

## REQUEST FOR WAIVER MEMORANDUM

<b>AGENCY:</b> <u>New York City</u> <u>Department of Parks and Recreation ("Parks")</u> <b># VOTES required for proposed action</b> <b>= <u>6</u></b> <input type="checkbox"/> N/A	<b>RECOMMENDED CONCESSIONAIRE</b> <b>Name:</b> <u>City Parks Foundation, Inc.</u> <b>Address:</b> <u>830 Fifth Avenue, 2<sup>nd</sup> Floor, New York, NY 10065</u> <b>Telephone #</b> <u>(212) 360-1399</u> <input checked="" type="checkbox"/> EIN <input type="checkbox"/> <b>SSN #</b> <u>13-3561657</u> <b>Not-for-Profit Organization</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <b>Certified by DSBS as M/WBE</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>UNDERLYING CONCESSION TITLE/ DESCRIPTION:</b> <u>Sole Source License Agreement with City Parks Foundation, Inc. ("CPF") for the right to enter into a naming rights sponsorship agreement for the use of City-owned intellectual property related to the presentation of live events at the SummerStage festival.</u>  <b>CONCESSION I.D.#</b> <u>M10-71-O</u>
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The City Parks Foundation ("CPF") is an independent, nonprofit organization with a mission to offer park programs throughout the five boroughs of New York City. CPF supports New York City neighborhood parks that lack access to private resources, presenting free arts, sports, educational, and community-building programs and making parks a focal point for community development. Founded in 1989, CPF works in hundreds of parks citywide, reaching hundreds of thousands of New Yorkers each year and contributing to the revitalization of communities across the five boroughs.

One of CPF's most popular arts programs is SummerStage, which debuted in 1986. SummerStage is one of the world's largest and most acclaimed outdoor music festivals. Each year, the festival brings approximately 87 free performances to parks throughout the five boroughs reaching more than 230,000 audiences annually. With performances ranging from American pop, Latin and World music to dance, opera, comedy and theater, the festival reflects the dynamic and diverse cultures of New York City, presenting performances by emerging and established musicians, dancers, and literary figures from around the globe. Since its inception, more than six million people from New York City and around the world have enjoyed SummerStage.

CPF is interested in entering into an Agreement with Parks for the right to enter into a naming rights sponsorship agreement for the use of City-owned intellectual property related to the presentation of live events at the SummerStage festival to help further offset the high costs of the maintenance and operations of Rumsey Playfield and other locations where SummerStage events take place, and programming free events as part of SummerStage, including but not limited to attracting a more diverse and higher profile slate of performers.

The unanimous approval of the FCRC is being sought to waive the 40 day notice for SummerStage festival locations outside of Central Park. At the time the original 40 day notice was issued, Parks was not sure of the specific locations that would host SummerStage events outside of Central Park, hence, only the Manhattan Borough President and Community Boards 5, 7, 8, 10, 11 received written notice at least 40 days in advance of the FCRC meeting on

11/14/2018, at which time the Agency sought and received approval to use a different selection procedure. However, all other affected borough presidents and community boards have subsequently been provided with notice. In addition, since some locations are in Manhattan but outside of Central Park, the Manhattan borough president and relevant Manhattan community boards have also subsequently been provided with notice. ~~Most of these~~All borough presidents and community boards have provided waivers for the lack of timely notice, ~~and we anticipate receiving waivers from the remainder shortly. We will provide an update as soon as we receive the remaining waivers.~~

Due to the timing and steps involved with the award of this concession, and CPF's need to obtain a naming rights sponsor and begin advertising and printing materials prior to the beginning of the SummerStage operating season, it is crucial that the Agreement be processed as soon as possible to ensure that all events outside of the Playfield take place as planned. CPF operates SummerStage at a loss and funding from this Agreement will provide a boost to the program. However, both the Agreement and a separate contract between CPF and the naming rights sponsor will need to be in place for CPF to receive funding from a naming rights sponsor. Thus, due to the exigent circumstances outlined above, Parks respectfully requests that the FCRC waive the requirement for the statement of notice to affected community board and Borough Presidents, in accordance with §1-16(b)(4) of the FCRC Rules.

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<b># VOTES required for proposed action</b> <b>= <u>6</u></b> <input type="checkbox"/> <b>N/A</b>		

The City Parks Foundation ("CPF") is an independent, nonprofit organization with a mission to offer park programs throughout the five boroughs of New York City. CPF supports New York City neighborhood parks that lack access to private resources, presenting free arts, sports, educational, and community-building programs and making parks a focal point for community development. Founded in 1989, CPF works in hundreds of parks citywide, reaching hundreds of thousands of New Yorkers each year and contributing to the revitalization of communities across the five boroughs.

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Due to the timing and steps involved with the award of this concession, and CPF's need to obtain a naming rights sponsor and begin advertising and printing materials prior to the beginning of the SummerStage operating season, it is crucial that the Agreement be processed as soon as possible to ensure that all events outside of the Playfield take place as planned. CPF operates SummerStage at a loss and funding from this Agreement will provide a boost to the program. However, both the Agreement and a separate contract between CPF and the naming rights sponsor will need to be in place for CPF to receive funding from a naming rights sponsor. Thus, due to the exigent circumstances outlined above, Parks respectfully requests that the FCRC waive the requirement for the statement of notice to affected community board and Borough Presidents, in accordance with §1-16(b)(4) of the FCRC Rules.

CONCESSION AGREEMENT RECOMMENDATION FOR AWARD MEMORANDUM COVER SHEET		
<i>(Attach, in the following order, applicable CRFA Memo, Responsibility Determination Form, approved CPSR Cover Sheet and, if the selection procedure was not CSB, the CPSR Memo and CCPO Memo (if applicable) )</i>		
<b>AGENCY:</b> <u>New York City Department of Parks and Recreation ("Parks")</u>  <b># VOTES required for proposed action</b> = <u>4</u> <input type="checkbox"/> N/A	<b>RECOMMENDED CONCESSIONAIRE</b> <b>Name:</b> <u>City Parks Foundation, Inc.</u> <b>Address:</b> <u>830 Fifth Avenue, 2<sup>nd</sup> Floor, New York, NY 10065</u> <b>Telephone #</b> <u>(212) 360-1399</u> <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN # <u>13-3561657</u> <b>Not-for-Profit Organization</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <b>Certified by DSBS as M/WBE</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>CONCESSION TITLE/ DESCRIPTION:</b> <u>Sole Source License Agreement with City Parks Foundation, Inc. ("CPF") for the right to enter into a naming rights sponsorship agreement for the use of City-owned intellectual property related to the presentation of live events at the SummerStage festival.</u>  <b>CONCESSION I.D.#</b> <u>M10-71-O</u>
<b>LOCATION OF CONCESSION SITE(S*)</b> <b>Rumsey Playfield, Central Park</b> <b>Address</b> <u>Central Park at East 71<sup>st</sup> Street; New York, NY</u> <input type="checkbox"/> N/A    *Attach additional sheet <b>Borough</b> <u>Manhattan</u> <b>C.B.</b> <u>5, 7, 8, 10, 11</u> <b>Block #</b> <u>111</u> <b>Lot #</b> <u>1</u>  <b>John V. Lindsay East River Park</b> <b>Address</b> <u>Montgomery St. To E. 12 St., FDR Drive</u> <b>Borough</b> <u>Manhattan</u> <b>C.B.</b> <u>3</u> <b>Block #</b> <u>262</u> <b>Lot #</b> <u>200</u>  <b>Tompkins Square Park</b> <b>Address</b> <u>Ave. A To Ave. B, E. 7 St. To E. 10 St.</u> <b>Borough</b> <u>Manhattan</u> <b>C.B.</b> <u>3</u> <b>Block #</b> <u>403</u> <b>Lot #</b> <u>1</u>  <b>Jackie Robinson Park</b> <b>Address</b> <u>Bradhurst Av and Edgecombe Ave, W 145 St to 155 St</u> <b>Borough</b> <u>Manhattan</u> <b>C.B.</b> <u>9, 10</u> <b>Block #</b> <u>2052</u> <b>Lot #</b> <u>1</u>  <b>Marcus Garvey Park</b> <b>Address</b> <u>Madison Ave. E. 120 St. to E. 124 St</u> <b>Borough</b> <u>Manhattan</u> <b>C.B.</b> <u>11</u> <b>Block #</b> <u>1719</u> <b>Lot #</b> <u>1</u>  <b>Brooklyn Bridge Park</b> <b>Address</b> <u>Furman St., Water St. and John St. between Atlantic Ave., Old Fulton St., Main St., Adams St., and Jay St</u> <b>Borough</b> <u>Brooklyn</u> <b>C.B.</b> <u>2, 6</u> <b>Block #</b> <u>199</u> <b>Lot #</b> <u>3</u>  <b>Herbert Von King Park</b> <b>Address</b> <u>Marcy Ave., Tompkins Ave., bet. Greene Ave. and Lafayette Ave.</u> <b>Borough</b> <u>Brooklyn</u> <b>C.B.</b> <u>3</u> <b>Block #</b> <u>1790</u> <b>Lot #</b> <u>1</u>  <b>Ford Amphitheatre at Coney Island</b> <b>** (possible location)</b> <b>Address</b> <u>3052 West 21 Street</u> <b>Borough</b> <u>Brooklyn</u> <b>C.B.</b> <u>13</u> <b>Block #</b> <u>7071</u> <b>Lot #</b> <u>100</u>  <b>Betsy Head Park</b> <b>Address</b> <u>Blake Ave., Dumont Ave., Livonia Ave. bet. Strauss St., Hopkinson Ave. and Bristol St.</u> <b>Borough</b> <u>Brooklyn</u> <b>C.B.</b> <u>16</u> <b>Block #</b> <u>3570</u> <b>Lot #</b> <u>1</u>  <b>Crotona Park</b> <b>Address</b> <u>Crotona Park North to South, Fulton Ave to Southern Blvd and Crotona Park East</u> <b>Borough</b> <u>Bronx</u> <b>C.B.</b> <u>3</u> <b>Block #</b> <u>2942</u> <b>Lot #</b> <u>1</u>  <b>Williamsbridge Oval</b> <b>Address</b> <u>Van Cortlandt Ave. East, Reservoir Oval East</u> <b>Borough</b> <u>Bronx</u> <b>C.B.</b> <u>7</u> <b>Block #</b> <u>3343</u> <b>Lot #</b> <u>400</u>		

