addition, Licensee shall maintain the grounds and overflow structures, keeping them free from algae, debris and trash, and making repairs as needed. Licensee shall, at its sole cost and expense, retain the services of qualified technicians and/or service firms to fully comply with all provisions of the irrigation system's operation and maintenance manual, as issued by Flowtronex PSI Pumping Systems.

(c) Licensee shall maintain and improve the landscaping at the Licensed Premises. This shall include, but is not limited to, performing any seeding, trimming, pruning, planting, fertilization, terrain shaping, and soil improvements. In addition, any trees on the Licensed Premises shall be pruned by Licensee as needed. Licensee shall submit detailed plans to Parks of all horticultural and landscaping work to be performed. All work to be performed at the Licensed Premises is subject to Parks' prior written approval, which shall not be unreasonably withheld. In addition, Licensee shall obtain all necessary permits, approvals, and authorizations from all City, state, and federal agencies having jurisdiction over the Licensed Premises before any work is performed, and such work shall be of a quality which meets Parks' standards. Licensee shall improve the horticultural amenities at the golf course by establishing planting areas for flowers, flowering shrubs, and flowering trees at strategic locations throughout the golf course, such as the entrance to the course, around the clubhouse, along the course perimeter, and at the tee boxes where necessary. All plans for horticultural improvements, including proposed locations and designs, as well as the types and approximate quantities of flowers, flowering shrubs, and flowering trees proposed for each planting area, are subject to Parks' prior written approval. Licensee shall adhere to all rules and regulations established by the United States Department of Agriculture, the New York State Department of Agriculture & Markets, and Parks concerning infestation control and treatment and general tree trimming and removal practices.

(d) Licensee shall, at its sole cost and expense, provide normal maintenance for the greens, tees, fairways and sand bunkers:

(i) Greens: Provide for the cutting and the applications of appropriate fungicides, herbicides and insecticides as part of a complete treatment and prevention program.

(ii) Tees: Provide normal maintenance which will include cutting, fertilizing and applications of appropriate chemicals.

(iii) Fairways: Provide normal maintenance including cutting, application of appropriate chemicals, and spot seeding where necessary.

(iv) Sand Bunkers: Provide normal maintenance including raking, weeding, and keeping proper sand levels.

11.2 Licensee shall, at its sole cost and expense, be responsible for maintenance of the parking lots at the Licensed Premises. Such maintenance shall include repair work on curbs, including paving and striping, snow removal, and removal of all litter, debris, and garbage. There are a limited number of parking spaces available at the Licensed Premises for facility staff and patrons. Licensee shall ensure that the number, placement, and specifications of all accessible spaces must comply with ADA guidelines as well as with all City, state, and federal regulations, including striping and signage specifications.

11.3 Licensee shall maintain the Licensed Premises, to the standard of a First Class Tournament Quality Daily Fee Golf Course, and to the satisfaction of the Commissioner. All such maintenance shall be performed by Licensee in a good and worker-like manner. In part to secure Licensee's obligation to maintain and repair the Licensed Premises, Licensee shall provide Parks with a Security Deposit as provided in Section 4.4(a).

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

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

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

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

11.8 Licensee shall conduct regular pest control inspections and extermination, as needed. Under no circumstances may licensee use a baiting system for pest control or extermination. To the extent Licensee applies pesticides to the Licensed Premises, Licensee, or any subcontractor hired by Licensee, shall comply with Chapter 12 of Title 17 of the New York City Administrative Code and limit the environmental impact of its pesticide use.

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 DEC and register such tanks with the DEP. Licensee shall assume all registration and update costs. Licensee shall keep a copy of the PBS Certificate on site and provide copies to Parks 5-Boro Office on Randall's Island, New York. Licensee shall perform or have performed a tightness test conducted at least once every five years, and shall comply with Parks' monitoring leak detection checklists for the tank(s) and all other legal requirements. Any changes, removals or additions of tanks must be pre-approved by Parks.

11.10 (a) Licensee hereby acknowledges that the FDNY has issued a fuel tank variance to Ferry Point Golf Course permitting the dispensation of petroleum from an above ground tank protected by a fuel containment system.

(b) Licensee shall operate, inspect and properly maintain the tanks provided by the City referenced in **Exhibit G**, in accordance with (i) the FDNY variance, if applicable, (ii) any applicable amendments thereto, and (iii) any other applicable Legal Requirements.

(c) Any changes, removals or additions of tanks must be pre-approved by Parks and FDNY.

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

11.12 During the hours of operation of the Licensed Premises, Licensee shall clean and maintain the public restrooms located thereon. The restrooms shall be cleaned and maintained in accordance with the manner approved by Parks.

11.13 (a) Notwithstanding anything to the contrary contained herein, neither the City nor Parks shall be responsible to remediate or remove any Environmental Conditions and/or effects of Environmental Conditions or indemnify, protect, defend or hold harmless Licensee, its members, partners, officers, directors, employees, agents, successors and assigns ("**Licensee Indemnitees**") with respect to any Environmental Conditions and/or effects of Environmental Conditions or any liability with respect thereto to the extent that such Environmental Condition and/or effects of Environmental Conditions is caused or exacerbated by the negligence or intentional tortious acts or omissions of any of the Licensee Indemnitees.

(b) If changes to the Golf Course requested by Licensee are required to obtain a professional PGA tournament at the Licensed Premises would require the disturbance or

excavation of the municipal solid waste below the surface of the Licensed Premises, Licensee shall be responsible for the performance of such work and the cost of such work with respect to any municipal solid waste that may be excavated or disturbed by such work being performed by Licensee, including the cost of disposing of such municipal solid waste, if required, in compliance with applicable Legal Requirements, the DEC Part 360 Permit, the DEC Deed and all applicable Environmental Laws.

11.14 (a) Notwithstanding anything to the contrary in this Agreement, the City, at its sole cost and expense, shall:

(i) be responsible for (i) the operation, maintenance and repair, if any, of the Licensed Premises as a site for the disposal of solid, hazardous or other waste materials by burial (a "**Landfill**") in compliance with applicable Legal Requirements, including, without limitation all applicable Environmental Laws, including compliance with the DEC Part 360 Permit and the DEC Deed, (ii) any Environmental Conditions and/or the effects thereof with respect to the Licensed Premises and/or resulting liability, which are caused by the Landfill, whether such Environmental Conditions and/or the effects thereof and resulting liability is presently existing or arises after the execution of this Agreement, (iii) any Environmental Condition and/or effects of Environmental Conditions that result from any conduct or condition that occurred or existed prior to the Commencement Date, whether such Environmental Condition and/or effects of Environmental Conditions are presently existing or arises after the Commencement Date, except to the extent that such Environmental Condition and/or effects of Environmental Conditions are caused or exacerbated by the negligence or intentional tortious acts or omissions of any of the Licensee Indemnitees, in which case Licensee, at its sole cost and expense, shall be responsible for such Environmental Conditions and/or effects of Environmental Conditions caused or exacerbated by reason of such negligence or intentional tortious acts or omissions of any of the Licensee Indemnitees, and (iv) obtaining any required Governmental Approvals relating to Environmental Conditions, except that Licensee, at its sole cost and expense, shall be responsible for obtaining such Governmental Approvals to the extent required by Environmental Conditions that are caused or exacerbated by the negligence or intentional tortious acts or omissions of any of the Licensee Indemnitees;

(ii) provide and install all required methane monitoring equipment and equipment required for the monitoring of settlement, provide staff to conduct the monitoring and reporting activities necessary for monitoring methane and settlement issues related to the Landfill and operate the methane monitoring equipment and settlement monitoring equipment installed by or on behalf of Parks, and be solely responsible for the management of such staff and the operation of such equipment and for reporting the results of such monitoring, in each case, in accordance with all applicable Environmental Laws, applicable Governmental Approvals, the DEC Part 360 Permit and the DEC Deed. the City and/or Parks shall conduct all inspections, maintenance, repair and monitoring activities of all on and off-site portions of the monitoring wells, gas venting trenches, active and passive gas venting systems, and piezometers required by the DEC Part 360 Permit, the DEC Deed and applicable Legal Requirements. Except as specifically provided in the provisos at the end of this sentence, Licensee shall have no responsibility for installing, affixing, replacing, operating, repairing, preserving or maintaining any equipment for the monitoring of methane and other gases, settlement and other Environmental Conditions and/or effects of Environmental Conditions at the Licensed Premises and the active and passive gas venting systems, provided, however, Licensee shall be responsible at its cost and expense solely (i) for the removal of bio growth for the portion of the venting

trench within the Licensed Premises; (ii) for the portion of the venting trench within the Licensed Premises, for the annual replacement of mulch and the prompt replacement of mulch following any soil washouts of the mulch cover and (iii) for promptly repairing and/or replacing any such monitoring equipment at the Licensed Premises that is damaged due to the operations or activities of Licensee (ordinary wear and tear excepted); provided further that (x) if Licensee actually becomes aware of (without any obligation to investigate) any overgrowth of bio growth or that a soil washout of the mulch has occurred to a portion of the venting trench within the Licensed Premises, and Licensee cannot reasonably remove the bio growth or replace the mulch within forty-eight (48) hours of discovery, as the case may be, then Licensee shall promptly report such damage to Parks in writing and Licensee shall remove the bio growth or replace the mulch, as the case may be, within two weeks of discovery by Licensee, and (y) for the portion of the venting trench within the Licensed Premises, if Parks discovers the overgrowth of bio growth or that a soil washout of the mulch has occurred, Parks shall promptly notify Licensee in writing and Licensee shall remove the bio growth or replace the mulch, as the case may be, within two (2) weeks of receipt of such notification from Parks. In the event of any damage due to Licensee's operations or activities as set forth in clauses (ii) and (iii) of the preceding sentence, such damage shall be promptly reported to Parks in writing. Any work conducted or performed by Licensee at the Licensed Premises shall be in accordance with all applicable Environmental Laws, applicable Legal Requirements, applicable Governmental Approvals, the DEC Part 360 Permit (as applicable), the DEC Deed (as applicable) and any other licenses or permits required by applicable Legal Requirements; and

(b) Parks and the City hereby represent, warrant and covenant to the Licensee that (i) no portion of the Licensed Premises are actively being used for or during the Term will be used for the disposal of municipal solid waste, (ii) (1) no disposal of Hazardous Substances are currently permitted at Ferry Point Park and (2) during the no disposal of Hazardous Substances will be permitted at Ferry Point Park, (iii) any soil or other fill material brought to the Licensed Premises for the purpose of providing cover for the Landfill (x) shall not contain any Hazardous Substances in amounts that would result in a violation of Environmental Laws, the DEC Part 360 Permit or the DEC Deed or pose a threat to the safety or health of persons or the Environment, and (y) shall not compromise the integrity of the Golf Course or any building foundations, and (iv) the City will only undertake disposal of any solid waste that is in compliance with DEC Part 360 Permit, the DEC Deed and all applicable Environmental Laws and Legal Requirements.

(c) Notwithstanding anything to the contrary set forth in this License Agreement, the City shall indemnify, protect, defend and hold harmless Licensee Indemnitees from and against any and all claims, demands, losses, liabilities, obligations, fines, damages, penalties, lawsuits, costs, charges and expenses (collectively, "**Claims**"), by third parties brought against Licensee Indemnitees arising out of: (i) the existence, exposure or disturbance of municipal solid waste at the Licensed Premises and the failure of the City to properly dispose of and/or remediate such municipal solid waste in accordance with applicable Legal Requirements (except to the extent that Licensee is required to dispose of and/or remediate such municipal solid waste pursuant to the terms of this Agreement) or pursuant to this Agreement (except to the extent such waste is exposed or disturbed by the negligence or intentional tortious acts or omissions of any of the Licensee Indemnitees, including but not limited to the negligence or intentional tortious acts or omissions of any of the Licensee Indemnitees in the course of performing Licensee's

responsibilities), (ii) Environmental Conditions and/or effects of Environmental Conditions, whether such Environmental Conditions and/or effects of Environmental Conditions are presently existing or arise after the date hereof, except to the extent that such Environmental Condition and/or effects of Environmental Conditions are caused or exacerbated by the negligence or intentional tortious acts or omissions of any of the Licensee Indemnitees; (iii) wildlife hazards to nearby airports or air navigation resulting from geese and/or other wildlife at the Licensed Premises and/or any other City property within the vicinity of the Licensed Premises (including Ferry Point Park) and/or the City's control and/or mitigation of geese and/or other wildlife populations at any of the foregoing areas (including the lethal removal of geese) (except to the extent any such Claims set forth in this clause arise from the negligence or intentional tortious acts or omissions of any of the Licensee Indemnitees in performing any of the Licensee Goose Related Activities); (iv) Licensee's failure to comply with SEQRA/CEQR, the DEC Part 360 Permit or any other applicable laws to the extent Licensee's non-compliance is caused by Licensee's failure to comply with the statement contained in the SEQRA/CEQR assessment dated April 27, 2005 for Ferry Point Park that herbicides or pesticides will not be used at the Licensed Premises, that Parks acknowledges was made in error, (v) any payment obligations under the Nicklaus Subcontract, except for remedies due to Nicklaus Design, if any, arising from the breach of this License Agreement by any of the Licensee Indemnitees or the negligence or intentional tortious acts or omissions of any of the Licensee Indemnitees, and (vi) any obligations under the Nicklaus Subcontract to the extent that City is required to perform such obligations under this Agreement or if such obligations are required to be performed by or on behalf of Sanford Golf Design under the Nicklaus Subcontract. Notwithstanding anything to the contrary contained herein, the provisions of the City's indemnification shall not be construed to indemnify or provide for the defense of any of the Licensee Indemnitees to the extent any Claims are attributable to the acts or omissions of any of the Licensee Indemnitees (provided, however, notwithstanding the foregoing, the City's indemnification obligations shall apply to Claims related to or in connection with any Environmental Conditions and/or the effects of Environmental Conditions, except to the extent that such Environmental Conditions and/or effects of Environmental Conditions are caused or exacerbated by the negligence or intentional tortious acts or omissions of any of the Licensee Indemnitees). The foregoing indemnification shall survive any termination or expiration of this License Agreement.

Notwithstanding anything to the contrary set forth in this License Agreement, Licensee shall indemnify, protect, defend and hold harmless City, Parks, their agents and employees (collectively, "**City Indemnitees**") from and against any and all Claims by third parties brought against City Indemnitees arising out of: (i) a default or breach by Licensee under this License Agreement, including a breach of the representations set forth in this Agreement; (ii) the exposure or disturbance of municipal solid waste at the Licensed Premises to the extent such municipal solid waste is exposed or disturbed by the negligence or intentional tortious acts or omissions of any of the Licensee Indemnitees and the failure of Licensee to properly dispose of and/or remediate such municipal solid waste in accordance with applicable Legal Requirements if required of Licensee by this Agreement in connection with such exposure or disturbance; (iii) the negligence or intentional tortious acts or omissions of any of the Licensee Indemnitees (iv) the failure of Licensee to properly dispose of municipal solid waste, if required by this Agreement, in accordance with Legal Requirements, in the course of performing Licensee's responsibilities pursuant to Section 9.3 or Section 11.13(b) of this Agreement ; (v) Environmental Conditions and/or effects of Environmental Conditions, whether such

Environmental Conditions and/or effects of Environmental Conditions are presently existing or arise after the date hereof, to the extent that such Environmental Conditions and /or effects of Environmental Conditions are caused or exacerbated by the negligence or intentional tortious acts or omissions of any of the Licensee Indemnitees; and/or (vi) wildlife hazards to nearby airports or air navigation resulting from geese and/or other wildlife at the Licensed Premises and/or the Licensee's control and/or mitigation of geese and /or other wildlife populations at the Licensed Premises to the extent any such Claims set forth in this clause arise from the negligence or intentional tortious acts or omissions of any of the Licensee Indemnitees in performing any of the Licensee Goose Related Activities. Notwithstanding anything to the contrary contained herein, the provisions of Licensee's indemnification shall not be construed to indemnify or provide for the defense of any City Indemnitees to the extent any Claims are attributable to the acts or omissions of the City Indemnitees. The foregoing indemnification shall survive any termination or expiration of this License Agreement.

(d) Licensee shall at its sole cost and expense provide all new cover over the Landfill required by Licensee to replace cover that is removed or disturbed due to Licensee's construction and maintenance activities, Golf Course operations and maintenance. Licensee represents, warrants and covenants that any soil or other fill material brought to the Licensed Premises for the purpose of providing cover for the Landfill (x) shall not contain any Hazardous Substances in amounts that would result in a violation of Environmental Laws, the DEC Part 360 Permit or the DEC Deed or pose a threat to the safety or health of persons or the Environment, and (y) shall not compromise the integrity of the Golf Course or any building foundations.

(e) (i) If (x) Licensee discovers (without any obligation to investigate) or becomes aware of any maintenance, repair, replacement, removal, remediation or other work ("**Repair or Remediation**") required to be performed by the City pursuant to Section 11.14, then within sixty (60) days of Licensee discovering (without any obligation to investigate) or becoming aware of any Repair or Remediation, Licensee shall send a written notice to the City (the "**Repair or Remediation Notice**") requesting that the City comply with such Repair or Remediation obligations, or (y) the City or Parks, as the case may be, discovers any Repair or Remediation that the City is required to perform pursuant to Section 11.14, then the City or Parks, as the case may be, shall send a written notification to Licensee.

(ii) If the subject Repair or Remediation does not require Repair or Remediation of an Environmental Condition, the City shall, within one hundred twenty (120) days (or one hundred eighty (180) days where the City needs to obtain a new or replacement Contractor to perform such Repair or Remediation) after receipt of such Repair or Remediation Notice or after the City or Parks, as the case may be, has sent a written notice to Licensee pursuant to Section 11.14 above, commence such Repair or Remediation and shall diligently complete such Repair or Remediation, to the satisfaction of all federal, state and City agencies having jurisdiction over such work and the standards of a First Class Tournament Quality Daily Fee Golf Course and a Jack Nicklaus Signature golf course.

(iii) If the subject Repair or Remediation requires Repair or Remediation of an Environmental Condition, within one hundred twenty (120) days (or one hundred eighty (180) days where the City needs to obtain a new or replacement Contractor to perform such Repair or Remediation) after its receipt of such Repair or Remediation Notice or after the City or Parks, as the case may be, has sent a written notice to Licensee pursuant to Section 11.14 above, the City

shall give written notice to Licensee whether or not the City will perform the Repair or Remediation, and, if the City elects to perform the Repair or Remediation, the amount of time, including any time required to obtain DEC approval of the proposed Repair or Remediation action, if required, that the City estimates will be required to complete the Repair or Remediation. In the event the City elects to undertake such Repair or Remediation the City shall, promptly thereafter, use commercially reasonable efforts to obtain DEC approval in accordance with Section 11.14 of this Agreement, and after receipt of DEC approval of any proposed Repair or Remediation action, if required, commence such Repair or Remediation and shall diligently complete such Repair or Remediation, to the satisfaction of all federal, state and City agencies having jurisdiction over such work and the standards of a First Class Tournament Quality Daily Fee Golf Course and a Jack Nicklaus Signature golf course.

(iv) In the event that the Repair or Remediation described above in this Section 11.14(e) is required due to an emergency condition or a condition that materially and adversely affects Licensee's operation of the Licensed Premises, or any part thereof (whether or not such emergency qualifies as an emergency pursuant to the New York City Charter or New York General Municipal Law, Article 5-A, §103, subsection 4), Licensee may request a meeting with Parks to discuss a plan for expediting the remediation, repair or replacement, as applicable, and Licensee and Parks shall attempt in good faith to promptly negotiate a mutually acceptable solution to expedite the remediation, repair, or replacement.

(v) (A) If (x) the City or Parks discovers (without any obligation to investigate) any maintenance, repair, replacement, removal, remediation or other work required to be performed by Licensee pursuant to Section 11.14 ("**Licensee Repair or Remediation**"), then the City or Parks, as the case may be, shall send a written notice to Licensee (the "**Licensee Repair or Remediation Notice**") requesting that Licensee comply with such Licensee Repair or Remediation obligations, or (y) Licensee discovers any Licensee Repair or Remediation that Licensee is required to perform pursuant to Section 11.14, then Licensee shall send a written notice to the City. The Parties agree that Licensee's failure to perform a Licensee Repair or Remediation in accordance with the provisions of this Agreement shall be deemed a material breach or failure to substantially comply with this Agreement.

(B) If the subject Licensee Repair or Remediation does not require Licensee Repair or Remediation of an Environmental Condition, then Licensee shall, within one hundred twenty (120) days after receipt of such Licensee Repair or Remediation Notice or after Licensee has sent a written notice to the City pursuant to Section 11.14(e)(v)(A) above, commence such Licensee Repair or Remediation and shall diligently complete such Licensee Repair or Remediation, to the satisfaction of all federal, state and City agencies having jurisdiction over such work and the standards of a First Class Tournament Quality Daily Fee Golf Course and a Jack Nicklaus Signature golf course within one hundred eighty (180) days of commencing such Licensee Repair or Remediation.

(C) If the subject Licensee Repair or Remediation requires Licensee Repair or Remediation of an Environmental Condition, within one hundred twenty (120) days after its receipt of such Licensee Repair or Remediation Notice or after Licensee has sent a written notice to the City pursuant to Section 11.14(e)(v)(A) above, Licensee shall give written notice to the City of the amount of time, including any time required to obtain DEC approval of the proposed Licensee Repair or Remediation action, if required, that Licensee estimates will be required to complete the Licensee Repair or Remediation. Licensee shall, (x) promptly thereafter, submit its proposed submission for DEC to Parks for Parks' approval, which approval

shall be given or withheld (and if withheld shall state the reason for such withholding and the changes required by Parks) as expeditiously as reasonably possible to avoid any delay in the proposed submission to the DEC and in no event later than the earlier of (i) two (2) days prior to the time the submission is due to the DEC or (ii) fifteen (15) business days from the date of receipt of such request for approval by Parks and (y) after receipt of DEC approval of any proposed Licensee Repair or Remediation action, if required, commence such Licensee Repair or Remediation and shall diligently complete such Licensee Repair or Remediation, to the satisfaction of all federal, state and City agencies having jurisdiction over such work and the standards of a First Class Tournament Quality Daily Fee Golf Course and a Jack Nicklaus Signature golf course within one hundred eighty (180) days of commencing such Licensee Repair or Remediation.

12. APPROVALS

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

12.2 Whenever any act, consent, approval or permission is required of the City, Parks or the Commissioner under this License, the same shall be valid only if it is, in each instance, in writing and signed by Commissioner or his 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 his duly authorized representative.

13. RESERVATION FOR SPECIAL EVENTS

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

(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 at the expense of the City. The dates of such events shall be mutually agreed upon by both Parties and shall be reserved in writing not less than one month in advance.

13.2 Subject to prior written approval from Parks, Licensee may conduct special events or programs (e.g., either arranged by Licensee or by reservation of all or part of the Licensed Premises through Licensee by third parties) at the Licensed Premises. Any ticketed (including, but not limited to, payment of a fee at the door) events also require prior written approval from

Parks at the Licensed Premises. Licensee shall, at least thirty (30) days in advance, submit to Parks for approval, with such supporting documentation as Parks shall require, 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 signed sequentially pre-numbered contracts that capture event information, including the time and date of the event, the number of attendees and required payment. All revenue generated through such Special Events must be reported to Parks as Gross Receipts.

(a) In no event shall Licensee completely close the Golf Course or all of the food service facilities to conduct Special Events during public hours of use except when such activities are specifically approved by Parks.

(b) Any and all banquet or catering use of the Food Service Facility must be booked for events primarily related to Parks appropriate activities, including but not limited to dining and/or sporting activities.

14. PROHIBITION AGAINST TRANSFER; ASSIGNMENTS AND SUBLICENSES

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

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

The term "assignment" shall be deemed to include any direct or indirect assignment, sublet, sale, pledge, mortgage, transfer of or change in ten percent 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 percent (10%) or more of the stock or voting control of Licensee in the Licensed Premises without the prior written consent of Commissioner. Licensee shall present to Commissioner the assignment or sublicense agreement for approval, together with any and all information as may be required by the City for such approval, including a statement prepared by

a certified public accountant stating the financial net worth of the proposed assignee or sublicensee, and 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 Commissioner for the management and operation of the Licensed Premises The constraints contained herein are intended to assure the City that the Licensed Premises are operated by persons, firms and corporations which are experienced and reputable operators and are not intended to diminish Licensee's interest in the Licensed Premises. Parks reserves the right to require payment of a reasonable transfer fee as a condition of the granting of any required consent or approval.

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

14.4 In the event that Parks authorizes Licensee to enter into a sublicense for operations at the Licensed Premises, the terms and conditions of any such sublicense shall be subject to the prior written approval of Parks. Any such sublicense which is authorized hereunder shall be subject and subordinate to the terms and conditions of this License and Licensee shall require the sublicensee to acknowledge in writing that it received a copy of this License and that it is bound by same. All provisions of this License applicable to Licensee with respect to the operation, management, 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 operation, management, 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 Section19 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. This License Agreement may be assigned by the City to any governmental corporation, governmental agency or governmental instrumentality having authority to accept such assignment provided such assignee assumes all of the City's obligations hereunder. The City shall provide the Licensee with prior written notice of any such assignment. Notwithstanding anything to the contrary set forth in this Section 14, any assignment or sublicense by Licensee of any of its obligations under this Agreement that impacts upon the use of the Endorsement or the Nicklaus Subcontract shall be subject to the approval of Nicklaus Design (not to be unreasonably withheld or denied) and the provisions of Section 1.6 above.

