



City of New York Permit

Department of Parks & Recreation - Revenue Division

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| <u>PERMITTEE NAME & ADDRESS</u> Parking Services Plus, Inc. 28 Fourth Street Valley Stream, NY 11581 | <u>BUSINESS</u> 516-825-4661 | <u>CELLULAR/E-MAIL</u> 516-807-2389 jbaron@parkingsystems.com |
| | <u>FAX</u> 516-825-3002 | <u>CONTACT</u> Jonathan Baron, VP of Business Development |
| <u>DESCRIPTION OF CONCESSION:</u> Renovation, operation and maintenance of parking facilities at Maimonides Park (formerly known as MCU Park), Coney Island. All plans, schedules, rates, fees and prices, and hours of operation are subject to the prior written approval of the City of New York ("City") Department of Parks and Recreation ("Parks"). No leasehold or other proprietary right is being conveyed to Permittee. This Permit is subject to the terms of the lease between the City and Brooklyn Baseball Company LLC ("BBC") dated March 1, 2001 with respect to Maimonides Park (the "Stadium"), Coney Island, Brooklyn, NY (the "BBC Lease"), a copy of which is annexed hereto as Exhibit C, and the terms of any other permits or license agreements issued for the use of the Stadium into which Parks may enter. | | |
| <u>PARK/LOCATION IN PARK ("PREMISES"):</u> Two parking lots near the Stadium. The primary lot ("Primary Lot"), consisting of approximately 808 parking spaces, is located adjacent to the Stadium between West 19 th and West 20 th Streets between Surf Avenue and Riegelmann Boardwalk. The second lot, consisting of approximately 150 parking spaces, is located between West 21 st and West 22 nd Streets, between Surf Avenue and Riegelmann Boardwalk. See map annexed hereto as Exhibit A for exact location of parking lots. During the Permit Term, the City reserves the right to add or remove parking spaces in the Primary Lot due to the neighborhood comprehensive rezoning plan. Replacement parking, if any, may be provided by the City, including in the form of mechanical parking lift(s). Should lift(s) be the form of replacement for the loss of parking spaces, the lift(s) will be licensed to the concessionaire by the City. Permittee would be required to file and obtain all necessary permits to operate the lift(s) with the City of New York Department of Buildings and/or other relevant permitting agencies. The permittee would be required to maintain the lift(s), and provide trained staff to operate the lift(s) | <u>BOROUGH:</u> Brooklyn | <u>PERMIT #:</u> B369-PL |
| <u>EFFECTIVE DATE:</u> Notice to Proceed | | <u>TERM:</u> One (1) year from Notice to Proceed, with three (3) one-year renewal options exercisable at the sole discretion of Parks. |



City of New York Permit

Department of Parks & Recreation Revenue Division

FEE AND PAYMENT TERMS: Permittee shall pay the City the fee set forth below for each Operating Year during the Term:

| | |
|--|-----------|
| Operating Year 1 | \$256,000 |
| Operating Year 2 (if option exercised) | \$268,800 |
| Operating Year 3 (if option exercised) | \$282,240 |
| Operating Year 4 (if option exercised) | \$296,352 |

The "Operating Year" or "Year" shall mean the period between the date of Notice to Proceed (or its anniversary in any year other than Operating Year 1) and the day before the anniversary of such date in the immediately following calendar year.

Fee payments for each Operating Year are due in five (5) equal installments due on the first day of June, July, August, September, and October of each Year.

In addition to the flat annual fee, Permittee shall remit to the City all revenue collected during Access Period (as defined in the attached General Provisions).

A fee payment schedule will be furnished by Parks with Notice to Proceed.

INSURANCE REQUIREMENT:

See Section 24 of the attached General Provisions

BROKER

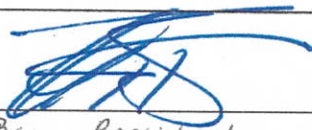
SECURITY DEPOSIT

\$74,088

JC NUMBER & DATE RECEIVED

OTHER TERMS & CONDITIONS: Please see the attached General Provisions and exhibits, both of which are incorporated herein and made a part hereof, before signing. The Permit shall become effective upon Notice to Proceed from Parks. Permittee shall not commence the operation of the concession until it has received the Notice to Proceed and 311 sign from Parks.

TERMS ACCEPTED BY


Mark Baron - President

TITLE

PRESIDENT

ISSUED BY



DATE

12/2/2021

Isabel Galis-Merendez

LJ

Approved as to Form and Certified as to Legal Authority
Acting Corporation Counsel

11/29/2021

PERMIT/LICENSE#: B369-PL

PERMITTEE/LICENSEE: **Parking Services Plus, Inc**

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

On this 2 day of December, 2021, before me personally came Alex Han, to me known, and known to be the Chief of Concessions of **NYC Parks & Recreation**, and the said person described in and who executed the forgoing instrument and he acknowledged that he executed the same in his official capacity and for the purpose mentioned therein.



Notary Public

MICHAEL KAPLAN
Notary Public, State of New York
No. 01KA6245725
Qualified in Queens County
Commission Expires Aug. 01, 20 23

PERMIT\LICENSE#: B369-PL

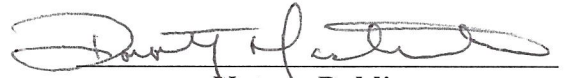
PERMITTEE\LICENSEE: **Parking Services Plus, Inc**

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

On this 1st day of December, 2021, before me personally came Mark Baron, to me known, and known to be the President of **Parking Services Plus, Inc**, and the said person described in and who executed the forgoing instrument and he acknowledged that he executed the same in his official capacity and for the purpose mentioned therein.


Notary Public

DOROTHY MASTRONARDI
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01MA4709689
Qualified in Nass County
My Commission Expires May 31, 2022