**Soundview Park****Address** Bronx River, Bronx River Ave. bet. Lafayette Ave., Surf Dr.**Borough** Bronx **C.B.** 9 **Block #** 3543 **Lot #** 1**Socrates Sculpture Park****Address** Vernon Blvd., bet. Broadway and 30 Dr.**Borough** Queens **C.B.** 1 **Block #** 501 **Lot #** 16**Queensbridge Park****Address** Queensboro Bridge, 41 Rd., 40 Ave. between The East River, Vernon Blvd., and 21 St.**Borough** Queens **C.B.** 1, 2 **Block #** 477 **Lot #** 49**Flushing Meadows Corona Park****Address** Grand Central Pkwy., Whitestone Exwy. bet. 111 St. and College Point Blvd., Park Drive East**Borough** Queens **C.B.** 3, 4, 6, 7, 8 **Block #** 2209 **Lot #** 10**Springfield Park****Address** 149 Ave. Springfield Blvd, 145 Rd, 184 St**Borough** Queens **C.B.** 13 **Block #** 13361 **Lot #** 100**Clove Lakes Park****Address** Forest Ave., Victory Blvd., between Clove Rd. and Brookside Ave., Royal Oak Rd.**Borough** Staten Island **C.B.** 1 **Block #** 319 **Lot #** 1**Corporal Thompson Park****Address** Broadway, Henderson Ave., Chappell St.**Borough** Staten Island **C.B.** 1 **Block #** 186 **Lot #** 119**SELECTION PROCEDURE**

(\*CCPO approval of CRFA required)

- ☐ Competitive Sealed Bids
- ☐ Competitive Sealed Proposals\* (☐ FCRC approved Agency request to deviate from final recommendation of the Selection Committee on \_\_/\_\_/\_\_)
- ☒ Different Selection Procedure: \* (☒ Sole Source Agreement ☐ Other \_\_\_\_\_ )
- > FCRC approved different selection procedure on 11/14/2018.
- ☐ Negotiated Concession\*

**CONCESSION AGREEMENT TERM****Initial Term:** Notice to Proceed through June 27, 2023**Renewal Option(s) Term:** n/a**Total Potential Term:** Approximately five (5) years☐ \* >20 years – FCRC unanimously approved term on  
\_\_/\_\_/\_\_**ANNUAL REVENUE**

(Check all that apply)

(☐ Additional sheet (☐s) attached)

- ☐ **Annual Fee(s)** \$ \_\_\_\_\_
- ☐ **% Gross Receipts** \_\_\_\_\_%
- ☐ **The Greater of Annual Minimum Fee(s of \$ \_\_\_\_\_ v. \_\_\_\_\_% of Gross Receipts**
- ☒ **Other**  
In lieu of a license fee, CPF shall use any revenue it receives to offset the high costs of the maintenance and operations of the Playfield and other locations where SummerStage events take place, and programming free events as part of SummerStage; including but not limited to attracting a more diverse and higher profile slate of performers ("Operating Costs"). In no event shall the revenue received by CPF from this Agreement during any fiscal year exceed the difference between the Operating Costs and the revenue received by CPF from sources other than this Agreement pursuant to separate agreements that is applied to the Operating Costs (the "Difference"). If at any time revenue received from the operation of the concession is projected by Parks to exceed the Difference, Parks shall direct CPF to implement a plan to provide additional

	SummerStage related services, including but not limited to additional free events, subject to the prior written approval of Parks.
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<p align="center"><b>NOTIFICATION REQUIREMENTS</b></p> <p><b>Subject concession was awarded by CSB or CSP.</b> <span style="float:right"><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</span></p> <p>If YES, check the applicable box(es) below:</p> <p><input type="checkbox"/> The subject concession is a Significant Concession and the Agency completed its consultations with each affected CB/BP regarding the scope of the solicitation by __/__/__, which was at least 30 days prior to its issuance.</p> <p><input type="checkbox"/> The subject concession is a Significant Concession and the Agency included this concession in the Agency's Plan and completed consultations with each affected CB/BP pursuant to §1-10 of the Concession Rules.</p> <p><input type="checkbox"/> The subject concession was determined not to be a Major Concession and the Agency sent notification of such determination to each affected CB/BP by __/__/__, which was at least 40 days prior to issuance of the solicitation.</p> <p>If NO, check the applicable box below:</p> <p><input checked="" type="checkbox"/> Originally, Parks was not sure of the specific locations that would host SummerStage events outside of Central Park. As a result, only the Manhattan Borough President and Community Boards 5, 7, 8, 10, 11 received written notice at least 40 days in advance of the FCRC meeting on 11/14/2018, at which the Agency sought and received approval to use a different selection procedure. Since that date, Parks has determined those specific locations, and all other affected borough presidents and community boards have subsequently been provided with notice. In addition, since some locations are in Manhattan but outside of Central Park, the Manhattan borough president and relevant Manhattan community boards have also subsequently been provided with notice. <u>All borough presidents and community boards have since provided waivers for the lack of timely notice.</u> Parks has requested a waiver of the 40 day notice requirement, in accordance with §1-16(b)(4) of the FCRC Rules, for those other locations in a separate Calendar Item appearing on the same calendar as this Calendar Item.</p> <p><input type="checkbox"/> The Agency certifies that each affected CB/BP received written notice on __/__/__, at the time that a notice of intent to enter into negotiations was published for the subject concession, and provided a copy of such notification to the members of the Committee within five days on __/__/__.</p> <p><input type="checkbox"/> The Agency certifies that based on exigent circumstances the FCRC unanimously approved waiver of advance written notice to each affected CB/BP on __/__/__.</p>
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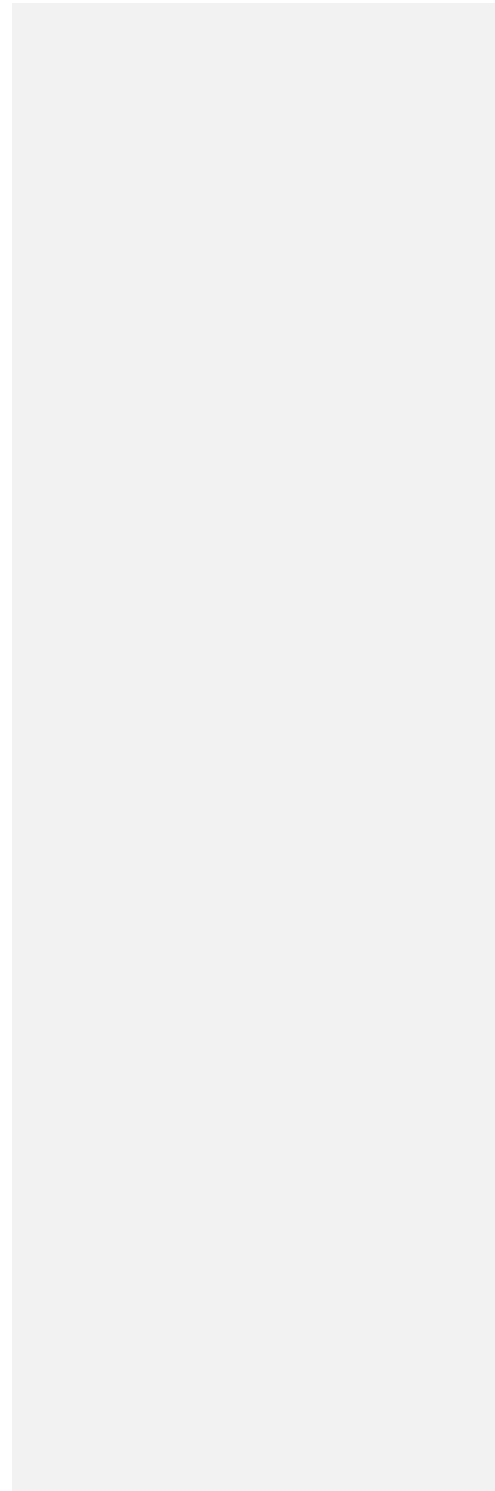
<p><b>Law Department approved concession agreement on</b> __/__/__</p> <p><b>Award is a major concession.</b> <span style="float:right"><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</span></p> <p>If YES, award was approved pursuant to Sections 197-c and 197-d of the NYC Charter as follows:</p> <p><input type="checkbox"/> CPC approved on __/__/__ <input type="checkbox"/> City Council approved on __/__/__ or <input type="checkbox"/> N/A</p>
<p align="center"><b>AUTHORIZED AGENCY STAFF</b></p> <p><b>This is to certify that the information presented herein is accurate and that I find the proposed concessionaire to be responsible and approve of the award of the subject concession agreement.</b></p> <p>If the concession was awarded by other than CSB or CSP, additionally check the applicable box below:</p> <p><input type="checkbox"/> The concession was approved by the FCRC on __/__/__.</p> <p><input type="checkbox"/> The concession was not subject to the approval of the FCRC because it has a term of &lt;30 days and is not subject to renewal.</p> <p>Name <u>Alexander Han</u> Title <u>Director of Concessions</u></p> <p>Signature _____ Date <u>  </u> / <u>  </u> / <u>  </u></p>

**CERTIFICATE OF PROCEDURAL REQUISITES**

This is to certify that the agency has complied with the prescribed procedural requisites for award of the subject concession agreement.

Signature \_\_\_\_\_  
City Chief Procurement Officer

Date \_\_/\_\_/\_\_





**CONCESSION AGREEMENT RECOMMENDATION FOR AWARD MEMORANDUM COVER SHEET**

(Attach, in the following order, applicable CRFA Memo, Responsibility Determination Form, approved CPSR Cover Sheet and, if the selection procedure was not CSB, the CPSR Memo and CCPO Memo (if applicable) )

**AGENCY:** New York City Department of Parks and Recreation ("Parks")

**# VOTES required for proposed action**  
= 4 ☐ N/A

**RECOMMENDED CONCESSIONAIRE**

**Name:** City Parks Foundation, Inc.

**Address:** 830 Fifth Avenue, 2<sup>nd</sup> Floor, New York, NY 10065

**Telephone #** (212) 360-1399 ☒ **EIN** ☐ **SSN #** 13-3561657

**Not-for-Profit Organization**

☒ **Yes** ☐ **No**

**Certified by DSBS as M/WBE**

☐ **Yes** ☒ **No**

**CONCESSION TITLE/ DESCRIPTION:**

Sole Source License Agreement with City Parks Foundation, Inc. ("CPF") for the right to enter into a naming rights sponsorship agreement for the use of City-owned intellectual property related to the presentation of live events at the SummerStage festival.