15. PARKS CONSTRUCTION

15.1 Parks reserves the right to perform safety, maintenance or construction work deemed necessary by Commissioner in the Commissioner's sole discretion at or throughout the Licensed Premises at any time during the Term. 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, except in an emergency, use its reasonable efforts to i) give Licensee at least one week's notice of any such work; and ii) shall

not 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. Licensee shall be responsible for security of all Licensee's property on the Licensed Premises at all times. Parks shall be solely responsible for claims, damages, or injury resulting from its work hereunder, except to the extent such claims, damages and injury are caused by the negligence or intentional tortious acts or omissions of Licensee.

16. COMPLIANCE WITH LAWS

16.1 Licensee shall comply and cause its employees and agents to comply with all laws, rules, regulations, 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 or authority over operations of the License and the Licensed Premises and/or Licensee's use and occupation thereof.

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

17. NON-DISCRIMINATION

17.1 Licensee shall not unlawfully discriminate against any employee, applicant for employment or patron because of race, creed, color, national origin, age, sex, handicap, marital status, or sexual orientation. Licensee shall comply with the ADA and regulations pertaining hereto as applicable. Any violation of this Section 17.1 shall be a material breach of this License.

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

18. NO WAIVER OF RIGHTS

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

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

19.1 Licensee Responsibility

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

B. The Licensee shall be solely responsible for taking all reasonable precautions to protect the persons and property of the City or others from damage, loss or injury resulting from any and all operations under this License.

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

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

19.2 Indemnification and Related Obligations

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

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

C. Notwithstanding anything in this License Agreement to the contrary, in the event Trump Ferry Point LLC is reinstated by judicial order as licensee of the Licensed Premises after the Commencement Date, the City will reimburse the Licensee for capital funds expended by the Licensee for the improvements listed in Exhibit D, and for up to the salvage value of Expendable Equipment the Licensee purchased for the operation of the Licensed Premises, for which the Licensee cannot otherwise, through reasonable efforts, recoup costs or mitigate losses.

20. INSURANCE

20.1 Licensee's Obligation to Insure

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

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

20.2 Commercial General Liability Insurance

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

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

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

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

20.4 Commercial Automobile Liability Insurance

A. With regard to all operations under this License, the Licensee shall maintain or cause to be maintained Commercial Automobile Liability insurance in the amount of at least One Million Dollars ($1,000,000) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA0001. If vehicles are used for transporting hazardous materials, such Business Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

20.5 Property Insurance

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

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

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

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

20.6 Flood Insurance

A. If applicable, the Licensee shall maintain flood insurance through the National Flood Insurance Program (NFIP) for each building on the Premises. Each building shall be insured separately. For each building, the Licensee shall maintain the maximum limits available under

the NFIP for both the building and its contents. The Licensee shall assure that the City is listed as a loss payee on the NFIP insurance.

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

20.7 Liquor Law Liability Insurance

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

20.8 Hazardous Materials and Pollution Liability Insurance

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

B. If required, the Contractor's 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.

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

20.9 General Requirements for Insurance Coverage and Policies

A. Policies of insurance required under this Article shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A- / "VII," 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.

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

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

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

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

F. The City may require other types of insurance and/or higher liability limits and other terms if, in the opinion of the Commissioner, the proposed program warrants it.

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

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

20.10 Proof of Insurance

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

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

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

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

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

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

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

20.11 Miscellaneous

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

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

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

D. Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Article, the Licensee shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this License (including notice to Commercial General Liability insurance carriers for events relating to the Licensee's own employees) no later than twenty (20) days after such event, or sooner if required by the insurance policy. For any policy where the City is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York including its officials and employees as Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. The Licensee shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

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

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

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

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

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

21. WAIVER OF COMPENSATION

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

21.2 Licensee further expressly waives any and all claims for compensation, loss of profit, or refund of its investment, if any, or any other payment whatsoever, in the event this License is terminated by Commissioner sooner than the fixed term because the Licensed Premises are required for any park or other public purpose, or because the License was terminated or revoked pursuant to sections 3.2 and 3.3 as provided herein

22. INVESTIGATIONS

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

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

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

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

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

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

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

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

(d) The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Section 22.1(d) (i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in Sections 22.1(d) (iii) and (iv) below in addition to any other information which may be relevant and appropriate.

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

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

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

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

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

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

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

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

(f) In addition to and notwithstanding any other provision of this License the Commissioner or agency head may in his or her sole discretion terminate this License Agreement upon not less than three days written notice in the event Licensee fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money

goods requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City of other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this agreement by the Licensee, or affecting the performance or this License Agreement.

23. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

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

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

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

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

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

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

24. WAIVER OF TRIAL BY JURY

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

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

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

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

25. CUMULATIVE REMEDIES – NO WAIVER

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

26. EMPLOYEES

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

27. INDEPENDENT STATUS OF LICENSEE

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

28. CREDITOR-DEBTOR PROCEEDINGS

28.1 In the event any bankruptcy, insolvency, reorganization or other creditor-debtor proceedings shall be instituted by or against the Licensee or its successors or assigns, or the guarantor, if any, the Security Deposit shall be deemed to be applied first to the payment of

license fees and/or other charges due the City for all periods prior to the institution of such proceedings and the balance, if any, of the Security Deposit may be retained by the City in partial liquidation of the City's damages.

29. CONFLICT OF INTEREST

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

30. PROCUREMENT OF AGREEMENT

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

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

31. NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

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

32. ALL LEGAL PROVISIONS DEEMED INCLUDED

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

33. SEVERABILITY: INVALIDITY OF PARTICULAR PROVISIONS

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

34. JUDICIAL INTERPRETATION

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

35. MODIFICATION OF AGREEMENT

35.1 This License Agreement constitutes the whole of the agreement between the Parties hereto, and no other representation made heretofore shall be binding upon the Parties hereto. This License 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 both Parties.

36. NOTICES

36.1 Where provision is made herein for notice or other communication to be given in writing, the same shall be given by hand delivery, or by overnight mail, 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. Licensee is required to update its mailing addresses with Parks.

37. LICENSEE ORGANIZATION, POWER AND AUTHORITY

37.1 Licensee and the individuals executing this License Agreement on behalf of Licensee each represent and warrant 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.

38. HEADINGS AND TABLE OF CONTENTS

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

39. ENTIRE AGREEMENT

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

40. COUNTERPARTS

40.1 This License may be executed in counterparts, each of which shall be an original and all of which counterparts taken together shall constitute one and the same License. PDF signatures shall be as effective as if originals.

41. FORCE MAJEURE

41.1 This License may be suspended in full or in part with written notice from Parks for any delay in performance resulting from any acts of God, war, enemies or hostile government actions, pandemics, epidemics; other states of emergency declared by the City, state or federal government, revolutions, insurrection, riots, civil commotion, strikes, fire or other casualty. Such suspension shall be immediately effective upon the mailing, facsimile, hand delivery or delivery by overnight service thereof. In the event of such notice, Licensee shall have a ten (10) day opportunity to cure or cease operations to the extent the Commissioner has determined that a cure is possible or that a delay in ceasing operations is acceptable as set forth in the notice. The Licensee may propose and submit for the Commissioner's approval a plan to equitably address the impact of the suspension and Parks will engage in good faith negotiations regarding such proposal. Parks, the City, and their officials, employees, and agents shall not be liable for damages to Licensee in the event that operations under this License are fully or partially suspended.

[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

By:_____
DAVID CERRON
Assistant Commissioner for Revenue

Dated:_____

AFFINITI FERRY POINT, LLC

By:_____
Managing Member

Dated: _____

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY

_____
Acting Corporation Counsel

STATE OF NEW YORK

ss:

COUNTY OF NEW YORK

On this day of _____, 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 she acknowledged that she executed the same in her official capacity and for the purpose mentioned therein.

_____

Notary Public

STATE OF NEW YORK

ss:

COUNTY OF

On this day of _____, 2021, before me personally came_____ who, being duly sworn by me did depose and say that she/he is the _____ of AFFINITI FERRY POINT, LLC and executed the foregoing instrument for the purposes mentioned therein in such capacity.

_____

Notary Public

EXHIBIT A
LICENSED PREMISES

FERRY POINT PARK GOLF COURSE

LICENSED PREMISES

EXHIBIT B – MONTHLY REPORT OF GROSS RECEIPTS

EXHIBIT C – SCHEDULE OF APPROVED HOURS AND RATES, FEES AND PRICES

HOURS OF OPERATION

Ferry Point Links will be open for play and dining every day of the year except for Christmas day and subject to weather conditions.

The Golf Course will open for play as early as 6:30 AM during the summer season. Generally, the first tee time will be available one hour after sunrise. During the winter months, the course will open as early as possible based on the weather and course conditions.

PROPOSED RATES AND FEES

The following will be the posted rates to play golf at Ferry Point Links. Since the club will use a dynamic pricing tee sheet system, the actual rates charged will vary based on demand. However, none will exceed the list amount below.

Green Fees

	NYC Resident	Non-Resident
18 Holes		
Weekday	$140	$171
Weekend	$167	$204
Senior		
Weekday	$89	$116
Weekend	$100	$125
Juniors		
Weekday	$54	$74
Weekend	$75	$100
Military Rate		
Weekday	$89	$116
Weekend	$115	$125
Twilight/Specials		
Weekday	$95	$123
Weekend	$125	$153

Driving Range

	NYC Resident	Non-Resident
Large Bucket of Balls	$25	$25
Putting and Practice Area	No Charge	No Charge

Surcharge

A surcharge of $4.00 per round of golf played.

Equipment

Golf rental sets are available from $50

Key Policies

Greens Fees are inclusive of range balls and an administrative fee.

- Applicable Fees are subject to 8.875% New York City Sales Tax.
- Times for rate categories vary depending on time of year and the time of day.
- Caddies and Forecaddies are available upon request.

A "NYC Resident" is an individual who lives within the Five Boroughs of New York City (Bronx, Manhattan, Brooklyn, Queens, Staten Island). In order to receive the discounted NYC Resident Rate, each individual must provide a valid ID with a New York City address upon checking in at the golf shop on the day of their tee time.

A "Senior" is an individual who is 62 years of age or older. In order to receive the Senior rate, each individual must provide a valid driver's license or passport upon checking in at the golf shop on the day of their tee time.

A "Junior" is an individual who is 16 years of age or younger. In order to be considered a Junior and receive the discounted rate, one must provide proof of age by presenting a current school ID and/or valid birth certificate upon checking in the golf shop on the day of their tee time. All juniors must be accompanied by an adult, 18 years or older.

In order to receive the Military rate, each individual must provide a proper Military Identification upon checking in at the golf shop on the day of their tee time.

You are not guaranteed to finish 18 holes with Twilight and Special rounds. The time frame for both rates will adjust throughout the season, based on daylight hours.

EXHIBIT D – CAPITAL IMPROVEMENTS

Total Cost of Capital Improvements shall be: $900,000.00

Capital improvements shall include:

- Parking lot improvements including the sealing of all cracks and resurfacing asphalt surface to maintain cover layer. Repaint striping as needed.
- Driving range lighting (as per approved PDC plans): install new LED lighting to replace existing bollard lights, including required electrical connections.
- Remove “Trump Links” signage and replace landscape area, pursuant to Parks’ written approval
- Replace irrigation pumps at pond as needed.
- Replace portions of perimeter fence as needed to secure premises.
- Provide landscape cover and plantings as required to maintain landfill vegetative layer as needed.

EXHIBIT E – PAID SICK LEAVE 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.[1] 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 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 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.

[1] 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.

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.

<u>Exemptions and Exceptions</u>

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 Polices 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 E1

Citywide Beverage Vending Machines Standards

For Vending Locations Regularly Used by Adults

All of the following criteria must be met:

A) **Specifications regarding the product mix:**

1) No more than two columns (or "buttons") may be unlimited calorie beverages (the maximum of two columns applies irrespective of the total number of columns in the machine).

2) Unless otherwise approved by the City in writing, water is required to be stocked for a minimum of 2 columns (or "buttons"). Unless otherwise approved by the City, in its sole discretion in writing, water for the purposes of these Standards shall mean bottled water that is intended for human consumption, that contains 0 calories per 8 oz, and contains no added flavor, color, or sweeteners of any kind. Any product containing water modified with added flavors, colors or sweeteners or with calories in excess of 0 calories per 8 oz shall not be considered water for the purposes of these Standards.

3) The remaining products must be ≤25 calories per 8 oz.

B) **Specifications regarding product display placement**:

1) Water must be placed in the position with the highest selling potential.

2) "High Calorie" beverages (defined as any beverage > 25 calories per 8 oz) must be placed in the position with the lowest selling potential.

3) For machines where the buttons are arrayed vertically, highest selling potential means those closest to eye level, usually the top buttons, and lowest selling potential means those furthest from eye level, usually the bottom buttons. Or as determined by industry best practices.

4) However, because machines have different display arrangements, the City will have sole discretion to approve all product display and placement.

C) **Specifications regarding size:**

1) All beverage selections with the exception of water and seltzer are limited to 12 oz. For the purposes of these Standards, seltzer is defined as water naturally or artificially impregnated with mineral salts or gasses, having 0 calories per 8 oz. and no artificial sweeteners.

2) All water and seltzer selections must be at least 12 oz.

3) Portion sizes smaller than 12 oz are encouraged for High Calorie beverages.

D) **Calorie labeling:**

1) Every machine must display the total calorie content for each item, as sold, clearly and conspicuously, adjacent or in close proximity so as to be clearly associated with the item, using a font and format that is at least as prominent, in size and appearance, as that used to post either the name or price of the beverage where it can be seen before the consumer presses the button to choose the beverage. Existing nutrition labeling on the beverages does not meet this requirement. The City will have sole discretion regarding the display of calorie information. (adapted from HC §81.50)

E) **Promotional space:**

1) Promotional space on the vending machines (i.e. sides, front graphic panel, etc.) including but not limited to the language and graphics, if used, is subject to the approval of the City in its sole discretion and must be used only to promote healthy beverage choices (≤ 25 calories per 8oz) and/or healthy activities.

F) **Price:**

1) Pricing models that encourage healthy choices (e.g. by establishing lower prices for healthy beverage choices (≤ 25 calories per 8 oz) relative to "High Calorie" beverages (> 25 calories per 8 oz)) are encouraged.

For Vending Locations Regularly Used by Children age 18 and under

A) **Specifications regarding the product mix:**

1) Beverage vending machines can only include:
   - Water

   Unless otherwise approved by the City, in its sole discretion in writing, water for the purposes of these Standards shall mean bottled water that is intended for human consumption, that contains 0 calories per 8 oz, and contains no added flavor, color, or sweeteners of any kind. Any product containing water modified with added flavors, colors or sweeteners or with calories in excess of 0 calories per 8 oz shall not be considered water for the purposes of these Standards.

   - Unsweetened milk,1% or nonfat only
   - Beverages with ≤ 25 calories per 8 oz
   - Carbonation and caffeine are allowed

2) Prohibited:
   - Artificial sweeteners
   - Other "natural" non-nutritive or very low-calorie sweeteners (e.g. stevia, erythritol)
   - Artificial flavors and colors

3) If the location is regularly used by **programs serving children age 12 or younger** (e.g. afterschool locations, summer camp), in addition to the standards above, products:

   - Should not be caffeinated
   - Should be ≤ 10 calories per 8 oz

B) **Calorie labeling:**

1) Every machine must display the total calorie content for each item, as sold, clearly and conspicuously, adjacent or in close proximity so as to be clearly associated with the item, using a font and format that is at least as prominent, in size and appearance, as that used to post either the name or price of the beverage where it can be seen before the consumer presses the button to choose the beverage. Existing nutrition labeling on the beverages does not meet this requirement. The City will have sole discretion regarding the display of calorie information.

   (adapted from HC §81.50)

C) **Promotional space:**

1) Promotional space on the vending machines (i.e. sides, front graphic panel, etc.) including but not limited to the language and graphics, if used, is subject to the approval of the City in its sole discretion and must be used only to promote healthy beverage choices (≤ 25 calories per 8 oz) and/or healthy activities.

Note that New York City beverage vending standards may be revised or updated in the future. Vendors would have time to come into compliance with any changes.

EXHIBIT E2 - STANDARDS FOR FOOD VENDING MACHINES

New York City Food Standards
Part III: Standards for Food Vending Machines

The Standards for Food Vending Machines were enacted December of 2011, pursuant to Executive Order 122. These Standards apply to all types of food vending machines including non-refrigerated "snack" and refrigerated machines. Follow these standards to make vending machine choices healthier for employees and visitors.

Snack Standards

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

1) Require that 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
        - Combination products of dried fruit and nuts 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
    - Contain at least 2 grams of fiber, if product is grain/potato-based (e.g. granola bars, crackers, pretzels, cookies, chips)

2) Limit grain/potato-based snacks (includes similar products, such as corn, plantain and taro chips) to no more than 50% of food items in machine.

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

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 – FDNY VARIANCE

EXHIBIT G

The City of New York

FIRE DEPARTMENT

9 METROTECH CENTER BROOKLYN, N.Y. 11201-3857

June 24, 2009

FP Index # 0905047
FPIMS # 29094240

John Natoli, P.E.
NYC Dept. of Parks and Recreation
Olmsted Center - Flushing Meadows Corona Park
Flushing, NY 11368

Re: VARIANCE APPLICATION
1,000 gallon aboveground gasoline storage tank for motor fuel dispensing
NYC Department of Parks and Recreation
Ferry Point Golf Course – 500 Hutchinson River Parkway, Bronx

Dear Mr. Natoli:

The Technology Management Unit is in receipt of a variance application submitted by the NYC Department of Parks and Recreation. Said variance application requests relief from NYC Fire Code Sections FC 2206.2.2 and 3404.1.1, so as to allow for the installation and operation of one (1) 1,000 gallon **aboveground gasoline** storage tank for motor fuel dispensing at the above-referenced location.

The Technology Management Unit has reviewed the documentation submitted to demonstrate the hardship in complying with Sections FC 2206.2.2 and 3404.1.1, as it would relate to installing an underground gasoline storage tank. Such hardship, as represented in the submitted application, includes the presence of combustible gases (primarily methane) in the subsurface, and the possibility of significant future settlement and ground movement. Additionally, we have reviewed the measures proposed to provide an adequate and equivalent level of safety. Such proposed measures include the installation of an aboveground tank that is listed to UL Standard 2085, providing integral secondary containment, protection from physical damage, and an insulation system intended to reduce the heat transferred to the primary tank when the tank is exposed to a high intensity liquid pool fire. Additional proposed safety features include leak monitoring, spill/overfill containment, overfill protection, and automatic fire extinguishing systems.

In consideration of the facts as represented in the submitted variance application, documentation of the hardship presented and equivalent level of safety proposed, be advised that a variance is hereby granted from NYC Fire Code Sections FC 2206.2.2 and 3404.1.1, so as to allow for the installation and operation of one (1) 1,000 gallon **aboveground gasoline** storage tank for motor fuel dispensing at the above-referenced location.

Said variance is issued subject to the following conditions, restrictions, and limitations:

1. This variance approval is **site-specific** (i.e., Ferry Point Golf Course – 500 Hutchinson River Parkway, Bronx), and not transferable to any other location.

2. The operation and maintenance of the subject 1,000 gallon aboveground gasoline storage tank, and 1,000 gallon aboveground diesel storage tank, shall be the sole responsibility of the concessionaire.

3. The concessionaire shall utilize the gasoline and diesel dispensing units solely to fuel vehicles and equipment which are not owned by the City of New York. Said vehicles and equipment shall be utilized by the concessionaire for the maintenance of the golf course. Employees of the NYC Department of Parks and Recreation shall not utilize the fuel dispensers.

4. The 1,000 gallon aboveground gasoline storage tank, and 1,000 gallon aboveground diesel storage tank, shall be located in the remote northwest corner of the site, adjacent to the maintenance facility.

5. Detailed full-size plans for the entire motor fuel installation, signed and sealed by the engineer of record, shall be examined by the Technology Management Unit - Bureau of Fire Prevention. Such plans shall show all details relevant to the installation, for both the 1,000 gallon aboveground gasoline storage tank and the 1,000 gallon aboveground diesel storage tank. All associated equipment, devices and systems shall be shown on the plans. Note: Plans shall be approved by the Department of Buildings.

6. Detailed full-size plans for automatic fire extinguishing systems, signed and sealed by the engineer of record, shall be examined by the Technology Management Unit - Bureau of Fire Prevention. Acceptable automatic fire suppression systems shall provide protection for both the motor fuel dispensing areas and the motor fuel tanks. Note: Plans shall be approved by the Department of Buildings.

7. With the exception of Sections FC 2206.2.2 and 3404.1.1, the entire installation shall comply with the requirements of the NYC Fire Code applicable to aboveground liquid motor fuel tanks, applicable requirements of NFPA 30/30A, the conditions of this letter, conditions required by the letter of approval for the subsequent plan examination, and any additional requirements imposed by the Fire Department at some later time in the interest of public safety. Note: Motor fuel dispensing facilities shall be designed, installed, operated and maintained in accordance with NYC Fire Code Chapters 22 and 34, the New York City Construction Codes, including the Building Code and Mechanical Code, and, as applicable, NFPA 30/30A.

8. With regards to both the 1,000 gallon aboveground gasoline storage tank and the 1,000 gallon aboveground diesel storage tank and associated equipment:

    a. tanks shall be protected aboveground tanks, listed in accordance with UL 2085.
    b. tank base support shall be in compliance with NYC Fire Code Section FC 2206.2.3.3.
    c. tank connections shall be in accordance with FC 2206.2.3.4.
    d. liquid level indicating devices shall be in accordance with FC 2206.2.3.5.
    e. tanks shall be located in accordance with NYC Fire Code Table 2206.2.3.
    f. security shall be in accordance with FC 2206.3.
    g. physical protection shall be in accordance with FC 2206.4.
    h. piping, valves, fittings, and ancillary equipment shall be in accordance with FC 2206.6.2.
    i. electrical equipment, dispensers, hoses, nozzles, and pumps shall be listed and approved.

9. Fire extinguishing system for motor fuel dispensing areas shall be in accordance with FC 2206.8.

10. Fire extinguishing system shall be monitored by an approved central station company, in accordance with FC 2206.8.6.

11. Secondary containment diking shall be provided for both tanks.

12. Adequate fire apparatus access roads shall be provided, in accordance with FC 503.

13. Inspection and testing shall be in accordance with FC 2206.9.

14. All required inspections shall be conducted by a representative of the Bulk Fuel Safety Unit (BFSU), and all required testing shall be witnessed by a representative of the BFSU.

15. All FDNY Certificate of Fitness requirements shall be adhered to.

16. All required permits shall be obtained, including but not limited to the site permit issued by the Bureau of Fire Prevention – District Office.

Please be advised that this letter of conditional variance approval may not include all conditions, restrictions, and/ or limitations necessary for final Fire Department approval. In the interest of public safety, it may become necessary to impose additional conditions, restrictions, and/ or limitations at some later time. Further, in the interest of public safety, this conditional variance approval may be revoked upon failure to comply with any of the expressly stipulated conditions, restrictions, and/ or limitations outlined in the foregoing.

Very truly yours,

Thomas Jensen
Chief of Fire Prevention

c. T. Saakian, P.E., Dir. Engrg.
Chief Inspector J. McCook
DCI F. Cifuentes
DCI A. Patel
P. Granitto, NYC Parks
H. Kaufman, NYC Parks

TS:DK \ 0905047

EXHIBIT H - NICKLAUS DESIGN GOLF DESIGN SUBCONTRACT AGREEMENT

NICKLAUS DESIGN℠
Golf Design Subcontract Agreement

This Agreement is entered into between NICKLAUS DESIGN, LLC, a Florida limited liability company ("Company"), whose address is 11780 U.S. Highway No. 1, Suite 500, North Palm Beach, Florida 33408, SANFORD GOLF DESIGN ("Consultant"), whose address is 4238 West Main Street, Jupiter, Florida 33458, and THE CITY OF NEW YORK, acting by and through its Department of Parks and Recreation, whose address is 117-02 Roosevelt Ave., Flushing, NY 11368, who hereby agree as set forth below.

1. Introduction. Consultant has been retained by the City of New York, New York (the "Owner"), through its Parks & Recreation Department, to provide those design and construction management services required to develop a championship quality golf course (the "Golf Course") and related facilities on a site in the Borough of Bronx known as "Ferry Point", as more particularly described in Exhibit "A" annexed hereto (the "Site"). Prior to the date of this Agreement, Company had been retained to design an 18-hole Jack Nicklaus Signature Golf Course on the Site by a prior contractor with Owner whose interest in the Site was terminated by Owner, and Company has developed and has retained ownership of and rights in certain intellectual property related to the design of the proposed Golf Course (the "Existing Intellectual Property"). In furtherance of that certain Contract for Services of Consultant dated _____, 2008, between Owner and Consultant (the "Master Contract"), Consultant has agreed to retain Company to act as lead designer of the Golf Course, and in such capacity, Company has agreed to provide Consultant and Owner with those specific services of Company's staff and its principal, Jack Nicklaus, as set forth in this Agreement. Although the parties have agreed that Consultant shall initially be responsible, either directly or through other sub-consultants retained by Consultant pursuant to the Master Contract, for providing on behalf of Owner those project management and other professional services which the Company normally requires developers of Jack Nicklaus Signature golf courses to provide to Company's staff, the parties understand that this Agreement is for the benefit of Owner and that Owner shall succeed to all of the rights and obligations of Consultant hereunder upon completion of the Golf Course as provided in Section 19.