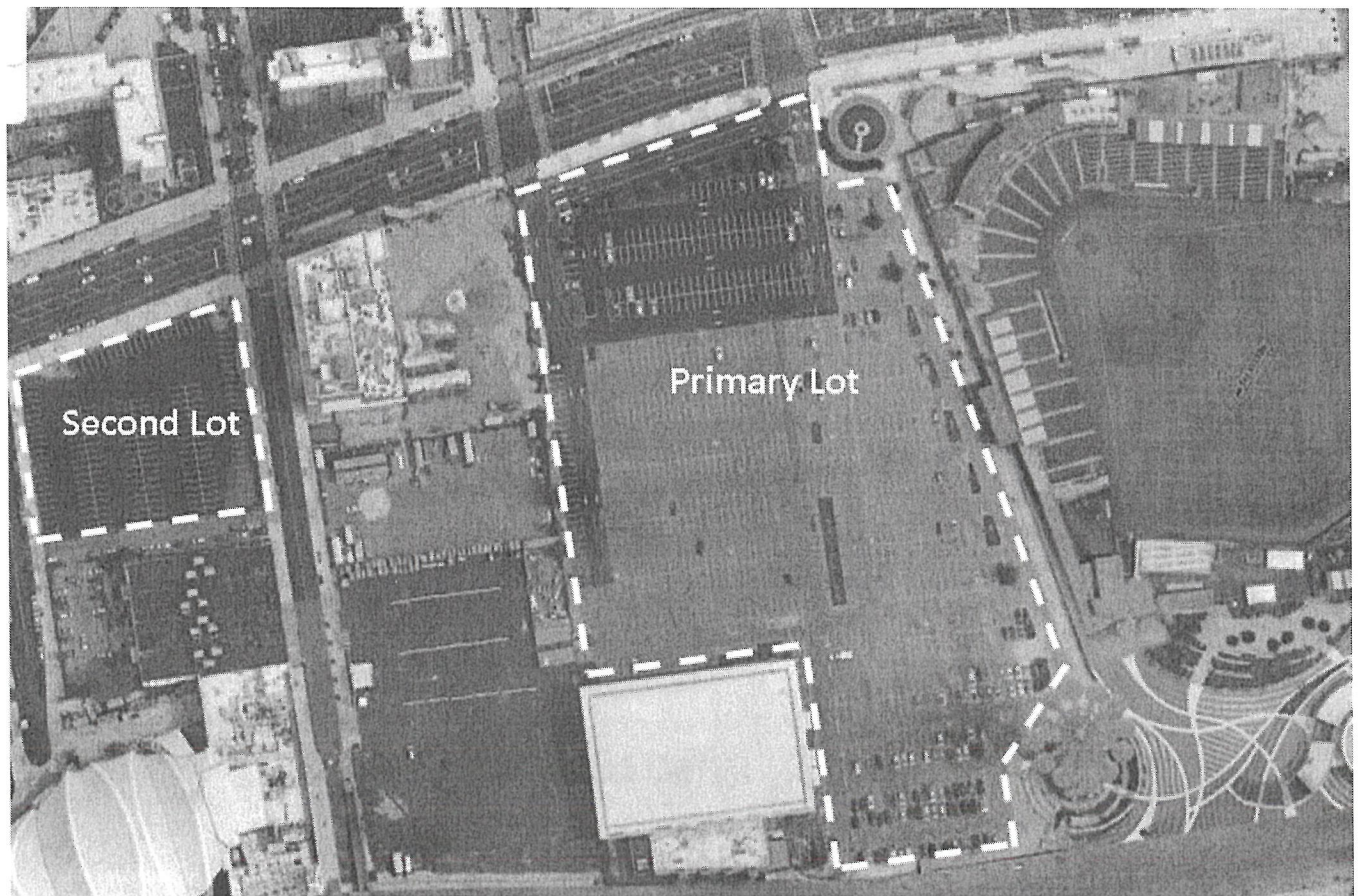
City of New York Permit

Department of Parks & Recreation - Revenue Division

LJ
LM # 2021-028139

EXHIBIT A

PREMISES





City of New York Permit

Department of Parks & Recreation - Revenue Division

EXHIBIT B

SCHEDULE OF APPROVED HOURS AND RATES

Days and Hours of Operation:

24 Hours/ 7 Days a Week

Any change in operating hours and operations, must be approved by Parks in writing in advance.

Parking Lot Rates:

Monday - Friday

Car, van, or other comparable vehicle \$13.00 per day

Saturday - Sunday

Car, van, or other comparable vehicle \$20.00 per day

Other Coney Island Events/Holiday

(such as the Coney Island Mermaid Parade, Nathan's hot dog contest, etc.)

Car, van, or other comparable vehicle \$27.00 per day

Any change in rates must be approved by Parks in writing in advance.

Note: Permittee may not charge patrons of the Abe Stark skating rink (located adjacent to the Stadium) any admission fees from September 1- June 1. However, if patrons of the Abe Stark facility enter the lots during the Access Period, then they must be charged the game rate set by the City's Stadium tenant, currently eight (8) dollars (or the rate charged for other Stadium tenant or Cyclones events)



City of New York Permit

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City of New York Permit

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EXHIBIT C

BBC LEASE

(TO BE PROVIDED UPON SIGNING)



City of New York Permit

Department of Parks & Recreation Revenue Division

EXHIBIT D

SCHEDULE OF CAPITAL IMPROVEMENTS

| | <u>Year 1</u> | <u>Option Year 1</u> | <u>Option Year 2</u> | <u>Option Year 3</u> | <u>Total by Improvement</u> |
|--|---------------|----------------------|----------------------|----------------------|-----------------------------|
| CAPITAL IMPROVEMENTS | | | | | |
| Re-Striping/Resurfacing including ADA/Van accessible spaces | 2,500.00 | 500.00 | 1,500.00 | 500.00 | 5,000.00 |
| Revenue Control Equipment | 35,000 | 32,000.00 | 32,000.00 | 32,000.00 | 131,000.00 |
| Beautification (Fencing, Landscaping) | 6,500 | 1,500.00 | 1,500.00 | 1,500.00 | 11,000.00 |
| Booths Enhancements | 2,500 | | | | 2,500.00 |
| Lighting & Electric (LED upgrades) | 3,500 | | | | 3,500.00 |
| CCTV | 4,500 | | 500.00 | | 5,000.00 |
| Signage | 5,500.00 | 350.00 | 350.00 | 350.00 | 6,550.00 |
| TOTALS | 60,000 | 34,350.00 | 35,850.00 | 34,350.00 | 164,550.00 |
| PERSONAL EQUIPMENT | | | | | |
| <p>Permittee shall expend up to \$8500 in personal equipment which may include but not be limited to traffic delineators, radios, lockout kits, jump packs, waste disposal barrels and green seal cleaning supplies.</p> | | | | | |

1. DEFINITIONS This document, together with the cover page hereof (the "Cover Page") and the exhibits thereto, shall be referred to as the "Permit." The named person to whom this Permit is issued and who signs this Permit shall be referred to in this document as "Permittee" or "Concessionaire". "City" and "Parks" respectively shall mean the City of New York and the New York City Department of Parks & Recreation. "Commissioner" shall mean the Commissioner of Parks. "Comptroller" shall mean the Comptroller of the City of New York. The locations designated by Parks where Permittee is authorized to operate under this Permit shall be referred to as the "Premises". The Premises are more fully described on the Cover Page. The "Term" shall mean the Term set forth on the Cover Page. "BBC" and the "BBC Lease" shall have the meanings set forth for those terms on the Cover Page. All terms not otherwise defined shall have meaning ascribed to them on the Cover Page.

2. TRANSFERS Permittee shall not sell, transfer, assign or sublicense this Permit or allow anyone else or any other entity to operate the concession under this Permit without Parks' prior written consent. Permittee shall ensure that any sublicense or subpermit of this Permit shall be subject and subordinate in all respects to this Permit, and that any sublicensee or subpermittee shall comply in all respects with the terms and conditions of this Permit.

3. FALSE INFORMATION Permittee is prohibited from giving false information, and the giving of false information shall be grounds for the revocation of this Permit.

4. IDENTIFICATION AND ADDRESS Permittee shall provide to Parks proof of its identification and address by submitting acceptable documentation such as a government issued photo ID, current utility bill, bank statement or rental/lease agreement, or a certificate of incorporation. Documents listing a post office box or commercial receiving agency as the mailing address shall not satisfy the requirements of this Section 4. Permittee shall immediately notify Parks of any change in either Permittee's address or phone number as set forth on the Cover Page.

5. ASSUMPTION OF RISK In accepting this Permit, Permittee assumes all the risks involved in operating this concession, other than any liability or responsibility for any environmental condition not caused or exacerbated by Permittee's negligence or willful misconduct pre-existing the date of this Permit on or affecting all or any portion of the Premises. Permittee represents that it has

inspected the Premises and found them suitable for Permittee's purpose and in operating condition and accepts them "as is" subject to the first sentence of this Section 5. Subject to Parks' prior written approval, any improvements and repairs deemed necessary shall be performed by Permittee at Permittee's sole cost and expense. Permittee shall provide adequate security at all times for Permittee's equipment, products, and personnel.

6. SCOPE OF PERMIT Parks authorizes Permittee to operate pursuant to this Permit in accordance with the description of the concession set forth on the Cover Page.

7. OPERATIONS Permittee shall renovate, operate and maintain the concession authorized by this Permit for the use and enjoyment of the general public and in compliance with all Federal, State and City laws, rules and regulations related to the operation of the Premises. All plans, schedules, prices and fees, and hours of operation are subject Parks' prior written approval. At minimum, on days when no game or event is scheduled at the Stadium, Permittee shall operate the parking lots from 8 a.m. to 8 p.m. On days when there is a Brooklyn Cyclones game or other event at the Stadium, Permittee shall operate, at minimum, from the earlier of 8 a.m. or two hours before the scheduled start of the game or event until the later of 8 p.m. or one hour after the game or event ends. The approved hours for the commencement of operations hereunder are set forth on Exhibit B attached to the Cover Page. Permittee shall ensure that there are adequate parking spaces available to patrons of BBC events.

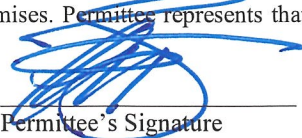
Permittee shall obtain and maintain any and all necessary approvals, permits and licenses for the lawful renovation, operation and maintenance of the concession authorized by this Permit. Permittee is subject to liquidated damages and/or confiscation of merchandise and vending apparatus for failing to operate with all necessary approvals, permits, and licenses.