**CONCESSION I.D.#**  
M10-71-O

**LOCATION OF CONCESSION SITE(S\*)**

**Rumsey Playfield, Central Park**

**Address** Central Park at East 71<sup>st</sup> Street; New York, NY

**Borough** Manhattan **C.B.** 5, 7, 8, 10, 11 **Block #** 111 **Lot #** 1

☐ **N/A** \*Attach additional sheet

**John V. Lindsay East River Park**

**Address** Montgomery St. To E. 12 St., FDR Drive

**Borough** Manhattan **C.B.** 3 **Block #** 262 **Lot #** 200

**Tompkins Square Park**

**Address** Ave. A To Ave. B, E. 7 St. To E. 10 St.

**Borough** Manhattan **C.B.** 3 **Block #** 403 **Lot #** 1

**Jackie Robinson Park**

**Address** Bradhurst Av and Edgecombe Ave, W 145 St to 155 St

**Borough** Manhattan **C.B.** 9, 10 **Block #** 2052 **Lot #** 1

**Marcus Garvey Park**

**Address** Madison Ave, E. 120 St. to E. 124 St

**Borough** Manhattan **C.B.** 11 **Block #** 1719 **Lot #** 1

**Brooklyn Bridge Park**

**Address** Furman St., Water St. and John St. between Atlantic Ave., Old Fulton St., Main St., Adams St., and Jay St

**Borough** Brooklyn **C.B.** 2, 6 **Block #** 199 **Lot #** 3

**Herbert Von King Park**

**Address** Marcy Ave., Tompkins Ave., bet. Greene Ave. and Lafayette Ave.

**Borough** Brooklyn **C.B.** 3 **Block #** 1790 **Lot #** 1

**Ford Amphitheatre at Coney Island** \*\*(possible location)

**Address** 3052 West 21 Street

**Borough** Brooklyn **C.B.** 13 **Block #** 7071 **Lot #** 100

**Betsy Head Park**

**Address** Blake Ave., Dumont Ave., Livonia Ave. bet. Strauss St., Hopkinson Ave. and Bristol St.

**Borough** Brooklyn **C.B.** 16 **Block #** 3570 **Lot #** 1

**Crotona Park**

**Address** Crotona Park North to South, Fulton Ave to Southern Blvd and Crotona Park East

**Borough** Bronx **C.B.** 3 **Block #** 2942 **Lot #** 1

**Williamsbridge Oval**

**Address** Van Cortlandt Ave. East, Reservoir Oval East

**Borough** Bronx **C.B.** 7 **Block #** 3343 **Lot #** 400

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- > FCRC approved different selection procedure on 11/14/2018.
- ☐ Negotiated Concession\*

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(☐ Additional sheet (☐s) attached)

- ☐ Annual Fee(s) \$ \_\_\_\_\_
- ☐ % Gross Receipts \_\_\_\_\_%
- ☐ The Greater of Annual Minimum Fee(s of \$\_\_\_\_\_ v. \_\_\_\_\_% of Gross Receipts
- ☒ Other
- In lieu of a license fee, CPF shall use any revenue it receives to offset the high costs of the maintenance and operations of the Playfield and other locations where SummerStage events take place, and programming free events as part of SummerStage; including but not limited to attracting a more diverse and higher profile slate of performers ("Operating Costs"). In no event shall the revenue received by CPF from this Agreement during any fiscal year exceed the difference between the Operating Costs and the revenue received by CPF from sources other than this Agreement pursuant to separate agreements that is applied to the Operating Costs (the "Difference"). If at any time revenue received from the operation of the concession is projected by Parks to exceed the Difference, Parks shall direct CPF to implement a plan to provide additional

SummerStage related services, including but not limited to additional free events, subject to the prior written approval of Parks.

#### NOTIFICATION REQUIREMENTS

**Subject concession was awarded by CSB or CSP.**

☐ YES ☒ NO

If YES, check the applicable box(es) below:

- ☐ The subject concession is a Significant Concession and the Agency completed its consultations with each affected CB/BP regarding the scope of the solicitation by \_\_/\_\_/\_\_, which was at least 30 days prior to its issuance.
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- ☐ The subject concession was determined not to be a Major Concession and the Agency sent notification of such determination to each affected CB/BP by \_\_/\_\_/\_\_, which was at least 40 days prior to issuance of the solicitation.

If NO, check the applicable box below:

☒ Originally, Parks was not sure of the specific locations that would host SummerStage events outside of Central Park. As a result, only the Manhattan Borough President and Community Boards 5, 7, 8, 10, 11 received written notice at least 40 days in advance of the FCRC meeting on 11/14/2018, at which the Agency sought and received approval to use a different selection procedure. Since that date, Parks has determined those specific locations, and all other affected borough presidents and community boards have subsequently been provided with notice. In addition, since some locations are in Manhattan but outside of Central Park, the Manhattan borough president and relevant Manhattan community boards have also subsequently been provided with notice. All borough presidents and community boards have since provided waivers for the lack of timely notice. Parks has requested a waiver of the 40 day notice requirement, in accordance with §1-16(b)(4) of the FCRC Rules, for those other locations in a separate Calendar Item appearing on the same calendar as this Calendar Item.

- ☐ The Agency certifies that each affected CB/BP received written notice on \_\_/\_\_/\_\_, at the time that a notice of intent to enter into negotiations was published for the subject concession, and provided a copy of such notification to the members of the Committee within five days on \_\_/\_\_/\_\_.
- ☐ The Agency certifies that based on exigent circumstances the FCRC unanimously approved waiver of advance written notice to each affected CB/BP on \_\_/\_\_/\_\_.

**Law Department approved concession agreement on \_\_/\_\_/\_\_**

**Award is a major concession.**

☐ YES ☒ NO

If YES, award was approved pursuant to Sections 197-c and 197-d of the NYC Charter as follows:

☐ CPC approved on \_\_/\_\_/\_\_ ☐ City Council approved on \_\_/\_\_/\_\_ or ☐ N/A

#### AUTHORIZED AGENCY STAFF

This is to certify that the information presented herein is accurate and that I find the proposed concessionaire to be responsible and approve of the award of the subject concession agreement.

If the concession was awarded by other than CSB or CSP, additionally check the applicable box below:

- ☐ The concession was approved by the FCRC on \_\_/\_\_/\_\_.
- ☐ The concession was not subject to the approval of the FCRC because it has a term of <30 days and is not subject to renewal.

Name Alexander Han

Title Director of Concessions

Signature \_\_\_\_\_

Date \_\_/\_\_/\_\_

**CERTIFICATE OF PROCEDURAL REQUISITES**

This is to certify that the agency has complied with the prescribed procedural requisites for award of the subject concession agreement.

Signature \_\_\_\_\_

Date \_\_/\_\_/\_\_

**City Chief Procurement Officer**

**RECOMMENDATION FOR AWARD OF CONCESSION AGREEMENT MEMORANDUM:-**  
**CONCESSION AGREEMENT AWARDED BY OTHER THAN CSB OR CSP**

**SUMMARY OF PROPOSED CONCESSION USE (Attach Proposed Agreement)**

The New York City Department of Parks and Recreation ("Parks") intends to seek Franchise and Concession Review Committee ("FCRC") approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into a Sole Source License Agreement ("Agreement") with City Parks Foundation, Inc. ("CPF") for the right to enter into a naming rights sponsorship agreement for the use of City-owned intellectual property related to the presentation of live events at the SummerStage festival.

**Instructions:** *Provide all information requested below; check all applicable boxes.*

**A. SELECTION PROCEDURE**

☒ Sole Source

☐ Other *Describe:*

**B. NEGOTIATIONS**

**Instructions:** *Describe the nature of negotiations conducted, including negotiations with respect to the amount of revenue offered.*

The term of this Agreement shall expire on June 27, 2023.

In lieu of a license fee, CPF shall use any revenue it receives to offset the cost of free events and the high costs of the maintenance and operations of the Playfield and other locations where SummerStage events take place, and programming free events as part of SummerStage, including but not limited to attracting a more diverse and higher profile slate of performers ("Operating Costs"). In no event shall the revenue received by CPF from this Agreement during any fiscal year exceed the difference between the Operating Costs and the revenue received by CPF from sources other than this Agreement pursuant to separate agreements that is applied to the Operating Costs (the "Difference"). If at any time revenue received from the operation of the concession is projected by Parks to exceed the Difference, Parks shall direct CPF to implement a plan to provide additional SummerStage related services, including but not limited to additional free events, subject to the prior written approval of Parks.

**C. BASIS FOR AWARD** (If sole source award, attach the offer; if other than a sole source award, attach the three highest rated offers, if applicable.)

**The agency determined that award of the concession is in the best interest of the City because:**

CPF is an independent, nonprofit organization with a mission to offer park programs throughout the five boroughs of New York City. CPF supports New York City neighborhood parks that lack access to private resources, presenting free arts, sports, educational, and community-building programs and making parks a focal point for community development. Founded in 1989, CPF works in hundreds of parks citywide, reaching hundreds of thousands of New Yorkers each year and contributing to the revitalization of communities across the five boroughs.

One of CPF's most popular arts programs is SummerStage, which debuted in 1986. SummerStage is one of the world's largest and most acclaimed outdoor music festivals. Each year, the festival brings approximately 87 free performances to parks throughout the five boroughs reaching more than 230,000 audiences annually. With performances ranging from American pop, Latin and World music to dance, opera, comedy and theater, the

festival reflects the dynamic and diverse cultures of New York City, presenting performances by emerging and established musicians, dancers, and literary figures from around the globe. Since its inception, more than six million people from New York City and around the world have enjoyed SummerStage.

