

1. DEFINITIONS.

(a) Including the Cover Page and exhibits, this document 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." The City of New York and the New York City Department of Parks & Recreation shall be referred to as "City" and "Parks" respectively. "Commissioner" refers to the Commissioner of Parks or Commissioner's designee. "Comptroller" shall mean the Comptroller of the City. The area to which Permittee is assigned under this Permit shall be referred to as the "Premises" or "Permitted Premises." The Premises consists of such parking lots on Randall's Island as shall be designated by Parks for each period of operation set forth in this Permit, as is more fully described on the cover sheet hereinafter referred to as "Cover Page," attached hereto and made part of this Permit, and in **Exhibit A** attached to the Cover Page. Parks may change the Premises during the Term to accommodate City renovations. Parking lot availability may vary depending on the event and the status of construction on Randall's Island. The "Concession" refers to the entire concession granted hereby, consisting of the parking lots designated by Parks for use at Special Events at Randall's Island, Manhattan, New York and as otherwise needed by Parks. "RIPA" shall mean the Randall's Island Park Alliance. "Special Event" shall mean any event at Randall's Island Park for which Parks has issued a Special Event Permit and requires Permittee to provide parking services. "State" shall mean the State of New York. The period between the effective date and the expiration date set forth on the Cover Page shall be referred to as the "Term." A "Year" means the period between the date of the effective date (or its anniversary in any year other than Year 1) and the day before the anniversary of the effective date in the immediately following calendar year.

(b) "Gross Receipts" shall include, without limitation, all funds or receipts of any kind received by Permittee from or in connection with its operations at the Permitted Premises, without deduction or set-off of any kind, from the sale or provision of parking operations, or services of any kind, provided that Gross Receipts shall exclude the amount of any federal, State or City sales taxes which may now or hereafter be imposed upon or be required to be collected and paid by Permittee. Gross Receipts shall include any orders placed or made at the Premises, although delivery of merchandise or services may be made outside or away from the Premises and shall include all receipts of Permittee for orders taken at the Premises by Permittee for services to be rendered by Permittee in the future either at or outside of the Premises. For example, if Permittee receives a \$1,000 deposit for services to be provided at a later date, the deposit must be reported at the time of payment, regardless of when the service is provided. All sales made or services rendered from the Premises shall be construed as made and

completed therein even though payment therefor may be made at some other place, and although delivery of merchandise sold, or services rendered upon the Premises may be made other than at the Premises. Gross Receipts shall include receipts from all sponsorships, whether in cash or as discounts against purchase price of materials, equipment, or commodities.

"Gross Receipts" shall also include all sales made by any other operator or operators using the Licensed Premises, under a properly authorized sub-permit or subcontract agreement provided that Gross Receipts shall also include Permittee's income from rental and sub-permit, or subcontracting fees and commissions Permittee receives in connection with all services provided by Permittee's subcontractors or sub-permittees, unless otherwise approved in writing by Parks.

"Gross Receipts" shall include sales made for cash or credit (credit sales shall be included in Gross Receipts as of the date of the sale) regardless of whether the sales are paid or uncollected, it being the distinct intention and agreement of the parties that all sums due to be received by Permittee from all sources from the operation of this Permit shall be included in Gross Receipts.

2. TRANSFERS. This Permit is issued solely to the Permittee on the basis of statements Permittee submitted in its proposal form submission. 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' written consent. All terms and conditions of sub-permit agreements and operations, including payment to the City, are subject to Parks' prior written approval.

3. 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 bills, bank statements or rental/lease agreements, or a certificate of incorporation. Documents listing a post office box or commercial receiving agency as the mailing address are not acceptable to Parks. Permittee shall notify Parks immediately of any change in either Permittee's address or phone number as set forth on the Cover Page. Permittee is prohibited from giving false information. The giving of false information by Permittee is a breach of this Permit and grounds for revocations of this Permit.

4. ASSUMPTION OF RISK. In accepting this Permit, Permittee assumes all the risks involved in operating this concession. Permittee represents that Permittee has inspected the Premises and found it suitable for Permittee's purpose and found it in suitable condition for Permittee's purpose. 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

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security at all times for Permittee's equipment, products and personnel.

5. SCOPE OF PERMIT. Parks authorizes Permittee to operate the Concession described on the Cover Page in accordance with the terms and conditions set forth in this Permit. Permittee shall renovate, operate, and maintain the Concession during all Special Events during the Term and as otherwise needed by Parks. Parks shall give Permittee at least thirty (30) days' written notice of each period of operation, which shall include time for Permittee to set up and remove any equipment needed for its operations under this Permit. This Permit does not convey any leasehold or other proprietary right or interest. This Permit shall only become effective upon Permittee's receipt of a written Notice to Proceed from Parks.