The operation of this concession is subject to the terms of the Lease, and the terms of any other permits or license agreements issued for the use of the Stadium into which Parks may enter

All parking services offered by Permittee and the prices, rates and charges for them are subject to Parks' prior written approval. The Schedule of Approved Hours and Rates for the commencement of operations hereunder is attached to the Cover Page as Exhibit B. All rates and subsequent increases must be approved in writing by Parks prior to each Year of the Term, and the rates

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Permittee's Signature



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Date

charged for parking during Access Period (as hereinafter defined) are also subject to the approval of BBC. All parking rates shall be inclusive of sales tax. Notwithstanding anything to the contrary herein, Permittee may not charge patrons of the Abe Stark skating rink (located adjacent to the Stadium) any admission fee from September 1st to June 1st, except that, during an Access Period, such patrons must be charged the rate approved for all parking lot patrons during that Access Period.

Permittee must reserve 12 spaces, approved by Parks and BBC, free of charge and at all times, in the Primary Lot for the BBC and team personnel of the Brooklyn Cyclones and their guests.

Permittee will endeavor to utilize equipment to operate the concession that is qualified for "Energy Star" certification, and to use "Green Seal" certified products such as cleaners, paper goods, and paint whenever reasonably feasible.

Permittee shall carefully monitor and record the number of vehicles that enter the parking lots at all times throughout the Term and furnish such information to Parks together with the monthly statement of Gross Receipts required under Section 32 hereof. Permittee shall separately monitor and record the number of vehicles, other than City vehicles on official business, that enter the parking lots during Access Period and the revenue derived therefrom. Permittee shall furnish to Parks its record of the number of vehicles, other than City vehicles on official business, that enter the parking lots during Access Period and the revenue derived there from together with the monthly statement of Gross Receipts that it is required to furnish Parks under Section 32 hereof. In addition to the required flat annual fee to be paid to Parks, concessionaire must remit to Parks net revenue collected during Access Periods so that the City can make all required payments to its Stadium tenant.

An "Access Period" means no less than two (2) hours prior to the scheduled start of and at least one (1) hour after the end of each Tenant Event (as defined in the BBC Lease, a copy of which is annexed to the Cover Page as Exhibit C).

Permittee shall ensure that the parking lots have a smooth traffic flow to available parking spaces and exit gates.

Subject to Parks' prior written approval (such approval not to be unreasonably withheld, conditioned or delayed), Permittee may set aside a limited number of specified reserved spaces in the two parking lots for daily, weekly,

monthly, and yearly customers. If such a use is approved by Parks, the exact number of spaces set aside for daily, weekly, monthly, and yearly customers is subject to Parks' prior written approval.

Permittee shall ensure that the number, placement and specifications of all accessible spaces comply with Americans with Disabilities Act ("ADA") guidelines, as well as with all City, State and Federal regulations, including striping and signage specifications.

Parks makes no representations that there is adequate storage space at the Premises. Permittee shall be responsible for, at its sole cost and expense, obtaining any additional storage space required for the operation of the concession. Permittee storage of equipment and supplies at the Premises is subject to the prior written approval of Parks. No item shall be placed upon any public space, including the ground adjacent to the Premises without Parks' prior written approval. The concessionaire will be required to store all moveable outdoor equipment on a nightly basis and anytime the concession is closed.

Permittee agrees that Parks Inspectors and/or Park Enforcement Officers may confiscate any and all material found to be outside of the Premises. If material is stored outside of the Premises, all expenses associated with enforcement of this provision will be reimbursed by Permittee to the City. Permittee shall reimburse the City within thirty (30) days of receipt of a written request.

Permittee shall provide and visibly display at all times during the Term all signage necessary for the operation of the parking facilities, including, but not limited to, directional signs and signs listing all operating hours and rates. The placement, design and contents of all directional signage and signage necessary for the operation of the parking facilities is subject to Parks' prior written approval (such approval not to be unreasonably withheld, conditioned or delayed) and should be in place before the Premises are opened to the public as parking facilities. Permittee shall also equip all parking lot ticket booths with a conspicuously placed sign or decal which contains an identification number for the ticket booth, a telephone number to which any complaints about the parking facilities can be reported, a statement indicating that the parking facilities are a Parks' concession, and a phone number for Parks.

Permittee shall accept both credit cards and cash for payment for parking at the Premises.

Permittee shall comply with all national safety guidelines and Federal, State and City laws, rules and regulations

AGREED TO:


Permittee's Signature

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related to the renovation, operation and maintenance of the Premises.

Permittee 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 Rider annexed as Exhibit A.

Permittee shall provide Parks' Director of Concessions with a 24-hour-a-day means of communication reasonably acceptable to Parks within 24 hours of the commencement of the Term.

8. **PRICE LIST** Permittee shall openly and fully display a price list which Parks has reviewed and approved. Permittee shall not charge more for the items than the posted and approved amounts set forth on the price list. Permittee shall not add items to Permittee's approved list of items without Parks' prior written approval (such approval not to be unreasonably withheld, conditioned or delayed).

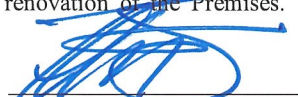
9. **STAFFING; MAINTENANCE PROGRAM**

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

10. **CAPITAL IMPROVEMENTS**

10.1 (a) Permittee shall expend or cause to be expended by the dates set forth on Exhibit D of the Permit Cover the amounts to perform the Capital Improvements set forth on Exhibit D at the Premises. Permittee shall provide written documentation to Parks of all expenditures for such Capital Improvements. Permittee shall perform and complete all such Capital Improvements in accordance with designs and plans approved by Parks (such approval not to be unreasonably withheld, conditioned or delayed) and other government agencies having jurisdiction. Notwithstanding the foregoing, Permittee is permitted to make additional Capital Improvements, provided, however, Permittee first obtains the express written consent of the Commissioner, which shall not be unreasonably withheld, conditioned or delayed. All Fixed Equipment applied toward the Capital Improvements required in this Section 10 shall become the property of Parks upon installation, at Parks' option. "Fixed Equipment" means all equipment and fixtures now or hereafter affixed to the Premises, whose removal would damage the Premises. "Capital Improvements" mean all construction, reconstruction or renovation of the Premises. Capital

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Improvements also include all Alterations and Fixed Equipment which Permittee installs or causes to be installed at the Premises. Personal expendable items shall not be considered Capital Improvements. Capital Improvements shall not include routine maintenance and repair activities required to be performed in the normal course of management and operation of the Premises. Parks reserves the right to determine whether certain repairs and material purchases can be accepted as Capital Improvements. Capital Improvements shall include those activities described on Exhibit D

(b) Permittee shall complete the Capital Improvements at the Premises in accordance with the schedule set forth on Exhibit D.

With Parks' prior written approval, Permittee may expend less than the amount set forth for a particular Capital Improvement provided that the total amount expended for Capital Improvements shall be at least \$164,550.00.

(c) Permittee must provide Americans with Disabilities Act ("ADA") accessibility throughout the Premises, including providing ADA signage. Permittee shall comply with all City, State, and Federal requirements to provide safe and accessible recreational opportunities for everyone, including persons with disabilities. Permittee is encouraged to exceed accessibility requirements whenever possible, and not simply provide the minimum level required.

10.2 Upon affixing its signature to this Permit, Permittee shall pay to the City the amount of \$1,645.50 representing one percent (1%) of the cost of the minimum guaranteed Capital Improvements described on Exhibit D, as a fee for design review by Parks personnel.

10.3 At Parks' discretion, Permittee 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. Parks will not require a construction security deposit for the Capital Improvements set forth on Exhibit D.

10.4 To guarantee prompt payment of moneys due to a contractor or his or her subcontractors and to all persons furnishing labor and 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), Permittee shall post a payment bond or

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Date

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.

10.5 The total cost of the Capital Improvements shall be reasonably 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 on Exhibit D shall be included in the total cost in addition to architectural/engineering fees incurred by Permittee. In making the determination of the total cost of Capital Improvements, Commissioner may request any information he/she reasonably believes would be helpful to make such a determination. Permittee shall forward such information to the Commissioner upon his/her request. Permittee shall spend or cause to be expended the entire amount required to complete the Capital Improvements described on Exhibit D, including any amount needed above any estimated cost shown. In the event that, by the expiration or sooner termination of this Permit, Permittee has performed the Capital Improvements required on Exhibit D to be performed by the date of such expiration or sooner termination for less than the amounts listed on Exhibit D to be expended by such date or in the event that Permittee, by the expiration or sooner termination of this Permit, fails to expend the amounts listed on Exhibit D to be expended by the date of such expiration or sooner termination, any excess monies unexpended through the date of expiration or sooner termination, shall be remitted to the City as additional permit fees within thirty (30) days of Parks' request, or shall be deducted from the Security Deposit.