2. Design Services. Consultant hereby engages Company to design a Jack Nicklaus Signature Golf Course for Owner on the Site, including preparation of all plans, specifications, and drawings (the "Plan Documents") that are necessary to illustrate the course layout, design features, and construction methods required by Company to complete the Golf Course according to Company's design quality standards for use of the Endorsement (as defined in Section 5, below). The Plan Documents will consist of a general strategy plan, a clearing plan (if necessary), contour plans, a conceptual golf course drainage plan (the "Conceptual Course Drainage Plan"), a preliminary grassing and planting plan, and a bunker study plan. The Conceptual Course Drainage Plan will be limited to showing locations and proposed sizing of perforated drainage pipes and catch basins. It is the intent of Consultant and Company that Company will provide its Conceptual Course Drainage Plan to the engineer employed by Consultant under the Master Contract and consult with such engineer regarding anticipated Golf Course drainage characteristics and requirements so that the engineer can prepare a Golf Course drainage plan in final form to be used by the golf course contractor and integrate the Golf Course

drainage as indicated in such plan into the storm drainage system prepared by such engineer for Owner's entire Site. The Plan Documents will also include specifications supplemental to the above plans, where applicable, but will not include shop drawings or engineering plans or drawings required to implement the Plan Documents. The parties acknowledge and agree that Company may utilize and incorporate Existing Intellectual Property into the Plan Documents where Nicklaus determines that such use is appropriate to his design vision for the Site. Company will own and retain the copyright to and all other intellectual property rights in the Plan Documents and all other plans or other written or electronically recorded materials prepared by Company for the Golf Course and delivered to Consultant and/or Owner. However, Company agrees to permit the duplication and use of such written materials and excerpts therefrom by Consultant and Owner and persons authorized by Consultant and Owner as reasonably necessary to complete the design and construction of the Golf Course and by Owner to permit the ongoing use and maintenance of the Golf Course as built. Consultant and Owner agree not to use or permit the use of Company's Plan Documents or related materials or design concepts for the construction of any other golf course facility, or make or permit any other use of any of such materials without Company's prior express written consent, except for those promotional uses approved by Company under Section 5. Notwithstanding the above, Owner (1) may allow access to all documents as required by law, and (2) may use all documents to the extent that it is acting in a governmental (as opposed to commercial) capacity. For the purposes of the preceding sentence, the design or construction of another golf course shall be considered to be acting in a commercial capacity.

Company will have no responsibility to prepare plans, specifications, or drawings for the Golf Course clubhouse, half-way house, shelter houses, sanitary facilities, drinking fountains, maintenance facilities, irrigation system, storm drainage system, dams, bridges, walls, cart paths, utility lines, or any other similar improvements, facilities, or structures incidental to the Golf Course; provided that Company will render advice to Consultant and Owner, when requested, as to the conceptual location of such facilities or structures in relation to the Golf Course and will include proposed locations for such facilities or structures in its Plan Documents. Company will also have no responsibility whatsoever with respect to the location, design, engineering, or construction of improvements to real estate adjacent to the boundaries of the Golf Course, including but not limited to roadways, utility lines, drainage, parking lots, recreation facilities, or commercial facilities developed by any party at or adjacent to the Site in conjunction with the Golf Course. Company will not have any liability to Consultant or Owner with respect to the design, engineering, location, or construction of such improvements, facilities, or structures or any architectural, engineering, or construction work required to integrate such facilities and structures into Company's design for the Golf Course.

Consultant will have the right to select, subject to Owner's right to approve subcontractors to Consultant and Company's reasonable right of approval, an irrigation consultant to design the Golf Course irrigation system and to integrate such system into Company's design. Consultant will pay all fees and expenses charged by the irrigation consultant for the irrigation design services. Consultant will be responsible for retaining the services of such irrigation consultant, or other persons approved by Company, for staking and inspecting the installation of the irrigation system in the Golf Course during the construction process, and Consultant will pay all fees and expenses associated with such services.

Before commencing any of the Plan Documents, Company will prepare and deliver to Consultant a proposed routing plan for the Golf Course, which will set forth Company's preliminary concepts for location and layout of the Golf Course pending receipt of all necessary Site Documents, as defined in Subsection 7C. After receipt of all such Site Documents, Company will cooperate with Consultant, Owner and the other professional consultants retained by Consultant under the Master Contract in formulating the final routing plan and will make adjustments to its preliminary routing as required by governmental authorities and in consideration of Owner's wishes and development requirements, but in a manner consistent with Company's design concepts.

After Consultant's and Owner's approval of the final routing plan, Company will not commence preparation of the Plan Documents until requested to do so by Consultant in writing. Company will use its best efforts to conform to Consultant's schedule for the delivery of the Plan Documents. Consultant acknowledges that it normally takes Company approximately sixty (60) days to prepare the Plan Documents after receipt of Consultant's request and the Site Documents.

Company's principal, Jack Nicklaus ("Nicklaus"), will be personally involved in the design of the Golf Course, and he will give his personal attention to the strategy and the design details. He will have the right, in his discretion, to personally approve or disapprove all matters affecting the integrity of the design for the Golf Course.

Company's standard golf course specifications do not include specifications for the sand and organic materials used in the tees and greens. Consultant agrees to use the standard recommendations of the United States Golf Association ("USGA") unless unforeseen circumstances prevent Consultant from using such standard USGA recommendations. In such event, Consultant will notify Company of any modifications deemed necessary by Consultant or Owner and the reasons such modifications are required. Consultant acknowledges that Company will not be responsible for any specifications for sand or organic materials used in the tees or greens and that Company will not have any liability to Consultant, Owner, the golf course contractor, or any subcontractor, or any supplier of materials with respect to sand or organic materials or the performance thereof in the tees or greens.

3. Consulting Services in Connection with Construction. After approval by Consultant and Owner of the final Plan Documents, Company will continue to provide design consulting services to Consultant in regard to the development and implementation of Company's design for the Golf Course as more fully described in this Section at no additional cost or expense to Consultant or Owner other than those payments required under Sections 8 and 9 of this Agreement:

A. Consultation Concerning Contracts.

Company will consult with Consultant and Owner in regard to the letting of construction contracts with the golf course contractor(s) for construction of the Golf Course (the "Construction Work"), and Company shall render the following consulting services:

(1) Company shall assist Consultant in soliciting price bids for Owner from responsible contractors;

(2) Company shall assist Consultant in the review of bids and qualifications of prospective contractors and advise Consultant of price comparison information based upon Company's prior experience with similar projects for private entities; and

(3) Company shall consult with Consultant regarding schedules for the Construction Work and assist Consultant in recommending a desired schedule for the contract work for Owner's approval and execution.

Consultant acknowledges that the actual bid prices or negotiated contract prices for the Construction Work will be subject to market forces at the time contracts are solicited, and Company does not represent or warrant that actual prices for work and materials will be within the limits of any cost estimates or budgets developed for Owner prior to the bidding or negotiation of contracts.

In connection with the letting of contracts for the Construction Work, Company will provide to Consultant Company's standard forms of (i) General Conditions to the Construction Contract (the "General Conditions") and (ii) Technical Specifications for Golf Course Construction (the "Specifications"). Consultant acknowledges that the Specifications include methods required to assure the integrity of Company's design and must be incorporated in the construction contracts to be entered into between Owner and the general contractor selected by Owner for the Construction Work, with only those modifications reasonably approved by Company in writing. Consultant further acknowledges that the General Conditions have been developed by Company to reflect its historical role as a consultant to golf course owners and their representatives relative to the Construction Work. The parties acknowledge that Owner is entitled to utilize such parts, if any, of Company's form of General Conditions with such changes as Owner's legal counsel may recommend; provided, however, that Company will not, under any circumstances, be liable to Consultant, Owner or any third parties for Company's failure as a subcontractor to discharge any responsibilities assigned to the "designer" under the final form of golf course construction agreement adopted by Owner or adhere to any procedures required by such construction contract that are not set forth in the General Conditions as furnished to Consultant by Company or otherwise required by this Agreement. Owner shall be responsible for obtaining appropriate legal representation in connection with the preparation and review of all construction contracts and documents that are necessary or prudent under applicable law, and the parties acknowledge that Company's provision of consulting services or forms of documents is not intended as legal advice by Company and shall not be relied upon as such by Owner.

B. Consultation Concerning Implementation of Plan Documents

Throughout the progress of the Construction Work, Company will assign one of its personnel (the "Design Associate") to consult with Consultant and Owner on a regular basis. The Design Associate will have the right to review all issues relating to the performance of the Construction Work in order to assist Consultant and Owner in evaluating whether or not the Plan

Documents are implemented during the Construction Work. Company will direct the Design Associate to periodically visit the Golf Course site as deemed necessary by Company and Consultant in order to ascertain the contractor's actual adherence to the Plan Documents and Nicklaus' design concepts and to review his conclusions with Consultant, and if requested by Consultant, with Owner.

Consultant and Company acknowledge that Company reserves the right to review the Construction Work at such times and under such circumstances as it may deem appropriate in order to determine any contractor's substantial compliance with the design concepts and specifications as expressed in the Plan Documents. Company may, where appropriate, recommend that Owner disapprove or reject any work as failing to conform to the Plan Documents and relevant construction contracts, or Company may, with Consultant's and Owner's approval, make such adjustments to the design of the Golf Course as Company may deem appropriate, in its discretion, to conform the Plan Documents to any Construction Work as-built. Notwithstanding the foregoing, Company will not be responsible for the performance of, or for any improper work by, the contractor or any subcontractor or specialty contractor performing any of the Construction Work, and the review of any Construction Work by Company will not release any contractor from its obligations to Owner to perform such work according to contract or relieve Consultant or any other sub-consultant from his duty to monitor the performance of such work. Company will not be required to supervise the performance of any contractor or subcontractor on behalf of Consultant, or to make exhaustive or continuous on-site inspections to check the quality or quantity of the Construction Work. Company will not be responsible for the means, methods, techniques, sequences, or procedures of construction, or the safety programs and precautions incident thereto, of any contractor retained by Owner to construct the Golf Course or of any subcontractor and Company will not be responsible for any contractor's or subcontractor's failure to perform the Construction Work in accordance with the Plan Documents.

4. Agronomy and Landscaping Consulting Services. Consultant acknowledges and understands that proper selection and care of turf grass and other plantings required in connection with the Golf Course are essential to the maintenance of the quality standards associated with the Company's designs, and that the provisions of this Section are intended by the parties to identify the manner in which agronomy services required by Company in connection with the design of the Golf Course and by Consultant and Owner in connection with the construction and maintenance of the Golf Course will be provided.

A. Consultant shall provide the services of a qualified agronomist approved by Company to consult with Owner and Company's staff agronomist for a period commencing on or before the time Company requests production of the Plan Documents and expiring three (3) months after final grassing of the Golf Course. Consultant's agronomist will be responsible for reviewing and resolving any agronomic issues of the Site which affect the design of the Golf Course with Company's agronomist and for developing a grassing plan, grassing specifications and a written turf management program for the Golf Course, which deliverables will be subject to approval by Company's agronomist in order to assure that issues relating to the playability and aesthetics of the turf and all related plantings selected by Owner's agronomist meet Company's quality standards for a Jack Nicklaus Signature golf course. Company shall not be responsible for the means, methods or results of Owner's agronomy consultant, or for any judgments made

by such consultant relating to the development, implementation or modification of the final grassing and turf management plan for the Golf Course. However, Company shall have the right, at its cost, to have the Golf Course inspected by its staff agronomist or an independent agronomist selected by Company at any time and from time to time during the Term of Service or License Period in order to review and assist the parties in resolving agronomic issues which, in the reasonable opinion of Company, may adversely affect the proper grow in of turf surfaces or otherwise impact the Owner's ability to maintain the quality of the Golf Course as required under this Agreement.

B. The landscape architect and/or other qualified landscaping consultants retained by Consultant and/or Owner under the Master Contract will be responsible for developing initial landscaping plans and specifications for the other planted areas of the Golf Course for review and approval by Consultant and Owner, and Company shall have the right to review and approve such plans and specifications in order to assure that they are consistent with Company's design for the Golf Course. After approval of the preliminary plans and specifications, the landscape consultants will be responsible for preparation of final landscape plans and specifications consistent with the plans and specifications approved by Company and otherwise meeting the requirements of the Master Contract with respect to landscaping services. Such plans and specifications will include, at a minimum, an identification of the species, quantities and preferred sizes of plant materials other than turf grass to be utilized, planting locations and specifications, and such cost estimates, bid documents and detail drawings as required by Consultant under the Master Contract. Company will not be responsible for the means, methods, judgments or results of the landscaping consultants retained by Consultant and/or Owner, nor will Company be liable in any event for any costs, losses or liabilities incurred in connection with the development, implementation, or modification of the final landscape plans and/or landscaping specifications for the Golf Course or the resolution of any field issues regarding landscaping which may arise during the Construction Work. It is also understood that Company shall not be responsible or liable for the growth or performance of turf or landscaping seed or plant materials furnished to or installed by any contractor.

5. Marketing Rights and Services. During the License Term (as defined in Section 12), Owner is authorized to use the following intangible rights of Company (collectively, the "Endorsement") to advertise, publicize, and market the Golf Course, subject to the terms and conditions of this Section: (i) the names "Nicklaus Design", "Jack Nicklaus Signature", and "Jack Nicklaus", (ii) Nicklaus' likeness, facsimile signature, and other identifying information relating to his career as a professional golfer and golf course designer, (iii) Company's Nicklaus Design logo, and (iv) copies or replicas of plans, artist's renderings, or other documents or data files prepared by Company and delivered to Consultant and Owner. Owner acknowledges that Company does not have the right to authorize the use of the "Golden Bear" name, or any use of the Golden Bear symbol other than as a part of Company's Nicklaus Design logo (the "Golden Bear Marks"), that the right to use the Golden Bear Marks is not included in the Endorsement licensed to Owner hereunder, and that Owner will not be authorized under this Agreement to utilize the Golden Bear Marks or any name or logo similar to such marks or derived therefrom in connection with the identification or promotion of the Golf Course. Company agrees to consult with Owner, as soon as practicable after the commencement of this Agreement, to determine a strategy consistent with the further terms of this Section and Company's customary standards and practices for using Nicklaus' role as designer to promote the Golf Course in advertising,

promotional, and public relations materials developed by Owner to promote the Golf Course and related recreational facilities developed by Owner at or adjacent to the Site.

A. Owner acknowledges and agrees that all uses of the Endorsement under this Agreement will be limited and directed to the role of Nicklaus and Company's staff in the design of the Golf Course. Owner is not authorized to utilize the Endorsement hereunder in any manner to represent or imply that (i) Company or Nicklaus has any other role in real estate development activities being undertaken by Owner or its designees or concessionaires in connection with the Golf Course, (ii) any non-golf facilities or commercial real estate at or adjacent to the Site other than the Golf Course have been endorsed or approved by Company or Nicklaus, or (iii) Company or Nicklaus will be involved in, or either of them has endorsed or approved of, the membership structure, management, or operation of the Golf Course and/or any related recreational facilities developed by Owner in conjunction with the Golf Course. Subject to the foregoing, Owner may include references to the fact that Company and/or Nicklaus designed the Golf Course in promotional materials utilized by Consultant to promote recreational facilities and real estate at or adjacent to the Site which are developed with the Golf Course as part of a single multi-use recreational facility. Owner will be responsible for enforcing compliance with the provisions of this Section by all other parties involved with the Golf Course and related facilities, and for assuring that persons authorized by Owner to participate in the operation and marketing of the Golf Course or development or marketing of related facilities do not make any unauthorized or improper uses of the Endorsement in connection with such activities.

B. Owner may make authorized uses of the Endorsement in brochures, sales films and videotapes, press releases, and similar promotional materials and in print media advertisements. Owner will not in any way make or permit any use of any part of the Endorsement without the express written approval of Company prior to use, which approvals are reserved by Company in order to assure that the form and context in which the Endorsement is used meets the positioning and stylistic requirements and quality standards generally applied by the Company to its licensees of Jack Nicklaus Signature™ golf courses. The parties acknowledge that Company's review of materials under this Subsection will thus be limited to determining the manner in which the Endorsement is utilized, and Owner will be entitled to develop the other content of such materials and will be solely responsible for the accuracy and completeness of such content. If requested by Owner, Company will approve standard advertising formats for use of the Endorsement, which may be utilized thereafter in the same manner approved by Company without any further approval required of Company. Owner will submit a sample of any proposed use of the Endorsement to Company for approval prior to use, and Company will use its best efforts to respond to Owner within ten (10) days of its receipt of each sample. Unless otherwise agreed in writing by Company, samples submitted for approval will require actual production photography, text, and layouts for print media uses and proposed final edits for audiovisual media uses. Owner acknowledges that it is essential for the protection of the reputation and financial interests of Company, Nicklaus, and Company's design clients (including Owner) that Company has continuing control over the manner in which the Endorsement is utilized to market golf courses designed by Company. Accordingly, in the event that any use of the Endorsement authorized under this Section becomes reasonably objectionable to Company due to subsequent circumstances or events, Owner will, as soon as reasonably practicable after receipt of a written notice from Company requesting such termination and stating a good faith reason for such request, terminate the objectionable use, and to use its best

efforts to terminate the continued use by other parties authorized by Owner to participate in marketing activities, of any advertising, promotional, or publicity materials that make such objectionable use of the Endorsement.

C. Owner is also authorized to photograph and record images of the likenesses and voices of Nicklaus and Company's staff in connection with site visits and public relations activities performed in connection with the Golf Course, provided that any such materials and artwork or transcriptions made from such materials shall be considered part of the Endorsement and subject to the terms and restrictions of this Section 5. Owner will furnish Company with copies of all photographs taken, film and videotape footage shot, and audio recordings made by or on behalf of Owner which involve Nicklaus, and Company will have the right to use, free of charge, all or any part of such materials and any reproductions thereof.

D. It is understood that Owner may assign its rights and delegate its duties under this Section to independent contractors retained by Owner and/or persons authorized by Owner to operate the Golf Course (the "Marketing Representatives"), and Company agrees to provide its services directly to a Marketing Representative subject to Company's prior receipt of a written notice from Owner describing the authority of such Marketing Representative and a written acknowledgment from such Marketing Representative of its receipt of a copy of this Agreement and agreement to conduct its activities hereunder according to the terms and conditions set forth herein.

6. Shaping Services. Consultant recognizes the importance of the final shaping work for the Golf Course in order to assure that the special features generally associated with a golf course designed by Company are incorporated into the Golf Course. Therefore, Consultant has agreed to obtain the approval of Company as to the subcontractor of the prime construction contractor retained by Owner to perform such shaping work. Although Company will not employ or contract with the shaper for the Golf Course, and will not be responsible for the means, methods, or results utilized to perform the work assigned to him, Consultant acknowledges that Company and Nicklaus will establish design parameters for the shaping work and will have the right to approve or request the modification of final shaping as part of the field design services provided under this Agreement.

7. Consultant's Responsibilities. So that Company can adequately perform its duties herein:

A. Consultant will provide to Company full, accurate, and complete information regarding the requirements of Consultant and Owner for the Golf Course, and Consultant will use its best efforts to notify Company regarding the requirements and/or recommendations of Owner and other governmental agencies and third party consultants retained by Consultant and Owner that may restrict or otherwise impact the design of the Golf Course.

B. Consultant will employ a qualified and experienced project manager on a full-time basis to supervise the performance of the Construction Work and to represent Owner in its dealings with the contractors performing the Construction Work. Consultant, the designated project manager or another authorized representative of Owner identified by Consultant will render decisions required by Company pertaining to the Golf Course promptly during the

development and implementation of the Plan Documents in order to avoid any unnecessary delay in the progress of the services to be performed by Company under this Agreement.

C. Consultant will furnish, at no charge to Company, before Company prepares the final routing plan for the Golf Course, a certified land survey illustrating grades and lines of streets and adjoining properties, rights-of-way, restrictions, easements, zoning, deed restrictions, boundaries and contours of the site, locations, dimensions, and complete data pertaining to existing buildings, other improvements, and trees, and full information concerning available service and utility lines, both public and private, above and below grade, including inverts and depths, aerial photographs, topographical maps, soil reports, and other information relative to Owner's site as Company may reasonably require (the "Site Documents"). All pertinent information will be provided by Consultant to Company in CAD format acceptable to Company.

D. To the extent not otherwise furnished by Owner, Consultant will be responsible for retaining the services of qualified professional consultants under the Master Contract to review the final routing plan and Plan Documents where required, in order to assure compliance with all applicable laws and regulations affecting the site, including but not limited to environmental, wetlands, land use, zoning, and other similar matters. Company agrees to work with such consultants as required in the design process. Consultant will supply Company with copies of all construction, engineering, zoning, environmental, and other regulations applicable to the proposed site of the Golf Course as requested by Company. Although Company will take care to prepare the final routing plan and Plan Documents in compliance with such regulations, it will be Consultant's and Owner's responsibility to ensure such compliance. If requested to do so by Consultant or Owner, Company will adjust the final routing plan and Plan Documents to conform with such regulations.

In connection with the foregoing, Consultant and/or Owner will employ the services of licensed engineers for the purpose of designing the storm drainage system for the Golf Course, bridges, walls, cart paths, and any other facilities or structures which require the services of an engineer. Such engineers will also be responsible for advising Company regarding the impact of applicable regulations and engineering practices upon Company's Plan Documents and for coordinating the storm drainage system with other drainage features of the Golf Course and Site. Consultant acknowledges that Company's recommendations (as set forth in the Plan Documents) for storm water drainage, conceptual cart path locations, soil and materials movement and placement, and other similar recommendations must be reviewed and confirmed by qualified licensed engineers, who must be retained by Consultant and/or Owner at their cost and expense.

E. If required under the Master Contract, Consultant or Owner will retain the services of a qualified soils engineer, who will provide Company with an analysis of the Golf Course site. In such event, Consultant will submit a completed set of Plan Documents to the soils engineer for analysis. If the soils engineer makes any suggested modifications to the Plan Documents, Company will make such modifications at no charge to Consultant, except for such expenses as are required to be paid by Consultant under this Agreement.

F. Consultant will also furnish the services of any other qualified consultants at no additional cost to Company or Owner when such services are required due to requirements of the

Master Contract, or are deemed necessary or appropriate by Company and Consultant. Such consultants may include irrigation consultants, planners, landscape architects, and other professionals. In addition to the general requirements of this subsection and the specific requirements of Section 4, above, Consultant acknowledges that Consultant will be responsible for retaining the services of a licensed landscape architect or equivalent to review the Plan Documents and Technical Specifications as provided by Company if and to the extent that such review is required under applicable local laws or regulations and to furnish those services with respect to the development and implementation of final Plan Documents and Technical Specifications, if any, that can only be furnished by a licensed landscape architect or equivalent under such laws and regulations.

The services, information, surveys, and reports required by this Section 7 to be provided to Company at no cost to Company. Consultant agrees that Company will be entitled to rely upon the accuracy and completeness of such services, information, surveys, and reports.

8. Company's Fee. For the services performed and rights granted hereunder, Consultant will pay Company a design and marketing fee of One Million One Hundred Twenty-Five Thousand U.S. Dollars (US$1,125,000), (the "Fee"), which Fee will be due and payable by Consultant on a non-refundable basis as follows:

A. Ten Percent (10%) of the Fee upon delivery to Consultant of Company's initial proposed routing plan for the Golf Course, which the parties contemplate will occur at or about the time of execution of this Agreement. (If Consultant permanently abandons the Golf Course project and does not request Company to commence preparation of the Plan Documents, Consultant's payment obligations under this Agreement will be limited to the amount provided for in this Subsection 8A, plus payment of any reimbursable expenses incurred by Company under Section 9.)

B. Twenty Percent (20%) of the Fee at the time Consultant requests Company to commence preparation of the Plan Documents (the "Design Commencement Date").

C. Thirty Percent (30%) of the Fee at the time Company notifies Consultant in writing that the Plan Documents are ready for delivery. Delivery of the Plan Documents shall be conditioned on Company's receipt of all the sums due under Subsections 8A, B and C.

D. Forty Percent (40%) of the Fee in eight (8) equal consecutive quarterly installments, with the first installment being payable upon the commencement of the Construction Work and subsequent quarterly installments being payable on the same day of each calendar quarter thereafter until the remaining Forty Percent (40%) of the Base Fee is paid in full, provided that any remaining installments of Company's Fee under this Agreement will be accelerated and payable at such earlier time, if any, as Consultant completes his services for Owner in connection with the Construction Work. For purposes of this Section 8D, the "commencement of the Construction Work" shall be deemed to occur upon the earlier of: (a) the date Owner's contractors first commence any actual clearing, earthmoving or other construction activities at the site of the Golf Course by the Golf Course contractor after the Design Commencement Date to prepare the Golf Course site or implement any of the Plan Documents

prepared by Company or any plans or drawings for the Golf Course infrastructure prepared by third parties to implement the Plan Documents, or (b) the date of the Design Associate's first field visit after preparation of the Plan Documents to consult on site with Consultant and Owner's contractors under Section 3, above. It is understood that the conduct of any preliminary clearing or earthmoving activities prior to the Design Commencement Date for the sole purpose of identifying site features or locating proposed routings or centerlines for the Golf Course or constructing non-golf infrastructure for adjacent real estate shall not be deemed "commencement of the Construction Work".