6. OPERATIONS.

(a) The Concession granted by this Permit is for the operation of a parking lot at Randall's Island. The Concession must be opened, operated, staffed, and maintained during and following all Special Events during the Term and as otherwise needed by Parks according to a schedule and staffing plan approved by Parks. All plans, schedules, prices and fees, and hours of operation are subject to Parks' prior written approval. All hours of operation are dependent on both individual events and the potential daily valet operations, and are subject to Parks' prior, written approval. The Concessionaire shall be required to provide and maintain, at its sole cost and expense, accessible spectator parks and shall provide traffic management, appropriate signage (on Randall's Island and, if possible, on the Robert F. Kennedy Bridge) and security for the designated parking areas during and following events. At its sole discretion, but based upon written request from Permittee, Parks may allow changes to Permittee's approved operating hours/schedule. If the request is granted by the Commissioner, the Concessionaire shall continue to be responsible for all other obligations under the Permit, including the payment of all fees. Permittee shall coordinate with Parks, RIPA, and all other agencies having jurisdiction regarding issues including, but not limited to, access, logistics, and operation.

(b) Permittee, at its sole cost and expense, shall develop, operate, and maintain the Concession granted hereby as a high quality concession for the use and enjoyment of the general public, and in such manner as the Commissioner shall prescribe and as permitted by, and in compliance with, all national safety guidelines and all laws, rules, regulations and orders related to the operation and management of the Premises of all government agencies having jurisdiction. Permittee shall obtain all necessary approvals, permits and licenses for the lawful operation of the concession from City, State and federal agencies

having jurisdiction. Permittee shall operate and occupy the Premises in accordance with all applicable laws and shall, at its sole cost and expense, obtain all licenses and permits that may be required to operate the Premises in accordance with applicable law, including any necessary Certificate(s) of Occupancy. Permittee shall at all times operate the Premises in accordance with the provisions of any required licenses or permits. In the event that at the effective date of this Permit Permittee does not have a Certificate of Occupancy because one is not legally required, then Permittee shall obtain a "Letter of No Objection" from the Department of Buildings. Furthermore, in the event that, at the effective date of this Permit, or at any time during the Term, 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, the Permittee nonetheless chooses not to conduct such operations in temporary structures, then such operations shall not take place unless and until Permittee has obtained the necessary Certificate(s) of Occupancy, if required, or "Letter(s) of No Objection". Nothing in this section shall limit the Permittee's obligation to pay the Permit fees owed to Parks.

(c) The Commissioner retains the right, throughout the Term of this Permit, to approve or disapprove any and all rates, fees and prices to be charged by Permittee for any goods, rights or services provided pursuant to the operation of this Permit. The Parks-approved rates and fees for the commencement of operations hereunder are set forth in **Exhibit B** of the Cover Page.

(d) Permittee shall carefully monitor and record the number of vehicles that enter the parking lots at all times and ensure that the parking lots have a smooth traffic flow to available parking spaces and exit gates. The Concessionaire shall be responsible for ensuring 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. Permittee shall reserve thirty (30) parking spaces at the Premises for Parks and RIPA staff, free of charge unless otherwise agreed to between Permittee and Parks. Permittee shall assist in traffic control exiting the parking lots and off Randall's Island.

(e) The hours of operation and fees for parking must be posted conspicuously at every exit and entrance to each lot at all times. The design, size, color, and placement of such signs are subject to the prior written approval of Parks

(f) Permittee shall not store any equipment or supplies at

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the Premises or on Parks' property without Parks' prior written approval. Permittee shall not place any item upon any public space, including, but not limited to, the ground adjacent to the Premises, without Parks' prior written approval. Permittee agrees that Parks Inspectors and/or Parks Enforcement Officers may confiscate any and all materials found to be outside of the Premises.

(g) Permittee is responsible for the appearance of the concession at all times during the Term. Any and all signage is subject to Parks' prior written approval. The placement, design, and contents of all signage, including signage which includes Permittee's name, trade name(s) and/or logos, at the Permitted Premises, are subject to Parks' prior written approval.

(h) The Earned Sick Time Act, also known as the Paid Sick Leave Law ("PSLL"), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time. Permittee shall comply with the Earned Sick Time Act, also known as the Paid Sick Leave Law, as a Permittee of the City as set forth in the NYC Earned Safe And Sick Time Act Concession Agreement Rider annexed hereto as Exhibit C.

(i) Inspectors from Parks shall visit the Permitted Premises unannounced to inspect operations, ensure proper maintenance of the concession, and determine whether or not Permittee is in compliance with the terms of this Permit. Based on their inspections, Parks may issue directives regarding deficiencies Permittee will be obligated to rectify in a timely fashion. Violations of the terms of this Permit may result in the assessment of liquidated damages (see section 41) which, if not paid promptly, may be deducted from the Permittee's Security Deposit.

(j) The concessionaire agrees to work in good faith to cooperate with Parks efforts to advance Parks-approved volunteering events and programming at or near the Permitted Premises. Parks' concession unit will coordinate these activities with the concessionaire.

(k) Permittee will pay all taxes applicable to the operation of the Concession. For purposes of Permittee's reporting to Parks, Gross Receipts shall exclude the amount of any federal, State, or City sales taxes which are paid by Permittee.