10.6 Permittee shall proceed in good faith and with due diligence to complete all necessary Capital Improvements in accordance with the schedule set forth on Exhibit D. Permittee 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 Permittee as reasonably determined by the Commissioner, including acts of God, war, enemies or hostile government actions, revolutions, insurrection, riots, civil commotion, strikes,

fire or other casualty. In such situations, the Permittee shall propose for the Commissioner's reasonable approval a revised completion schedule and if approved, Permittee shall complete such Capital Improvements in accordance with such approved revised schedule. In the event Permittee fails to finally complete a particular improvement by the date specified for completion on Exhibit D Permittee may be required to pay the City liquidated damages of \$100 per day until the outstanding improvement is completed, provided that such failure is not the result of delay by Parks or any City, State, or Federal permitting authority and provided, further, that Parks has given Permittee a 30-day notice to cure such failure to complete and Permittee has failed to cure within the period specified in such notice. In the event of any delay by Parks or any City, State, or Federal permitting authority, the date specified for completion of the item affected by the delay shall be adjusted to reflect the duration of such delay. The scope of work may be modified with the prior written approval of Parks (such approval not to be unreasonably withheld, conditioned or delayed) in the event of unforeseen circumstances that could not have been reasonably anticipated affecting construction conditions at the Premises, provided that in no event shall Permittee expend or cause to be expended less than \$164,550.00 for Capital Improvements.

10.7 Permittee 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. Permittee 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 reasonably require. All necessary permits and approvals for capital work must be obtained from DOB, including, but not limited to, obtaining a Certificate of Occupancy, public assembly permit or a Letter of No Objection, as needed. In the event that at the commencement date of the Permit, or at any time during the term of the Permit, Permittee does not have a Certificate of Occupancy, where required, and does not have a Letter of No Objection, Permittee may conduct its operations in temporary structures that have been approved by Parks. Permittee shall obtain any necessary licenses and permits for such temporary structures before the commencement of operations. However, if in such situation, Permittee nonetheless chooses not to conduct

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such operations in temporary structures, then such operations shall not take place unless and until Permittee has obtained the necessary Certificate of Occupancy, if required, or Letter of No Objection.

All designs, outdoor signage, capital work and construction may require prior written approval from Parks, the Public Design Commission of the City of New York, the New York State Historic Preservation Office, the New York City Landmarks Preservation Commission (if applicable), DOB and any other agency having jurisdiction. All work shall be undertaken in accordance with the plans, specifications, schematics, and working and mechanical drawings approved in writing in advance by Parks. The supervising architect or engineer is required to ensure that all construction conforms to the plans approved by Parks. No Capital Improvement shall be deemed Finally Completed (as hereinafter defined) until the Commissioner certifies in writing that the Capital Improvement has been completed to his/her satisfaction. The Commissioner's determination as to whether the Capital Improvements are Finally Complete shall not be unreasonably withheld, conditioned or delayed.

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


10.9 For any Capital Improvements commenced under this Permit, Permittee shall apply for applicable licenses from Parks' Revenue Division prior to commencement of work. Permittee 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. Permittee shall also, prior to commencing work, obtain all other necessary governmental approvals, permits, and licenses. Permittee will also be responsible for obtaining, amending and complying with the Certificate of Occupancy, sign-offs, public assembly permits, fire department certificates and all other permits including, but not limited to, the City of New York Department of Environmental Protection ("DEP"), New York State Department of Environmental Conservation and/or other government agency approvals and permits necessary for any alterations to the existing premises. Permittee shall notify Commissioner of the specific date on which construction shall begin.

10.10 Permittee 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, free of defects, suitable for the purpose intended and furnished in ample quantities to prevent delays. Permittee shall obtain all manufacturer's warranties and guarantees for all such equipment and materials, as applicable, and shall assign same to the City when and if the City exercises its option to take title to such equipment and materials in accordance with the terms of this Permit, except to the extent that Permittee retains the obligation to maintain such equipment and materials under this Permit. In furtherance of the preceding sentence, as applicable, Permittee shall execute and deliver to the City any documents reasonably requested by the City in order to enable the City to enforce such guaranties and warranties. All of the City's rights and title and interest in and to said manufacturers' warranties and guaranties may be assigned by the City to any subsequent permittee of the Premises.

10.11 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 Permit 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.

AGREED TO:


Permittee's Signature

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10.12 Unless otherwise provided, Permittee 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.

10.13 No temporary storage or other ancillary structures and staging areas may be erected and maintained without Parks' approval (such approval not to be unreasonably withheld, conditioned or delayed).

10.14 During performance of the Capital Improvements and up to the date of Final Completion, Permittee 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, Permittee shall promptly replace or repair such Capital Improvements at its sole cost and expense.

10.15 Permittee shall provide written notice to Commissioner when the Capital Improvements are Substantially Completed (as hereinafter defined). After receiving such notice, Commissioner shall within thirty (30) days inspect such Capital Improvements. After such inspection Commissioner and Permittee 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 reasonable satisfaction of the Commissioner. Permittee shall proceed with diligence to complete all items on that list within a reasonable time as determined by the Commissioner.

10.16 Permittee, within three (3) months of Substantial Completion, shall furnish the Commissioner with a certified statement, issued by Permittee, 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. Permittee 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 Premises to permit audit by Parks or the New York City Comptroller upon request.

10.17 Permittee shall provide Parks with discharges for any and all liens which may be filed or levied against the Capital Improvements during construction of such improvements. ~~Permittee shall use commercially~~

reasonable efforts to discharge such liens within thirty (30) business days of receipt of lien by Permittee. Upon Final Completion of all Capital Improvements, Parks shall return to Permittee the unused balance of any construction security provided to the City.

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

10.19 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 Permit 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 Permit and from demanding and recovering from Permittee such damages as Parks or the City may sustain by reason of Permittee's failure to perform substantially its obligations under this Permit 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 9.19 signed by the Commissioner or his/her authorized representative.

10.20 Upon installation, title to all construction, renovation, improvements, and fixtures made to the 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 Premises, it shall be the responsibility of Permittee to remove such equipment and restore the Premises to the satisfaction of the Commissioner at the sole cost and expense of Permittee.

10.21(a) As used herein, "Final Completion" or "Finally Complete" shall mean that the construction of an improvement to the Premises has been completed to such an extent that the Commissioner certifies in writing that it has been finally completed and that no further work is

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required by Permittee pursuant to this Permit in connection with the construction of said improvement. Notwithstanding the issuance of any such certification, Permittee shall be liable for any claims related to such construction and shall be responsible for any other obligations (including maintenance, repair and indemnity) set forth in this Permit.

(b) As used herein, "Substantial Completion" or "Substantially Complete" shall mean, with respect to an improvement at the Premises, that the Commissioner certifies that an improvement to the 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 items as provided for in Section 9.15 herein, and that the improvement may be utilized by the public.

11. EXPANDING; NO EXCLUSIVE RIGHTS

Permittee shall not operate beyond the perimeter of Premises except as approved by Parks.

Subject to Section 39(b) hereof, this Permit grants Permittee the exclusive right to operate the parking lots at the Premises during the Term hereof. However, as the Premises are located within a park, this Permit does not grant Permittee exclusive rights to sell parking services in the park in which the Premises are located (other than with respect to the Premises). Moreover, Parks may grant other permits to vendors to sell the same or similar services not otherwise prohibited under this Permit within the same park in which the Premises are located. Permittee acknowledges and understands that Parks does not guarantee that illegal vendors, persons unauthorized by Parks, or disabled veteran vendors will not compete with Permittee or operate near the Premises.

12. FREE ACCESS Permittee shall not block any sidewalk, pathway, park entrance or other pedestrian walkway with Permittee's equipment or supplies. Permittee shall place Permittee's equipment and supplies in such manner that at least a six (6) foot walkway is available to pedestrians at all times.

13. TERMINATION The City or Parks may terminate this Permit at any time for any reason. Permittee will be given a written termination notice should Parks desire to terminate the Permit, such termination to be immediately effective upon the mailing, delivery by hand or facsimile thereof. Permittee expressly waives any and all claims against Parks and the City for losses and or damages event this Permit is terminated, neither Parks nor the City will reimburse Permittee's unamortized capital

improvement costs. If the Permittee does not comply with the terms of the Permit, the permit may be terminated.