If, for any reason, Consultant, Owner or any of their professional consultants requests Company to make changes to the design of the Golf Course which affect the preparation or use of any of the Plan Documents after their approval of the final routing, the parties will negotiate in good faith with Owner an appropriate increase in the Fee.

If any payment due to Company has not been made more than thirty (30) days after it is due, Company may suspend the use of the Endorsement by written notice to Consultant, Owner and any Marketing Representative(s), which suspension shall be effective until such payment is made.

9. Expenses. Subject to the limitation provided herein, Consultant will pay or reimburse Company for all reasonable expenses incurred by Company and its personnel for travel (including transportation costs, living accommodations, and meals), telephone, facsimile, and telex charges, postage and express delivery charges, and other related expenses in connection with performing Company's services, promptly upon Company's submission of periodic statements to Consultant. It is understood that Consultant's obligations to pay or reimburse expenses under this Section shall be limited to an aggregate amount of One Hundred Twenty-Five Thousand Dollars ($125,000), and any expenses incurred by Company and its personnel in excess of such limitation will be borne solely by Company from the Fee payable under Section 8, above. When Nicklaus visits the site, he will travel by private aircraft, helicopter, and other expedient methods of transportation, and Company will allocate a share of his expenses for private aircraft travel to such site visit based upon other travel scheduled in conjunction with such visit, which allocated share shall be invoiced by Company to Consultant for payment hereunder.

10. Changes in Golf Course. If the Golf Course is not constructed substantially in accordance with plans and specifications prepared or furnished by Company or approved by Company in writing, or if any substantial change is subsequently made to the Golf Course without the written approval of Company with respect to both design concept and construction execution, then Company will have the right to terminate this Agreement and the License Term as provided in Section 12, below, and thereafter Owner will not have the right to state or represent in any manner that the Golf Course was designed by Company and/or by Nicklaus or to use the Endorsement in any manner in relation to the Golf Course. Consultant acknowledges that the rights of Consultant and Owner to utilize copyrights and intellectual property of Company granted under Section 1 does not include the right to duplicate or use Plan Documents or any other written or electronically recorded materials owned by Company to obtain additional

golf course design work from third parties or construct any additions or modifications to the Golf Course without the prior express written consent of Company.

11. Assignment. This Agreement will be binding upon and inure to the benefit of the parties and their respective successors and assigns; provided that neither this Agreement nor any rights hereunder may be assigned directly or indirectly by either party without first receiving the prior written consent of the other party. Notwithstanding the foregoing, without such consent, (a) Company may assign this Agreement to another entity which controls, or is controlled by or under common control with Company, (b) Company may assign its rights to payment of some or all of its compensation hereunder, and (c) Consultant may assign this Agreement to Owner or a party designated by Owner in the event of a termination of the Master Contract, subject to the cure of any events of default by Consultant and assumption by such assignee of Consultant's remaining obligations under this Agreement. In addition, pursuant to the terms and conditions set forth in Section 19, below, this Agreement shall automatically be assigned by Consultant to Owner upon expiration or earlier termination of the Master Contract. In the event that Owner subsequently sells or otherwise transfers the Golf Course or operation of the Golf Course, including a temporary transfer to a person authorized to operate and/or market the Golf Course under a lease, subcontract or concession arrangement with Owner, to a responsible person or entity which agrees in writing to assume Owner's obligations under this Agreement and to maintain the integrity of the Golf Course as designed by Company, Company agrees that it will not unreasonably withhold or deny its consent to an assignment of this Agreement or subcontract of Owner's rights hereunder as a part of such transfer.

12. Term and Termination. Unless this Agreement is earlier terminated as provided herein: (i) the period during which Company will render its design and consulting services under this Agreement (the "Term of Service") will commence upon execution of this Agreement and continue until Owner's acceptance of the Construction Work, and (ii) the period during which Owner will be authorized to utilize the Endorsement (the "License Term") will commence upon execution of this Agreement and continue indefinitely unless the Golf Course is modified without compliance with the requirements of Section 10. Company may terminate this Agreement, including the Term of Service and the License Term, by giving written notice, and a corresponding thirty (30) day right to cure, to Consultant and Owner upon the occurrence of any of the following events or circumstances: (i) if any design requirements of the Golf Course site or changes required by Consultant or Owner conflict with Nicklaus' design standards for a Jack Nicklaus Signature course, (ii) if the Construction Work has not commenced within two (2) years after the date of this Agreement, provided that this period shall be extended for a period of time equal to the total period of all extensions of time for Consultant's performance of the Master Contract, if any, which may be granted by Owner to Consultant under Article 4 of Part III of the Master Contract, (iii) if Owner abandons the Golf Course project, (iv) if Consultant or its successors in interest fail to make any payment to Company when due, provided however that, notwithstanding the cure period set forth above, Consultant and Owner shall have a six month period to cure such non-payment before Company may terminate this Agreement, the Term of Service or the License Term, (v) if Owner uses or permits the use of any part of the Endorsement without Company's prior approval in the manner required under Section 5 hereof, or during the period of any suspension of Owner's rights under Section 8, above, (vi) in the event of the bankruptcy or insolvency of Consultant and/or Owner; provided, however, that in the event this

Agreement is assigned to Owner in connection with the bankruptcy or insolvency of Consultant, the City shall have a reasonable period of time, not to exceed one year from the filing date of such bankruptcy, to secure the services of an alternate consultant to Company who is ready, willing and able to complete the performance of Consultant's obligations to Company under this Agreement and the Master Agreement, and upon Company's reasonable approval of such alternate consultant and such consultant's assumption of such obligations, Company agrees to waive the right to terminate vis a vis the Owner based on Consultant's bankruptcy or insolvency, (vii) if Owner does not operate the Golf Course at a quality level consistent with Company's and/or Nicklaus' reasonable standards, (viii) if, in connection with the Golf Course, Owner does anything to discredit or otherwise adversely affect or diminish Company's and/or Nicklaus' name, stature, or reputation, or if any circumstances arise which cause Company's and/or Nicklaus' association with Consultant and/or Owner in connection with the Golf Course to reflect adversely upon Company and/or Nicklaus, or (ix) in the event of any other material breach of this Agreement by Consultant or Owner.

Consultant may terminate this Agreement by giving written notice thereof to Company in the event of any material breach of this Agreement by Company, in the event of the bankruptcy or insolvency of Company, or in the event Consultant terminates the Master Contract without assignment of this Agreement to Owner or a designated successor to Consultant as provided in Section 11, above. Consultant's election to terminate this Agreement pursuant to this Section 12 will not constitute a waiver of any claims Consultant may have against Company for breach of this Agreement, and any such termination by Consultant will not release Company from any liabilities incurred prior to the effective date of such termination.

Upon termination of this Agreement during the Term of Service, for any reason provided for in this Section 12, Company will have no further obligation to perform any services under this Agreement or to deliver any further Plan Documents or other written materials to Consultant or Owner, and except as expressly provided herein, Consultant and Owner will cease using and will have no further right to use, in any manner whatsoever any of the Plan Documents or any other written or electronically recorded materials prepared by Company under this Agreement. Within thirty (30) days after any such termination, Consultant shall return and shall cause Owner to return to Company all such materials in printed or written form or otherwise recorded on permanent media which are in their possession, custody or control or within the possession, custody or control of any contractor or consultant retained by Consultant and/or Owner, and Consultant shall assure that any such materials stored in erasable electronic form are permanently destroyed and certify that such destruction has been completed in a written notice to Company. In the event that this Agreement is terminated during the Term of Service as a result of a material breach by Company after approval of a final routing plan for the Golf Course, Consultant and Owner shall have the limited right (but shall not be required) to utilize such final routing plan and design concepts reflected in any Plan Documents delivered by Company prior to the termination date to serve as the basis for a new design of the Golf Course by a successor designer retained by Consultant and/or Owner to complete the design of the Golf Course. As a condition to any such use of design materials prepared by Company, Consultant, Owner and the successor designer shall be solely responsible for the final design of the Golf Course, and Company shall be fully indemnified by Owner under Section 13 of this Agreement from any and all claims made against Company as a result of Owner's use of Company's intellectual property

in the final design of the Golf Course, including, in such event only, any claim that Company or any other indemnified party was negligent in the preparation of the final routing or any other intellectual property utilized by the successor designer in the preparation of final plans for the Golf Course.

Upon termination of this Agreement during the License Term, Consultant will cease using and will have no further right to use any part of the Endorsement to identify and/or market the Golf Course, and Consultant will be responsible for assuring that any such use is terminated by all parties involved in the development or marketing of the Golf Course and any related facilities or real estate within thirty (30) days after the effective date of such termination.

In the event this Agreement is terminated, Consultant will remain obligated to pay any unpaid amount of Company's Fee already due and payable, and to pay Company for any unpaid or unreimbursed expenses already incurred under Section 9, but otherwise Consultant will not be obligated to make any further fee payments under Section 8 or expense payments or reimbursements under Section 9.

Upon termination of this Agreement for any reason provided for in this Section 12, the following rights and obligations of the parties under this Agreement will survive such termination: (i) Company's ownership rights relative to the copyright and all other intellectual property rights in and to the Plan Documents and all other plans or other written or electronically recorded materials prepared by Company and delivered to Consultant or Owner; (ii) all obligations and liabilities of the parties hereunder already accrued at the time of such termination; (iii) the liability and indemnity obligations of the parties under Section 13 with respect to claims that arose (whether or not asserted) prior to such termination; and (iv) the arbitration provisions in Section 16.

13. Liability. During the Term of Service, Company will be liable to Consultant for damages caused by Company's breach of this Agreement, and Consultant will be liable to Company for damages caused by Consultant's breach of this Agreement, provided that neither party will be liable to the other for any consequential or incidental damages arising out of such a breach. Company agrees that, during the Term of Service, it will not make any claim for damages against the Owner, its officers, agents or employees, by reason of this Agreement, or any acts or omissions of the Consultant, provided that such agreement shall not prevent Company from specifically enforcing any its rights granted to Owner as a beneficiary of this Agreement. After expiration of the Term of Service, and for the remainder of the License Term, Company will be liable to Owner for damages caused by Company's breach of this Agreement, and Owner will be liable to Company for damages caused by Owner's breach of this Agreement, provided that neither party will be liable to the other for any consequential or incidental damages arising out of such a breach. In the event a third party asserts any claim relating to the Golf Course, Consultant and Owner shall be required to indemnify, defend, and hold harmless Company, its officers, directors, employees, consultants, and agents, and Nicklaus against and from any and all liabilities, losses, costs, expenses, or damages incurred by them as a result of such claim, including reasonable legal fees and expenses of settlement or defense related thereto, unless such claim results from a breach of this Agreement by Company or negligence or misconduct of the person seeking indemnification. Without limiting the generality of the foregoing indemnity, the parties acknowledge and agree that: (i) Company will be indemnified

by Consultant from claims arising out of the acts, errors, omissions, strict liability duties, and/or financial obligations of Consultant and its other subconsultants under the Master Contract in connection with the design and construction of the Golf Course (other than design work performed by Company) or any related facilities or structures required under the Master Contract, and (ii) Company will be indemnified by Owner or its subcontractors from claims arising out of the acts, errors, omissions, strict liability duties, and/or financial obligations of Owner and/or its independent contractors in connection with the construction, operation, use, and maintenance of the Golf Course, any related facilities or structures, and/or any associated real estate development. Consultant and Owner will use their best efforts to have Company and Nicklaus named as additional indemnified parties in all third party contracts relating to the development, construction, and operation of the Golf Course and related facilities, provided that the inclusion or omission of such names will not prevent Company and Nicklaus from enforcing their indemnification rights under this Section 13 or asserting their legal or equitable rights as intended third-party beneficiaries of any indemnification provided to Consultant or Owner by such parties.

Company and Nicklaus will in no event be responsible or liable for any improper performance by the contractor or any subcontractor, or any independent professionals retained by Consultant and/or Owner, or any testing laboratory, or for the installation or use of any improper or defective materials or equipment or structures on the Golf Course, or for the failure of any materials or equipment to perform in the manner expected or specified. Consultant acknowledges that the foregoing provision is necessary in order to allow Company to have free access to information regarding the work of independent third parties without assuming any obligation to Consultant or Owner to assure or monitor their performance, and Consultant and Owner hereby waive any claims either of them might otherwise assert under any applicable legal theory which would conflict with such provision.

14. Insurance. Throughout the progress of the Construction Work, Consultant and Company shall each effect and maintain in force, at its own cost, all insurance which they are required to maintain by Owner pursuant to the Master Contract. Company shall provide Consultant and Owner with evidence of insurance as required under the Master Contract, and Consultant shall furnish Company with copies of all certificates of insurance provided to Owner by Consultant and its other sub-consultants to evidence the insurance carried by them in order to meet the requirements of the Master Contract.

15. Notices and Payments. Notices between the parties will be in writing and will be deemed to have been properly given if delivered by express courier service or by U.S. mail, return receipt requested, to the address of the receiving party as set forth on the first page of this Agreement, or if sent by facsimile to the number set forth on the execution page hereof. Either party may change the address or facsimile number for notices as stated in this Agreement by giving written notice of a change of such address or phone number to the other party, which change shall be effective when such notice is duly given in the manner provided under this Section. Notices will be effective on the date of receipt if sent by mail or courier, and facsimile notices will be effective on the next business day following the date of confirmation of error-free transmission. Any notice refused by a party or returned to the sender as undeliverable as a result of the recipient's failure to provide the sender with a current and active office address will be deemed effective as of the date delivery of such notice is first attempted. Payment hereunder to

Company will be made in U.S. Dollars and will be wired to such bank accounts as Company specifies.

16. Arbitration. All disputes between Consultant and Company arising out of this Agreement or the rights or obligations of Consultant and Company hereunder will be finally settled by binding arbitration before a sole arbitrator nominated or appointed in accordance with the Commercial Arbitration Rules of the American Arbitration Association then obtaining (the "AAA Rules"), and each of them hereby agrees to submit all such disputes to arbitration. Arbitration proceedings will be conducted in Palm Beach County, Florida. The AAA Rules will govern the conduct of all such proceedings, the submission of evidence, and the procedures to be used in any evidentiary hearings conducted by the arbitrator. Each party agrees that the foregoing agreement to arbitrate, and any award rendered in connection with any such arbitration, may be enforced against such party in any court having jurisdiction over such party, and that Consultant hereby agrees to submit to the personal jurisdiction of the state and federal courts located in Palm Beach County, Florida, in connection with any action to enforce the foregoing agreement to arbitrate or any award rendered by an arbitrator under authority of this Agreement.

17. Late Payment Charges. Any unpaid installment of Company's fee or any expense reimbursement to Company due and payable under this Agreement will bear interest at the rate of twelve percent (12%) per annum from its due date until paid in full. So long as Consultant is in arrears with respect to any payment due to Company, Company's obligations under this Agreement will be suspended. Company will be entitled to recover its reasonable expenses and attorneys' fees incurred in connection with efforts to collect payments in arrears and late charges, regardless of whether or not legal action is instituted to collect such payments. Notwithstanding the foregoing, Company agrees that Consultant shall not be required to advance any payment due to Company and that Company will not seek to collect interest or attorneys fees from Consultant hereunder if Consultant's delay in payment is caused by normal payment cycles imposed by Owner under the Master Contract, provided that such agreement shall not be deemed a waiver or modification of any of Company's other rights for non-payment under this Agreement.

18. Miscellaneous. In performing its services under this Agreement, Company agrees to be bound by those additional terms and conditions set forth in Exhibit "B" annexed hereto and incorporated herein by reference, which terms and conditions are acknowledged by the parties to be required in order to meet specific requirements imposed by Owner under the Master Contract with respect to subcontracts undertaken by Consultant. Except as otherwise expressly stated to the contrary in Exhibit "B", and as between Consultant and Company, this Agreement will be construed in accordance with and governed by the internal laws of the State of Florida. Disputes between Company and Owner under this Agreement will be construed in accordance with and governed by the internal laws of the State of New York, provided however, that all matters related to the ownership, licensing and use of the Endorsement shall be determined by the internal laws of the State of Florida as the law of the domicile of Nicklaus and the Company as his authorized representative. This written Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and is the final expression of the agreement between the parties. This Agreement may be executed and delivered by the parties in identical counterparts, including counterparts transmitted and delivered by facsimile or electronic mail, which when taken together, shall be fully effective as if both parties had signed one and the same document. Any and all claims asserted by or against the Owner arising under this Agreement or

related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Court") or in the courts of the State of New York ("New York State Courts") located in the City and County of New York.

19. Assignment of Agreement to Owner. The parties acknowledge that the Master Contract provides for Consultant to design and provide construction management services to Owner for the Golf Course and related facilities on a "turn-key" basis, with the understanding that the Owner will contract for the construction of the Golf Course and related facilities and, upon completion of the Construction Work, will own and receive the ultimate benefit from such facilities and will be responsible for their management, operation and maintenance. It is understood that Owner shall be entitled, as a third party beneficiary of this Agreement, to utilize the Company's intellectual property in its Golf Course design, to exercise those rights of review and approval reserved to Owner under this Agreement and the Master Contract, to utilize the Endorsement as provided in Section 5 of this Agreement, and to receive all other benefits of being the Owner as set forth in this Agreement, subject in all cases to compliance with the obligations, terms and conditions set forth in the Agreement with respect to such matters. The parties agree that Owner is a signatory to this Agreement for the sole purpose of giving effect to the preceding sentence, and neither Consultant nor Company shall have any rights against Owner for breach by Consultant or Company of obligations of one to the other. The parties have further agreed that this Agreement shall automatically be assigned by the Consultant to the Owner upon expiration or earlier termination of the Master Contract for the remainder of the License Term, subject to the further terms and conditions of this Section. In the event that the Master Contract is terminated during the Term of Service, Owner acknowledges that the obligations of Company to perform its remaining services under this Agreement shall be conditioned upon the Company's receipt of adequate assurances from Owner that Owner or a designated substitute consultant reasonably acceptable to Company will perform all remaining obligations of Consultant under this Agreement (including outstanding payment obligations) and the Master Contract with respect to the design of the Golf Course and upon Owner's cure of any outstanding defaults of Consultant under this Agreement at the time the Master Contract is terminated. Upon completion of the Master Contract and acceptance of Consultant's design work thereunder by Owner, Owner shall provide Company with written notice of such acceptance, at which time Company's remaining obligations to Consultant and Owner as a service provider under this Agreement shall be deemed to have been fully satisfied without prejudice to the further rights and obligations thereafter of Company and Owner for the remainder of the License Term.

[COUNTERPART SIGNATURES APPEAR ON FOLLOWING PAGE(S)]

This Agreement was executed by the parties as of August 14, 2008.

COMPANY:
NICKLAUS DESIGN, LLC

By: _____
Jack Nicklaus

Its: Chairman

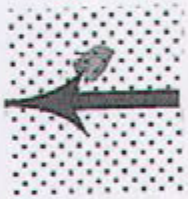
Facsimile No. (561) 227-0302

CONSULTANT:
SANFORD GOLF DESIGN

By: _____

Its: PRESIDENT

Facsimile No. 561 691 8603



OWNER:
THE CITY OF NEW YORK,
Acting by and through its Department
of Parks and Recreation

By: _____

Its: Chief Management Services, ACO
Facsimile No. ~~(212)~~ 718-760-6781

August 14, 2008
Donna L. Doty

DONNA L. DOTY
MY COMMISSION # DD634391
EXPIRES April 05, 2011
(407) 395-0153
FloridaNotaryService.com

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY

Steve Stein
Acting Corporation Counsel

AUG 20 2008

EXHIBIT "A"

DESCRIPTION OF THE SITE

EXHIBIT "B"

Additional Terms Required under Master Contract

1. The parties acknowledge that the effectiveness of foregoing Agreement is conditioned upon the submission by the Company of a thoroughly completed Vendex questionnaire to the party designated by Owner under the Master Contract, and that Owner has reserved the right to reject Company as a subcontractor if it has been evaluated as a poor performer by the Owner or any other governmental entity, has Advices of Cautions against it listed in the City-wide Vendex system, or for any other reason which might cause the Owner to reject the Company if the Owner were contracting directly with the sub-consultant. Company understands and acknowledges that any material misrepresentation or failure to disclose pertinent information on the Vendex by the Company shall give the Owner's designated representative, at such representative's discretion, the right to terminate the Company and allow no payment to be made for work performed under the Agreement, provided that in such event, all rights of Consultant and Owner under the Agreement shall thereupon terminate as provided in Section 12 of the Agreement.

2. In the event that Consultant is unable to perform the services set forth in the Master Contract, the parties agree that Consultant may assign the Agreement to Owner or Owner's designee pursuant to Part I, Article 5 of the Master Contract and Section 11 of the Agreement, provided that Company's consent to such assignment will not be unreasonably withheld or delayed if the assignee agrees to be bound by the obligations of Consultant under the Agreement and has the resources and experience required to perform Consultant's obligations to Company under the Agreement during the Term of Service.

3. As required by the applicable terms of Part III, Article 32 of the Master Contract, which are hereby incorporated by reference into the foregoing Agreement, Company agrees that it shall be governed by New York State Labor Law § 220-e and New York City Administrative Code § 6-108 in connection with the performance of services under this Agreement in the State and City of New York.

4. The parties understand that the Master Contract is subject to the requirements of Executive Order No. 50 (1980) as revised ("E.O. 50") and the Rules and Regulations promulgated thereunder, and that Company will be subject to those requirements and potential sanctions set forth in Part III, Article 38, of the Master Contract applicable to the performance of Company's services under this Agreement. Company agrees to furnish reasonable cooperation to Consultant as requested in order to permit Consultant to comply with the requirements of Owner pursuant to Part III, Article 38, of the Master Contract.

EXHIBIT I – PAYMENT GUARANTEE

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

(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 I** 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 I** 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 I** as a "party liable for payment" where applicable.

(B) Licensee shall, in accordance with the terms of this **Exhibit I**, 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 I** are subject to the limitations and conditions in this Section II and in Sections III and IV of this **Exhibit I**:

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

(B) Nothing in this **Exhibit I** 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 I**. 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 I**, 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 I**, 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 I** 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 I**), the payment guarantee made pursuant to this **Exhibit I** shall be construed in a manner consistent with Section 5 of the New York Lien Law.

EXHIBIT J – DEC PART 360 PERMIT

New York State Department of Environmental Conservation
Division of Environmental Permits, Region 2
47-40 21ST Street, Long Island City, NY 11101-5407
Phone: (718) 482-4997 • **FAX:** (718) 482-4975
Website: www.dec.ny.gov

Joe Martens
Commissioner

October 29, 2014

Kay Zias
Capital Projects
City of New York Parks and Recreation
Olmstead Center
Flushing Meadows – Corona Park
Flushing, NY 11368

Re: Permit Modification 6 NYCRR Part 360
Ferry Point Park Golf Course, Bronx, NY
NYSDEC Permit No. 2-6006-00014/000013
Solid Waste Management Facility

Dear Ms. Zias:

The above referenced permit, issued May 21, 2014 is hereby amended as follows:

Special Condition 24:

(f) xiii: during fill delivery and earthwork, submit quarterly reports to the Department summarizing all Site activities set forth by this permit. Each report shall provide details of all rejected fill material, quantify the amount of material imported onto the Site using truck volumes, and the results of all on-site gas monitoring for that period.

All other terms and conditions of the issued permit remain as previously written.

You are required to provide a copy of this approval to all agents, contractors and employees performing any part of the permitted activities and maintain an accessible copy at the project site and at the document repository established for this project.

Sincerely,

John F. Cryan
Regional Permit Administrator

Ecc:
S. Arakhan, DMM, R2
K. Brezner, DMM, R2
M. Moore, DEP, R2
File

New York State Department of Environmental Conservation
Division of Environmental Permits, Region 2 Office
47-40 21ST Street, Long Island City, NY 11101-5407
Phone: (718) 482-4997 • **Fax:** (718) 482-4975

Joe Martens
Commissioner

May 21, 2014

Kay Zias
Capital Projects
City of New York Parks and Recreation
Olmstead Center
Flushing Meadows-Corona Park
Flushing, N.Y. 11368

Re: DEC No. 2-6006-00014/000013 (2-6006-00014/00016)
Permit Issuance - Solid Waste Management Facility (Tidal Wetlands)
Ferry Point Park Golf Course, Bronx, NY

Dear Ms Zias:

Enclosed are permits for the referenced facility. Please read all conditions carefully. Please provide a copy of the permit and all attachments to the document repository established for this project.

Special Conditions 28, 29, 32, 37, 38 and 39, among others, specify post permit submittals, please make a note of the submission deadlines. To assist the development of a deed restriction for the project site, Attachment A, to this notice contains draft language of the conditions to be specified in the restrictive covenant.

If you have questions on the specific solid waste management conditions, please contact Sam Arakhan at 718-482- 4894. If you have questions regarding marine resources issues and the development of the waterfront park contact Susan Maresca at 718-482-6464. If you have any other questions regarding the administration of this permit, please contact Michelle Moore at 718-4982-4967.