(l) Permittee shall maintain a high level of safety at the Premises and shall comply with all federal, State, and City guidelines regarding safety. Permittee shall also comply with all federal, State, and City laws, rules, and regulations related to the operation and management of the Premises.

(m) Permittee shall prepare and provide to Parks

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

(n) Permittee shall promptly notify Parks of any unusual conditions that may develop in the course of the operation of this Permit such as, but not limited to, fire, flood, casualty and substantial damage of any character.

(o) Permittee shall perform the following temporary improvements to the Premises:

- Improve and provide signage, as needed.
- Clearly mark entrance and exits.
- Install temporary traffic delineators to prevent vehicles from driving over the walkway below the trestle between Lots B and C, described in Exhibit A, attached to the Cover Page.

(p) Permittee agrees to work in good faith to cooperate with parks in efforts to advance Parks-approved volunteering events and programming at or near the Premises. Parks' concession unit will coordinate these activities with the Permittee.

(q) Permittee shall cooperate with parks during special and unanticipated events.

(r) Permittee shall be required to have a sufficient number of staff available at the Premises during regular operating hours to ensure proper operation of the concession. Parks reserves the right to require that all staff wear uniforms that have been approved in writing by Parks. At night, all traffic control attendants must wear reflective vests and carry flashlights or light wands.

7. MUSIC/SOUND LEVELS. Permittee shall comply with all laws, rules and regulations of appropriate agencies, specifically the Department of Environmental Protection ("DEP"), regarding noise levels. Permittee shall be responsible for payment of any and all fees or royalties to the American Society of Composers, Authors and Publishers ("ASCAP"), Broadcast Music, Inc. ("BMI"), or such other entity as they may require for such music or music programming. Permittee may operate and play sound equipment and music only at a sound level reasonably acceptable to the Commissioner. Any musical programming or other types of entertainment must be approved by Parks. Outdoor amplified sound will not be permitted past 10 PM. Any musical programming or other types of entertainment is subject to Parks' approval.

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8. NO EXCLUSIVE RIGHTS GRANTED. This Permit does not grant Permittee exclusive rights to sell in the park in which the Premises are located. Moreover, Parks may grant other Permits to vendors to sell the same or similar items authorized 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.

9. PARKS' ACCESS. Permittee shall provide Parks with full and free access to the Premises to ensure Parks' satisfaction with the Permittee's compliance with the terms of this Permit.

10. DISABLED ACCESS. Permittee shall comply with American with Disabilities Act in the performance of its operations under this Permit. 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 all accessibility requirements whenever possible and not simply provide the minimum level required.

11. TERMINATION. The City may terminate this Permit at any time for any reason. Permittee will be given a written termination notice should the City desire to terminate the Permit, such termination to be immediately effective upon certified delivery by mail or delivery by hand or facsimile. Permittee expressly waives any and all claims against the City for losses and/or damages Permittee may suffer in the event of termination. In the event this Permit is terminated, the City will not reimburse Permittee's unamortized capital improvement costs.

12. 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.

Permittee shall, on or prior to the expiration or termination date, remove all 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 personal property left at the Premises 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 decal stickers issued to Permittee by Parks.

13. RUBBISH REMOVAL AND RECYCLING. Permittee shall in accordance with the operating schedule, at its sole cost and expense, keep the Premises and the area within fifty (50) feet of the Premises clean, neat, and orderly and free of all snow, waste, garbage, refuse, rubbish and litter at all times. Permittee shall complete daily cleaning within two (2) hours of the conclusion of each day's event. Permittee shall clear all snow and ice in the parking lots on the Premises within four (4) hours of the cessation of snowfall or accumulation of ice during the Permit term. Permittee shall provide adequate and easily accessible waste and recycling receptacles approved by Parks, and have these receptacles emptied on a daily basis and removed by a private carter. The location and placement of all receptacles is subject to Parks' prior written approval. Permittee shall comply with all City, State, and federal recycling regulations. Permittee shall provide to Parks a detailed maintenance plan demonstrating how Permittee will keep and maintain the Premises in excellent condition throughout the Term.

14. MAINTENANCE. Permittee shall, at its sole cost and expense (or through arrangements with third parties), maintain, clean, repair, operate and keep the entire Premises in good and safe condition and in accordance with industry standards. This includes, but is not limited to, the maintenance and repair of the entire Permitted Premises, utility systems and connections, sewer systems and connections, equipment, lighting, sidewalks, paved areas, vaults, gutters, curbs, and fixtures. In addition, all signs and structures must be kept in good condition and free of graffiti.

Permittee shall maintain and improve the landscaping at the Premises, including, but not limited to performing any seeding, trimming, pruning, planting, fertilization, terrain shaping, and soil improvements, subject to Section 19. Permittee shall submit to Parks detailed plans of all horticultural and landscaping work to be performed. All work to be performed at the Premises is subject to Parks' prior written approval. Permittee shall obtain any 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' standards.

Permittee is prohibited from cutting down or removing any trees on the Premises without prior written approval from Parks. Any attachments to trees, such as lights, are not permitted.