14. TERMINATION AND REMOVAL Upon the expiration, or sooner termination, of this Permit, Permittee shall immediately cease all operations under this Permit and shall vacate the Premises without any further notice by Parks, and without resort to any judicial determination regarding termination of this Permit. Parks reserves the right to take immediate possession of the Premises upon the termination of this Permit.

Permittee shall, on or prior to the expiration or termination date, remove all of Permittee's personal property from the Premises. Any personal property remaining on the Premises after the expiration, or sooner termination, of this Permit, shall be deemed abandoned by Permittee. Permittee shall remain liable to Parks for any damages, including lost revenue to Parks and the cost of removal or disposal of Permittee's personal property left at the Premises by Parks should Permittee fail to cease operations, vacate or remove all possessions from the Premises on or before the expiration or termination date.

Permittee shall, on or prior to the expiration or sooner termination of this Permit, return to Parks any permit stickers issued to Permittee by Parks.

15. SANITATION AND PEST CONTROL

(a) Permittee is responsible, at its sole cost and expense, for the clean-up and removal of all snow, waste, garbage, refuse, rubbish and litter from the Premises and the area within 50 feet of the Premises (excluding any mapped street). Permittee shall clear snow and ice from the parking lots on the Premises within four (4) hours of the cessation of snowfall or accumulation of ice during the Term. Permittee shall provide adequate and easily accessible waste and recycling receptacles, approved by Parks, and have those 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 (such approval not to be unreasonably withheld, conditioned or delayed). Permittee shall comply with all City, state and federal regulations regarding recycling. In addition, Permittee shall demonstrate to Parks' satisfaction, through a detailed maintenance plan, that it will keep and maintain the Premises in excellent condition throughout the Term.

(b) Permittee is responsible for regular pest control inspections and extermination, as needed. To the extent that Permittee applies pesticides to any property owned or leased by the City, Permittee or any subcontractor

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hired by Permittee, shall comply with Chapter 12 of Title 17 of the New York City Administrative Code and limit the environmental impact of its pesticide use.

16. MAINTENANCE; ACCESS TO PREMISES; LIGHTING

(a) Permittee shall be responsible for the regular and routine maintenance of the concession authorized by this Permit and shall, at its sole cost and expense (or through arrangements with third parties), renovate, operate and maintain the Premises in good and safe condition and in accordance with industry standards. The foregoing requirement includes, but is not limited to, the maintenance and repair of the entire Premises, all interior and exterior structures, building systems, utility systems and connections, sewer systems and connections, equipment (including any mechanical parking lifts, lighting, sidewalks, paved areas, gates, entrance and exit lanes, parking spaces, fences, landscaping, planters, vaults, gutters, curbs, catch basins, piping and fixtures. Permittee shall also repair all potholes, resurfacing the pavement as necessary, and applying and maintaining all pavement markings and lines on the Premises in compliance with all City, State, and Federal guidelines, rules and regulations. In addition, Permittee must keep all signs and structures at the Premises in good condition and free of graffiti. The erecting of any ancillary structures at the Premises is subject to Parks' prior written approval (such approval not to be unreasonably withheld, conditioned or delayed).

(b) To ensure Parks' satisfaction with Permittee's compliance with this Permit, Permittee shall provide Parks with full and free access to the Premises.

(c) Permittee shall provide safe lighting throughout the Premises and shall also be responsible for replacing lamps after lamp outages.

17. EQUIPMENT Permittee shall, at its sole cost and expense, purchase, supply, or otherwise obtain use of all equipment necessary for the successful operation of the concession granted hereby.

18. LANDSCAPING Permittee shall maintain and improve the landscaping at the Premises. The foregoing requirement shall include, but not be limited to, performing any seeding, trimming, pruning, planting, fertilization, terrain shaping, and soil improvements. In addition, Parks requires that any trees on the Premises be pruned as needed. Permittee shall submit reasonably detailed plans to Parks of all horticultural and landscaping work to be performed. All work to be

performed at the Premises is subject to Parks' prior written approval (such approval not to be unreasonably withheld, conditioned or delayed). In addition, Permittee shall obtain all necessary permits, approvals, and authorizations from all City, State, and Federal agencies having jurisdiction over the Premises before any work is performed, and such work shall be of a quality which meets Parks' reasonable standards.

19. NO TOBACCO/ ALCOHOL The selling and/or advertisement of cigarettes, electronic cigarettes, cigars, any other tobacco products or other non-tobacco smoking products or alcohol is strictly prohibited. In addition, smoking of any tobacco product or non-tobacco smoking product or electronic cigarettes at the Premises is strictly prohibited, except in parking lots or on sidewalks along the park perimeter. It is the Permittee's responsibility to adhere to and enforce the prohibitions of this Section 19.

20. TREES The cutting down, pruning or removing of any trees or shrubbery on the Premises without the prior written approval from Parks is strictly prohibited. Permittee will report dead and diseased trees to Parks and only upon Parks' request, will remove them. Any attachments to the trees, such as lights, will not be permitted.

21. SECURITY Pursuant to a plan approved in advance in writing by Parks, Permittee at its sole cost and expense, shall be responsible for all security at the Premises year-round during the Term and shall provide a 24 hour-a-day security system at the Premises. Permittee shall secure the Premises and its equipment every evening.

In addition, Permittee shall work with and accommodate Stadium security personnel and/or City security personnel in regard to specific security operations, plans and procedures that may arise during the Term.

22. SECURITY DEPOSIT

(a) Permittee will be required to submit a security deposit of twenty-five percent (25%) of the highest year's guaranteed minimum Permit fee, which will be required for the duration of the term. This security deposit, which may be in the form of an interest bearing account or other format approved by Parks, and will be due upon signing. Permittee's security deposit, in the dollar amount as set forth on the Cover Page of this Permit, will be held, without liability for the City to pay interest thereon, to ensure that Permittee fulfills all the terms and conditions of this Permit.

(b) If Permittee fails to comply with Section 15 herein, the costs of cleanup will be deducted from Permittee's

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security deposit. If Permittee fails to make timely fee payments, Permittee's security deposit may be seized. If Permittee operates without insurance or in a location other than the Premises or at times not allowed by this Permit, Parks may also seize Permittee's security deposit. If Permittee causes any damage to Parks' property, the security deposit may also be used to pay for the repairs.

(c) If part of Permittee's security deposit is used for any purpose, Permittee shall replace that sum within thirty (30) days of Parks appropriation of such sum. Failure to replace such sum as required herein may result in the termination of this Permit. Permittee is responsible for any costs beyond those covered by the security deposit. If Permittee ceases Permittee's operations at the Premises prior to the termination of this Permit, Parks may seize Permittee's security deposit.

23. LATE PAYMENTS A late charge may be assessed for any fee payment not received by Parks on or prior to the payment dates specified on the Fee Payment Schedule attached to the Notice to Proceed. A late charge of two percent (2%) per month may be applied to any unpaid balance that is overdue for ten (10) days following the date for which such fees are due. 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 10th day of the month. If no payment is received, a two percent (2%) late charge in the amount of \$20.00 will be assessed on the 11th day of the month.

24. INSURANCE Insurance must be in place throughout the entire Term of the Permit.

(a) Permittee shall maintain Commercial General Liability ("CGL") 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 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 Permit. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, 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." Such CGL insurance shall name the City, together with its officials and employees, as Additional Insureds with coverage at least as broad as the most recent edition of ISO Form CG 20 26 and the City's limits shall be no less than the Permittee's. Such

CGL insurance shall be primary and non-contributing to any insurance or self-insurance maintained by the City. A certified copy of this CGL policy or a Certificate of Insurance (evidencing the CGL insurance and the City's status as additional insured) must be submitted to and accepted by the Commissioner prior to or upon execution of this Permit.

(b) During the term of the Permit, Permittee shall also carry statutory limits of Worker's Compensation, Employers Liability, and Disability Benefits Insurance. Permittee must submit proof of valid Workers' Compensation Insurance, Employer's Liability, and Disability Benefits Insurance in the following acceptable forms: (1) C105-C; (2) State Insurance Fund Form No. U-26.3; (3) New York State Workers' Compensation Board Form No. DB-120.1; (4) equivalent or successor forms used by the New York State Workers' Compensation Board; (5) or other proof of insurance in a form acceptable to the Commissioner of Parks. If Permittee is or intends to be exempt from the requirements of the New York State Worker's Compensation Law, Permittee must submit Certificate of Exemption Form No. CE-200.