Sincerely,

John F. Cryan
Regional Permit Administrator

Enclosures

S. Arakhan, DMM, R2
K. Brezner, DMM, R2
D. Menasha, DAR, R2
S. Maresca, DMR, R2
J. Nehila, Esq., DLA, R2
S. Zacharias, DOW, R2
M. Moore, DEP, R2
File

ATTACHMENT A

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS COVENANT made this __ day of _____, 2014, by the City of New York ("City"), a municipal corporation organized and existing under the laws of the State of New York, acting by and through the New York City Department of Parks and Recreation ("DPR") and having an office for the transaction of business 830 Fifth Avenue, New York, New York, 10021, and the New York City Department of Citywide Administrative Services ("DCAS"), having an office for the transaction of business at 1 Centre Street, New York, New York, 10007, in favor of the New York State Department of Environmental Conservation ("Department"), an agency of the State of New York, with offices at 625 Broadway, Albany, New York, 12233;

WHEREAS, DPR has jurisdiction pursuant to the New York City Charter over certain municipal parkland in the Borough and County of the Bronx, New York, known as "Ferry Point Park", which was the site of a former municipal landfill;

WHEREAS, pursuant to the New York State Environmental Conservation Law, Article 27, Title 7 and regulations promulgated pursuant thereto at 6 NYCRR Part 360, the Department has issued DPR a Solid Waste Management Permit (DEC Permit No. 2-6006-00014/00013-0)(the "Permit"), annexed hereto as Attachment A, to construct a Golf Course, Community Park and Waterfront Park (hereinafter "the Project") on the eastern portion of Ferry Point Park, a 222 acre parcel bounded by Bronx-Whitestone Bridge to the West, Balcom, Miles and Emerson Avenues to the East, Schley Avenue and St. Raymond's Cemetery to the North and the East River to the South (the "Site"), said parcel comprising Block 5583, Lot 100 and a portion Block 6522, Lot 1, as shown on the Bronx County Tax Map and more particularly depicted on the map attached hereto as Attachment B;

WHEREAS, the Permittee is authorized to import a total of 2,514,000 cubic yards of in-place fill material to the Site, which fill material shall consist of approximately 2,120,000 cubic yards of select exempt construction and demolition (C&D) debris for the shaping layer, and approximately 394,000 cubic yards of cover material, to be used in constructing the Project;

WHEREAS, Special Condition 17 requires the Permittee to implement a Groundwater Monitoring Program as described in section 4.5 of the Supplemental Engineering Report, Volume 1, dated October 15, 2013 (hereinafter the "Supplemental Engineering Report");

WHEREAS, Special Condition 26 requires the Permittee to perform monthly monitoring of the Landfill Gas Passive Venting Trenches for the duration of the Permit, and, thereafter, to monitor the Landfill Gas Passive Venting Trenches as described in the Supplemental Engineering Report, Volume 3, Appendix F;

WHEREAS, Special Condition 28 requires the Permittee, during the duration of the Permit, to inspect the Landfill Gas Passive Venting Trenches monthly to verify the integrity of the venting trenches and their mulch cover, and, thereafter, to maintain the Landfill Gas Passive Venting Trenches after the completion of construction of the Project, in the manner described in the Supplemental Engineering Report, Volume 3, Appendix F;

WHEREAS, Special Condition 29 requires the Permittee, until the completion of the Project, to conduct monthly monitoring of the depth of ground water in each piezometer installed at the gas venting trenches, and, thereafter, such piezometer monitoring shall be performed in accordance with the Supplemental Engineering Report, Volume 3, Appendix F, Section 6;

WHEREAS, Special Condition 32 requires the Permittee to execute and file a Department approved deed restriction, which shall run with the land in perpetuity, and shall recite and require compliance with the Permit's provisions as regards to the custodial care requirements described in the Supplemental Engineering Report, Volume 3, Appendix I;

WHEREAS, Special Condition 33 requires the Permittee to conduct bi-weekly monitoring of the On and Off-site Gas Monitoring Networks;

WHEREAS, Special Condition 34 requires the Permittee to maintain, and upgrade if required, the On and Off-site Gas Monitoring Networks during facility construction and after completion of the Project;

WHEREAS, Special Condition 35 requires the Permittee, upon Department approval of the Permittee's written post-construction certification report, to implement the custodial care plan described in the Supplemental Engineering Report, Volume 3, Appendix I;

WHEREAS, Special Condition 36 requires Permittee, should the Project be abandoned, to close, monitor and maintain after closure the entire 222 acre Site, in accordance with 6 NYCRR Sect. 360-2.15 as a landfill in operation since 2000;

WHEREAS, Special Conditions 17, 26, 28, 29, 33 and 34, require the installation, maintenance and operation of the Groundwater Monitoring Program, the Landfill Gas Passive Venting Trenches, the piezometers, and the On and Off-site Gas Monitoring Networks, on the perimeter of the site and off-site, for the purposes of monitoring groundwater and Landfill Gas and/or preventing Landfill Gas from migrating from the Site (hereinafter "Engineering Controls") said Engineering Controls being more particularly depicted on the map attached hereto as Attachment C.

WHEREAS, Special Condition 32 of the Permit requires the City of New York to execute and file a deed restriction for the real property beneath the site to run with the land in perpetuity, and that the deed restriction recites and requires compliance with the Permit's provisions as regards to Groundwater monitoring, the maintenance of Landfill Gas venting trenches, the piezometers, the On-site Landfill Gas Monitoring Network, including perimeter monitoring wells, the Off-site Landfill Gas Monitoring Network, and the criteria for abandonment of the site as specified in Special Condition 36 of the Permit;

NOW THEREFORE, pursuant to its terms, this covenant runs with the land and:

(1) requires the maintenance and operation of the Engineering Controls as set forth in Special Conditions 17, 26, 28, 29, 33 and 34 of the Permit;

(2) prevents modification or alteration of the Engineering Controls except as otherwise set forth in Special Conditions 17, 26, 28, 29, 33 and 34 of the Permit or in any subsequent written authorization by the Department or its successor agency;

(3) unless prior written approval by the Department or its successor agency is first obtained, there shall be no construction, use or occupancy of the Site that results in the disturbance or excavation of the Site which threatens the integrity of the Engineering Controls, or which results in unacceptable human exposure to contaminated soils;

(4) the owner of the Site shall not disturb, remove, or otherwise interfere with the installation, use, operation, and maintenance of Engineering Controls required by the Permit and the Supplemental Engineering Report, unless in each instance the owner first obtains a written waiver of such prohibition from the Department or its successor agency;

(5) the owner of the Site shall prohibit the Site from ever being used for purposes other than for the Project described in the Permit, without the express written waiver of such prohibition by the Department or its successor agency;

(6) the owner of the Site shall provide a periodic certification, prepared and submitted by a professional engineer or other environmental professional acceptable to the Department or its successor agency, which will certify that the Engineering Controls put in place are unchanged from the previous certification, comply with the Permit and the Supplemental Engineering Report, and have not been impaired;

(7) this Declaration is and shall be a covenant that shall run with the land and shall be binding upon all future owners of the Site, and shall provide that the owner and its successors and assigns consent to enforcement by the Department or its successor agency of the prohibitions and restrictions that the Permit requires be recorded, and hereby covenant not to contest the authority of the Department or its successor agency to seek enforcement;

(8) any deed of conveyance of the Site, or any portion thereof, shall recite, unless the Department or its successor agency has consented to the termination of such covenants and restrictions, that said conveyance is subject to this Declaration of Covenants and Restrictions;

(9) in the event that the Project is abandoned, requires closure, monitoring and maintenance of the Site as a landfill in operation since 2000, in accordance with 6 NYCRR Part 360-2.15 and Special Condition 36 of the Permit; and

(10) may be modified by mutual agreement of the City or its successors and the Department or its successor agency.

IN WITNESS WHEREOF, the undersigned have executed this instrument on the day(s) written below.

_____
New York City Department of Parks and Recreation

Sworn to before me
this ____ day of _____, 201__

_____
Notary Public

Approved as to form
this ____ day of _____, 201__

_____
Assistant Corporation Counsel

_____
Department of Citywide Administrative Services

Sworn to before me
this ____ day of _____, 201__

_____
Notary Public

Approved as to form
this ____ day of _____, 201__

_____
Assistant Corporation Counsel

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

DEC PERMIT NUMBER:		EFFECTIVE DATE:
2-6006-00014/00013 (SW) 2-6006-00014/00016 (TW)	PERMIT Under the Environmental Conservation Law (ECL)	May 21, 2014
FACILITY:		**EXPIRATION DATE:**
Ferry Point Park Golf Course		May 20, 2024

TYPE OF PERMIT: ☐ New ☒ Renewal ☒ Modification ☐ Permit to Construct ☐ Permit to Operate

☒ Article 27, Title 7; 6 NYCRR 360: Solid Waste Management

☐ 6 NYCRR 608: Water Quality Certification

☐ Article 15, Title 15: Long Island Wells

☐ Article 17, Titles 7, 8: SPDES

☒ Article 25: Tidal Wetlands

☐ Article 15, Title 5: Protection of Waters

PERMIT ISSUED TO:	**TELEPHONE :**
Owner and Operator: NYC Department of Parks and Recreation	212-360-8111(NYCDPR)
ADDRESS OF PERMITTEE: NYCDPR, 830 5th Avenue, New York, NY 10021-7001	
CONTACT PERSON FOR PERMITTED WORK: Kay Zias	**TELEPHONE :** 718-760-6748

PROJECT/FACILITY NAME: Ferry Point Park Golf Course Construction

PROJECT/FACILITY ADDRESS: Eastern portion of Ferry Point Park, bounded by the Bronx Whitestone Bridge, Balcom, Miles and Emerson Avenues, Schley Avenue and the East River, Bronx County. Block 5583, Lot 100, Block 5622, Lot 1

DESCRIPTION OF AUTHORIZED ACTIVITY:

Construction of a Golf Course, Community Park and Waterfront Park on 222 acres of Ferry Point Park, requiring a total of approximately 2,514,000 cubic yards of material in-place volume. This material will be imported to the Site by truck and consist exclusively of: 1) recognizable and uncontaminated concrete or concrete products (including steel or fiberglass reinforcing rods that are embedded in the concrete), brick, soil, sand, gravel, and rock (hereafter referred to in this permit as select exempt construction and demolition debris) totaling approximately 2,120,000 in-place cubic yards for the shaping layer, and 2) approximately 394,000 in-place cubic yards of cover material. The imported material will be used to attain the final approved grades and contours.

All work associated with the authorized activity described above shall comply with all of the applicable provisions of 6 NYCRR Part 360 (Solid Waste Management Regulations), effective 29 September 1997. By acceptance of this permit, the Permittee agrees that this permit is contingent upon strict compliance with the ECL, all applicable regulations, and the General Conditions and Special Conditions included herein.

REGIONAL PERMIT ADMINISTRATOR: John F. Cryan	**ADDRESS:** NYS Department of Environmental Conservation 47-40 21st Street, Long Island City, NY 11101	
AUTHORIZED SIGNATURE: John F. Cryan	**DATE** May 21, 2014	Page 1 of 17

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification

The Permittee has accepted expressly, by the execution of its application for the subject work, the full legal responsibility for all damages and costs, direct or indirect, of whatever nature and by whomever suffered, for liability it incurs resulting from activity conducted pursuant to this permit or in noncompliance with this permit and has agreed to indemnify and save harmless the State from suits, actions, damages, and costs of every name and description resulting from such activity.

Item B: No Right to Trespass or Interfere with Riparian Rights

This permit does not convey to the Permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the subject work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.

GENERAL CONDITIONS

General Condition 1: Facility Inspection by the Department

The subject facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the Permittee is complying with this permit and the ECL. Such representative may order the subject work suspended pursuant to ECL 71-0301 and SAPA 401(3).

The Permittee must provide a person to accompany the Department's representative during an inspection of the subject facility when the Department provides written or verbal notification to the Permittee at least 24 hours prior to such inspection.

A copy of this permit, including all general and special conditions therein, all amendments thereto, and all documents referenced therein must be available for inspection by the Department at the project site at all times that activity associated with the subject work is occurring. Failure to produce a copy of such permit, conditions, amendments, or documents upon request by a Department representative is a violation of this permit.

Any sign provided by the Department with this permit must be protected from the weather and posted in a conspicuous location at the subject work site throughout the period during which any of the subject work occurs.

General Condition 2: Relationship of this Permit to Other Department Orders and Determinations

Unless expressly provided for by the Department, this permit does not modify, supersede, or rescind any order or determination previously issued by the Department or any of the terms, conditions, or requirements contained in such order or determination.

General Condition 3: Applications for Permit Renewals or Modifications

The Permittee must submit a separate written application to the Department for renewal, modification, or transfer of this permit, including but not limited to a change in facility operator. Such application must include any forms or supplemental information the Department requires. Any renewal, modification, or transfer granted by the Department must be in writing. The Permittee must submit a renewal application at least:

a) 180 days before expiration of permits for State Pollutant Discharge Elimination System (SPDES), Hazardous Waste Management Facilities, major Air Pollution Control (APC) and Solid Waste Management Facilities; and
b) 30 days before the expiration of all other permit types.

Submission of applications for permit renewal, modification, or transfer are to be submitted to:
NYSDEC Regional Permit Administrator, Region 2, 47-40 21 Street, Long Island City, NY 11101 (tel. 718/482-4997).

General Condition 4: Permit Modifications, Suspensions, and Revocations by the Department

The Department reserves the right to modify, suspend, or revoke this permit when:

a) the scope of the permitted activity is exceeded or a violation of any condition of the permit or provisions of the ECL and pertinent regulations is found;
b) the permit was obtained by misrepresentation or failure to disclose relevant facts;
c) new material information is discovered; or
d) environmental conditions, relevant technology, or applicable law or regulation have materially changed since the permit was issued.

General Condition 5: Compliance with Other Regulatory Requirements

The Permittee is responsible for obtaining any other permits, approvals, lands, easements, and rights-of-way that may be required for the subject work. The Permittee and its independent contractors, employees, agents, and assigns must comply with all applicable local, State, and federal regulatory requirements.

General Condition 6: Permittee to Ensure that its Contractors to Comply with Permit

The Permittee must ensure that its independent contractors, employees, agents, and assigns read, understand, and comply with this permit, including all General and Special Conditions herein, in general, and General Condition No. 5, above, in particular. Such persons must be subject to the same sanctions for violations of this permit as those prescribed for the Permittee.

ADDITIONAL GENERAL CONDITIONS FOR ARTICLE 27 and 6 NYCRR Part 360 (Solid Waste Management Facilities)

7. That if future operations by the State of New York require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Department it shall cause unreasonable obstruction to the free navigation of said waters or flood flows or endanger the health, safety or welfare of the people of the State, or cause loss or destruction of the natural resources of the State, the owner may be ordered by the Department to remove or alter the structural work, obstructions, or hazards caused thereby without expense to the State, and if, upon the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the watercourse hereby authorized must not be completed, the owners, must, without expense to the State, and to such extent and in such time and manner as the Department may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable and flood capacity of the watercourse. No claim shall be made against the State of New York on account of any such removal or alteration.
8. The State of New York must in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the State for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.
9. All necessary precautions must be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate, or any other environmentally deleterious materials associated with the project. Any creosote-treated lumber must be weathered for at least six months before it is brought to the subject work site.
10. Any material dredged in association with the work herein permitted must be removed evenly, without leaving large refuse piles, ridges across the bed of a waterway or flood plain, or deep holes that may have a tendency to cause damage to navigable channels, the banks of a waterway, water quality, sediment quality, or benthic habitat.
11. There must be no unreasonable interference with navigation by the work herein authorized.
12. If upon the expiration or revocation of this permit, the project hereby authorized has not been completed, the Permittee must, without expense to the State, and to such extent and in such time and manner as the Department may require, remove all or any portion of the uncompleted structure or fill and restore the site to its former condition. No claim shall be made against the State of New York on account of any such removal or alteration.
13. If granted under Article 36, this permit does not signify in any way that the project will be free from flooding.
14. If granted under 6 NYCRR Part 608, the Department hereby certifies that the subject project will not contravene effluent limitations or other limitations or standards under Sections 301, 302, 303, 306, and 307 of the Clean Water Act of 1977 (PL 95-217) provided that all of the conditions listed herein are met.
15. In accordance with Title 19, Part 600.4 (c) of the New York Code of Rules and Regulations, the Department hereby certifies that the action described and approved in this permit, if located within the Coastal Zone, is consistent to the maximum extent practicable with the policies and purposes of the New York City Waterfront Revitalization Program.

SPECIAL CONDITIONS

Site Work

1. All activities authorized by this permit shall conform to all documents supporting the original permit, DEC No. 2-6006-00014/00011, dated July 17, 2000 ,and modified October 18, 2002 , November 18, 2005 and December 27, 2005 as modified by the following:

- Technical Environmental Assessment for the Ferry Point Park Recreation Facility prepared by Allee, King, Rosen and Fleming dated February 11, 2002 and amended September 29, 2004;
- Geotechnical Engineering Study prepared by Langan Engineering and Environmental Services, Inc. dated July 2, 2002;
- Response to Request for Additional Information prepared by TRC Raymond Keyes Associates dated July 2, 2002;
- Fill Procurement Protocol shall be as per the Department letters dated May 21, 2001 and May 23, 2001 from John Nehila to Steve Kass;
- Ferry Point Park: Offsite Methane Monitoring-Bronx, New York prepared by AKRF, Inc., October 12, 2001;
- Landfill Gas (LFG) Passive Vent Trench Along Miles And Emerson Avenues Plan and Detail, V-1, Sheet 1 of 4 prepared by TRC with checked date 02/04/02 ;
- Landfill Gas (LFG) Passive Vent Trench Along Balcom, Miles And Schley Avenues Plan and Detail, V-2, Sheet 2 of 4 prepared by TRC with checked date 02/04/02 ;
- Landfill Gas (LFG) Passive Vent Trench Along Northern Property Boundary Plan and Detail, V-3, Sheet 3 of 4 prepared by TRC with checked date 02/04/02;

SPECIAL CONDITIONS
ADDITIONAL SPECIAL CONDITIONS FOR ARTICLES 27 and 6 NYCRR Part 360 (Solid Waste Management Facilities)

- LFG Vent Trench and Piezometer Network Profile, V-4, Sheet 4 of 4 prepared by TRC with checked date 02/04/02;
- Landfill Gas (LFG) Passive Vent Trench Along Balcom, And Schley Avenues Plan and Detail, C-2, Sheet 1 of 1 prepared by TRC with checked date 07/20/01;
- Landfill Gas (LFG) Passive Vent Trench Along Balcom between Sampson & Dewey Avenues Plan and Detail, C-1, Sheet 1 of 1 prepared by TRC with checked date 03/09/01;
- Volume#1, Application for Modification to the Solid Waste Management Facility Permit for Construction of Ferry Point Park Recreation Facility, Bronx, NY, Engineering Report, prepared by TRC Raymond Keyes Associates, dated June 30, 2005. (revised)
- Volume #2, Application for Modification to the Solid Waste Management Facility Permit for Construction of Ferry Point Park Recreation Facility, Bronx, NY, Engineering Report, prepared by TRC Raymond Keyes Associates, dated June 30, 2005.
- Settlement Evaluation and Long Term Monitoring Plan, Ferry Point Golf Course, Ferry Point Park, Bronx, NY, prepared by Langan Engineering and Environmental Services, Inc., dated January 26, 2005.
- Response to Department Comments prepared by TRC Raymond Keyes Associates, dated August 2, 2005 and by Langan Engineering and Environmental Services, Inc., dated June 30, 2005.
- Application for Modification to the Solid Waste Management Facility Permit for Construction of Ferry Point Park Recreation Facility, Bronx, NY, "Second Supplement to Engineering Report," prepared by TRC Raymond Keyes Associates, dated August 23, 2004.
- Site plans labeled "Ferry Point Park Public Recreational Facility Bulk Earthwork, Ferry Point Park Public Recreation Facility, Ferry Point Park, Bronx, New York" prepared by TRC Raymond Keyes Associates, dated April 22, 2005 (revised) consisting of drawings:

    - GC-2, G1 and G-2 dated 7/01/05 (last revised);
    - G-3, and G-4 dated 1/21/05 (last revised);
    - D-1 dated 7/1/04 (last revised);
    - D-2 dated 7/1/05 (last revised);
    - V-1, V-2, V-3 and V-4 dated 02/04/04 (last revised);
    - C-1 dated 3/09/01 (last revised);
    - C-2 dated 7/20/01;
    - SW-1.00 dated 4/13/04;
    - SW 1A.01 dated 2/18/04;
    - SW 1B.01 and SW 1b.02 dated 4/13/04;
    - Irrigation Design Phase 1 Ferry Point Park Approval Set, labeled "Ferry Point Park 0514-AS-R04-060704, Phase 1 Approval Set" dated 06/07/04 (last revised), sheets numbered 1, 2, 3 and 4 dated 5/22/03 and sheets numbered I, II and III dated 5/22/03

- Supplemental Engineering Report for the Solid Waste Management Facility Permit Application for Ferry Point Park East Bronx, NY, Vol. 1 - 3 dated May 31, 2012 and last revised October 15, 2013.

SPECIAL CONDITIONS
ADDITIONAL SPECIAL CONDITIONS FOR ARTICLES 27 and 6 NYCRR Part 360 (Solid Waste Management Facilities)

2. Activities authorized by this permit include development of a golf course and parks, as well as the construction of associated structures, utility lines, gas venting and control systems. All aspects of the project must be constructed in accordance with the Department approved design plans, specifications and documents noted in Special Condition # 1. All physical aspects of the project including project location referenced in this permit shall be referred to as the "Site." All construction aspects of the permitted activities referenced in this permit shall be referred to as the "Project."

3. In accordance with "Item A" of the Notification of Other Permittee Obligations" found on page 2 of this permit, the Department in general accepts no liability for the structural integrity and/or the adequacy of the buildings and/or foundation designs of the proposed buildings or other structures associated with the development of the golf course. In addition, the Department specifically does not guarantee nor accept liability in regards to the measures proposed to prevent the subsidence of any buildings, foundations and other structures built on or adjacent to the Site, or to prevent the migration of explosive gas.

4. All operations at the Site shall occur Monday through Saturday during daylight hours, between sunrise and sunset, unless otherwise authorized by the Department.

5. All truck traffic entering and leaving the Site shall use only authorized truck traffic routes, and conform to the construction traffic management plans noted in Exhibit K of Volume #1, Application for Modification to the Solid Waste Management Facility Permit for Construction of Ferry Point Park Recreation Facility, Bronx, New York, Engineering Report, prepared by TRC Raymond Keyes Associates, dated June 30, 2005 (revised).

a) All truckers shall receive written instruction on the truck access routes to and from the Site.

b) All trucks entering the site shall be tarped or sufficiently covered to comply with local and state highway regulations. The Site access and exit routes shall be maintained so that they are free from dust, dirt and debris resulting from the truck traffic.

6. Short-term settlement monitoring must strictly conform to the recommendations listed in the Settlement Evaluation and Long Term Monitoring Plan, Ferry Point Golf Course Ferry Point Park, Bronx, NY, prepared by Langan Engineering and Environmental Services, Inc., dated January 26, 2005. As construction progresses and long term plates are installed, short term plates do not need to be re-installed.

7. The long-term settlement monitoring must strictly conform to the recommendations listed in the Settlement Evaluation and Long Term Monitoring Plan, Ferry Point Golf Course Ferry Point Park, Bronx, NY, prepared by Langan Engineering and Environmental Services, Inc., dated January 26, 2005.

a) The long-term monitoring shall be performed for locations shown in Appendix H of the October 15, 2013 supplemental engineering report as described in Appendix I of the October 15, 2013 supplemental engineering report.

b) All monitoring points must be maintained in proper working condition. If any points are unable to be sampled for any reason, they must be repaired within two weeks of such detection and re-tested.

Fill Importation

8. The Permittees are authorized to import a total of 2,514,000 cubic yards of in-place fill material to the Site. The fill material shall consist of approximately 2,120,000 cubic yards of select exempt construction and demolition (C&D) debris for the shaping layer, and approximately 394,000 cubic yards of cover material. The imported material shall be used on Site to attain the final approved grades and contours approved by the Department, and referenced on plans made a part of this permit.

a) The use of asphalt as fill material on the Site is prohibited.

b) The use of dredge spoils as fill material on the Site is prohibited.

c) There shall be no mechanical separation of steel and fiberglass reinforcing rods from concrete and concrete products at the Site.

d) No size reduction or material processing may occur on Site, except with earth moving equipment in the course of placement. However, the breakdown and removal of stumps and wood previously left on Site by the New York City Department of Sanitation (DOS) is permitted.

e) All solid waste material excavated from the Site shall be properly secured immediately, and then removed from the Site and legally disposed of within seven (7) days.

f) All unauthorized solid waste or fill material found on the Site shall be properly secured immediately, and then removed and legally disposed of within five (5) days of its discovery by Permittees.

g) All select exempt construction and demolition (C&D) debris for the shaping layer and the cover layer material must be free of all non-exempt C&D recognizable debris.