Permittee shall conduct or cause to be conducted regular pest control inspections and extermination at the Premises, as needed. To the extent that Permittee applies

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pesticides to any property owned or leased by the City, Permittee or any subcontractor 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.

15. LIGHTING. The Permittee shall be responsible for surveying the lighting in the Premises and providing any additional safe lighting throughout the Premises. The Permittee shall also be responsible for replacing lamps after lamp outages.

16. VEHICLES All drivers of vehicles employed in the operation of the concessions are required to obtain and display a Parks-issued Vehicle Permit. Traffic regulations may be subject to change during the Term of the Permit

17. NO TOBACCO/ALCOHOL. The sale and/or advertisement of tobacco products, non-tobacco smoking products, or electronic cigarettes is strictly prohibited. The sale of alcohol is strictly prohibited. The display or placement of advertising of alcoholic beverages shall not be permitted. In addition, smoking of any tobacco product, non-tobacco smoking product and the use of electronic cigarettes are strictly prohibited at the Premises 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 16.

18. NO GLASS BOTTLES OR POLYSTYRENE. Permittee shall not sell any beverages in glass bottles. All beverages must be in non-glass, shatter-proof containers. Also, the use of polystyrene packaging or food containers in the operation of the concession under this Permit is prohibited.

19. TREES All horticultural and landscaping work performed at the Premises is subject to Parks' prior written approval. The Permittee will be required to 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' standards. The cutting down, pruning or removing of any trees on the Premises without prior written approval from Parks and any other entity with jurisdiction over the park within which the Premises is located is strictly prohibited. Any attachments to the trees, such as, but not limited to, lights, will not be permitted.

20. SECURITY. Pursuant to a plan approved in writing by Parks, Permittee, at its sole cost and expense, shall be responsible for all security at the Permitted Premises while operating, and shall provide a 24 hour-a-day security system at the Premises. Permittee shall secure the Premises and all equipment, structures, and inventory every evening.

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

22. 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. All benches, seating areas, parking meters, park and subway entrances and fire hydrants at or in the vicinity of the Premises shall be kept clear of any property of Permittee or other concession-related items.

23. EQUIPMENT. Permittee shall supply, at its own cost and expense, all equipment and materials necessary for the operation of the Concession, including without limitation signs, ticket or money collection booths, vests for its employees on the roadways, and communications equipment. All fixed equipment becomes the property of Parks upon installation, at Parks' option. Should Parks choose not to exercise this option, it will be the responsibility of Permittee, at the end of each Year's operation, to remove fixed equipment and return the Premises to Parks in a condition as good as, or better than, the condition in which it was delivered to Permittee by Parks at the beginning of each Year's operation. Permittee shall maintain all fixtures and equipment in clean, good and safe operating condition without any broken parts or obvious damage and in accordance with industry standards.

24. CAPITAL IMPROVEMENTS.

(a) Permittee shall, subject to the prior approval of Parks and at Permittee's sole cost and expense, complete the capital improvements set forth in **Exhibit D** of the Permit Cover at the Premises ("Capital Improvements"). Permittee shall provide written documentation to Parks of all expenditures for such capital improvements. All designs and work to be performed will require prior approval from Parks, and all other agencies having jurisdiction, including the New York City Public Design Commission's approval, if applicable. Additionally, all necessary permits, approvals and sign-offs for capital work and lawful operation of the Concession must be obtained from the City's Department of Buildings, Department of Health and Mental Hygiene and Fire Department including obtaining a Certificate of Occupancy and Public Assembly permits. Parks must see all designs and approve of all Capital Improvements prior to the commencement of capital work. All Fixed Equipment and all other equipment applied toward the Capital Improvements required in this Section 24, shall

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become the property of Parks upon installation, at Parks' option.

(b) Permittee shall, at its sole cost and expense, expend a minimum of eight thousand two hundred dollars (\$8,200) in Capital Improvements during the Term. Such Capital Improvements shall include, but are not limited to, the items listed in Exhibit D of the Permit Cover.

Permittee recognizes that the design, placement and colors for all vending apparatuses, equipment, and facilities, including but not limited to the ticket booths and signs, are subject to the prior written approval of Parks.

(c) Upon affixing its signature to this Permit, Permittee shall pay to the City the amount of eighty two dollars (\$82.00) 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.

(d) Permittee shall perform and complete all such Capital Improvements at its sole cost and expense and in accordance with designs and plans approved by Parks and other government agencies having jurisdiction. The Permittee shall make no other Capital Improvements or alterations without the prior written consent of the Commissioner.

(e) Parks will use its reasonable efforts to approve or disapprove Permittee's design plans within thirty (30) days of receipt thereof. Permittee shall obtain the services of a New York State Registered Architect or Professional Engineer approved by Parks to review all improvements and/or replacements required under this Permit, to supervise the construction and installation thereof and to assure that the work conforms to the plans approved by Parks and all other agencies having jurisdiction. Permittee shall submit the architect's or engineer's qualifications to Parks for prior written approval.

(f) Permittee shall use its best efforts to minimize the extent to which the public use of the park property of the City is disrupted in connection with the Capital Improvements at the Premises.