In 2013, Parks entered into a Maintenance and Operation Agreement with CPF for the operation of SummerStage at Rumsey Playfield in Central Park. This agreement was renewed in June 2018. The total cost of the free events, maintenance and operation, and administrative expenses directly related to the SummerStage festival is approximately \$7 million annually. In 2016, CPF entered into a Concession Agreement with Parks for the operation and maintenance of a food, beverage, and merchandise concession related to the presentation of live events at SummerStage in Central Park. The revenue generated from the sale of food, beverages, and merchandise at SummerStage through this concession helps CPF offset the high costs of maintenance and operations of the Playfield and programming and events in Central Park, most of which are offered free of charge, as well as the administrative expenses associated with this very popular series. However, the revenue that is generated from that concession does not cover all of the operational costs.

CPF is interested in entering into an Agreement with Parks for the right to enter into a naming rights sponsorship agreement for the use of City-owned intellectual property related to the presentation of live events at the SummerStage festival to help further offset the high costs of the maintenance and operations of the Playfield and other locations where SummerStage events take place, and programming free events as part of SummerStage, including but not limited to attracting a more diverse and higher profile slate of performers. In no event shall the revenue received by CPF from this Agreement during any fiscal year exceed the difference between the Operating Costs and the revenue received by CPF from sources other than this Agreement pursuant to separate agreements that is applied to the Operating Costs (the "Difference"). If at any time revenue received from the operation of the concession is projected by Parks to exceed the Difference, Parks shall direct CPF to implement a plan to provide additional SummerStage related services.

Given CPF's commitment to providing New Yorkers with world-class entertainment experiences at SummerStage and given CPF's Maintenance and Operation Agreement for the operation of SummerStage, Parks believes that it is in the best interest of the City to enter into an Agreement with CPF, rather than proceed with a competitive solicitation process.

Originally, Parks was not sure of the specific locations that would host SummerStage events outside of Central Park. As a result, only the Manhattan Borough President and Community Boards 5, 7, 8, 10, 11 received written notice at least 40 days in advance of the FCRC meeting on 11/14/2018, at which the Agency sought and received approval to use a different selection procedure. Since that date, Parks has determined those specific locations, and all other affected borough presidents and community boards have subsequently been provided with notice. In addition, since some locations are in Manhattan but outside of Central Park, the Manhattan borough president and relevant Manhattan community boards have also subsequently been provided with notice. All borough presidents and community boards have since provided waivers for the lack of timely notice. Parks has requested a waiver of the 40 day notice requirement, in accordance with §1-16(b)(4) of the FCRC Rules, for those other locations in a separate Calendar Item appearing on the same calendar as this Calendar Item.

Due to the timing and steps involved with the award of this concession, and CPF's need to obtain a naming rights sponsor and begin advertising and printing materials prior to the beginning of the SummerStage operating season, it is crucial that the Agreement be processed as soon as possible to ensure that all events outside of the Playfield take place as planned. CPF operates SummerStage at a loss and funding from this Agreement will provide a boost to the program. However, both the Agreement and the agreement between CPF and the naming rights sponsor will need to be in place for CPF to receive funding from a naming rights sponsor.

D. **PUBLIC HEARING** ☐ N/A – Subject award **NOT** a significant concession]

1. Publication & Distribution of Public Hearing Notice

Formatted: Font: (Default) Tahoma, 11 pt, Not Italic

- ☒ Subject concession is a **Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on 02/23/2019, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on 02/23/2019, which was not less than 15 days prior to the hearing date. Agency also published a public hearing notice twice in the two newspapers indicated below. A copy of each such notice was sent to each affected CB-BP by 02/23/2019.

- ☒ New York Post, a NYC citywide newspaper on 03/01/2019 and 03/08/2019  
☒ New York Daily News, a NYC citywide newspaper on 03/01/2019 and 03/08/2019

**OR**

- ☐ Subject concession is **NOT a Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on   , which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on   , which was not less than 15 days prior to the hearing date. Agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement in the newspapers indicated below. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB-BP by   .

- ☐ , a NYC citywide newspaper on and.  
☐ , a NYC local newspaper published in the affected borough(s) on  
.  
☐ , a NYC local newspaper published in the affected borough(s)  
on.

## 2. Public Hearing Date, Exception to Public Hearing Requirement

- ☒ A Public Hearing was conducted on 03/11/2019.

**OR**

- ☐ The Agency certifies that the total annual revenue to the City from the subject concession does not exceed one million dollars and a Public Hearing was not conducted because, pursuant to §1-13(q)(2) of the Concession Rules, the Agency gave notice of the hearing and did not receive any written requests to speak at such hearing or requests from the Committee that the Agency appear at the hearing. Furthermore, the Agency certifies that it published a notice in the City Record canceling such hearing on   /  /   and sent a copy of that notice to all Committee Members.

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**D. PUBLIC HEARING      ☐ N/A – Subject award NOT a significant concession]**

## **1. Publication & Distribution of Public Hearing Notice**

☒ Subject concession is a **Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on 02/23/2019, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on 02/23/2019, which was not less than 15 days prior to the hearing date. Agency also published a public hearing notice twice in the two newspapers indicated below. A copy of each such notice was sent to each affected CB-BP by 02/23/2019.

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☐ , a NYC citywide newspaper on and.

☐ , a NYC local newspaper published in the affected borough(s) on

☐ , a NYC local newspaper published in the affected borough(s) on.

## **2. Public Hearing Date, Exception to Public Hearing Requirement**

☒ A Public Hearing was conducted on 03/11/2019.

**OR**

☐ The Agency certifies that the total annual revenue to the City from the subject concession does not exceed one million dollars and a Public Hearing was not conducted because, pursuant to §1-13(q)(2) of the Concession Rules, the Agency gave notice of the hearing and did not receive any written requests to speak at such hearing or requests from the Committee that the Agency appear at the hearing. Furthermore, the Agency certifies that it published a notice in the City Record canceling such hearing on   /  /   and sent a copy of that notice to all Committee Members.

LICENSE AGREEMENT

BETWEEN

**CITY OF NEW YORK  
PARKS & RECREATION**

AND

**CITY PARKS FOUNDATION**

*for*

NAMING RIGHTS SPONSORSHIP TO THE SUMMERSTAGE FESTIVAL

NEW YORK, NEW YORK

**M10-71-O**

DATED: \_\_\_\_\_, 2019

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THIS LICENSE AGREEMENT (“License” or “Agreement”), made this \_\_\_\_\_ day of \_\_\_\_\_, 2019 between the City of New York (“City”), a municipal corporation of the State of New York (“State”) acting by and through the Commissioner of the Department of Parks & Recreation (“Commissioner” and “Parks”, respectively), having an office at The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065; and City Parks Foundation, Inc. (“CPF” or “Licensee”), a not-for-profit corporation organized in accordance with the laws of the State, with an office at The Arsenal, Central Park, 830 Fifth Avenue, 2<sup>nd</sup> Floor, New York, NY 10065.

**WITNESSETH**

**WHEREAS**, the Commissioner pursuant to Section 533 of the New York City Charter is charged with the duty to manage, maintain, and operate City parks, buildings, and recreation facilities under the jurisdiction of Parks for the beneficial use of the people of the City, and has the duty to plan, develop, conduct, and enter into arrangements on behalf of Parks and for the benefit of the public; and,

**WHEREAS**, Licensee was formed in 1989 for the purpose of offering various park programs throughout the five (5) boroughs of the City; and,

**WHEREAS**, Licensee supports City neighborhood parks that lack access to private resources by presenting free arts, sports, educational, and community building programs, and making City neighborhood parks a focal point for community development; and,

**WHEREAS**, the Commissioner has jurisdiction over the National Historic Landmark park known as Central Park, located in the Borough of Manhattan; and,

**WHEREAS**, since 1986, the SummerStage Program (“SummerStage” or “the Program”), one of the most popular arts programs in Central Park (and elsewhere in parks throughout New

York City), has contributed to the cultural heritage of the City by presenting performances by emerging and established musicians, dancers, and literary figures from around the globe; and,

**WHEREAS**, the Central Park portion of SummerStage runs from April 1<sup>st</sup> through October 17<sup>th</sup> each year (“Operating Season”) and presents approximately thirty-five (35) days of free performing arts events to an average audience of one hundred sixty thousand (160,000) New Yorkers and visitors annually; and,

**WHEREAS**, the non-Central Park portion of SummerStage runs each summer and is anticipated to present approximately fifty-two (52) free performing arts events to an anticipated audience of seventy thousand (70,000) New Yorkers each summer; and,

**WHEREAS**, Licensee has assumed responsibility for the management and operation of SummerStage since 1993; and,

**WHEREAS**, in June 2013, Parks and Licensee entered into a license agreement (“Maintenance and Operation Agreement” attached hereto as Exhibit A) for the management and operation of SummerStage in Central Park and through Parks’ special event permits Licensee has operated SummerStage events at other Parks locations throughout the City; and,

**WHEREAS**, the total cost of the free events and the maintenance and operation of SummerStage is approximately seven million dollars (\$7,000,000.00) annually and the revenue generated from the Maintenance and Operation Agreement does not cover these costs; and,

**WHEREAS**, Licensee desires to enter into an agreement with a third-party entity (the “Naming Rights Sponsor”) granting certain sponsorship rights related to the presentation of live events at SummerStage in Central Park and other locations approved by Parks and use any revenue generated to offset the high costs of the maintenance and operations of the Rumsey Playfield (“Playfield”) in Central Park and other locations where SummerStage events take place, and

programming free events as part of SummerStage including but not limited to attracting a more diverse and higher profile slate of performers; and,

**WHEREAS**, the Commissioner and Licensee desire to ensure that the coordinated efforts of Parks and Licensee will continue to serve the best interest of the public; and,

**WHEREAS**, Parks and Licensee have collectively created an effective public-private partnership whereby Parks and Licensee complement each other's efforts in connection with ensuring that the public continues to have access to free programs on the Playfield and other locations throughout the City; and,

**WHEREAS**, the Franchise and Concession Review Committee ("FCRC"), has authorized Parks to use a different procedure to enter into this Sole Source License Agreement with CPF.

**NOW, THEREFORE**, in consideration of the promises and mutual covenants contained herein, the City and Licensee covenant and agree as follows:

#### **GRANT OF LICENSE**

**1.1** Parks hereby grants to Licensee and Licensee hereby accepts from Parks a non-exclusive license throughout the Term (i) to enter into an agreement with a Naming Rights Sponsor ("Naming Rights Sponsorship Agreement"), subject to the specifications, terms, reservations and restrictions of this Agreement, for the purpose of publicly identifying and associating SummerStage with such Naming Rights Sponsor, and (ii) to collect all revenues generated by such Sponsorship activities (the "Concession").