9. The quantification of all imported fill material shall be continuously tracked by both truck volume, and periodic topographic survey of the imported in-place fill volume. Since compacted in-place fill volumes will not equal truck volumes of fill, a 41.7 percent (41.7%) correction factor shall be applied for shaping layer material and a correction factor of 18 percent (18%) shall be applied for cover material. The correction factor for converting truck volume into in-place volume may be modified by the Department.

10. The Permittees must cease the importation of fill material if:

a) The final approved grades are attained prior to the permitted amount of fill material being imported;

b) 2,120,000 cubic yards of select exempt construction and demolition debris for the shaping layer, as measured by in-place fill volume determined through topographic survey, are accepted. All material imported to the Site is considered shaping layer material, unless testing determines otherwise; or

c) 394,000 cubic yards of cover layer material, as measured by in-place volume, are accepted.

SPECIAL CONDITIONS

ADDITIONAL SPECIAL CONDITIONS FOR ARTICLES 27 and 6 NYCRR Part 360 (Solid Waste Management Facilities)

11. Use of fill material from DEC registered construction and demolition debris processing facilities (DEC registered C&D facilities or registration facilities) requires written Departmental approval. Such requests must be submitted to the Department for approval not less than ten (10) business days prior to any proposed date for importation from the new locations. No fill material may be received from unapproved facilities or locations. DEC registered construction and demolition debris processing facilities (DEC registered C&D facilities or registration facilities) may be used to obtain select exempt construction and demolition debris for fill material to the Department for its approval prior to use. The subsequent transportation and use of fill material from other additional registration facilities requires written Departmental approval. Such requests must be submitted to the Department for approval not less than ten (10) business days prior to any proposed date for importation from the new locations. No fill material may be received from unapproved facilities or locations.

12. Select exempt construction and demolition debris to be used as fill material at the Site may be accepted from DEC registered C&D facilities as approved pursuant to Special Condition #11, provided that the facilities segregate and clearly mark each stockpile with a specific identification number, the date each stockpile was started and the date when it was sampled by the Permittees. The Department shall be notified by Permittees at least 24 hours before any sampling event at a DEC registered C&D facility. All sampling reports shall be transmitted to the Department or the IEM directly from the certified testing laboratory.

13. The Permittee shall be responsible for ensuring that cover layer material is procured from a DEC approved source, and it meets all permit specifications.

a) If cover layer material is manufactured, the soil used in its manufacture must not originate from any industrial sites, brownfield site, historical fill site or DEC registered C&D facilities.

14. The Permittee shall be responsible for ensuring that the shaping and cover layer materials meet sections 4.2.1 and section 4.3 of the October 15, 2013 Supplemental Engineering Report, Volume 1, as well as the following:

a) In order for select exempt construction and demolition debris material to be used on Site, it must be sampled both prior to acceptance and after the importation of each additional 10,000 cubic yards (in truck volumes). Each soil sample is to be analyzed for Toxicity Characteristic Leachate Procedure (TCLP), volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), polychlorinated biphenyls (PCBs), and metals (including Resource Conservation and Recovery Act (RCRA) metals).

b) Cover layer material must be sampled prior to acceptance and after the importation of each additional 2,000 cubic yards (in truck volumes). Each soil sample is to be analyzed for the entire analyte list in the NYSDEC Technical and Administrative Guidance Memorandum (TAGM) 4046, total volatile organic compounds (VOCs), total semi- volatile organic compounds (SVOCs), pesticides and herbicides, polychlorinated biphenyls (PCBs), and metals (including Resource Conservation and Recovery Act (RCRA) metals).

c) The shaping layer must meet the following chemical limits:

i. Total carcinogenic SVOC levels (weighted average as calculated by formula provided in 10/25/06 letter from NYSDEC) must be less than 3 ppm by completion of construction; maximum carcinogenic SVOCs level from individual source must be 10 ppm or less. The following are the list of carcinogenic SVOCs that are subject to this 3 ppm limit: Benzo(a)pyrene, Dibenzo(a,h)anthracene, Benzo(a)anthracene, Benzo(b)fluoranthene, Indeno(1,2,3-cd)pyrene, Benzo(k)fluoranthene, and Chrysene.

ii. Total SVOCs must be less than 500 ppm

iii. Metals:

- Arsenic less than 28 ppm;
- Barium less than 2,000 ppm;
- Cadmium less than 20 ppm;
- Chromium less than 1,000 ppm;
- Copper less than 1000 ppm;
- Lead less than 400 ppm;
- Mercury less than 0.57 ppm
- Selenium less than 11 ppm
- Silver less than 100 ppm

iv. Asbestos for all layers must be 0.5% or less

v. Total sulfur for all layers must be 0.5% or less

vi. Total PCBs less than 10 ppm

vii. Total Pesticides less than 10 ppm

viii. VOCs (all individual analytes less than TAGM 4046)

d) The final placement of shaping and cover layer materials is subject to installation of a demarcation layer at locations where combined shaping and cover layers thickness are less than five (5) feet.

e) All shaping and cover layer material placed after the final placement of shaping and cover layer must meet the 6NYCRR Part 375 protection of public health restricted residential Part 375-6.8(b) SCOs.

15. The major components (greens, contours, heights and top soil) of the cover layer shall meet the Nicklaus Design Technical Specification, as noted in Exhibit C of the June 30, 2005 Engineering Report, and as follows:

- Greens - Greens mix imported to the site shall be tested as per material testing requirements. Fertilizer and soil amendments may be applied on the greens mix after spreading to construction specifications and finally grassed, as per the specifications provided by the agronomist.
- Topsoil - Topsoil imported shall be consistent with native topsoil, and shall be free of rock and debris greater than three quarters of an inch, as per Exhibit C of the Engineering Report. Soil amendments, fertilizer applications and seed may be applied to tee, fairway and rough areas, as per Exhibit C of the June 30, 2005 Engineering Report.

16. The Department may conduct joint sampling or take split samples as necessary for verification purposes.

Groundwater

17. The Permittee shall implement a groundwater monitoring program as described in section 4.5 of the Supplemental Engineering Report, Volume 1, dated October 15, 2013.

Fill Progression Monitoring

18. The Permittee shall place grade stakes indicating elevations for proposed final grades of fill and cover material.

19. The Permittee shall place benchmarks throughout the Site, in a manner acceptable to the Department, for the purpose of periodically measuring and surveying fill elevations. Benchmarks are to be maintained at all times. If it becomes necessary, they shall be repaired promptly.

Project Completion Schedule

20. The project shall progress according to the Construction Schedule provided in Volume #1, Application for Modification to the Solid Waste Management Facility Permit for Construction of Ferry Point Park Recreation Facility, Bronx, NY, Engineering Report, prepared by TRC Raymond Keyes Associates, dated June 30, 2005 (as revised), Exhibit A, and as updated in section 3.1 of the Supplemental Engineering Report dated October 15, 2013. The effective date for implementation of the construction schedule is the effective date of this permit.

21. In accordance with the approved plan in Special Condition #1, placement of fill material in each section of the Site shall not exceed the designed and approved final contours for each section.

22. Only cover material may be stockpiled in a section upon completion of the placement of fill material for the shaping layer in that section as per design calculations. In addition, cover material may be stockpiled in a section where the completion of fill placement has not occurred, if such stockpile is segregated and secured from construction and demolition debris used for the shaping layer.

23. Upon completion of filling operations to approved grades in a section, the Permittees shall commence the rough shaping and placement of cover material, and the installation of drainage, irrigation and utilities, as per Construction Schedule noted in Special Condition # 20. Prior to placement of this cover material, Permittee must comply with the requirements of Special Condition # 15(d).

Independent Environmental Monitor

24. An Independent Environmental Monitor (IEM), accountable to the Department, shall be retained by the Permittee to provide environmental oversight of all activities authorized by this permit for the duration of its permitted term, including, but not limited to, the quantification, importation and placement of fill, and the monitoring of the Site.

SPECIAL CONDITIONS

ADDITIONAL SPECIAL CONDITIONS FOR ARTICLES 27 and 6 NYCRR Part 360 (Solid Waste Management Facilities)

a) It shall be the IEM"s responsibility to provide notice of any deviation from the activities authorized by this permit and any deviation from New York State Environmental Regulations (6NYCRR Part 360) to the Department immediately, but in no event later than 24 hours after such deviation is detected. This notification must include the date and time of the potential non-compliance, the nature of the non-compliance, any corrective action, and any additional measures the IEM will be undertaking to track the issue until corrected. Should the IEM be uncertain as to whether such a deviation has occurred, the matter shall be promptly reported to the Department for a determination. For the purposes of this permit, a deviation(s) shall mean any of the following:

   i. An apparent violation of any condition of this permit;

   ii. An apparent violation of Federal, State or Local Law;

   iii. A material difference between construction or monitoring data obtained by the Permittees or their consultants, and that obtained by the IEM;

   iv. Any receipt of fill that does not meet the specifications authorized in this permit;

   v. Any receipt of fill from a site not authorized under the permit or by the Department.

   vi. Any condition, activity or occurrence that may endanger or pose a threat to public health, safety or the environment.

b) Notwithstanding any other reporting this permit requires, the IEM shall submit a detailed written report to the Department no less frequently than every three months detailing the IEM"s activities at the Site, the estimated total volume of fill material (including cover material) received during the reporting period based on truck volume, the total volume of fill in place at the Site, the percentage of filling to final grades, and the number(s) of trucks prohibited from entering the Site. The report also shall summarize any site meetings amongst the Permittee, its consultants or others, verify that all samples taken and monitoring done at the Site by the Permittee or consultants conform to this permit, detail any substantive change in the condition of the Site or project, fully explain any deviations occurring during the reporting period and their disposition, and describe any other occurrence, circumstance or condition that may have a bearing upon the safe and environmentally sound operation of the Project or Site.

c) The IEM must be approved by the Department prior to the finalization of any contractual agreement with the Permittee, and the initial receipt of any fill material at the Site.

d) The continued retention, discharge, or replacement of the IEM shall be at the sole discretion of the Department. The Permittee waive any right to seek judicial review of the Department's exercise of that discretion. The Permittees must fully pay all invoices and bills from the IEM within sixty days of submission. The IEM or its Department approved representative shall be present on Site whenever it is open. Under no circumstances shall Project activities, including the receipt or management of fill, take place while the IEM or its designated representative is absent from the Site.

SPECIAL CONDITIONS
ADDITIONAL SPECIAL CONDITIONS FOR ARTICLES 27 and 6 NYCRR Part 360 (Solid Waste Management Facilities)

e) The Department shall have access to any information obtained by the IEM at any time. The IEM shall keep all information including, but not limited to, fill records, inspection reports, field notes, monitoring data, graphics, databases, financial records, minutes of meetings and other information in a form approved by the Department

f) The IEM, if an individual, shall possess a New York State Professional Engineer license. If an engineering firm serves as the IEM, the firm must provide an employee of that firm who is a New York State licensed professional engineer to perform all functions and certifications noted in Section 1.1 of the Engineering Report referenced in Special Condition No. 1 above. In addition, the IEM shall:

i. monitor all aspects of the Permittees" fill operations at the Ferry Point Park ("FPP") facility;

ii. have unrestricted access to all personnel employed by the Permittee at the FPP facility, and to all files and records maintained by the Permittees at the FPP facility pursuant to this permit;

iii. inspect the proposed sources of fill, review the documentation about the sources of the material, including without limitation, any off-site sampling, and certify as to the acceptability of the material for use at the Site, in accordance with the criteria specified in the Engineering Report, Section 2. The IEM shall notify the Department at least 24 hours before any on-site sampling;

iv. visually inspect each truckload of imported fill material at the Site, and undertake reasonable verification activities including directing, where appropriate, verification sampling, analysis and certification by the IEM on a Project specific tracking form that it meets criteria for acceptable fill at the Site;

v. inspect each truckload of material upon its dumping on Site with a Photo-Ionization Detector (PID).

vi. prohibit any truck from leaving the dumping area before the load has been inspected, and the manifest signed by the IEM. If any load is rejected, the rejected fill material shall be reloaded onto the same truck immediately and legally transported off-site. However, if the rejected fill material is a DEC regulated solid waste or hazardous waste, it must be segregated immediately and secured on-site, until it is removed by a DEC permitted hauler for appropriate disposal. Such regulated or hazardous waste must be removed from the Site within 3 days of its discovery;

vii. monitor the off loading of all material at the unloading station. No truck shall be allowed to off load unless the IEM is present. Such truck shall only be allowed to leave the station after the load is tested and found acceptable.

viii. certify that the sampling of material at the project Site conforms to the permit requirements, and review the results of all laboratory tests;

ix. notify the Department daily about the receipt of unacceptable material or any violations of conditions set forth in this permit;

x. maintain files on Site of fill sampling data, site histories, and internal manifest (tracking) forms;

xi. report and certify to the Department that the on-site gas well monitoring has been conducted as required by this permit. Notify the Department immediately if levels exceed 25% of the lower explosive limit (LEL) in any gas monitoring well;

xii. certify that: (a) all grades of the shaping layer of a section are correct prior to the placement of cover material on that section; (b) a minimum of two feet of fill material covers the existing municipal solid waste layer; and (c) the final cover layer meets the appropriate specifications of the Engineering Report noted in Special Condition #1;

xiii. during fill delivery and earthwork, submit bi-weekly reports to the Department summarizing all Site activities set forth by this permit. Each report shall provide details of all rejected fill material, quantify the amount of material imported onto the Site using truck volumes, and the results of all on-site gas monitoring for that period;

xiv. review the final post-construction report and provide comments to the Department on whether the fill operation was performed in accordance with the permit documents and including any deviations thereof. These comments must be submitted by the IEM to the Department within sixty (60) calendar days of the receipt of the final post construction report, certify that the fill operation was performed in accordance with the permit documents. The certified post-construction report must be submitted by the IEM to the Department within sixty (60) calendar days after the completion of the earthwork portion of the Project;

xv. report all operational upsets, emergencies, unusual circumstances (including, but not limited to, unauthorized entries, security breaches, equipment breakdowns, fires, thefts, acts of vandalism, and on-site accidents) to the Regional Solid Waste Engineer by telephone (at 718/482-4996) within 24 hours of the occurrence, and in writing within 3 business days advising the engineer of the nature of the event, and providing a description of how the event was handled.

Gas Venting Trench

25. During the duration of this permit, the Permittee shall inspect the gas venting trench monthly to verify the integrity of the venting trench and its mulch cover. The Permittee shall maintain the gas venting trench at all times, and promptly repair any soil washouts of the mulch cover, as necessary. If any portion of the venting trench or mulch cover is found in need of repair, this fact must be reported to the IEM immediately and all necessary repairs must be made within two weeks of discovery.

SPECIAL CONDITIONS

ADDITIONAL SPECIAL CONDITIONS FOR ARTICLES 27 and 6 NYCRR Part 360 (Solid Waste Management Facilities)

(SC 25 continued) In addition, the mulch cover shall be replaced, at a minimum, every spring to maintain the effectiveness of the gas venting trench. The Permittee shall maintain the gas venting trench after the completion of construction of the golf course in the manner described in the Supplemental Engineering Report, Volume 3, Appendix F.

26. Monthly monitoring of the gas venting trench shall continue for the duration of the permit.

27. **As required by the Custodial Care Plan**: Gas venting trench inspection reports shall include the inspection date, the name of inspector, and a description of repairs, monitoring results and maintenance performed. A log of these self-inspections must be maintained including the dates, times and results of the inspections.

Piezometers

28. The Permittee shall conduct monthly monitoring of the depth of ground water in each piezometer installed at the gas venting trench, until the completion of the construction of the golf course. All readings shall be submitted to the Department in a monthly report.

a) **As required by the Custodial Care Plan**: Post-construction piezometers monitoring shall be performed in accordance with the Supplemental Engineering Report dated October 15, 2013, Volume 3, Appendix F, Section 6.

29. Within sixty (60) days of receipt of this permit, the Permittee shall submit a Response Action Plan to the Department. This Plan shall set forth the measures to be implemented by the Permittee, if the piezometer readings indicate that the groundwater table has dropped below the depth of the gas venting trench during the post construction monitoring period.

30. The Permittee shall sample the perimeter gas monitoring wells #0, #1A, #1 to #3, #5 to #12, and #14 to #18, and the on-site monitoring wells #13 and #19 on a bi-weekly basis to detect any explosive gas migration. Copies of the bi-weekly monitoring field notes shall be electronically mailed to the Department within 24 hours after the sampling event and a copy of this report shall be submitted to the Department within 3 business days and reported to the IEM immediately and all necessary repairs must be made within two weeks of discovery.

31. All perimeter gas monitoring wells should be tested at least on a bi-weekly basis. However, if any individual monitoring point has a bi-weekly reading that equals or exceeds 100% LEL or three consecutive bi-weekly reading are greater than 25% LEL, a modified methane gas action plan shall be implemented by the Permittee. Such plan shall require, at minimum, weekly testing of the individual monitoring point(s) with the elevated readings. The Department also may require any additional measures it deems necessary. Any individual point under the modified methane gas action plan may return to the regular bi-weekly monitoring schedule, when three (3) consecutive weekly readings are all less than the 25% LEL action level.

SPECIAL CONDITIONS

ADDITIONAL SPECIAL CONDITIONS FOR ARTICLES 27 and 6 NYCRR Part 360 (Solid Waste Management Facilities)

Deed Restriction

32. Within thirty (30) days of the date of the issuance of this permit, the Permittee shall submit a draft Deed Restriction to the Regional Permit Administrator. The deed restriction, which shall run with the land in perpetuity, shall recite and require compliance with this permit's provisions as regards to the custodial care requirements described in the Supplemental Engineering Report dated October 15, 2013, Volume 3, Appendix I. The deed restriction must be filed within six (6) months of the issuance date of this permit.

Off-site Gas Monitoring Network

33. The Permittee shall conduct bi-weekly monitoring of the Off-site Gas Monitoring Network. A copy of the bi-weekly monitoring field notes shall be electronically mailed to the Department within 24 hours, and a copy of the monitoring report shall be submitted to the Department within 3 days of the completion of each round of monitoring.

a) **As required by the Custodial Care Plan**. Each bi-weekly monitoring report shall include the geoprobe monitoring point(s) installed on or near Buttrick, Schley, Balcom, Miles and Emerson Avenues, as described in the methane monitoring reports referenced in Special Condition #1 of this permit.

34. The Permittee shall maintain, and upgrade if required, the Off-site Gas Monitoring Network during facility construction and after completion of the golf course.

a) The Permittees may request Departmental approval to substitute for all, or part of, the Off-site Gas Monitoring Network by installing geoprobe soil gas monitoring points of a placement and design suitable to the Department. Such points must be at linear intervals no greater than 50 feet (on 50-foot centers) along either segments of the perimeter boundary of the gas venting trench or the drainage ditch.

b) If any point used for off-site gas monitoring is found to require repairs, this fact must be reported to the IEM immediately and all necessary repairs must be made within two weeks of discovery. A copy of the off-site gas monitoring well results also must be sent to the New York City Housing Authority.

c) All off-site gas monitoring points shall be tested on a bi-weekly basis. If any individual monitoring point has a bi-weekly reading that equals or exceeds 100% LEL, or three consecutive bi-weekly readings that are greater than 25% LEL, sampling of that point shall be done weekly. Any individual point under the later modified methane gas action plan may return to the regular bi-weekly monitoring schedule, if there are three (3) consecutive weekly readings all less than the 25% LEL action level.

d) None of the requirements specified in Special Conditions Nos. 26 through 34, 36 (a) through (c) may be terminated without written approval from the Department.

SPECIAL CONDITIONS

ADDITIONAL SPECIAL CONDITIONS FOR ARTICLES 27 and 6 NYCRR Part 360 (Solid Waste Management Facilities)

Ferry Point Park East Post Construction Custodial Care Plan (Custodial Care Plan)

35. Upon Department approval of the Permittee's written post construction certification report, Permittee shall implement the Custodial Care Plan described in Supplemental Engineering Report dated October 15, 2013, Volume 3, Appendix I, as referenced in Special Condition No. 1.

Project Abandonment and Environmentally Sound Closure

36. Should the Project be abandoned, the entire 222 acre Site must be closed, monitored and maintained after closure in accordance with 6 NYCRR Sect. 360-2.15 as a landfill in operation since 2000.

a) Within one hundred and twenty (120) days after notice from the Department that the Site has been deemed abandoned, the Permittee shall implement the custodial care plan contained in the Supplemental Engineering Report dated October 15, 2013, Volume 3, Appendix I, as referenced in Special Condition No. 1.
b) For the purpose of this permit, abandonment shall mean any of the following:
    i. Filling operations authorized under this permit cease for a period of 12 consecutive months, as provided in 6NYCRR sect 360-1.11(f);
    ii. Failure to complete the Project within 12 months of the issuance of this permit, as determined by the Department, by the expiration date of this permit; or
    iii. Termination of this Project as a result of enforcement action by the Department or another government agency for non compliance with this permit, or with applicable Federal, State or Local Law.
c) The terms of this Special Provision shall govern, if in conflict with the terms of General Condition No. 12.

Waterfront Park

37. Within one hundred and eighty (180) days of the effective date of this permit, provide three hard copies and one copy on CD of revised design plans for the Waterfront Park, to the Regional Permit Administrator. Include in this submission details on the extent of adjacent area and tidal wetlands encroachment, water balance, proposed mitigation (including mitigation for the pool barge), implementation plans and staging.

SPECIAL CONDITIONS

ADDITIONAL SPECIAL CONDITIONS FOR ARTICLES 27 and 6 NYCRR Part 360 (Solid Waste Management Facilities)

Submittals

38. Within sixty (60) days of completion of the filling operation on the Site and construction of the earthwork portion of the Project, the Permittees shall provide:

a) as-built drawings of the Project, signed by a professional engineer licensed in New York State for DEC's approval. The post construction as built drawings shall, at a minimum, include detailed cross-sections illustrating the depth of fill placed and location of all utilities and associated structures, road ways, demarcation layer and storm water drainage control structures for the Project. The as-built plans also shall include the location of all monitoring and control systems and devices (including gas control and monitoring, water quality and elevation monitoring and settlement monitoring).

b) a written post-construction certification report for review and approval by the Department and certification by the Independent Environmental Monitor. This report shall include approved "as-built" drawings demonstrating that the earthwork and filling operation was accomplished in accordance with the Department approved plans and this permit. If as-built drawings are not approved by DEC within 120 days of the completion of the filling operation, the Site is deemed abandoned, as per Special Condition No. 36. This report and the as-built drawings cannot be done or submitted by the IEM.

39. Within ninety (90) days of approval of the post construction certification report, the Permittee shall submit an amended subsurface operations plan which includes relevant post construction storm water pollution prevention maintenance documentation as per the State Pollution Discharge Elimination System (SPDES) general permit for storm water discharges from construction activity.

40. Within sixty (60) days of the effective date of the permit, the Permittee shall submit a full size (24 inches by 36 inches) scaled, signed and sealed drawing showing construction of the irrigation lake passive venting system.

41. Thirty (30) days after approval of the construction certification report, the Permittee must provide to the Regional Solid Waste Engineer, a revised Table 6-1 (noted in the engineering report referenced in Special Condition #1 above).

42. Prior to the installation of any sub slab depressurization systems for onsite buildings, the Permittee must secure written approval of these systems from the NYS Department of Environmental Conservation and the NYS Department of Health.

43. All reports and written submissions shall be sent in duplicate to the regional office of the DEC, with an additional copy to DEC Central Office, and another copy to the document repository as noted below. Each submission shall have a transmittal page, which references the DEC permit number and the relevant Special Condition number.

SPECIAL CONDITIONS

ADDITIONAL SPECIAL CONDITIONS FOR ARTICLES 27 and 6 NYCRR Part 360 (Solid Waste Management Facilities)

Samsudeen Arakhan
Regional Materials Management Engineer
NYS DEC, Region 2
47-40 21st Street
Long Island City, NY 11101

John Cryan
Regional Permit Administrator
NYSDEC, Region 2
47-40 21st Street
Long Island City, N.Y. 11101

David Vitale, Bureau Chief
Bureau of Solid Waste, Reduction, and Recycling
NYS DEC
625 Broadway
Albany, NY 12233-7253

FPP Golf Course Document Repository
New York City Department of Parks and Recreation
1 Bronx River Parkway
Bronx, NY 10462-2869

44. All notifications to the Department, as referenced in Special Conditions of this permit, shall be made to the Regional Materials Management Engineer, NYS DEC, 47-40 21st Street, Long Island City, NY 11101. All immediate, 24-hour, verbal or expedited notifications shall be made by telephone and electronic mail to the attention of Samsudeen Arakhan, Regional Solid Materials Engineer at: 718-482-4996 (phone) / skarakha@gw.dec.state.ny.us (email), or other numbers subsequently provided by the Department.

45. Copies of reports generated or reviewed by the Independent Environmental Monitor shall be maintained at the document repository referenced in Special Condition No. 43 above.