(g) Under no condition shall Permittee remove, replant, move, prune, or cut-back any tree, living or dead, in conjunction with Permittee's Capital Improvements, or with any other of Permittee's rights or duties under this Permit, without the express written permission of Parks. Permittee acknowledges that Parks does not intend to authorize the removal of any living trees in conjunction with any of Permittee's rights or duties detailed herein.

(h) Permittee, within three (3) months after certification of final completion of any construction or improvements, shall furnish the Commissioner with a certified statement,

issued by Permittee, detailing the actual costs of the Capital Improvements. Accompanying such statement shall be construction documents, bills, invoices, labor time books, accounts payable, daily reports, bank deposit books, bank statements, checkbooks and canceled checks. Permittee shall maintain accurate books and records of account of construction costs, which shall be segregated from other accounts, or shall itemize and specify those costs attributable to the Premises to permit audit by Parks or the New York City Comptroller upon request.

(i) Pursuant to Section 24(a) and (b), Permittee shall pay all applicable fees and shall submit to Parks and all other governmental agencies having jurisdiction, for prior approval, all plans, specifications, schematics, working and mechanical drawings which shall be signed and sealed by a New York State Registered Architect or Licensed Professional Engineer. All plans, specifications, schematics, and working and mechanical drawings shall be in such detail as Parks shall require. All work shall be undertaken in accordance with the plans, specifications, schematics, and working and mechanical drawings approved in writing in advance by Parks. No Capital Improvement shall be deemed finally completed until the Commissioner certifies in writing that the Capital Improvement has been completed to Commissioner's satisfaction.

(j) At Parks' request, Permittee shall provide Parks with one complete set of final, approved plans on 4 millimeter double matte Mylar. 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 final, approved 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, and, if applicable, the Department of Buildings approval / application number.

(k) For any Capital Improvements commenced under this Permit, Permittee shall apply for applicable licenses from the construction permit office located in the Olmsted Center, Flushing Meadows Corona Park 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 Department of Buildings. Permittee shall notify Commissioner of the specific date on which construction shall begin.

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(l) No temporary storage or other ancillary structures and staging areas may be erected and maintained without a license obtained from Parks' Construction Division, License Office.

(m) 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.

(n) 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, of the best grade and quality, 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.

(o) As required by Section 24-216(b) 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.

(p) Unless otherwise provided, Permittee shall choose the means and methods of completing the Capital Improvements unless the 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 in accordance Section 24(a).

(q) Permittee shall provide written notice to Commissioner when the Capital Improvements are substantially completed. After receiving such notice, Commissioner shall inspect such Capital Improvements. After such inspection Commissioner and Permittee shall jointly develop a single final "punch list" incorporating all findings from such inspection concerning all work not completed to the satisfaction of the Commissioner. Permittee shall proceed with diligence to complete all "punch list" items within a reasonable time as determined

by the Commissioner.

(r) Permittee shall provide Parks with discharges for any and all liens that may be levied against the Capital Improvements during construction of such improvements. Permittee shall use its best efforts to discharge such liens within thirty business days of receipt of lien by Permittee.

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

(t) Neither Parks, nor the City, its 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 does not in fact conform to the requirements of this Permit and from demanding and recovering from the Permittee such damages as Parks or the City may sustain by reason of Permittee's failure to perform each and every part of 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 24(t) signed by the Commissioner or Commissioner's authorized representative.

(u) Upon installation, title to all construction, renovation, improvements, and fixtures made to the Premises 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 items and restore the Premises to the satisfaction of the Commissioner at the sole cost and expense of the Permittee. However, Permittee shall not under any circumstances be required to remove heating, plumbing, air conditioning, electrical wiring, elevators, windows and ventilation fixtures.

(v) Permittee must have an asbestos inspection performed before commencing any construction. In the event asbestos removal is deemed necessary, Permittee shall remove the asbestos pursuant to all applicable, federal, State, and City regulations.

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Permittee's Signature

Date

(w) Prior to commencing any construction or renovation, Permittee shall provide a construction security deposit, in an amount and form approved by Parks, to ensure that all construction and renovation work is completed.

25. SECURITY DEPOSIT. Upon affixing its signature to this Permit, Permittee shall deposit with the City the amount of thirty two thousand nine hundred sixty five dollars and seventy three cents (\$32,965.73) payable to the City of New York Department of Parks & Recreation "PARKS", as its security deposit ("Security Deposit"). The Security Deposit shall be held by the City, without liability for the City to pay interest thereon, as security for the full, faithful and prompt performance of and compliance with each and every term and condition of this Permit to be observed and performed by the Permittee. The Security Deposit shall remain with the City throughout the Term of this Permit. If Permittee fails to perform any of the terms of this Permit, Parks may, at its option, and without prejudice to any other remedy which the City may have on account thereof, appropriate and apply the Security Deposit or as much required to compensate the City (a) toward the payment of sums due from the Permittee or (b) towards any loss, damage or expense sustained by the City resulting from such default on the part of Permittee. If Permittee fails to comply with sections 12, 13, and 14 herein, the costs of clean-up will be deducted from Permittee's 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. 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.