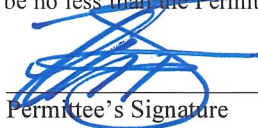
(c) With regard to all operations under this Permit, Permittee shall maintain or cause to be maintained Commercial Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) for each accident combined single limit for liability arising out of the ownership, maintenance or use of any owned, non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA 00 01. If Permittee does not provide proof of compliance with this requirement, no vehicular use will be permitted within Parks boundaries.

(d) If vehicles are used for transporting hazardous materials, such Commercial Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

Permittee shall maintain all-risk property insurance covering all the parking gates and any revenue control equipment on the property at a value reasonably determined by Parks. Such insurance, if required, shall include coverage for, among other risks, damage cause by flooding. If for any reason it does not, the concessionaire shall purchase separate flood insurance. Such insurance shall be "occurrence" (rather than "claims-made") based and shall designate Permittee as Named Insured and the City as Loss Payee as their interests may appear.

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(e) 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.

(f) For each policy required under this Permit, except for Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, Permittee shall file a Certificate of Insurance with Parks upon signing this Permit and as a condition of issuance of this Permit. All Certificates of Insurance shall be (i) in a form acceptable to the City and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (ii) accompanied by the endorsement in Permittee's general liability policy by which the City has been made an additional insured pursuant to Section 26(a). All Certificate(s) of Insurance shall be accompanied by either a duly executed "Certification by Insurance Agent or Broker" in the form attached as Exhibit D or copies of all policies referenced in the Certificate of Insurance. If complete policies have not yet been issued, binders are acceptable until such time as the complete policies have been issued, at which time such policies shall be submitted.

(g) 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 Permit. Such Certificates of Insurance shall comply with the requirements of Section 26(b) and Section 26(f) above.

(h) Permittee shall provide the City with a copy of any policy required under this Section upon the demand for such policy by the Commissioner or the New York City Law Department.

(i) Acceptance by the Commissioner of a certificate or a policy does not excuse the Permittee from maintaining policies consistent with all provisions of this Section (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

(j) There shall be no self-insurance program 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, Permittee shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Article, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.

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

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

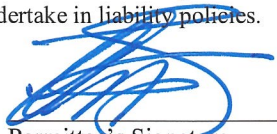
(m) All required policies, except for Workers' Compensation insurance, Employers Liability insurance, and Disability Benefits insurance, shall contain an endorsement requiring that the issuing insurance company endeavor to provide the City with advance written notice in the event such policy is to expire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

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

(o) Permittee shall be solely responsible for the payment of all premiums for all policies and all deductibles or self-insured retentions to which they are subject, whether or not the City is an insured under the policy.

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

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location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. Permittee 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.

(q) Permittee'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 Permit. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

(r) Insurance coverage in the minimum amounts provided for in this Article shall not relieve the Permittee of any liability under this Permit, 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 Permit or the law.

(s) 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, Permittee shall at all times fully cooperate with the City with regard to such potential or actual claim.

(t) Apart from damages or losses covered by Workers' Compensation Insurance, Employers Liability Insurance, Disability Benefits Insurance or Commercial Automobile Insurance, Permittee 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 Permittee and/or its employees, agents, or servants of its contractors or subcontractors.

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

(v) In the event Permittee 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, Permittee 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, Permittee shall ensure that there is no interruption in any of the insurance coverage required under this Article

25. INDEMNIFICATION & HOLD HARMLESS

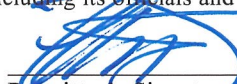
Permittee is responsible for any claims made by either any employee or member of the public against Permittee and/or City arising from the operations conducted under this Permit. Permittee assumes all risks in Permittee's operations under this Permit.

(a) To the fullest extent permitted by law, Permittee shall indemnify, defend and hold the City and its officials and employees harmless against any and all claims (even if the claims are without merit), liabilities, settlements, damages (excluding special or consequential damages and damages for lost profits), 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 Permit and/or Permittee's failure to comply with the law or any of the requirements of this Permit. 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 Permittee, the City and its officials and employees shall be partially indemnified by Permittee to the fullest extent permitted by law.

(b) The City may arrange for its own defense and the defense of its officials and employees by the Corporation Counsel in any action, claim, suit, or other proceeding, and, having done so, may, at any time thereafter, tender its/and or their further defense to Permittee, without any prejudice to any rights to which it, or they or any of them, may be entitled to under this Section 27, including the right to be indemnified and held harmless, as herein provided.

(c) Permittee's duty to defend, indemnify and hold the

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City, its officials and employees harmless, as provided in this Section 27, shall not be abrogated, diminished or otherwise affected by Permittee's further duty in their behalf to procure and maintain insurance pursuant to the provisions of Section 26 hereof, nor by its or their failure to avail themselves of the benefits of such insurance by due and timely demand upon the insurers therefor, and shall survive the expiration or sooner termination of this Permit.

Permittee shall be solely responsible for the safety and protection of its employees, agents, servants, contractors, and subcontractors, and for the safety and protection of the employees, agents, or servants of its contractors or subcontractors.

(d) Permittee 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 Permit.

(e) Permittee 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 Permit, whether or not due to the negligence of Permittee, including but not limited to injuries or damages resulting from the acts or omissions of any of its employees, agents, servants, contractors, subcontractors, or any other person.

(f) Permittee shall use the Premises in compliance with, and shall not cause or permit the 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 Permittee or the Premises (collectively "Environmental Laws"). Except as may be agreed by the City as part of this Permit, Permittee shall not cause or permit, or allow any of Permittee's personnel to cause or permit, any Hazardous Materials to be brought upon, store, used generated, treated or disposed of on the 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.

(g) Permittee assumes all risk in the operation of this Permit.

(h) To the fullest extent permitted by law, Permittee shall indemnify, defend and hold the City and its officials and

employees harmless against any and all claims, 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 Permit and/or Permittee's failure to comply with the law or any of the requirements of this Permit. 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 Permittee, the City and its officials and employees shall be partially indemnified by Permittee to the fullest extent permitted by law.

(i) The City may arrange for its own defense and the defense of its agents and employees by the Corporation Counsel in any action, claim, suit, or other proceeding, and, having done so, may, at any time thereafter, tender their further defense to Permittee, without any prejudice to any rights to which they, or any of them, may be entitled to under this Section, including the right to be indemnified and held harmless, as herein provided.

(j) Permittee's duty to defend, indemnify and hold the City its officials and employees harmless, as provided in this Section, shall not be abrogated, diminished or otherwise affected by Permittee's further duty in their behalf to procure and maintain insurance pursuant to the provisions of Section 26 hereof, nor by their failure to avail themselves of the benefits of such insurance by due and timely demand upon the insurers therefor, and shall survive the expiration or sooner termination of this Permit.

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

26. UTILITIES Parks makes no representations regarding the adequacy of utilities currently in place at the Premises. Permittee 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 utility usage on the Premises and an account with Con Edison (or other relevant provider) as appropriate. Permittee will be required to pay for any and all utility costs connected with the operation of this concession during the Term. These utility costs include, but are not limited to, paying all water and sewer charges that DEP assesses

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for water usage. Permittee is strictly prohibited from unauthorized use of utilities used, operated, or owned by the City.

Permittee shall adhere to all directives and restrictions of the DEP regarding drought and water conservation issues during the Term.

Permittee shall not tap into or utilize Parks' electricity without Parks' prior written approval. If such approval is given, Permittee shall be solely responsible for working with the appropriate utility company to make any electrical connections, installing a meter, and the cost of any electricity used in conjunction with the concession. Where applicable, Permittee will be required to reimburse Parks for all the costs to Parks for providing electrical, oil, gas, water and other utilities to Permittee at the Premises. Permittee shall reimburse Parks within thirty (30) days of its receipt of a bill from Parks. Failure to reimburse Parks may result in the forfeiture of Permittee's security deposit.

27. RECORDS OF SALES AND INTERNAL CONTROLS

(a) Permittee shall maintain records of its business activities at the Premises in a form suitable for audit by Parks and/or the City Comptroller's Office. Business activities at the Premises must be recorded separately from any other businesses that may be operated by Permittee.