**1.2** The terms and conditions of any such Naming Rights Sponsorship Agreement and the entity selected as the Naming Rights Sponsor shall be subject to the prior written approval of Parks the Commissioner. Any such Naming Rights Sponsorship Agreement which is authorized hereunder shall be subject and subordinate to the terms and conditions of this License and the



Maintenance and Operation Agreement and Licensee shall require the Naming Rights Sponsor to acknowledge in writing that it received a copy of this License and the Maintenance and Operation Agreement and that all provisions of this License, and the portions of the Maintenance and Operation Agreement and any other permits applicable to the operations under this License, including but not limiting to those regarding signage and use of the City Property (as hereinafter defined), shall be equally applicable to any Naming Rights Sponsor. Licensee shall require any Naming Rights Sponsor to agree in writing that it will comply with Parks' directives and the provisions of this License and the Maintenance and Operation Agreement applicable to Licensee with respect to the use of the City Property including, but not limited to indemnifying the City as set forth in Paragraph 10 herein, and shall be responsible for assuring such compliance. If the Naming Rights Sponsor does not comply with this License and the Maintenance and Operation Agreement insofar as applicable to it, such Naming Rights Sponsor's operations shall be terminated by Licensee upon direction of Parks. No Naming Rights Sponsorship Agreement may be assigned without the prior written consent of Parks, and Licensee shall ensure that the Naming Rights Sponsorship Agreement provides that the City shall be named a third-party beneficiary of any such Naming Rights Sponsorship Agreement. Any subsequent Naming Rights Sponsorship Agreements will be subject to the terms and conditions as set forth in this License.

**1.3** Licensee shall obtain any and all approvals, permits, and other licenses required by Federal, State and City laws, rules, regulations, and orders which are or may become necessary to operate this Concession, in whole or in part, in accordance with the terms of this License. In order to be in compliance with this License, Licensee must fulfill in all material respects all of the obligations contained herein. Failure to fulfill in all material respects any of the obligations set forth herein for any reason may be deemed as a default by the Commissioner. Whenever any act, consent, approval, or permission is required of the City or the Commissioner under this License, the same

shall be valid only if it is, in each instance, in writing and signed by the Commissioner or his duly authorized representative, and such approval or permission shall not be unreasonably withheld or delayed. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon the City, the Commissioner, or their agents, unless the same is, in each instance, in writing and duly signed by the Commissioner or his duly authorized representative.

1.4 Licensee shall ensure that any Naming Rights Sponsor whose aggregate value of City contracts, franchises, and concessions awarded during the past twelve-month period equals or exceeds one hundred thousand dollars (\$100,000) enrolls in the Mayor's Office of Contract Services' Procurement and Sourcing Solutions Portal (PASSPort).

## **TERM**

**2.1** This License shall become effective upon registration with the Comptroller and commence upon the date written in a written Notice to Proceed issued to Licensee by Parks ("Commencement Date") and, unless terminated sooner in accordance with this License, shall terminate on the same date as the Maintenance and Operation Agreement (June 27, 2023) ("Termination Date"). The period between the Commencement Date and the Termination Date shall be the "Term." In no event shall the Term exceed the term of the Maintenance and Operation Agreement.

**2.2** Notwithstanding any language contained herein, this License is terminable at will by the Commissioner at any time. Such termination shall be effective upon twenty-five (25) days' written notice to Licensee. The City, its employees, and its agents shall not be liable for damages to Licensee if this License is terminated by Commissioner as provided for in this Section 2.2.

## **LICENSING AND INTELLECTUAL PROPERTY**

**3.1** Subject to the limitations, terms and conditions set forth in this Agreement, the City hereby grants to Licensee a non-exclusive license to use, during the Term, the City trademark (the "City Property"), attached hereto as Schedule A, to, upon prior written approval by Parksthe

Commissioner, directly or indirectly develop, market, and promote the Program in connection with the Naming Rights Sponsorship Agreement.

**3.2** Licensee shall work with the Naming Rights Sponsor to develop, at Licensee's expense, a graphic design ("Artwork") incorporating the Sponsor's trademarks, logos, servicemarks, and other intellectual property identified and given prior approval in writing by the Commissioner for use in connection with this Naming Rights Sponsorship agreement, (individually and/or collectively the "Sponsor Property"), City Property, and/or Licensee's trademarks, logos, servicemarks, and other intellectual property identified and given prior approval in writing by the Commissioner for use in connection with this Naming Rights Sponsorship agreement, (individually and/or collectively the "Licensee Property") to be used for marketing and promotional purposes in connection with the Program. Such Artwork shall be subject to ~~Parks'~~ the Commissioner's prior written approval. To the extent that the Artwork incorporates City Property, the City shall own the portion of any Artwork that consists of or includes City Property.

**3.3** Licensee agrees to use the applicable trademark and copyright notices as directed by the City (™, ® or ©), as well as any additional notations directed by the City in connection with the first and most prominent usages of the City Property in any manner authorized by this

Agreement: "SUMMERSTAGE and its design is the property of the City of New York and may not be reproduced without written consent. © 2019. City of New York. All rights reserved."

Licensee agrees to display the applicable notices and notations as directed by the City on all web sites, displays, advertising, sales brochures, instruction manuals, and other promotional materials (hereinafter the "Promotional Materials"): "SUMMERSTAGE and its design is the property of the City of New York and may not be used or reproduced without prior written consent. © 2019. City of New York. All rights reserved." Any shortened version of such notices may be used only with the ~~City's~~ Commissioner's prior written approval. Licensee shall require the Naming

Rights Sponsor to comply with the provisions of this Section 3.3 in any Naming Rights Sponsorship Agreement. Any failure to do so shall constitute a material breach of this Agreement by Licensee and be cause for immediate termination. [The right to terminate the Agreement pursuant to this Section 3.3 is in addition to any other rights to terminate set forth in this Agreement.](#)

**3.4** Upon termination or expiration of this Agreement, Licensee shall immediately cease using the City Property and cause the Naming Rights Sponsor to cease using the City Property. Failure to do so shall cause immediate and irreparable harm to the City and Licensee and its Naming Rights Sponsor shall acknowledge this and the City shall be entitled to equitable relief in the event that use of City Property does not immediately cease upon termination or expiration of this Agreement.

**3.5** Licensee may not use the City Property or the Artwork for merchandising purposes under this Agreement. The Naming Rights Sponsor may not use the City Property or the Artwork for any merchandising purposes whatsoever. Violation of this section 3.5 shall constitute a material breach of this Agreement by Licensee and be cause for immediate termination. [The right to terminate the Agreement pursuant to this Section 3.5 is in addition to any other rights to terminate set forth in this Agreement.](#)

## **OPERATIONS**

**4.1** Licensee, at its sole cost and expense, shall operate the 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 laws, rules, regulations, and orders of government agencies having jurisdiction, including but not limited to the New York City Paid Sick Leave Law, attached hereto as Exhibit B. Licensee shall obtain written approval from ~~Parks~~ the Commissioner prior to entering into the Naming Rights Sponsorship Agreement. The Naming Rights Sponsor

entering into the Naming Rights Sponsorship Agreement with Licensee may be afforded signage and sponsorship rights as set forth in Schedule B.

**4.2** Licensee shall record all revenue generated as a result of the operation of this License and keep books and records as required and in compliance with the provisions set forth in Paragraphs 12 and 14 and as deemed acceptable by the Commissioner.

**4.3** Licensee shall designate an officer or representative to act as a direct point of contact for the operation of this License or employ an operations manager (“Manager”), qualified to manage operations of the Concession in a manner that is reasonably satisfactory to the Commissioner. Licensee shall replace any Manager, officer, employee, sublicensee, or subcontractor whenever reasonably requested by Commissioner.

**4.4** Licensee shall provide for the transfer of all monies collected to Licensee’s designated banking institution and bear the loss of any lost, stolen, misappropriated, or counterfeit monies derived from operations under this License.

**4.5** Licensee shall comply with all applicable laws, rules and regulations in force as of the date of this Agreement and which may hereafter be adopted.

## **COMPENSATION**

**5.1** In lieu of a license fee, Licensee shall use any revenue it receives from the Naming Rights Sponsorship Agreement to offset the high costs of the maintenance and operations of the Playfield and other locations where SummerStage events take place, and programming free events as part of SummerStage, including but not limited to attracting a more diverse and higher profile slate of performers (“Operating Costs”). In no event shall the revenue received by Licensee from the Naming Rights Sponsorship Agreement during any fiscal year exceed the difference between the Operating Costs and the revenue received by Licensee from sources other than the Naming Rights

Sponsorship pursuant to separate agreements (“Other Revenue Sources”) that is applied to the Operating Costs (the “Difference”). If at any time revenue received from the operation of the Concession is projected by Parks to exceed the Difference, Parks shall direct Licensee to implement a plan to provide additional SummerStage related services, including but not limited to additional free events, subject to the prior written approval of ~~Parks~~the Commissioner. Failure of Licensee to comply with such written directive within the time frame specified therein shall be deemed a material breach of this License and as such will be subject to immediate termination. The right to terminate the Agreement pursuant to this Section 5.1 is in addition to any other rights to terminate set forth in this Agreement. Operating Costs shall include any and all administrative expenses directly related to the cost of events at the Playfield and other locations where SummerStage events take place and operation and maintenance of the Playfield and other locations where SummerStage events take place, including, but not limited to:

- (a) any allocation of Licensee’s office rent or overhead;
- (b) any portion of the salary of the Executive Director or development professionals employed by Licensee; and,
- (c) any other cost, such as insurance, which is expressly stated to be a cost to be borne by Licensee pursuant to this License.

**5.2** No later than sixty (60) days after the end of each Operating Season, Licensee shall deliver to Parks an accounting setting forth its calculation of annual Operating Costs, Other Revenue Sources, and revenue received by Licensee from the operation of the Program for the preceding Operating Season, in accordance with Article 12 herein.