26. LATE PAYMENTS A late charge may be assessed for any fee payment not received by RIPA on or prior to the payment dates specified in the Permit. A late charge of 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 2% late charge in the amount of \$20.00 will be assessed on the 11th day of the month.

27. 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 One Million Dollars (\$1,000,000) per occurrence for bodily injury (including death) and property damage and One Million Dollars (\$1,000,000) for personal and advertising injury, **and if the policy contains an aggregate limit, the aggregate shall apply on a per-location basis and the per-location aggregate shall be at least Two Million Dollars (\$2,000,000).** 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, and the Randall's Island Park Alliance** as Additional Insureds with coverage at least as broad as the most recent edition of ISO Form CG 20 37 or 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, Employer's 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) If vehicles are to be used in connection with Permittee's operations, Permittee shall carry 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 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.

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Permittee's Signature

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(d) Permittee shall maintain comprehensive, broad-form property insurance (such as an “All Risk” policy) covering all buildings, structures, equipment, and fixtures on the Premises (“Concession Structures”), whether existing at the beginning of this License or built at any time before its expiration or termination. Such insurance shall provide full Replacement Cost coverage for the Concession Structures (without depreciation or obsolescence clause) and include, without limitation, coverage for loss or damage by acts of terrorism, water (other than flood-related), wind, subsidence and earthquake. Such insurance shall be “occurrence” (rather than “claims-made”) based and shall designate the Permittee as Named Insured and the City as Additional Insured and Loss Payee as its interests may appear. The limit of such property insurance shall be no less than the full Replacement Cost of all Concession Structures, including, without limitation, the costs of post-casualty debris removal and soft costs, to the extent that such costs can be covered by an “all risk” or “special perils form” insurance policy. If such insurance contains an aggregate limit, it shall apply separately to the Concession Structures.

(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 nature of such operations merits 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 25(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 E** 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 policies required under this section. Such Certificates of Insurance shall comply with the requirements of section 27(b) and section 27(f), as applicable.

(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 section 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 section, 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 section 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 section shall be the greater of (i) the minimum limits set forth in this section or (ii) the limits provided to Permittee 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.

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(p) Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this section, 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 Permittee'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 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 section, or to give the insurance carrier timely notice on behalf of the City, or to do anything else required by this section 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 section 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 section, 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 section (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) In the event Permittee receives notice, from an insurance company or other person, that any insurance

policy required under this section 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 section.

(v) In order to encourage contactless submission of documents, Permittee or Permittee's broker must email all required documents/insurance certificates to the Office of the Concessions Unit.

28. INDEMNIFICATION & HOLD HARMLESS.

(a) i. Permittee shall be solely responsible for the safety and protection of its employees, agents, servants, vendors, sublicensees, subpermittees, contractors, and subcontractors, and for the safety and protection of the employees, agents, or servants of its vendors, sublicensee, subpermittees, contractors or subcontractors.

ii. 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.

iii. 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.

iv. 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

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manner by any Environmental Law based upon, directly or indirectly, its properties or effects.

(b) i. 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, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements) arising out of or related to any of the operations under this Concession (regardless of whether or not Permittee itself had been negligent) and/or the Permittee's failure to comply with the law or any of the requirements of this Concession. 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.

ii. 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.

iii. Permittee's duty to defend, indemnify and hold harmless the City, its officials and employees, 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.

iv. 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.

29. STORAGE/PARKING Parks makes no representation that there is adequate storage space or parking at the Premises. Permittee is responsible, at its sole cost and expense, for obtaining any additional storage space required for the operation of the concession granted hereby. Permittee shall not store any equipment or supplies at the Premises without the prior, written approval of Parks. No item shall be placed upon any

public space, including the ground adjacent to the Premises without Park's prior, written approval. Permittee shall store all outdoor equipment on a nightly basis and anytime the Concession granted hereby is closed. Permittee may not park private, commercial or delivery vehicles at the Premises without Parks' prior approval. All vehicles associated with the Concession granted hereby must operate in compliance with local Department of Transportation ordinances.

30. UTILITIES. Parks makes no representations regarding the adequacy of utilities currently in place at the Premises. Permittee is required, as needed, to connect to and/or upgrade any existing utility service or create a new utility system, and obtain the appropriate permits and approvals. This includes establishing a dedicated meter and/or submeter that captures electricity usage at the Premises and an account with an electric utility company as appropriate. Permittee is required to pay for any and all utility costs connected with the operation of the Concession granted hereby during the Term. These utility costs include, but are not limited to, all water and sewer charges that the Department of Environmental Protection ("DEP") assesses for water usage. Permittee shall be required to adhere to all DEP directives and restrictions regarding drought and water conservation issues during the Permit Term. Permittee is prohibited from unauthorized use of utilities used, operated or owned by the City.