(b) Throughout the Term, Permittee shall maintain a revenue control system to ensure the accurate and complete recording of all revenues, in a form and manner acceptable to the City. This revenue control system must maintain detailed sales information from each sales transaction. Specifically, sales information must be recorded electronically, via a 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. All accounting and internal control related records shall be maintained for a minimum of ten (10) years from the date of creation of the record.

(c) A dedicated bank account for deposits related to this concession's revenue must be established.

(d) Cash receipts from the operation under this Permit must be deposited regularly in the aforementioned dedicated bank account located in New York City and reconciled with the sales reports.

28. STATEMENTS OF GROSS RECEIPTS AND INCOME AND EXPENSE

(a) Within thirty (30) days following the end of each month in which Permittee is operating at the Premises, Permittee shall submit to Parks monthly statements of Gross Receipts, signed by a principal of Permittee, from all categories of income in a format approved by Parks. Gross Receipts shall exclude the amount of any federal, state, or city sales taxes which are paid by Permittee. Within sixty (60) days after the end of each Operating Year, the Permittee shall submit to Parks a detailed income and expense statement for the past Year's operations.

(i) For purposes of this Permit, "Gross Receipts" shall include all funds or receipts of any kind received by Permittee, without deduction or set-off of any kind, from the operation of the Premises, from the rental of parking spaces at the Premises, from the licensing of any of the Premises for private functions, and from any related services of any kind, provided that Gross Receipts shall exclude the amount of any federal, state or City sales taxes which may now or hereafter be imposed upon or be required to be collected and paid by Permittee.

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

(iii) Gross Receipts shall include sales or rentals 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 or rentals are paid or uncollected, it being the distinct intention and agreement of the parties that all sums due to be received by Permittee from all sources from the operation of this Permit shall be included in Gross Receipts. The concessionaire may not deduct fees paid for credit card transactions from monthly statements of Gross Receipts

(iv) Gross Receipts shall also include all sales made by any other operator or operators using the Premises under a properly authorized sublicense or subcontract agreement, provided that Gross Receipts shall also include Permittee's income from rental and sublicense or subcontracting fees and commissions Permittee receives in connection with all services provided by subcontractors or sublicensees. All sublicensees will be subject to the same internal control requirements as Permittee. All terms and conditions of sublicense agreements and operations, including payment to the City, are subject to Parks' prior, written approval

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29. AUDIT Permittee shall make available to the office of the Comptroller of the City of New York, and/or Parks' auditor, on demand all books, records, documents and correspondence pertaining to this Permit, for the purpose of examination, audit, review or any purpose deemed necessary by the office of The Comptroller of the City of New York and/or the Commissioner of Parks.

30. TAXES The Permittee is required to pay all taxes applicable to the operation of the concession. Permittee is responsible for obeying all relevant laws, rules and regulations and obtaining all necessary permits and licenses. Permittee shall obtain and provide to Parks a New York State Sales Tax Number from the New York City Department of Finance. Permittee shall collect and pay New York State and City Sales Tax as well as all other taxes applicable to the operation of the concession granted hereby.

31. NOTICE TO CURE Permittee shall comply with all directions and instructions Parks issues to Permittee. Failure to comply with any such directive or with any of the provisions of this Permit within twenty (20) days or any shorter period set forth in any directive may result in the suspension and/or termination of this Permit. Parks may impose a two hundred and fifty Two Hundred Fifty Dollar (\$250) administrative fee for reinstatement of a suspended Permit.

32. SUSPENSION This Permit may be suspended for any reason with written notice from Parks. Such suspension shall be immediately effective upon the mailing, facsimile or hand delivery thereof. In the event of such notice of suspension, Permittee shall not operate. In the event that Permittee's business is disrupted due to construction in the park where the Premises is located, this Permit may be suspended, at Parks' option. If the suspension is related to Parks' construction, Parks in its sole discretion may extend the Term of this Permit by the amount of time Permittee was prevented from operating. In the event that Permittee must close the Premises because of Parks' construction or other operations and Licensee's operations at the Premises are materially adversely affected by Parks' construction or other operations, then the parties agree to modify the terms of this Permit to equitably address the impact of the closure, including but not limited to Permittee's right to terminate this Permit and/or a suspension of all financial obligations of this Permit.

33. OTHER PERMITS A New York City Department of Parks and Recreation Vendor's permit is not a substitute for a Consumer Affairs or other applicable license. For many locations, and for many types of

concessions, more than one license or permit may be required. Without ALL necessary licenses or permits, Permittee may be fined, Permittee's items or equipment necessary for the operation of the concession may be confiscated and Permittee may be prevented from operating the concession at the Premises. Permittee should check for license/permit requirements with the following:

Citywide Licensing Center
42 Broadway, 5th Floor
New York, NY 10004

34. SPECIAL EVENTS

(a) Subject to prior, written approval from Parks Permittee may conduct special events or programs at the Premises between the day after Labor Day and the Thursday before Memorial Day. Any ticketed events at the Premises also require prior written approval from Parks. Permittee shall submit to Parks for approval all plans for any events or programs at the Premises, and in no event shall the 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 (2) weeks in advance of such activities or events. Permittee must document each special event 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. All events and programs conducted by Permittee at the Premises shall minimize the impact of the event or program on the surrounding business community, the visiting parking public and Parks and its operations.

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

(c) Permittee shall cooperate with Parks and other applicable agencies during special and unanticipated events, including emergencies.

35. PERMIT/SIGNAGE DISPLAY

(a) Permittee shall conspicuously display the 311 sign and any other permit, license, sticker or identification issued to Permittee by Parks, the City or other governmental agency for display purposes on the vending

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apparatus or equipment necessary for the operation of Concession. Permittee is subject to fines and/or confiscation of vending apparatus for failing to operate without all necessary permits.

(b) Permittee is prohibited from displaying, placing, or permitting the display or placement of advertisements in the Premises, without the prior written approval of Parks. The display or placement of tobacco or e-cigarette or non-tobacco smoking product advertising shall not be permitted. The display or placement of advertising of alcoholic beverages shall not be permitted. The following standards will apply to all allowed advertising: any type of advertising which is false or misleading, which promotes unlawful or illegal goods, services, or activities, or which is otherwise unlawful, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11, shall be prohibited. Advertising of product brands is prohibited without Parks' prior approval. Any and all signage is subject to Parks' prior written approval. The design and placement of all signage, including signage which includes Permittee's name, trade name(s) and/or logo, is subject to Parks' prior written approval. The placement of advertisements on the exterior of the concession area, or on the building is strictly prohibited. Any prohibited material displayed or placed shall be immediately removed by Permittee upon notice from Parks, at Permittee's sole cost and expense.

36. NO DISCRIMINATION Permittee shall not unlawfully discriminate against any customer, employee or applicant for employment because of race, creed, sex, color, sexual preference or orientation, national origin, or any other protected class of individuals as defined by City, state or federal laws, rules or regulations. As used herein, the term "employment" shall mean and include, without limitation, the following: recruited, whether by advertising or other means, compensation, selected for training, including apprenticeship, promoted, upgraded, downgraded, transferred, laid off, and terminated. Any violation of this paragraph shall be deemed a material breach of this Permit for which it may be terminated or suspended.

37. INSPECTIONS AND LIQUIDATED DAMAGES

(a) Permittee agrees that any failure to perform requirements to such standard as set forth in this Permit shall result in injuries to the City and its residents, businesses and institutions, the compensation for which will be difficult to ascertain.