## **SIGNS**

**6.1** Pursuant to the provisions of the Maintenance and Operation Agreement, Licensee shall display, at its sole cost and expense and with the Commissioner’s reasonable approval, such signs

as may be needed to guide and inform the public as to the location, purpose, hours of operation, and related fees of the Playfield. Licensee shall maintain such signs in good condition and repair and shall also include the Parks logo and indicate that the Playfield is operated by Licensee through a license agreement with Parks. All signs must face inward towards the Playfield and not out towards the other areas of Central Park, except those required for directional or instructional purposes. As to any signage under this Agreement related to Program events outside of Central Park, such signage shall be subject to the terms and conditions set forth in the special event permit for that event.

**6.2** Pursuant to the provisions of the Maintenance and Operation Agreement, Licensee shall, at its sole cost and expense, post throughout the Playfield such signs as may be necessary to direct patrons to its services and facilities. Such signs shall include the necessary wording and arrows to direct patrons to Licensee's attendants. Licensee shall, obtain any necessary approvals or permits from any governmental agency with jurisdiction over any nearby highways, streets, or other specified location contemplated for the placement of any signs off-site of the Playfield. The design and content of all such signs, whether on or off Parks' property, are subject to Commissioner's prior written approval. As to any signage under this Agreement related to Program events outside of Central Park, such signage shall be subject to the terms and conditions set forth in the special event permit for that event and subject to the Commissioner's prior written approval.

## **ADVERTISING**

**7.1** Licensee may establish with the Naming Rights Sponsor an advertising and promotion program in compliance with Schedule B, which shall be subject to ~~Parks'~~ the Commissioner's prior written approval. Licensee and/or the Naming Rights Sponsor shall have the right to print or to arrange for the printing of programs or brochures containing City Property and/or the Artwork in connection with any advertising matter except advertising matter which in the sole discretion of

the Commissioner is indecent, in obvious bad taste, which demonstrates a lack of respect for public morals or conduct, or which adversely affects the reputation of SummerStage or the City of New York. If the Commissioner, in the Commissioner's discretion, finds any advertising or other releases to be unacceptable, then Licensee and/or the Naming Rights Sponsor shall cease or alter such advertisements or releases as directed by the Commissioner. The Commissioner shall have prior written approval as to design and distribution of all advertising and promotional materials. The Commissioner shall have prior written approval as to design and distribution of all advertising and promotional materials containing City Property or the Artwork, such as season brochures, which approval shall be exercised within a reasonable period of time following such request.

**7.2** Licensee shall not use City Property or the Artwork to advertise any product brands, commercial goods or services, or any third party without ~~Parks'~~ the Commissioner's prior written approval.

## **TRADEMARK OWNERSHIP**

**8.1** Licensee agrees that by virtue of this Agreement it does not and shall not claim any right, title, or interest in the City Property, or any other intellectual property right owned or claimed by the City or any part thereof (except the right to use them in accordance with this Agreement), and that any and all uses thereof by Licensee shall inure to the benefit of the City, to the extent that such uses incorporate City Property. Licensee acknowledges the City's sole right, title, and interest in and to, and ownership of the City Property (and in the Artwork to the extent it incorporates City Property) and the validity of the trademarks and service marks that are part of the City Property (or Artwork to the extent that it incorporates City Property) and the City's rights therein. Licensee agrees that neither it nor the Naming Rights Sponsor will raise or cause to be raised any challenges, questions, or objections to the validity, registrability, or enforceability of the City Property; the Artwork, to the extent that it includes City Property; to



Article 3, Article 8, and Article 9 herein; or to the validity of the City Property (or the Artwork to the extent that it incorporates City Property) and the City's rights therein, and shall not contest such right and title, nor do or permit to be done any act or omission which will in any way impair the rights of the City with respect to such City Property or the Artwork to the extent that it incorporates City Property. ~~The City acknowledges that the Artwork may or may not include City Property and may consist of or incorporate Sponsor Property to the extent such Artwork is approved in advance by the City Commissioner in its his or her sole discretion in writing.~~

Licensee shall require the Naming Rights Sponsor to comply with the provisions of this Section 8.1 in any Naming Rights Sponsorship Agreement. Any failure to do so shall constitute a material breach of this Agreement by Licensee and be cause for immediate termination.

**8.2** Licensee agrees to assist the City in protecting the City's rights to the City Property (and the Artwork to the extent that it incorporates City Property), including but not limited to reporting to the City any infringement or imitation of the City Property or the Artwork. The City shall have the sole right to determine whether to institute litigation with respect to such infringements of City Property or the Artwork to the extent that it incorporates City Property, as well as the sole right to select counsel. The City may commence or prosecute any claims or suits for infringement of the City Property or the Artwork to the extent that it incorporates City Property in its own name or in the name of Licensee or join Licensee as a party thereto. If the City brings an action against any infringement of the City Property or the portion of any Artwork that infringes City Property, Licensee shall cooperate with the City at its own cost.

**8.3** If claims are made against the City, or Licensee with respect to the use of the City Property or the Artwork to the extent that it incorporates City Property, then the Parties agree to consult with each other on a suitable course of action. In no event shall Licensee, without the prior written consent of the City, have the right to acknowledge the validity of the claim of such

party, to obtain or seek a license from such party, or to take any other action which might impair the ability of the City to defend or otherwise contest the claim of such party. The City shall have the right to participate at its own expense in the defense of any claims or suit instituted against Licensee with respect to the use by Licensee or the Naming Rights Sponsor of the City Property or any Artwork that incorporates City Property.

**8.4** Licensee agrees to make modifications requested by the City in Licensee's or Naming Rights Sponsor's use of the City Property or any Artwork incorporating City Property, if the City, in its sole discretion, determines such action to be necessary or desirable to resolve or settle a claim or suit or to eliminate the threat of a claim or suit by any party.

## **GOODWILL**

**9.1** Licensee and any Naming Rights Sponsor recognize and acknowledge that the City Property, any Artwork to the extent that it incorporates City Property, and the City's name and reputation are the exclusive property of the City and that they communicate to the public, worldwide, a reputation for high standards of quality and service, which reputation and goodwill have been and continue to be unique to the City. Licensee further recognizes and acknowledges that the City Property has acquired secondary meaning in the mind of the public. The City Property or any Artwork to the extent that it incorporates City Property shall not be used in connection with any illegal, illicit or immoral purpose or activity, or in any manner which would be inconsistent with or damaging to the City's name and reputation. The City shall have the right to terminate the license granted by this section immediately, upon written notice, in the event that any part of the City Property or any Artwork to the extent that it incorporates City Property are used by Licensee or the Naming Rights Sponsor in connection with any illegal, illicit or immoral activity. In addition, in the event that any City Property or any Artwork to the extent that it incorporates City Property are used by Licensee or the Naming Rights Sponsor in any way

which, in the reasonable judgment of the Commissioner, is inconsistent with or damaging to the City's name or reputation, the Commissioner shall so notify Licensee in writing and the Commissioner shall have the right to terminate this License immediately upon written notice to Licensee ~~unless Licensee or the Naming Rights Sponsor ceases and halts all such uses within two (2) business days following receipt of such notice.~~ Licensee and its Naming Rights Sponsor acknowledge that failure to do so shall cause immediate and irreparable harm to the City and the City shall be entitled to equitable relief in the event that use of City Property or any Artwork to the extent that it incorporates City Property does not immediately cease upon termination or expiration of this Agreement. Licensee shall require the Naming Rights Sponsor to comply with the provisions of this Section in any Naming Rights Sponsorship Agreement. Any failure to do so shall constitute a material breach of this Agreement by Licensee and be cause for immediate termination. The right to terminate the Agreement pursuant to this Section 9.1 is in addition to any other rights to terminate set forth in this Agreement.

**9.2** Licensee and any Naming Rights Sponsor shall use the City Property and any Artwork incorporating City Property only in the manner specified by the City. Licensee acknowledges and agrees, and will require any Naming Rights Sponsor to acknowledge and agree, that all use of and goodwill in the City Property and Artwork shall inure to the sole benefit of the City or the trademark owner whose marks are incorporated into the Artwork. Except for the rights granted under this Agreement, neither Licensee nor any Naming Rights Sponsor shall acquire any rights in the City Property or Artwork by virtue of any use it makes of the City Property. Neither Licensee nor any Naming Rights Sponsor shall attempt to register the City Property alone or as part of any other trademark, service mark, trade name, or corporate identifier (including without limitation its own trademark), nor shall Licensee or any Naming Rights Sponsor use, adopt as its own, or attempt to register any marks, names, domain names, designations, or indicia that are the

same as or similar to the City Property or Artwork except to the extent that such use is preapproved in advance in writing by the City and any marks, names, domain names, designations or indicia that are the same as or similar to the City Property or the Artwork are used, adopted or registered for the benefit of the City, and are assigned to the City, at the expiration or termination of this Agreement.

**9.3** Any artwork or other materials conceived under or resulting from this Agreement and the Naming Rights Sponsorship (other than ~~the marks or property of the Naming Rights Sponsor~~any Sponsor Property or the marks or property of a third party), including but not limited to copyrighted materials and trademarks, trade names, service marks, service names and trade dress and the like, photographs, sound and/or video recordings, films, broadcasts, brochures, printed material, or any other tangible work in any media (including but not limited to social media) or format, now known or hereafter discovered, as well as copies of any of these, whether developed by Licensee or on behalf of Licensee, shall be considered “work made for hire” within the meaning of 17 U.S.C. §101 and is the exclusive property of the City upon creation ~~to the extent that they include City Property~~. In the event that such materials are deemed not to be a work made for hire, Licensee hereby irrevocably assigns to the City its entire right, title, and interest in and to such work and any derivative works thereof (including without limitation all rights of copyright). Licensee agrees, and will require any Naming Rights Sponsor to agree, to execute any documents as may be deemed necessary or desirable by the City to register in its own name, record, confirm, clarify, or otherwise cause the foregoing assignment of rights to the City to have full legal effect worldwide. If Licensee or any Naming Rights Sponsor desire to develop any new or different material, including but not limited to any design for any mark, symbol, logo, character or other element ~~included within the City Property or~~ related to the Program, Licensee or any Naming Rights Sponsor shall first obtain the City’s Commissioner’s written approval, and

in any event all such designs shall be fully subject to the provisions of this paragraph and owned in full by the City to the extent that they do not incorporate Sponsor Property or other third party marks.