31. RECORDS OF SALES. 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 computerized point-of-sale system, and must include, but is not limited to, details on each sales transaction the item(s) sold, time, date of sale and price of the item sold. All sub-permittees will be subject to the same internal control requirements as the Permittee. Permittee shall maintain records of the following information in a form suitable for audit by Parks or the City Comptroller's Office:

(a) Sales activities at the Permitted Premises recorded separately from any other businesses that may be operated by the Permittee.

(b) 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) All deposits related to revenue under this Permit must be deposited regularly in a separate, dedicated bank account located in New York City.

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(d) Cash receipts from operations under this Permit must be deposited regularly in the aforementioned dedicated bank account located in New York City dedicated to deposits of concession-related revenue and reconciled with the sales reports.

32. STATEMENT OF GROSS RECEIPTS AND INCOME. Permittee shall submit to Parks and RIPA on a monthly basis, a certified statement of Gross Receipts generated from all operations under this Permit for the past season's operations, properly segregated so as to permit audit by the City. Each statement must indicate whether the receipts being reported are inclusive of sales taxes collected or net of taxes; the Permit number, location, and period of time covered. This statement must be submitted on a form provided or approved by Parks. Gross Receipts include the receipts from parking operations and any other sources of revenue.

In addition, within sixty (60) days following the end of each operation year, Permittee shall submit a detailed income and expense statement for the past year's operation.

Permittee shall pay all taxes applicable to the operation of the Concession. Gross Receipts shall exclude the amount of any federal, State or City sales taxes which are paid by the Permittee.

Permittee shall furnish Parks with such other information relating to Permittee's operations under this Permit as Parks may request.

33. 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 or the Commissioner of Parks.

34. COMPLIANCE WITH LAWS/TAXES 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 applicable taxes. If the Premises are in the Borough of Manhattan, south of 96th Street, Permittee shall pay the New York City Commercial Rent or Occupancy taxes. Permittee shall pay all taxes applicable to the operation of the Concession.

35. 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 ten (10) 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 \$250.00 administrative fee for reinstatement of a suspended Permit.

36. 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 from and after the effective date of the notice. 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 at its sole option may extend the Term of this Permit by the amount of time Permittee was prevented from operating.

37. OTHER PERMITS A New York City Department of Parks and Recreation permit is not a substitute for a NYC Department of Consumer and Worker Protection 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 shall check for license/permit requirements with the following:

**NYC Department of Consumer and Worker
Protection Citywide Licensing Center**
42 Broadway, 5th Floor
New York, NY 10004

38. SPECIAL EVENTS

(a) Permittee's Special Events. Subject to prior, written approval from Parks, Permittee may conduct special events or programs at the Premises. 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 weeks in advance of such activities or events. Permittee must document each of its special events via signed sequentially pre-numbered contracts that capture event information, including the time and date of the event, the number of attendees and required payment. All revenue generated through such special events must be reported to Parks as Gross Receipts.

(b) Parks' Special Events. Parks, acting on behalf of the City of New York, and RIPA, reserves the right to host a number of annual events, without cost to Parks, at the Permitted Premises, including benefits and other non-profit or public events. The dates of such events shall be mutually agreed upon by both parties and shall be

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reserved in writing not less than one month in advance. Costs for Parks Special Events must be reported to Parks, but may be excluded from calculation of Gross Receipts.

Permittee shall cooperate with Parks during special and unforeseen or unanticipated events.

39. PERMIT/SIGNAGE DISPLAY. Permittee shall conspicuously display at all times the Permit Decal, and any other permit, license, sticker or identification issued to Permittee by Parks, the City or other governmental agency for display purposes on the cart or equipment necessary for the operation of the concession under this Permit.

Permittee shall not display, place, or permit the display or placement of advertisements in the Premises without the prior written approval of Parks. If advertising is allowed, the following standards will apply: any type of advertising which is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful or obscene as determined by Parks, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11 shall be prohibited. Advertising of product brands is prohibited without Parks' prior written approval.

Any and all signage is subject to Parks' prior written approval. The design and placement of all signage, including signage that includes Permittee's name, trade name(s) and/or logos, is subject to Parks' prior written approval. Permittee shall not place advertisements on the exterior of the Premises. Any prohibited material displayed or placed shall be immediately removed by Permittee upon notice from Parks, at Permittee's sole cost and expense.

Permittee shall be required to 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, signs listing all operating hours, prices, and rates. Permittee shall also be required to 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 facilities can be reported, a statement indicating that the facilities are a Parks' concession, and a phone number for Parks.

40. 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 section shall be deemed a material breach of this Permit for which it may be terminated or suspended.