(b) Inspectors from Parks will visit the Premises unannounced to inspect operations and ensure proper


maintenance of the Premises. Based on their inspections, Parks may issue directives regarding deficiencies that Permittee will be obligated to remedy in a timely fashion. Violations of the terms of this Permit may result in the assessment of liquidated damages, which, if not promptly paid, may be deducted from Permittee's security deposit. Should Permittee fail to provide the cleaning, maintenance and operational services required by this Permit, Parks shall notify Permittee in writing and Permittee shall be required to correct such shortcomings within the time frame set forth in such notice. If Permittee fails to cure the violation within the time frame set forth in the notice, Parks may, at its option, in addition to any other remedies available to it, assess liquidated damages and/or suspend or terminate this Permit. Parks may impose a \$250 administrative fee for reinstatement of a suspended permit. Liquidated damages may be assessed in accordance with the following schedule:

Liquidated Damages per Occurrence

| | |
|--|-------|
| Missing or Unauthorized Rate List | \$250 |
| Overcharging | \$350 |
| Expanding | \$350 |
| Blocked Exits | \$350 |
| Improper Disposal (noxious liquids , debris, etc.) | \$350 |
| Unauthorized tapping into utilities used, operated or owned by the City | \$350 |
| Equipment or structures obviously damaged or in poor repair | \$250 |
| Unauthorized advertising | \$350 |
| Improper storage | \$350 |
| Graffiti | \$350 |
| 311 sign not displayed | \$250 |
| Operating without applicable permit(s) or license(s) | \$350 |
| Failure to provide designated parking spaces for persons with disabilities | \$250 |

Permittee will receive written notice each time that Parks determines Permittee has violated or failed to comply

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with the requirements set forth herein. If Permittee fails to pay liquidated damages to Parks within ten (10) days of receipt of notice, this Permit may be suspended or terminated. In addition, Parks may seize Permittee's security deposit, described in Section 25 herein, to cover the amounts of any outstanding payments for liquidated damages.

(c) If Permittee receives an assessment for one of the above violations, there is a process by which such assessment may be appealed if Permittee believes that the assessment has been assessed in error. Permittee may file an appeal as follows:

(i) If Permittee 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 Permittee believes the assessment was erroneous. The statement of reasons must be notarized. Any evidence supporting Permittee's appeal (such as photographs, documents, witness statements) should also be included.

(ii) 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 Permittee's account.

(d) Adjudication of an appeal:

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

(ii) The Director of OMP is authorized to investigate the merits of the appeal but is not required either to hold a hearing or to speak to Permittee in person.

38.INSPECTIONS AND INVESTIGATIONS

(a) Permittee shall allow the Commissioner, his/her representatives and any other City, state or federal official having jurisdiction and photo identification to inspect the Premises and the equipment which Permittee operates at any time.

(b) The parties to this Permit 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.

(c) (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

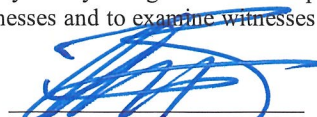
(ii) If any person refuses to testify for a reason other than the assertion of his or her privilege against self incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses 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 cooperation within the City, then:

(d) (i) 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 (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

(ii) 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 43(e) without the City incurring any penalty or damages for delay or otherwise.

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

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

(ii) The cancellation or termination of any and all existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Permit, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair 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.

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

(g) (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 "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.

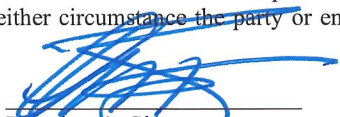
(h) (i) In addition to and notwithstanding any other provision of this Permit the Commissioner or agency head may in his or her sole discretion terminate this agreement upon not less than three (3) days written notice in the event Permittee fails to promptly report in writing to the Commissioner of Investigation 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 Permittee, or affecting the performance of this Permit.

39. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

This Permit shall be deemed to be a contract ("Contract") executed in the City of New York, State of New York, regardless of Permittee's domicile, and shall be governed by and construed in accordance with the laws of the State of New York.

Permittee agrees that any and all claims asserted by or against the City arising under this Permit or related thereto shall be heard and determined either in the courts of the United States located in New York ("Federal Courts") or in the courts of the States of New York ("New York State Courts") located in the City and County of New York. To effect this agreement and intent, Permittee agrees to the following:

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

(b) With respect to any action between the City and Permittee in New York State Court, Permittee 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.

(c) With respect to any action between the City and Permittee in Federal Court located in New York City, Permittee expressly waives and relinquishes any right it might otherwise have more to transfer the action to a United States Court outside the City of New York.

(d) If Permittee 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, Permittee 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, Permittee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

If any provision of this Section is held unenforceable for any reason, each and every other provision shall nevertheless remain in full force and effect.

40. WAIVER OF TRIAL BY JURY

Permittee hereby waives trial by jury in any action, proceeding, or counterclaim related to this Permit.

41. PROCUREMENT OF AGREEMENT

Permittee represents and warrants that no person or selling agency has been employed or retained to solicit or secure this Permit upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. Permittee 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. Permittee makes such representations and warranties to induce the City to enter into this Permit and the City relies upon such representations and warranties in the execution hereof.

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For a breach or violation of such representations or warranties, the Commissioner shall have the right to annul this Permit without liability, and Permittee shall not make any claim for, or be entitled to recover, any sum or sums due under this Permit. 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 for by law or pursuant to this Permit.

42. CUMULATIVE REMEDIES - NO WAIVER

The specific remedies to which the City may resort under the terms of this Permit 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 Permit, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenants or option.

43. SEVERABILITY; INVALIDITY OF PARTICULAR PROVISIONS

If any term or provision of this Permit or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Permit, 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 Permit shall be valid and enforceable to the fullest extent permitted by law.

44. CONFLICT OF INTEREST

Permittee 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. Permittee further represents and warrants that in the performance of this Permit no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City or Department, nor any person whose salary is payable, in whole or part, from the City treasury, shall participate in any decision relating to this Permit 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 Permit or in the proceeds thereof.

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45. JUDICIAL INTERPRETATION

Should any provision of this Permit 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 Permit and that legal counsel was consulted by each responsible party before the execution of this Permit.

46. INDEPENDENT STATUS OF PERMITTEE; EMPLOYEES

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

All experts, consultants and employees of Permittee who are employed by Permittee to perform work under this Permit are neither employees of the City nor under contract to the City, and Permittee alone is responsible for their work, direction, compensation and personal conduct while engaged under this Permit. Nothing in this Permit shall impose any liability or duty on the City for acts, omissions, liabilities or obligations of Permittee or any person, firm, company, agency, association, corporation or organization engaged by Permittee 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.

47. ALL LEGAL PROVISIONS DEEMED INCLUDED

Each and every provision of law required to be inserted in this Permit shall be and is inserted herein. Every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Permit shall, forthwith upon the application of either party, be amended by such insertion so as to comply strictly with the law and without prejudice to the

rights of either party hereunder.

48. PRIOR UNDERSTANDING; NO ORAL MODIFICATION

This Permit states the entire and integrated agreement between the City and Permittee and supersedes all prior negotiations, representations and agreements, whether written or oral. This Permit may not be altered, modified or amended in any manner whatsoever except by a written instrument signed by the City and Permittee.

49. MARKETING AND SPONSORSHIP AGREEMENTS

Permittee must obtain Parks' prior written approval before entering into any marketing or sponsorship agreement. In the event Permittee breaches this requirement, Permittee shall take any action that the City may deem necessary to protect the City's interest.

50. TRADEMARK

Permittee should be aware that the City is the trademark owner of various trademarks and has licensed the use of those trademarks for use on certain designated merchandise. If the Permittee wants to sell merchandise that uses the City's trademarks, Permittee shall purchase such merchandise from authorized licensees of the City of New York. 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 this concession will result in the immediate termination of this Permit and seizure of the security deposit.

51. NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

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

52. NAMING OF THE CONCESSION

Any name that Permittee proposes to use for the Premises or in connection with its operations at the Premises shall be subject to Parks' prior written approval. Parks shall be the owner of any portion of any name for the Permitted Premises that indicates or refers to Parks' property or a pre-existing facility name. The City will not own any portion of any name that consists of the name, portrait, or signature of a living or deceased individual or restaurant identifier that is not otherwise associated with Parks' property.

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53. PAYMENT AND NOTICE Any Permit fees, charges or sums payable by Permittee to Parks shall be made to the New York City Department of Parks & Recreation, Revenue Division, The Arsenal - Room 407, 830 Fifth Avenue, New York, NY 10065.

Where provision is made herein for notice to be given in writing, the same shall be given by hand delivery, facsimile, or by mailing a copy of such notice by first class mail addressed to Commissioner at New York City Department of Parks & Recreation, The Arsenal, 830 Fifth Avenue, New York, NY 10065 or to the attention of Permittee at its address provided in this Permit, or to any other address that Permittee shall have filed with Commissioner.

54. REIMBURSEMENT OF CITY Permittee shall, within thirty (30) days of receipt of a written request, reimburse City and Parks for all costs incurred by City or Parks in assisting Permittee to comply with this Permit or in rectifying any non-compliance by Permittee with the terms and conditions hereof.

AGREED TO:


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