End of Special Conditions

EXHIBIT K – FERRY POINT PARK EAST POST CONSTRUCTION CUSTODIAL CARE PLAN

FERRY POINT PARK EAST
POST CONSTRUCTION
CUSTODIAL CARE PLAN

October 2013

Prepared by:
New York City Department of Parks and Recreation

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Table of Contents

List of Figures

Figure **Page**

1 Introduction and Purpose

The Ferry Point Park East Post Construction Custodial Care Plan (FPCCCP) has been prepared to comply with the requirements of the New York State Department of Conservation (DEC) 6NYCRR Part 360 Permit No 2-6006-00014/00013-0 (see attached) (hereafter referred to as the "2013 Permit") and applicable regulations and conditions as previously discussed and agreed upon between DEC and the New York City Department of Parks and Recreation (DPR). See the attached Figure 1-1 of Ferry Point Park. The purpose of this document is to define the post construction criteria applicable to the operation, monitoring and maintenance of the environmental protection systems installed as part of site wide development of Ferry Point Park East. DPR agrees to a 5-year rolling schedule whereby, at the end of a five year term, DPR may demonstrate that the routine operation and maintenance for the end use of the site, i.e., the golf course, meets the performance criteria established in the 2013 Permit, and petition to modify or terminate the FPCCCP. The general procedures for the termination of monitoring activities or abandonment of infrastructure are detailed further in the FPCCCP.

As built drawings and a written post-construction certification report for NYSDEC review and approval and certification by the IEM will be prepared within 60 days of completion of the filling operation on the Site and construction of the Earthwork portion of the Project. Therefore the as-built drawings and post construction certification report have not been provided in this FPCCCP.

As construction activities are on-going, relevant changes and additions associated with final construction will be incorporated into an amended Sub-Surface Operations Plan. As part of this addendum, DPR will also submit the relevant post construction Storm Water Pollution Prevention maintenance documentation as per the SPDES (State Pollution Discharge Elimination System) General Permit for Stormwater Discharges from Construction Activity. These amendments to the FPCCCP will be submitted to DEC within 90 days of the approval of the post construction certification report by DEC.

Post construction monitoring and maintenance of the Golf Course, Community Park and Waterfront Park will be the responsibility of DPR. At this time DPR has entered into a contract with a golf course concessionaire, Trump Ferry Point LLC, to implement post-construction care necessary to maintain the golf course for operational purposes. Golf course maintenance and operations exclude those requirements specific to post construction monitoring and maintenance of existing

environmental conditions and infrastructure as installed by DPR and specifically defined in this plan as being Landfill Gas systems, Groundwater monitoring and Long Term Settlement Plates. DPR's Maintenance & Operations division or an appointed representative will also implement the operational and maintenance post construction requirements associated with the Community and Waterfront Parks.

1.1 Document Organization

This FPCCCP provides descriptions – either within the document or by reference – of systems, facility management, maintenance operations, environmental monitoring and the construction schedule.

This FPCCCP is organized into three sections summarized below:

The first section provides the document overview, organization, scope and applicable permitting basis.

The second section provides the post closure operational details for the relevant site-wide compliance systems and components. This includes site background, information regarding the specific systems and components related to the specific closure parameters and relevant regulatory processes necessary to facilitate the FPCCCP.

The third section addresses various closure and post closure issues including end use, construction schedules, and the post construction custodial care plan.

1.2 Scope of Document

As part of the overall permit submittal, the FPCCCP provides an overview of the systems within Ferry Point Park East as they will exist following the conclusion of construction at the site. In order to avoid duplication, design drawings and details, discussed within the FPCCCP that are referenced and included within the overall permit submittal are noted as such within the document. These drawings, bound separately under the permit application and referenced herein, have been compiled from various source documents.

The respective drawings serve as a basis for management of the site during the post-construction period. However, as per the 2013 Permit, these drawings do not represent actual as-built conditions. In addition, the terms used within the FPCCCP are consistent with the list of preferred terms contained in the overall permit application.

Path: M:\New_York_City\FerryPoint\Maps\MXD\1-1 Project Area Map.mxd

Figure 1-1
Ferry Point Park
Project Area Map
Bronx, New York

SOURCE: ESRI 2012; Ecology and Environment, Inc. 2013; Ferry Point 2013.

1.3 Compliance Basis

As described in Section 2, Ferry Point Park East has an anticipated short operating life, as it has been designed and operated not for the purpose of disposal, but as a golf course and public park. Therefore, the scope of the FPCCCP is not congruous with facilities that have been operating as solid waste facilities.

The FPCCCP is prepared in accordance with the applicable regulatory requirements as they specifically relate to the Permit. The FPCCCP has been developed in conformance with applicable regulatory requirements of Article 27, Title 7, 6NYCRR Part 360 pertaining to construction and demolition material transfer operations as they relate to the infrastructure developed at Ferry Point Park East.

During 2010, fill material from one particular source was brought on-site and placed in seven different stockpiles. The material was believed to be in conformance with permit conditions. However, the material was found to be in violation of 2005 Permit Special Conditions 1, 9, and 16, during NYSDEC and IEM inspections. On January 10, 2011, DPR signed an Administrative Order on Consent (Consent Order), Case No. R2-20100521-172, related to this fill material.

Specific requirements within the Consent Order as they pertain to post construction operations are as follows:

Consent Order No R2-20100521-172 (Appendix I.1)
" *Attachment "A" Proposed Handling of Ferry Point Park Soil Stockpile, Item 6, Once the asphalt top course is installed, the asphalt surfaces of the clubhouse and maintenance facility parking lots will be inspected during April and October every year by a licensed professional engineer ("engineer") who is registered to practice in New York State. Within thirty days (30) days of such inspections, the engineer will submit to the Department a stamped and certified written detail report, including photo documentation, regarding the condition of the asphalt surfaces and their adequacy, including photo documentation, regarding the condition of the asphalt surfaces and their adequacy to effectively function as covers. A description of any needed repairs will be included in the engineer's report.*

Item 7, Any repairs deemed necessary by the engineer must be completed by New York City Department of Parks and Recreation ("NYC Parks") within fifteen (15) days of the notification by the Department to NYCDPR to begin such repairs. A certification, including supporting written and photo documentation must be submitted by NYC Parks within fifteen (15) days after completion of repairs."

2 Overview of Site Wide Systems and Components

Ferry Point Park East is bound by the Bronx-Whitestone Bridge to the west, Balcom, Miles, and Emerson Avenues to the east, Schley Avenue and St. Raymond's Cemetery to the north, and the East River to the south.

The Site, which comprises the eastern portion of Ferry Point Park, historically was largely unused and undeveloped. The project site is a former landfill that accepted municipal solid waste from before 1951 to the 1960's, and was closed and covered in the mid-1960's, with additional closure operations conducted in the late 1980's. The project site contained an organic recycling and composting facility (operated by DPR) that was located in the northwestern portion of the project site, informal dirt bike paths, an informal model airplane area in the western portion of the project site, and a ballfield and basketball court located on the northeastern portion of the project site.

The proposed Project includes three major elements (Waterfront Park, Community Park, and comprehensive golf facility) that together constitute a new regional park. The site map is attached as Figure 2-1 of the October 2013 Supplemental Engineering Report (pg 2-5).

Numerous systems have been constructed and installed at Ferry Point Park East that will continue to serve operational and environmental functions during the site closure and post closure period. Each of these systems has specific components, activities and controls. The purpose of this section is to describe the primary function intended to be served by each system and the components that comprise the system as they relate to closure and post closure activities.

Each of the relevant systems listed below have a specific compliance aspect which includes the following:

- **Final Cover and Drainage System (as applicable)**
- **Landfill Gas Control System**
- **Long Term Settlement Monitoring System**
- **Groundwater Characterization System**

2.1 Final Cover System

The overall function of the final cover system is to provide a clean barrier of one foot of uncontaminated soil (cover material) over a minimum of one foot of shaping material in designated passive recreation areas and a minimum of two feet of cover material over shaping material in designated active recreation areas. In areas where an impermeable cover system (e.g. asphalt) is in place no cover material or demarcation layer is present. The final cover system is dependent on the park design typology and use defined further below. Final cover design and construction for Ferry Point Park East are composed of the following common components in accordance with the 2013 Permit.

1. The Topmost Layer consists primarily of vegetated cover material throughout the park may also consist of impermeable asphalt or gravel materials, concrete or paver systems. Within the context of this FPCCCP, the topmost cover system is defined as that system which is used to stabilize the Barrier Protection Material (BPM).

2. The BPM layer or cover material consists of clean soil meeting permit requirements for cover material at a depth of one foot for passive recreation areas and two feet for active recreation areas.

3. The Surface Water Drainage System, where applicable, is constructed to protect the final cover system from the peak discharge based on a rainfall intensity of a 24-hour, 25 year storm event.

4. The Demarcation Layer, where applicable, is placed to provide a physical visual separation between the BPM which is underlain by select exempt Construction and Demolition (C&D) fill material and existing landfill and cover material. This item provides a visual warning against unintended penetration into the underlying C&D material layer. The Demarcation layer will be Guardian Safety Fence, as manufactured by Tenax ® Corporation, Baltimore, Maryland, or the 3T Product T820A as manufactured by 3T Products, LLC, Dalmatia, Pennsylvania, or approved equal.

Infiltration into the BPM is minimized by means of final grading. Infiltration that does enter the BPM is either released back into the air through evapo-transpiration or collected and diverted through the drainage layer (if used) and discharged to a system of catch basins or detention ponds located throughout the site.

As defined in the 2013 Permit documentation, minimum and maximum slopes combined with drainage elements are used to prevent ponding and ensure slope stability.

The BPM is placed in a manner that produces a well graded mass. The material is and will be constructed in a horizontal layer of twelve (12”) inches or (24”) in depth extending across the entire area of fill. The material is and will be placed

and distributed so that there will be no pockets of uniform size solid material. Hollows and depressions which develop during the process of rolling and compacting are filled with acceptable material and the subgrade is compacted again. This process of filling and compacting is repeated until no depressions develop. After compacting, the area must be in a uniformly compacted, smooth, dense, true, firm, satisfactory, and evenly finished condition, free of compaction planes, irregularities, voids, ridges, or loose material.

2.1.1 Final Cover Systems by Park Typology

2.1.1.1 Community Park

The Community Park is classified as an active recreational facility and therefore requires a minimum of twenty four (24) inches of BPM per the New York State Department of Health (NYSDOH) determination regarding Ferry Point Park on August 2, 2006 and a further determination by NYSDEC staff on July 28, 2009.

Excerpt from NYSDOH August 2, 2006 determination:
"Additionally, areas that are considered "Active Recreation" pursuant to New York State Brownfield Cleanup Program Technical Support Document, Section 3.0, will contain a minimum of twenty four-(24) inches of cover material that meets or exceeds NYSDEC TAGM 4046 guidelines for soil. In addition to cover material, a demarcation barrier will be used to divide the final cover fill from the existing landfill capping material."

Excerpt from July 28, 2009 NYSDEC Correspondence:
"…All other areas, that are not covered with a building or other acceptable impermeable cover system, including the …"Community Park" area are deemed active recreational areas that must be covered with at least two feet of soil over a demarcation layer."

Community Park Final Cover System

1. Topmost Layer: Vegetated cover material or impermeable cover system.
2. BPM layer or cover material: 24" of topsoil meeting permit requirements for cover material at a depth of two feet in areas not covered with a building or impermeable material.
3. Demarcation Layer: The Demarcation layer utilized is a Guardian Safety Fence, as manufactured by Tenax ® Corporation, Baltimore, Maryland, or the 3T Product T820A as manufactured by 3T Products, LLC, Dalmatia, Pennsylvania, or approved equal.

2.1.1.2 Waterfront Park

1. Topmost Layer: Vegetated cover material or impermeable cover system. This topmost cover system throughout the park is primarily vegetative but may also consist of asphalt or gravel materials, concrete or paver systems.
2. BPM layer or cover material: consists of clean soil meeting permit requirements for cover material at a depth of one foot for passive areas and two feet for active areas.
3. Demarcation Layer: where applicable as determined by NYSDOH, the Demarcation layer will be Guardian Safety Fence, as manufactured by Tenax ® Corporation, Baltimore, Maryland, or the 3T Product T820A as manufactured by 3T Products, LLC, Dalmatia, Pennsylvania, or approved equal.

2.1.1.3 Golf Course

The Golf Course is classified as a passive recreational facility and therefore requires a minimum of twelve (12) inches of BPM per the New York State Department of Health (NYSDOH) determination regarding Ferry Point Park on August 2, 2006 and a further clarification by NYSDEC staff on July 28, 2009.

Excerpt from NYSDEC July 28, 2009 correspondence:
"For the purpose of the permit, only the golf course is deemed a "passive recreational area" and is required to have a one foot thick cover layer over a demarcation layer."

NYSDEC directed that the placement of the demarcation layer, per a March 9, 2011 correspondence, is required for the golf course in areas containing less than 5 feet of combined cover and shaping material thickness.

Excerpt from a NYSDEC March 9, 2011 correspondence specific to the installation of a demarcation layer on the Golf Course:
"The Department and NYSDOH informed NYCDPR that a demarcation barrier would not be required at areas of the golf course having five feet or more of shaping and cover layer."

Areas exempted from demarcation, structures, paved areas, and lakes are lined with an impermeable barrier. The preliminary Demarcation Layer Plan is shown on Figure 3 located in Section C.4 of the October 2013 Supplemental Engineering Report Drawing number S-H22.

The surface water drainage components are integrated into the final cover and function to control stormwater flow into the shaping layer material. Maintenance and inspection procedures for the surface water drainage system are provided in Section 3.3.2.2 Final Cover System Inspections and Maintenance. Additional maintenance and inspection criteria regarding these systems will be amended to the FPCCCP pursuant to the relevant post construction Storm Water Pollution

Prevention maintenance documentation as per the SPDES General Permit for Stormwater Discharges from Construction Activity.

The surface water drainage system includes a "tile drainage system" installed underneath the fairways, tees, greens and inner roughs that connects to the overall drainage system. The capacity of the drainage pipes was reviewed to make sure there is sufficient capacity for additional flow.

The surface water drainage system consists of the following that connect to catchbasins and manholes adjacent to the tile drainage system:

"Golf course surface drainage pipe will be A.D.S. N12-or Approved Equivalent. Typically the golf course Grading Plans show the locations of the catch basins throughout the golf course. In these locations, there should be a 12 to 18-inch A.D.S. N12-or Approved Equivalent perforated riser, extending above grade 2 to 3-feet. Washed pea-gravel 1/4 to 3/8-inch in size, is mounded up around the base of the pipe, so that it functions throughout the construction process. Upon establishment of finish grade, the pipe is cut off flush with the grade. Soil is then removed 12-inches around and 12-inches deep and backfilled with clean, washed 1/4 to 3/8-inch pea-gravel. A cast iron or approved plastic grate is then inserted into the pipe and attached according to the manufacturer's specifications.

All golf course drainage pipe will have a 1.628 millimeter-14 gauge direct bury copper locator wire placed on top of the pipe prior to backfilling the pipe. This includes all sizes of perforated and solid pipe."

1. Topmost Layer: Vegetated cover material or impermeable cover system. This topmost cover system throughout the park is primarily vegetative but may also consist of asphalt or gravel materials, concrete or paver systems.
2. BPM layer or cover material: consists of one foot of permit requirements for cover material at a depth of one foot for passive areas and two feet for active areas.
3. Surface Water Drainage System: where applicable, constructed to protect the final cover system from the peak discharge based on a rainfall intensity of a 24-hour, 25 year storm event.
4. Demarcation Layer: where applicable, the demarcation layer is placed to provide a physical visual separation between the BPM which is underlain by select exempt Construction and Demolition (C&D) fill material and existing landfill and cover material. This item provides a visual warning against unintended penetration into the underlying C&D material layer. The Demarcation layer will be Guardian Safety Fence, as manufactured by Tenax ® Corporation, Baltimore, Maryland, or the 3T Product T820A as manufactured by 3T Products, LLC, Dalmatia, Pennsylvania, or approved equal.

2.2 Landfill Gas Control

The generation of landfill gas (LFG) is a natural process resulting from the decomposition of organic material in municipal solid waste. LFG is comprised mainly of methane and carbon dioxide, along with traces of other gases.

LFG at the Ferry Point Park East site is present within the waste layer of the landfill. The waste at the Site consists of widely varying amounts of MSW and construction debris intermixed with soil. LFG is currently being generated at a very low rate, approximately 1 cfm/acre or less which correlated well with the modeling conducted in 1999 by DPR's consultant TRC Engineers (AP-42 modeling). Very little to no LFG was measured at the landfill surface during the flux box testing (Ferry Point Landfill Gas Report EEEPC 2011, Appendix F.1 Supplemental Engineering Report).

LFG that is generated accumulates in more pervious portions of the waste layer and/or migrates laterally to the east and northeast and is vented out the perimeter vent trenches. As shown on the graphs depicted on design drawings (S-H6.01 and S-H6.02 contained Ferry Point Landfill Gas Report EEEPC 2011, Appendix F.1 Supplemental Engineering Report).

The remaining Landfill gas at Ferry Point Park East is managed to control emissions of LFG and to prevent off site migration through a passive vent trench. Post construction care operations and maintenance of the landfill gas emissions management systems are detailed in Section 3.3 of the Post Construction Custodial Care Plan.

2.2.1 Passive Venting System

Passive venting systems have been and are being installed to vent LFG. The following are the design components of the passive control of LFG at the Ferry Point Park East site as further detailed in Appendix F.1 LFG Management Plan:

- Wet and dry utility pipe bedding corridors: contain low permeability soil plugs and gas vents at periodic intervals and terminations into structures. These include as applicable and approved by NYSDEC:
  1. Passive surface vents located adjacent to the plugs on the up gradient side to allow venting of built up gas;
  2. Plugs and passive vents prior to every potentially occupied structure at a suitable interval;
  3. Air vents on vault and manhole covers; and
  4. Explosion proof conduit seals and electrical connection.
- Vertical passive gas vent wells are located within the rough and other non-playing areas of the golf course. The vent locations were based on the following criteria:

1. Areas of significant waste thickness;
2. Areas of significant cover soil thickness;
3. Areas of historic high LFG concentrations; and areas in apparent lateral migration pathways.
4. A passive vent trench is located at the eastern perimeter of the Community Park. Vertical passive gas vents are additionally located within the passive LFG vent trench that has been installed at Community Park.

2.2.2 Landfill Gas Migration System

Ferry Point Park East utilizes a passive perimeter LFG interceptor venting system or LFG vent trench as an engineered control against the migration of LFG off site. The vent trench is installed along the edge of the East River near the foot of Emerson Avenue, along the length of the Balcolm Avenue Site boundary, along Schley Avenue, and continues approximately 1,050 feet west past the intersection of Schley and Buttrick Avenues as shown in Figure 5 (located in Appendix F.1 of the October 2013 Supplemental Engineering Report).

A review of the historic field data associated with the perimeter LFG vent trench monitoring program from 2001 to present was conducted to evaluate LFG trends at the Site relative to the perimeter passive LFG control.

The following key findings were noted:

1. After the installation of the vent trench in 2001, methane levels in the vicinity of the LFG vent trench tended to decrease significantly within a year in most monitoring wells;
2. Methane levels remained relatively low and below regulatory limits for the next three years (2002 thru 2004), except for a few wells that sporadically exceeded the regulatory limit;
3. In 2005, the measured methane levels tended to increase, likely due to the installation of more reliable monitoring points (new monitoring points and repaired wells); and,
4. Results from 2008-2011 generally indicate relatively consistent levels of methane, with certain limited sporadic increases above regulatory limits.

The vent trench is extended below the seasonal low groundwater table to form a barrier to off-site migration of LFG generated within the site and to allow the LFG to vent passively. Where underground utilities may act as conduits for the LFG migration, utility seals and low permeability soil collars are used to cut off the LFG from migrating along the utility corridors.

To remain consistent with the design intent of the LFG vent trench, monitoring of the groundwater is done by utilizing installed piezometers in accordance with the 2013 Permit.

To evaluate the effectiveness of the engineered controls monitoring at the vent trench has been ongoing since it became operational in 2002 at a frequency of bi-weekly monitoring with a contingency of weekly monitoring if the lower explosive limit is greater than 25%.

To meet the requirements of the 2013 Permit, a monitoring program and contingency procedures have been developed and are referenced (to the Landfill Gas Management Plan Appendix F.1 of the October 2013 Supplemental Engineering Report) in Section 3.3 of this report.

2.2.3 Interior Active Collection Systems

The intent of the interior active collection systems is to control LFG emissions such that safe levels are maintained in all potential occupied interior spaces. This is achieved by including active removal systems beneath all enclosed buildings within the site.

The interior active collection system is comprised of a sub slab depressurization system (SSD) designed to protect LFG from migrating into confined spaces and monitor those spaces. The interior LFG venting system is designed to prevent the accumulation of gas at greater than 25% of the lower explosive limit in structures on site. The system is designed to achieve lower sub slab air pressure relative to indoor air pressure by use of a fan powered vent drawing air from beneath the slab. The system prevents the migration of LFG into the interior of on-site buildings. Further, the system is designed to achieve depressurization during winter conditions when ventilation is limited.

To meet the requirements of the 2013 Permit, a monitoring program and contingency procedures have been developed and are referenced (to the Landfill Gas Management Plan Appendix F.1 of the October 2013 Supplemental Engineering Report) in Section 6.3.4.1 of the LFG Management Plan.

2.3 Long Term Settlement

In accordance with Special Condition #9 of the 2005 Permit, a settlement monitoring program was developed and a report issued. The report made recommendations with respect to the impact of potential long-term settlements of C&D fill and cover material on the construction and operation of the Ferry Point Golf Course (Settlement Evaluation and Long-Term Monitoring Plan Ferry Point Golf Course January 2005 Appendix I.2).

Settlement monitoring began on site in December 2002 and consisted of the construction of 7 instrumented test fills and installation of 6 settlement plates

throughout the site. The test fills ranged in height between 10ft and 18ft and were located in areas where significant thicknesses of fill were required, in areas where thick compressible layers existed and in future green areas. Additional, short and long term settlement monitoring has been on-going on the site since the original monitoring program began.

Further evaluation was completed in the Settlement Evaluation and Long-Term Monitoring Plan regarding Slope Stability; this evaluation indicated that the factors of safety exceeded the minimum acceptable factor of safety for a circular global slope failure, and thus that the steepest slopes of the proposed grades for the project are stable and will not require any reinforcement for construction or maintenance purposes.

As part of the report, a Long Term Settlement Monitoring plan was developed to be implemented after the final grading of the golf course and during the golf course operation. The Settlement Plate Location Plan (Figure 2) is located in Section H.1 of the October 2013 Supplemental Engineering Report.

The plan consists of the construction of nine (9) settlement monitoring plates to be placed throughout the golf course. As per the Long Term Settlement Monitoring plan, final locations of the monitoring plates were coordinated with the golf course architect and approved by NYSDEC staff. The locations were chosen to be adjacent to the water and sewer mains and/or adjacent to green areas, where differential settlements are potentially critical. The settlement points are located in variable subsurface conditions, but generally in the highest fill areas and thickest compressible layers.

The settlement plates will be placed as close to the defined area as possible without interrupting play or compromising the viability of the plate. The settlement monitoring points will be installed to within 1 foot of the final grade. The work consists of installing settlement plates consisting of a base plate, steel riser pipe sections, and any additional hardware and couplers which may be required that is consistent with the 2005 Settlement and Long Term Monitoring Plan.

The work consists of installing settlement plates consisting of a base plate, steel riser pipe sections, and any additional hardware and couplers which may be required that is consistent with the 2005 Settlement and Long Term Monitoring Plan.

1. Initial Installation: The base plate will be installed at least 12 inches (150 mm) below natural ground, firmly seated on a level surface.
2. Adding Extensions: Riser pipe extensions and couplers will be added, as necessary, in 5 foot increments as construction of the embankment progresses. The Contractor will install extensions in a plumb line.

The monitoring requirements associated with the long term settlement plates are discussed in Section 3.3.

2.4 Groundwater Monitoring

Characterization of the on-site groundwater was not initially contemplated as part of the 2005 permit by DEC. As per a 2011 DEC directive, DPR installed 11 groundwater monitoring wells on site in February of 2012, reference Figure 4 located in Appendix G.2 of the October 2013 Supplemental Engineering Report.

The purpose of the well installation was to obtain baseline chemical data on groundwater constituents at the Ferry Point site. Basic site hydrogeological information was also characterized during this effort, including direction of flow, groundwater elevation gradients, and flow velocity.

At the time of installation, construction activities were 80% complete. The baseline characterization is expected to capture conditions representing 80% of the potential measurable impacts to groundwater. Future monitoring is expected to capture less than 20% of the potential post-construction impacts.

Groundwater characterization monitoring has been performed for an initial three quarterly rounds of sampling and the data has been compared to data from landfills of similar age and type. DPR will continue to conduct annual groundwater sampling after the golf course is operational.

Trend analysis was used to develop an understanding of the effectiveness of an implemented remedy in addressing the exposures presented at the site and to begin to identify any trend(s) with regard to the achievement of remedial objectives (DER-10 6.2.2.c.6). However, the current redevelopment project is not intended as a 'remedy' for the site, and there are no remedial action objectives for groundwater at Ferry Point Park East. Therefore activities usually associated with monitoring for the effectiveness or performance of a remedy, such as trend analysis, are not appropriate for Ferry Point Park East.

Exposure to groundwater upon completion of the project will be managed by engineering controls (DER-10 6.1 Site Management).

Engineering controls to limit exposure to groundwater/leachate include:

- The placement of fill material ranging from 1 to 12 feet in depth above the original soil cover placed following termination of landfill activities in the 1960s.
- A demarcation layer to be placed in areas of the site where the combined cover and shaping material is less than 5 feet thick.