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

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

### **Licensee Responsibility**

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

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

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

## **10.2 Indemnification and Related Obligations**

(a) To the fullest extent permitted by law, Licensee shall indemnify, defend and hold the City and the Central Park Conservancy (“CPC”), and their respective officials and employees, harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements) arising out of or related to any of the operations under this License (regardless of whether or not Licensee itself had been negligent) and/or Licensee’s failure to comply with the law or any of the requirements of this License. Insofar as the facts or law relating to any of the foregoing would preclude the City or CPC, or their respective officials and employees, from being completely indemnified by Licensee, the City and CPC, and their officials and employees, shall be partially indemnified by Licensee to the fullest extent permitted by law.

(b) Licensee shall defend, indemnify and hold the City and CPC harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages and from costs and expenses to which the City and CPC may be subject to or which it may suffer or incur allegedly arising out of or in connection with any infringement by Licensee of any copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party by Licensee or the Naming Rights Sponsor in the performance of this Agreement. Licensee shall defend, indemnify, and hold the City and CPC harmless regardless of whether or not the alleged infringement arises out of compliance with this Agreement. Insofar as the facts or

law relating to any claim would preclude the City and CPC from being completely indemnified by Licensee, the City and CPC shall be partially indemnified by Licensee to the fullest extent permitted by law.

### **ASSUMPTION OF RISK**

**11.1** Licensee assumes all risk in the operation of this License.

### **INSPECTION OF RECORDS AND AUDITS**

**12.1** Licensee will establish and maintain accurate records and accounts, in a manner satisfactory to the Commissioner, which sufficiently and properly reflect all revenues and direct and indirect costs of any nature resulting from Licensee's operations pursuant to this License, and set forth, in a manner reasonably acceptable to the Commissioner, its expenditures in any way connected to Licensee's Operating Costs. Such records must include, but not be limited to, the details of how Licensee has applied the revenue it received in connection with its operation of the Concession to the Operating Costs as further described in Article 8. Such records and accounts shall conform to generally accepted accounting principles ("GAAP").

**12.2** Licensee shall furnish to the Commissioner a detailed income and expense report for each fiscal year during the Term of this License. Such statements shall be prepared by an independent Certified Public Accountant retained at the sole cost and expense of Licensee. Such annual statement shall be submitted to the Commissioner no later than sixty (60) days after the close of each fiscal year. Copies of sales tax reports, if any, shall be submitted whenever requested by the Commissioner. In addition, Licensee shall provide the Commissioner within thirty (30) days of execution, any required tax filings with the Internal Revenue Service (such as the Form 990 and any successor form) and any required financial reports with the New York State Department of Law (such as an annual report to be filed with the Charities Bureau or any successor report). Finally, no more than thirty (30) days after the end of each Operating Season, Licensee shall

provide the Commissioner with detailed statements concerning any revenue generated pursuant to this Agreement as well as concerning Other Revenue Sources, and detailed statements to the Commissioner's reasonable satisfaction, concerning the expenses that Licensee has incurred in connection with the Operating Costs as described in Article 5.

**12.3** Licensee 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. Licensee must also establish a dedicated bank account for all deposits related to the Concession's revenue. The books and records maintained pursuant to this License shall be conveniently segregated from other business matters of Licensee and shall include, but not be limited to: all Federal, State and local tax returns and schedules Licensee's records of daily bank deposits of the entire receipts from transactions related to the Program, whether maintained in hard copy or in electronic form, sales slips, daily dated sales receipts, sales books, and duplicate bank deposit slips and bank statements, whether maintained in hard copy or in electronic form.

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

**12.5** The failure or refusal of the Licensee to furnish any of the statements required to be furnished under this Article 12 within thirty (30) days after its due date, the failure or refusal of the Licensee to maintain adequate internal controls or to keep any of the records as reasonably required by this Article 12 or the existence of any unexplained discrepancy in the amount of fees



required to be due and paid hereunder, as disclosed by audit conducted by Parks and/or the Comptroller, of more than five percent (5%) in any two (2) out of three (3) consecutive months or more than ten percent (10%) in one month, shall be presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder, which shall entitle Parks, at its option, to terminate this License. Licensee shall make available to the office of the Comptroller, and/or Parks' auditor, on demand, all books, records, documents, and correspondence pertaining to the License Agreement, for the purpose of examination, audit, review, or any purpose deemed necessary by the office of the Comptroller and/or Parks

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

#### **NO REMOVAL OF RECORDS**

**13.1** Where performance of this License may involve the use by Licensee of Parks' papers, files, data, or records at Parks' facilities or offices, Licensee shall not remove any such papers, files, data, or records, therefrom without the prior written approval of ~~Parks~~the Commissioner.

#### **RETENTION OF RECORDS**

**14.1** Licensee agrees to retain all books, records, and other documents relevant to this License for ten (10) years from the date of the creation of the record. City, State, and Federal auditors shall have full access to and the right to examine any of said materials during this period, upon reasonable prior notice.

#### **PERSONNEL**

**15.1** All experts, consultants and employees of Licensee or any Naming Rights Sponsor who are employed by Licensee or any Naming Rights Sponsor to perform work under this License Agreement are neither employees of the City or CPC, nor under contract to the City or CPC, and

Licensee alone is responsible for their work, direction, compensation and personal conduct while engaged under this License Agreement. Nothing in this License Agreement shall impose any liability or duty on the City or CPC for acts, omissions, liabilities or obligations of Licensee, any Naming Rights Sponsor, or any person, firm, company, agency, association, corporation or organization engaged by Licensee or any Naming Rights Sponsor as expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent or for taxes of any nature including but not limited to unemployment insurance, workers' compensation, disability benefits and social security.

#### **NO DISCRIMINATION**

**16.1** Licensee shall not unlawfully discriminate against any employee, applicant for employment, or patron because of race, creed, color, national origin, age, sex, disability, marital status, or sexual orientation. Licensee shall comply with the Americans with Disabilities Act (“ADA”) and regulations pertaining thereto as applicable. Any violation of this Article 17 shall be a material breach of this License.

#### **WAIVER OF COMPENSATION**

**17.1** Licensee hereby expressly waives any and all claims for compensation for any and all loss or damage sustained by reason of any defects, including, but not limited to, deficiency or impairment of the water supply system, gas mains, electrical apparatus or wires furnished for the Playfield and/or at the site of any of the non-Central Park portions of SummerStage, or by reason of any loss of any gas supply, water supply, heat or current which may occur from time to time, or for any loss resulting from fire, water, windstorm, tornado, explosion, civil commotion, strike or riot, and Licensee hereby expressly releases and discharge the Commissioner, the Commissioner's agents, and the City from any and all demands, claims, actions, and causes of action arising from any of the aforementioned causes.

**17.2** Licensee further expressly waives any and all claims for compensation, loss of profit, or refund of its investment, or any other payment whatsoever, in the event this License is terminated by the Commissioner earlier than the fixed Term because the Playfield, and/ or the site of any of the non-Central Park portions of SummerStage is required for any park or other public purpose, or because the License was terminated or revoked for any reason as provided herein.

## **INVESTIGATIONS**

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

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

**(ii)** If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or

State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then

(A) The Commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days' written notice to the parties involved to determine if any penalties should attach for the failure of any person to testify.

(B) If any non-governmental party to the hearing requests an adjournment, the Commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Section 18.1(d) below without the City incurring any penalty or damages for delay or otherwise.

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

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

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

due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

**(d)** The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Section 18.1(d)(i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in Sections 18.1(d)(iii) and (iv) below in addition to any other information which may be relevant and appropriate.

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

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

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

**(iv)** The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under (c) above, provided that the party or entity has given actual notice to the Commissioner or agency head upon the acquisition of the interest, or at the hearing called for in Section 18.1(b)(ii)(A) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must

present evidence at the hearing demonstrating the potentially adverse impact a penalty will have on such person or entity.

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

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

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

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

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

## **NOTICE**

**19.1** All notices from Licensee to Parks shall be in writing and delivered by mailing a copy of such notice by registered or certified mail, return receipt requested, to the Office of the Revenue Division, New York City Department of Parks & Recreation, The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065, or such other address as Parks may designate, with copies

sent to Parks' General Counsel at the same address. All notices from Parks to Licensee shall be dispatched in the same manner, and delivered to Licensee at The Arsenal, Central Park, 830 Fifth Avenue, 2<sup>nd</sup> Floor, New York, NY 10065, Executive Director, or such other address as may be notified from time to time.

### **PARKS' RIGHT TO TERMINATE**

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

(a) Should Licensee materially breach or fail to comply with any of the provisions of this License or any Federal, State, or local law, rule, regulation, or order affecting the License or the Program with regard to any and all matters, the Commissioner shall in writing order Licensee to remedy such breach or comply with such provision, law, rule, regulation, or order. In the event that Licensee fails to respond in a reasonable manner to the Commissioner, substantially comply with such written notice, or commence, in good faith and with due diligence, efforts to comply with such order within the time frame set forth in said notice from the mailing thereof, subject to unavoidable delays beyond reasonable control of Licensee and notwithstanding any other provisions herein, then this License may immediately terminate. If said breach or failure to comply is corrected, and a repeated violation of the same provision, law, rule, regulation, or order follows thereafter, the Commissioner, by notice in writing, may revoke and terminate this License. Such revocation and termination shall be immediately effective on the mailing thereof.

(b) The following shall constitute events of default for which this License may be terminated on three (3) days' notice:

- (i) the appointment of any receiver of Licensee's assets;
- (ii) the making of a general assignment for the benefit of creditors;

(iii) the occurrence of any act which operates to deprive Licensee permanently of the rights, powers and privileges necessary for the proper conduct and operation of the License; and,

(iv) the levy of any attachment or execution which substantially interferes with Licensee's operations under this License and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty (60) days.

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

(d) Upon expiration or earlier termination of this License by the Commissioner, all rights of Licensee herein shall be forfeited without claim for loss, damages, refund of investment, or any other payment whatsoever against the Commissioner or City.

(e) Licensee agrees that upon the expiration or earlier termination of this License, it shall immediately cease all operations pursuant to this License without any further notice by City and without resort to any judicial proceeding by the City.