41. LIQUIDATED DAMAGES.

(a) Inspectors from Parks will visit the site unannounced to inspect operations and ensure proper maintenance of the concession site. Based on their inspections, Parks may issue directives regarding deficiencies the Concessionaire will be obligated to rectify in a timely fashion. Violations of the terms of the Permit may result in the assessment of liquidated damages which, if not paid promptly, may be deducted from the Concessionaire's Security Deposit. If the Concessionaire fails to provide the cleaning, maintenance, and operational services required by the Permit, Parks shall notify the Concessionaire in writing, and the Concessionaire shall be required to correct such shortcomings within the timeframe set forth in such notice. If the Concessionaire fails to cure the violation within the timeframe set forth in the notice, Parks may, at its option, in addition to any other remedies available to it, assess liquidated damages and/or suspend or terminate the 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:

<u>Provision</u>	<u>Liquidated Damage Per Occurrence</u>
Missing or unauthorized price list	\$250
Overcharging	\$350
Expanding	\$350
Blocked Exits	\$350
Improper disposal (Noxious liquids, debris, etc.)	\$350
Equipment or Structure obviously damaged or in poor repair	\$250
Improper storage	\$350
Graffiti or Dirty Facility	\$350
Unauthorized Advertising	\$350
Roving or Vending at Unauthorized Location	\$250
Unauthorized Vehicular Activities	\$350
Operating without applicable permit(s) or license(s)	\$350

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311 sign not displayed	\$250
Failure to provide designated ADA parking spaces	\$250
Unauthorized tapping into utilities used, operated or owned by the City	\$350

Permittee will receive written notice each time that Parks determines Permittee has violated or failed to comply 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 23 herein, to cover the amounts of any outstanding payments for liquidated damages.

(b) 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 10 days of the date the assessment is mailed, the assessment shall be considered final and charged to Permittee's account.

(c) 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.

42. INSPECTIONS AND INVESTIGATIONS

(a) Permittee shall allow the Commissioner, Commissioner's representatives and any other City, state or federal official having jurisdiction and photo identification to inspect the Premises and the vending apparatus 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 paragraph (e) below 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:

AGREED TO: _____
Permittee's Signature

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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 in this section shall be defined as a license, Permit, franchise or concession not granted as a matter of right.

ii. The "person" as used in this section 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 in this section 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 in this section shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

(h) 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 the Permittee, or affecting the performance of this Permit.

43. 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:

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

AGREED TO: _____
Permittee's Signature

Date

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

(d) If the 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, the 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, the 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.

44. WAIVER OF TRIAL BY JURY Permittee hereby waives trial by jury in any action, proceeding, or counterclaim related to this Permit.

45. 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.

For a breach or violation of such representations or warranties, the Commissioner shall have the right to annul this Permit without liability, and the 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.

46. 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.

47. 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.

48. 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 her/his personal interest or the interest of any corporation, partnership or association in which she/he is, directly or indirectly, interested nor shall any such person have any interest, direct or indirect, in this Permit or in the proceeds thereof.

49. 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.

50. INDEPENDENT STATUS OF PERMITTEE Permittee is not an employee of 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,

AGREED TO: _____
Permittee's Signature

Date

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.

51. 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.

52. 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.

53. MARKETING AND SPONSORSHIP AGREEMENTS Permittee must obtain the prior written approval of Parks prior to 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.

54. 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, Concessions Unit, 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 mail addressed to Commissioner of Parks at New York City Department of Parks & Recreation, The Arsenal, 830 Fifth Avenue, New York, NY 10065 and to the attention of Permittee at its address set forth on the Cover Page, or to any other address that Permittee shall have filed with Commissioner.

55. TRADEMARK

(a) Permittee should be aware that the City is the trademark owner of various marks and has licensed the use of those trademarks for use on certain designated merchandise. If 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.

(b) The sale of counterfeit or unlicensed merchandise at this concession will result in the immediate termination of this Permit and seizure of the security deposit.

56. NAMING Any business or trade name with Permittee proposes to use in identifying the Premises or any part of the Premises shall be subject to the prior written approval of the Commissioner. All intellectual property rights in the Premises, and any other names, trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifies, images and other intellectual property that identify Parks are the property of the City ("City IP"). Parks may require that the City own any portion of a new name selected by Permittee for use at the Premises that indicates that it is Parks property or uses a preexisting facility name. The City will not own any portion of a new name that consists of the name, portrait or signature of a living or deceased individual or an identifier that is not otherwise associated with Parks' property.

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

58. SUSTAINABILITY Permittee shall incorporate the following integrated sustainable practices, including, but not limited to:

- traffic delineators made from recycled plastic and rubber,
- Staples Sustainable Earth cleaning products and Webster Earthsense Recycled trash bags;
- Parking office will be equipped with energy efficient air conditioning and lighting options; and
- Adding greenery and perennials annually, including potted plants near the new parking office.

AGREED TO: _____
Permittee's Signature

Date

STATE OF NEW YORK

SS:

COUNTY OF NEW YORK

On this day of 2025 before me personally came Alexander Han to me known, and known to be the Chief of Concessions of the Department of Parks and Recreation of the City of New York, and the said person described in and who executed the forgoing instrument and she acknowledged that she executed the same in her official capacity and for the purpose mentioned therein.

Notary Public

STATE OF NEW YORK

SS:

COUNTY OF

On this day of 2025 before me personally came _____ who, being duly sworn by me did depose and say that s/he is the _____ of _____ and that s/he executed the foregoing instrument and acknowledged that s/he executed the same for the purposes mentioned therein.

Notary Public

AGREED TO: _____
Permittee's Signature

Date