3 Post Construction Custodial Care Operations

This section addresses the compliance items as necessary to provide for the proper post construction custodial care for the site. The specific components of this section consist of a description of the sites' end use, the construction schedule, the environmental monitoring requirements, post construction custodial care operations and maintenance plan, consent order maintenance and the implementation of the site wide health and safety plan and emergency contact information.

3.1 End Use

DPR agrees that any proposed change of end use that significantly alters the intended recreational character or that impacts the integrity or operation of the environmental control and monitoring systems will require DEC approval. The End use of the site during the term of the FPCCCP will be in accordance with the 2013 Permit.

The end use for Ferry Point Park East will be a public passive and active recreational facility owned by DPR. There are three distinct areas or "Parks" within the project site.

- Community Park: Approximately 10 acres of active and passive recreation are replaces and expands an existing recreational facility. The project includes a walking path, detention area, ballfields, basketball courts, tot-lot, comfort station and seating areas.
- Golf Course: Approximately 180 acres, contains an 18-hole tournament quality golf course, driving range and practice areas for chipping and putting, a clubhouse, maintenance building, comfort station and rain shelter.
- The Waterfront Park: Approximately 19.5 acres of passive park land, the Waterfront Park design includes a small parking lot and comfort station, a beach and picnic area, salt marsh, and grassed and landscaped features with a continuous path that crosses the park.

3.2 Construction Schedule

The various components of the three distinct Parks have been and are being installed in various stages. Construction completion for each of the Parks is defined as placement of the final cover system, specifically the vegetated cover material or impermeable cover material. Final stabilization of the golf course, parks and ancillary facilities will be in accordance with the approved design specifications and the final plans of the Waterfront and Community Parks as approved by DPR.

Attached as Appendix I.3 is the construction schedule for the Golf Course project, upon completion of filling operations for the shaping layer, the Contractor will commence the rough shaping, placement of cover material and installation of drainage, irrigation and other utilities as per the construction schedule and construction sequence, for the purposes of this FPCCCP referred to as the Closure Construction Schedule.

The Community Park is substantially complete except for the proposed Comfort Station at Community Park which is contemplated for final completion in fall 2013.

The Waterfront Park, currently in design, is anticipated to begin construction in fall 2013, once a construction schedule is completed for this project it will be submitted to NYSDEC as an addendum to the FPCCCP.

Upon completion of the fill delivery and construction of the earthwork portion of the project, DPR agrees that its engineer will prepare the post construction certification report and the IEM will certify that the fill operation was performed in accordance with the 2013 Permit. Any deviations from the permit will be noted. This report will include approved "as-built" drawings demonstrating that the earthwork and filling operation were accomplished in accordance with the Department approved plans and the permit.

3.3 Post Construction Custodial Care Plan

The Post Closure Care Monitoring and Maintenance Operations Plan provides a description of overall management of the Site during the post construction period and sets the performance standards and requirements under which the actual monitoring, maintenance and reporting practices are to be carried out. Contingency procedures are discussed within the specific document as applicable.

This Plan consists of these components:

1. Environmental Monitoring Requirements
2. Health and Safety Plan Emergency Contact
3. Post Construction Custodial Care Inspections and Maintenance

Unless otherwise noted, compliance actions governed by the FCCCP will commence within 60 days of the NYSDEC's approval of the construction certification report. The compliance documentation, in the form of either or both:

1. Monitoring Data and Summary Report
2. Inspection Report

Compliance reports will be submitted within 30 days of the initial monitoring or inspection. Concurrent reports will be submitted within 30 days of the submittal of the initial report unless otherwise noted.

3.3.1 Environmental Monitoring Requirements

Environmental monitoring, maintenance and reporting will be performed at Ferry Point Park East during the post-construction period. The plans are specific to groundwater characterization, landfill gas monitoring and long term settlement monitoring. Record keeping and reporting requirements and contingency action levels and procedures are also addressed.

Maintenance of the systems associated with Ferry Point Park East monitoring will be performed:

1. Based on the result of inspections performed during monitoring events; or
2. If an issue is identified during general site wide operations; or
3. Specifically determined by contingencies for applicable systems.

Maintenance, monitoring, and reporting for activities associated with the LFG systems, long term settlement plates, final cover system and groundwater monitoring infrastructure will be performed by a DPR approved representative.

As necessary, changes may be made to the FPCCCP to reflect monitoring results and address relevant site conditions. Modifications to the environmental monitoring program will be implemented in compliance with the FPCCCP or by written request to the NYSDEC. Revisions to the FPCCCP monitoring program may be made through issuance of addenda, submittal of a partially or fully revised document, submittal of revised supporting documentation or other approved vehicle to NYSDEC.

3.3.1.1 Groundwater Characterization Monitoring

Groundwater monitoring will be performed at the eleven well locations located within the golf course. Upon commencement of operation of the golf course, groundwater sampling will take place annually with samples being analyzed for constituents listed in 6 NYCRR Subpart Part 360-2.11 routine parameters. The groundwater monitoring report and summary will be submitted to NYSDEC as a part of the annual monitoring and inspection report. Monitoring and inspection

will commence concurrently within 60 days of the approval of the construction certification report for a period of three years.

Upon completion of 3 years of post-operation annual routine groundwater sampling DPR may submit documentation to NYSDEC in furtherance of a request to reduce or cease groundwater sampling at the FPP golf course. DPR agrees to perform operational groundwater sampling, data analysis and reporting for a minimum of three years after construction, with the goal of demonstrating whether operation of the Park adversely impacts on water quality with respect to leachate quality or quantity, and whether operation of the park meets the performance criteria established in the 2013 Permit. .

When the request for cessation is accepted, the groundwater monitoring wells will be evaluated for either abandonment or removal within the first year of the cessation of monitoring. The abandonment or removal documentation, signed and certified by a licensed NYS Engineer will be provided to DEC within the concurrent post closure reporting period after the completion of the work.

3.3.1.2 Long Term Settlement Monitoring

Long term settlement monitoring will be performed at the 9 installed settlement monitoring plates throughout the golf course for a period of thirty years after completion of construction.

The long term settlement monitoring report and summary will be submitted to NYSDEC as a part of the annual monitoring and inspection report and will be certified by a licensed NYS professional engineer. The report will include:

1. Commencing within 60 days of the approval of the construction certification report, for a period of five years, the quarterly monitoring results collated and summarized for the year.
2. Commencing at the fifth year, for a period of five years, bi-annual monitoring results collated and summarized for the year.
3. Commencing at the 10th year, for a period of twenty years, yearly monitoring results and summary.

Monitoring will commence concurrently within 60 days of the approval of the construction certification report for a period of three years. Based on the results of the initial five years of monitoring, DPR may petition for decreased monitoring or a cessation in frequencies.

When the request for cessation is accepted, the long term settlement plates will be evaluated for either abandonment or removal within the first year of the cessation of monitoring and inspection. The abandonment or removal documentation signed and certified by a licensed NYS Engineer, will be provided to DEC within the concurrent post closure reporting period after the completion of the work.

3.3.1.3 Landfill Gas Monitoring Program

The LFG monitoring program, in accordance with the 2013 Permit will support compliance with the following requirements: (1) the concentration of explosive gases will not exceed 25% of the lower explosive limit (LEL) in on-site structures; and (2) the concentration of explosive gases must not exceed the LEL at the property boundary as defined by the Landfill Gas Management Plan (LFGMP).

Operations, monitoring and maintenance (OM&M) for the Site's LFG management system will take place on an ongoing, routine schedule with additional inspections to address maintenance concerns and potential alarm call-outs, and to provide contingency monitoring and actions as needed. The OM&M plan for the Site is presented in Section 6 of the LFGMP (located in Appendix F.1 of the October 2013 Supplemental Engineering Report).

OM&M of the piezometer network is also incorporated into Section 6 of the LFGMP (see Appendix F.1). OM&M operations regarding landfill gas are to be in compliance with the LFGMP. The abandonment or removal documentation signed and certified by a licensed NYS Engineer, will be provided to DEC within the concurrent post closure reporting period after the completion of the work as documented in the OM&M plan.

The LFG monitoring report and summary will be submitted to NYSDEC as a part of the annual monitoring and inspection report unless otherwise noted within the OM&M plan. Monitoring and inspection will commence concurrently within 60 days of the approval of the construction certification report unless otherwise noted within the OM&M plan. Adjustments to monitoring frequencies will be requested of NYSDEC upon meeting the performance criteria thresholds identified in Section 6.3.4.2 of the LFG Management Plan. DPR will submit a request with supporting documentation to NYSDEC 30 days prior to the desired date of the proposed change in monitoring. DPR will not change monitoring frequencies until the request has been approved.

3.3.2 Post Construction Custodial Care Inspections and Maintenance

The site will be operated as part of the New York City Department of Parks and Recreation system. The Community Park and Waterfront Park will be operated and maintained by the DPR Borough of the Bronx Operations and Maintenance division or an appointed representative. The golf course site will be operated and maintained, unless otherwise noted within the FPCCCP by a Concessionaire, identified as Trump Ferry Point, LLC. DPR remains responsible for all inspection monitoring, reporting and oversight of operations and maintenance of the applicable site wide components as identified within the FPCCCP.

Inspection and maintenance will be conducted in coordination with monitoring events unless otherwise noted or as directed by DEC in response to a specific

monitoring condition or violation. If a contingency action or maintenance is warranted based on the inspection it will be noted in the inspection report to be provided as explained below. The inspection report will be submitted annually for the first ten years and then every five years unless noted; the first report will be submitted within 30 days of the initial monitoring and inspection operations. Subsequent reports will be submitted within 30 days of the submittal of the initial report unless otherwise noted or as directed by DEC in response to a specific monitoring condition or violation. Reports will be certified by a New York State licensed engineer.

The inspection reports will include:

1. Brief Summary
2. Site Inspection Documentation
3. As noted, photographs documenting site conditions.

The content and scope of the inspection reports may be subject to change based on the termination or reduction in frequency of monitoring and maintenance activities. DPR will advise through a transmittal letter included with the inspection report of any changes within the inspection report. Inspection reports will be sent to:

NYSDEC Region 2 Office
C/O Division of Materials Management
1 Hunters Point Plaza
47-40 21st Street
Long Island City, NY 11101

As relevant and in accordance with specific component plans, DPR may consult with DEC for guidance regarding the appropriate data to demonstrate whether or not DPR has achieved the performance goals that would provide the basis for modifying or terminating any or all components of the plan.

Component	Frequency	Duration
Final Cover System	Quarterly	5 years
LFG System	Quarterly	5 years
Infrastructure	Bi-Annually Annually	10 years 15 years
Groundwater Monitoring	Annually	3 years*
Long Term Settlement Plates	Quarterly	5 years*
Parking Lot Asphalt Cover (April & October)	Bi-Annually Annually	5 years* 20 years*

*Denotes Dependent on Cessation of Activity

3.3.2.1 Final Cover System

The integrity of the final cover system will be inspected by DPR quarterly and will report to DEC on an annual basis during the post-closure period to observe and document changes as they occur to the cover system.

Inspection frequencies, procedures and documentation are applicable to erosion damage, vegetative cover condition, settlement and the cover drainage system. Those systems that may specifically impact the integrity of the final cover system.

Final Cover System inspections are performed routinely as part of the Golf Course Operations and Management Manual, as the integrity of the cover system is paramount to the success of the Golf Course. The maintenance of the golf course will be performed by Trump Ferry Point LLC with inspections performed by a duly appointed DPR representative. Please refer to Appendix I.5 of this plan for further information regarding the Golf Course management operations..

DPR agrees to a rolling five-year plan, whereby DPR may petition to modify or terminate the final cover inspection requirements by demonstrating that the integrity of the final cover system has been maintained in accordance with performance criteria established in the 2013 Permit. DPR may consult with DEC to ensure that DPR is collecting and reporting the appropriate data for this purpose. For the purpose of reporting a yearly inspection report will be submitted verifying the integrity of the final cover system for a period of thirty years, unless otherwise approved by DEC for the Ferry Point Park East Site. The report will be certified by a New York State licensed engineer. The inspections will be performed by an appointed DPR representative. Commencing within 60 days of the submittal of the post construction certification report and then undertaken annually within 30 days of the submittal of the initial report.

As part of the inspection, DPR or their duly appointed representative will:

(a) verify the cover systems are being maintained as per routine visual inspections observing and noting any significant diversions from the final cover system. Any findings will be recorded in the inspection report.

(b) DPR will inspect the surface of the cover for evidence of erosion within one week of a storm event with precipitation amounts greater than a 100 year storm event or as otherwise directed by DEC for any precipitation event. If erosion damage greater than eight inches in depth has occurred, or if an area greater than one quarter of an acre of vegetative cover has been destroyed due to erosion, corrective action will be initiated within 30 days of the incident.

(c) in the unlikely event that a large unexplained settlement problem, or vegetative die-off occurs, examine the subsurface conditions beneath the distressed areas. Non-destructive techniques will be utilized at the location of the problem where there is significant contrast from surrounding areas and evidence of large scale settlement. Excavation of test pits will not be conducted due to the

complexity of the designs. If the exploratory operation penetrates the areas where a demarcation layer is placed, then it will be excavated and patched according to the sub surface plan. Backfill for exploratory operations above the demarcation layer will be of a material compatible with the final cover system plan. The exploratory operations will be backfilled with suitable material from their total depth to the ground surface. Photographic documentation of these operations will be included with the inspection report.

(d) note any bare areas susceptible to erosion and the presence of deteriorated or dead vegetation.

(e) during each of the inspections, observe the cover drainage system and note any presence of debris in the discharge pipes or waterlogged soil condition which may indicate that the drains are not functioning. If debris is found in discharge pipes that will be initiated within 14 days to clear the pipes.

Documentation: DPR or their duly appointed representative will submit to NYSDEC, Department of Materials Management correspondence that contains the information noted above as well as provides for an explanation of any contingency actions.

Contingency Action: If significant maintenance is required as a result of the inspections, unless otherwise noted, DPR has 60 days to remedy the issue. If it is determined that the issue cannot be resolved within the 60 days, DPR will immediately inform NYSDEC and request an extension of time based on the scope of work necessary to bring the issue to closure. A report will be submitted to NYSDEC within 60 days of completion of work that documents the specific close-out of the action item. DPR agrees to notify DEC within 7 days of detecting any significant issue found during inspection, and to provide a schedule and plan for remedying the condition. DPR will take steps to stabilize the condition within 60 days unless directed by DEC to expedite the remedial work, or, if the remedial action will take longer than 60 days to implement, and DEC has agreed to an extended schedule.

3.3.2.2 Landfill Gas Management

Operations, monitoring and maintenance (OM&M) for the Site's LFG management system will take place on an ongoing, routine schedule with additional inspections to address maintenance concerns and potential alarm call-outs, and to provide contingency monitoring and actions as needed. The OM&M plan for the Site is presented in Section 6 of the LFGMP (located in Appendix F.1 of the October 2013 Supplemental Engineering Report).

OM&M of the piezometer network is also incorporated into Section 6 of the LFGMP (see Appendix F.1). OM&M operations regarding landfill gas are to be in compliance with the LFGMP.

The LFG inspection report will be submitted to NYSDEC as a part of the annual monitoring and inspection report unless otherwise noted within the OM&M plan. Monitoring and inspection will commence concurrently within 60 days of the approval of the construction certification report unless otherwise noted within the OM&M plan.

3.3.2.3 Groundwater Characterization Monitoring

Groundwater characterization monitoring infrastructure inspections will be performed 30 days prior to the sampling events to ensure that infrastructure necessary to successfully perform the sampling event is in adequate working condition.

Upon commencement of operation of the golf course, groundwater infrastructure inspections will take place annually.

DPR agrees to perform operational groundwater sampling and reporting for a minimum of three years after construction, with the goal of demonstrating whether or not operation of the Park adversely impacts on water quality with respect to leachate quality or quantity, and whether or not operation of the park meets the performance criteria established in the permit modification. DPR may consult with DEC to ensure that DPR is collecting the appropriate data to achieve the performance goals that would provide the basis for a cessation of groundwater sampling or a reduction in sampling frequency. Commencing within 60 days of the submittal of the post construction certification report and then undertaken annually within 30 days of the submittal of the initial report. Inspections will continue annually past the eight year term of inspections only if the petition to discontinue monitoring is denied. At that time a revised inspection timeline will be submitted to NYSDEC as an addendum to this plan.

As part of this inspection, DPR or their duly appointed representative will:

(a) inspect the monitoring wells to confirm the area surrounding the well is free of debris and vegetation that may affect the ability to accurately sample the wells. If the area is not free of debris or vegetation all materials that hinder the ability to sample will be removed 72 hours prior to the sampling event.

(b) confirm that all components and parts of the well are working correctly and free of defect or damage that affects the ability to accurately sample the wells. If all the components and parts of the well are not functional, all repairs must be completed 24 hours prior to the sampling event.

Documentation: DPR or their duly appointed representative will submit to NYSDEC, Department of Materials Management correspondence that contains the information noted above as well as provides for an explanation of any contingency actions.

Contingency Action: If it is determined that the issue cannot be resolved within the 30 days, DPR will immediately inform NYSDEC and request an extension of

time based on the scope of work necessary to bring the issue to closure. And a revised monitoring date will be included with the request. A report will be submitted to NYSDEC within 60 days of completion of work that documents the specific close-out of the action item.

3.3.2.4 Long Term Settlement Plates

Long term settlement plate inspections will be performed 30 days prior to the settlement plate monitoring event on an annual basis commencing within 60 days of the submittal of the post construction certification report and then undertaken annually within 30 days of the submittal of the initial report. As DPR may petition for decreased monitoring frequencies if data supports the request at year five, inspections of the settlement plate locations will terminate based on the NYSDEC decision. Consistent with the rolling five-year schedule DPR agrees to monitor the long term settlement plates in accordance with the performance goals established in the 2013 permit until DPR has demonstrated to DEC that continued monitoring is no longer necessary. If additional monitoring is required inspections will continue on an annual basis until otherwise approved by DEC.

As part of this inspection, DPR or their duly appointed representative will:

(a) verify that the settlement plate location is being maintained to allow for the proper monitoring of the settlement . If the area is not properly maintained, the area will be properly cleared 48 hours prior to the monitoring event.

(b) visually inspect the monitoring apparatus, if the apparatus is not fully functional via the visual inspection, DPR will remedy the settlement plate apparatus 48 hours prior to the monitoring event.

Documentation: DPR or their duly appointed representative will submit to NYSDEC, Department of Materials Management correspondence that contains the information noted above as well as provides for an explanation of any contingency actions.

Contingency Action: If it is determined that the issue cannot be resolved within the 30 days, DPR will immediately inform NYSDEC and request an extension of time based on the scope of work necessary to bring the issue to closure. And a revised monitoring date will be included with the request. A report will be submitted to NYSDEC within 60 days of completion of work that documents the specific close-out of the action item.

3.3.3 Sub-Surface Operations Plan

The Sub Surface Operations plan reviews those appropriate controls to protect worker health and safety and assure that soils meeting the cover layer materials requirements are restored. As previously stated, DPR contemplates an amendment to this plan once construction operations on the site are finalized based on final construction information.

The amendment will be submitted within 90 days of the approval of the certification report.

1. The Plan will apply to disturbances of material below the cover layer (i.e. soils at a depth below the finished grade of greater than one foot or two feet) or for areas where the demarcation layer is required to be breached.

2. For purposes of the Plan, sub surface activities will be characterized as either routine or non-routine as described below:

   A. Routine Disturbances

   Routine disturbances are those generally associated with the operations and maintenance of the project. Examples include localized pipeline or electrical replacement/repairs, drainage system repairs, building or pond system repairs. These disturbances will always encompass less than one acre in area.

   B. Non-Routine Disturbances

   Non-routine disturbances are those not generally associated with the operations and maintenance of the project and larger projects. Examples include pipeline excavation and replacement, course upgrade involving re-grading. All disturbances of greater than one acre in area will be considered non-routine. Based on the nature of the disturbance and applicable regulatory guidance, inspection certification by a qualified environmental professional may be required and will be vetted with the advance notification to DEC. The below table presents the various plan elements to be prescribed and initiated for both routine and non-routine disturbances. As necessary additional information is provided below the table:

Management Element	Routine Disturbances	Non-Routine Disturbances
Advanced Notification to NYSDEC	No	Yes
Initiation of Worker Health and Safety Plan	Yes	Yes
Inspections certification by Environmental Professional	No	Yes
Dust Control	No	Yes
Stockpile Protection	Yes	Yes
Stormwater Pollution Prevention	No	Yes, if greater than 1 acre of disturbance
Segregation of existing cover material for reuse	Yes	Yes
New cover layer material option	Yes	Yes
Excess Soil Material Disposal	Yes	Yes
MSW Segregation & Disposal	Yes, but not anticipated	Yes, to the extent excavated

In all areas where the demarcation layer is breached, the layer must be re-installed to include the original area of coverage removed during operations. Once the de-

marcation layer is re-installed backfilling of compatible materials to those removed may occur.

When stockpiling occurs, all material above the demarcation layer or material within one or two feet (as applicable by the recreational designation) will be segregated for re-use. Material will be visually inspected upon excavation to ensure comingling does not occur.

The material designated for re-use will be segregated from other excavated materials and placed in a location proximate to the excavated area. The stockpiles will be visibly marked for re-use via placards or other similar methods. Material stockpiles will consist of approximately 500 cubic yards. These piles will generally have a 60 ft by 60 ft footprint and be approximately 6 ft in height. The material stockpiled will be covered with plastic sheets at end of each day. Plastic sheet covers will be weighted down with sand bags or equal at the end of the day to avoid a sailing effect.

Material that is not designated for re-use will be removed from the site and transported to a facility compatible to the disposal requirements. The material will be characterized to ensure proper disposal prior to leaving the site. A report of the material characterization and the identification of the disposal location will be submitted as part of the routine and non-routine reporting requirements.

At times, additional cover layer material may be required to be imported to the site to supplement that material identified for re-use. This material will meet the performance requirements for each component of the Ferry Point Park East project as subject to the Permit. However, one chemical analytical test will be performed per 10,000 cubic yards of cover material to be imported if the material is specifically of the nature of non-exempt construction debris as under the jurisdiction of the permit. If the material to be used is commercially available and purchased for the purpose of replacing or supplementing the cover layer this material is exempt from analytical testing. The analytical report will be included as part of the post event reporting.

Documentation: DPR or their duly appointed representative will submit to NYSDEC, Department of Materials Management correspondence that contains the following information as it relates to routine or non-routine actions:

1. Routine Actions: These actions will be reported as part of the annual inspection report. The report will include proper documentation including a written summary of the event, photographic documentation and a location plan of the routine action.
2. Non-Routine Actions: These actions will be reported to NYSDEC 60 days prior to an event. This notification will include summary documentation regarding the scope of the action and a schedule for the commencement and conclusion of the action and any designs or details as deemed applicable by DPR. Within 90 days of completion, DPR will provide NYSDEC a report

documenting close-out of the action and provide updated as-built drawings as necessary.

If non-routine actions are imminently required due to site safety or operational risks, DPR will immediately inform NYSDEC of the action and commence operations as necessary.

Within 10 days of the commencement of these operations DPR will provide NYSDEC with a draft schedule of completion.

Within 90 days of completion, DPR will provide NYSDEC a report documenting close-out of the action and provide updated as-built drawings as necessary.

3.3.4 Health and Safety Plan and Emergency Contact

A Site-Wide Health and Safety Plans (HASP) was developed for construction operations at Ferry Point Park East and approved by DPR in 2009. Based on sub surface post construction operations and maintenance certain portions or the plan in its entirety will be instituted. The HASP is attached as Appendix I.1.

The DPR appointed emergency contact personnel for the site will be submitted with the amended sub surface operations plan. If there are personnel changes this will be noted via an e-mail correspondence to NYSDEC upon identification of the new personnel and noted in the annual report.

3.4 Consent Order Maintenance

As per the Order of Consent the following inspection schedule attached as Appendix I.1 specific to "Attachment "A" Proposed Handling of Ferry Point Park Soil Stockpile, Item 6 will be followed:

"*Once the asphalt top course is installed, the asphalt surfaces of the clubhouse and maintenance facility parking lots will be inspected during April and October every year by a licensed professional engineer ("engineer") who is registered to practice in New York State. Within thirty days (30) days of such inspections, the engineer will submit to the Department a stamped and certified written detail report, including photo documentation, regarding the condition of the asphalt surfaces and their adequacy, including photo documentation, regarding the condition of the asphalt surfaces and their adequacy to effectively function as covers. A description of any needed repairs will be included in the engineer's report.*

Item 7, Any repairs deemed necessary by the engineer must be completed by New York City Department of Parks and Recreation ("NYC Parks") within fifteen (15) days of the notification by the Department to NYCDPR to begin such repairs. A certification, including supporting written and photo documentation must be submitted by NYC Parks within fifteen (15) days after completion of repairs."

3.5 Golf Course Maintenance Guidelines

The **Maintenance Guidelines for Trump Golf Links at Ferry Point Park** attached as Appendix I.5 provides for the operations and maintenance of the golf course by the Concessionaire for a period of 25 years commencing once the golf course is operational. The manual describes those operations and maintenance activities contemplated as part of the day to day operations of the golf course facility. The maintenance guidelines are subject to amendment and revision based on site conditions over time.