#### **COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS**

**21.1** Licensee shall faithfully perform and carry out the provisions of this License and cause its agents, employees, and invitees, including any Naming Rights Sponsor, to conform to all rules, regulations, and orders prescribed as of the date hereof or which may hereafter be reasonably prescribed by the Commissioner, provided Commissioner shall use reasonable efforts to give Licensee notice of any rules, regulations, or orders hereafter prescribed by Parks, and comply with all laws, regulations, rules, and orders of any kind whatsoever and of any agency or entity of government whatsoever applicable to the Playfield and the site of any of the non-Central Park portions of SummerStage and the Licensee's use and occupation thereof. This provision includes,



but is not limited to, the Parks' Rules and Regulations as set forth in 56 RCNY §1-01 et seq., the New York State Not-for-Profit Corporation Law, applicable tax and labor laws relating to non-discrimination in employment, and laws protecting youths from child abuse and maltreatment.

## **REPRESENTATIONS, WARRANTIES, AND COVENANTS**

**22.1** Licensee makes the following representations and warranties:

(a) Licensee is a not-for-profit corporation duly organized, validly existing and in good standing under the laws of the State of New York and has all requisite and authority to execute, deliver, and perform this License.

(b) This Agreement has been duly authorized by all necessary corporate action on the part of Licensee, has been duly executed and delivered by Licensee, and assuming due execution and delivery by the City, constitutes a legal, valid, binding, and enforceable obligation of Licensee.

(c) The execution and delivery of this License, and compliance with the provisions herein, do not and will not conflict with or constitute a violation of or default under Licensee's Certificate of Incorporation, by-laws, or any statute, indenture, mortgage, deed of trust, or other agreement or instrument to which Licensee is bound, or, to the knowledge of Licensee, any statute, order, rule, or regulation of any court, governmental agency or body having jurisdiction over Licensee or any of its activities or properties.

(d) Licensee has neither been asked to pay, offered to pay nor paid any illegal consideration, whether monetary or otherwise, in connection with the procurement of this License.

(e) Licensee has not employed any person to solicit or procure this License, and has not made and shall not make any payment of any commission, percentage, brokerage, contingent fee, or any other compensation in connection with the procurement of this License.

(f) Licensee is the sole and exclusive owner of ~~any intellectual property developed by Licensee (individually and/or collectively~~ the "Licensee Property") required in connection with

promoting the Program during the Term of this Agreement; it is free, clear, and unencumbered; no part of it is taken from or based on any other work; no part violates the right of any other person or infringes ~~the any~~ copyright, trademark, or any other intellectual property right ~~of any person~~; and the reproduction, publication, exhibition, or any other use by the City of the Licensee Property in any form whatever will not in any way, directly or indirectly, infringe on the rights of any person. Licensee shall ensure that the Naming Rights Sponsorship Agreement provides that the Naming Rights Sponsor represents and warrants that the Naming Rights Sponsor is the sole and exclusive owner of ~~any intellectual property developed by the Naming Rights Sponsor (individually and/or collectively the "Sponsor Property")~~ the Sponsor Property required in connection with promoting the Program during the Term of this Agreement; it is free, clear, and unencumbered; no part of it is taken from or based on any other work; no part violates the right of any other person or infringes ~~the any~~ copyright, trademark or any other intellectual property right or any other right of any person; and the reproduction, publication, exhibition, or any other use by the City of the Sponsor Property in any form whatever will not in any way, directly or indirectly, infringe on the rights of any person.

**22.2** Licensee covenants and agrees that during the Term, it shall maintain its corporate existence under the laws of the State of New York as a not-for-profit corporation, and shall maintain its tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

## **CONFLICT OF INTEREST**

**23.1** Licensee represents and warrants that neither it nor any of its officers, trustees, employees, or volunteers has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. Licensee further represents and warrants that in the performance of this License no

person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this License which affects his or her personal interest or the interest of any corporation, partnership, or association in which he is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this License or in the proceeds thereof.

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

**24.1** Subject to the terms of this Article 24, Licensee shall not sell, transfer, assign, sublicense or encumber in any way this License, ten percent (10%) or more of the shares of or interest in Licensee, or any equipment furnished as provided herein, or any interest therein, or consent, allow or permit any other person or party to use any part of the Playfield, and/or the site of any of the non-Central Park portions of SummerStage, buildings, space or facilities covered by this License, nor shall this License be transferred by operation of law, unless approved in advance in writing by Commissioner, it being the purpose of this License Agreement to grant this License solely to Licensee herein named.

Should Licensee choose to assign or sublicense the management and operation of any element of the Playfield, and/or the site of any of the non-Central Park portions of SummerStage to another party, Licensee shall seek the approval of the Commissioner by submitting a written request including proposed assignment documents as provided herein which approval shall not be unreasonably withheld or delayed. The Commissioner may request any additional information she deems reasonably necessary and Licensee shall promptly comply with such requests.

The term "assignment" shall be deemed to include any direct or indirect assignment, sublet, sale, pledge, mortgage, transfer of or change in ten percent (10%) or more in stock or voting control of or interest in Licensee, including any transfer by operation of law. No sale or transfer

of the stock of or interest in Licensee or its nominee may be made under any circumstance if such sale or transfer will result in a change of control of Licensee violative of the intent of this Section 24.

**24.2** No assignment or other transfer of any interest in this License Agreement shall be permitted which, alone or in combination with other prior or simultaneous transfers or assignments, would have the effect of changing the ownership or control, whether direct or indirect, of ten percent or more of stock or voting control of Licensee in the Playfield and/or the site of any of the non-Central Park portions of SummerStage without the prior written consent of Commissioner, which shall not be unreasonably withheld. Licensee shall present to Commissioner the assignment or sublicense agreement for approval, together with any and all information as may be required by the City for such approval, including a statement prepared by a certified public accountant indicating that the proposed assignee or sublicensee has a financial net worth acceptable to the Commissioner together with a certification that it shall provide management control acceptable to the Commissioner for the management and operation of the Playfield and/or the site of any of the non-Central Park portions of SummerStage. The constraints contained herein are intended to assure the City that the Playfield and the site of any of the non-Central Park portions of SummerStage are operated by persons, firms and corporations, which are experienced and reputable operators and are not intended to diminish Licensee's interest in the Playfield and/or the site of any of the non-Central Park portions of SummerStage.

**24.3** No consent to or approval of any assignment or sublicense granted pursuant to this Section 24 shall constitute consent to or approval of any subsequent assignment or sublicense. Failure to comply with this provision shall cause the immediate termination of this License. [The right to terminate the Agreement pursuant to this Section 24.3 is in addition to any other rights to terminate set forth in this Agreement.](#)

## **FEDERAL EMPLOYER IDENTIFICATION NUMBER**

**25.1** Licensee represents that it is not in arrears to the City upon any debt, contract, or taxes and is not a defaulter as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of Licensee to receive public contracts or concessions. The Federal Employer Identification Number of Licensee is 13- 3561657.

## **PARKS' RESERVATION OF RIGHTS AND INTERESTS**

**26.1** Public Events. The parties to this License will give each other timely written notice in advance of all press conferences, public ceremonies, or other public or planned news events relating to the subject of this License.

**26.2** Public Communications. In any statement or release made to the public relating to the subject of this License, Licensee will conspicuously acknowledge the involvement of Parks. If the Commissioner finds that any release, advertisement, or statement made to the public relating to the programs and activities offered through the Program is incorrect or unacceptable, Licensee and the Commissioner agree in good faith to make such release, advertisement, or statement accurate and acceptable to both parties.

**26.3** Publications. If Licensee publishes a work discussing any aspect of performance of any service covered by this License, Licensee will acknowledge therein the involvement, if any, of the City, when appropriate, and the City will have a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use and authorize others to use such publication.

**26.4** Intentionally Omitted.

**26.5** Parks reserves the right to use the Playfield and/or the site of any of the non-Central Park portions of SummerStage for events or programs sponsored or permitted by Parks, upon consultation with Licensee and with reasonable advance notice to Licensee, provided that Parks

shall use reasonable efforts to ensure that such use will not alter unreasonably Licensee's performance schedule at the Playfield and/or the site of any of the non-Central Park portions of SummerStage, including load-in, performance, and breakdown. In the event such use is required by Parks, Parks and Licensee will negotiate in good faith to determine what reimbursement, if any, Licensee should receive for any additional costs reasonably incurred thereby, provided Licensee presents written documentation of such actual additional costs satisfactory to Commissioner or Commissioner's designee.

**26.6 Large-Scale Citywide Events.** Should any large-scale citywide event as determined by the City be awarded to the City during the Term:

- (a) the City, at its sole discretion, may require Licensee to cease to sell and place advertising at the Playfield and/or other locations during the event period;
- (b) the City, at its sole discretion, may impose restrictions on the parties who may advertise at the Playfield and/or other locations and/or the nature of the advertising during the event period;
- (c) the City or its designated representative may assume control of advertising sales and placement during the event period;
- (d) the Licensee shall continue to comply with all other terms of this Agreement, except as expressly set forth herein.

Any material displayed or placed in violation of Section 26.6 shall be removed by Licensee within forty-eight (48) hours of notice from Parks. If Licensee fails to do so, the City shall have the right to remove such material without any liability to Licensee and Licensee shall pay to the City the costs incurred in connection with such removal and for any other costs or damages incurred by the City in connection with such removal including, but not limited to repair and restoration costs, arising out of the performance of such work.

## **WAIVER OF JURY TRIAL**

**27.1** Licensee hereby expressly waives all rights to trial by jury in any summary proceeding hereafter instituted by the City or CPC against Licensee or any counterclaim or cause of action directly or indirectly arising out of the terms, covenants, or conditions of this License or the use and occupation of the Playfield and/or the site of any of the non-Central Park portions of SummerStage or any matter whatsoever in any way connected with this License, including, but not limited to, the relationship between the City and Licensee. The provision relating to waiver of jury trial shall survive the expiration or earlier termination of this License.

## **USE OF NAME**

**28.1** The parties will not use the name of the other party, its subsidiaries, or affiliates in any sales or marketing publication or advertisement without prior full disclosure of such use and the written consent of the other party, such consent not to be unreasonably withheld or delayed. This provision will survive any termination of this License.

## **CHOICE OF LAW/CONSENT TO JURISDICTION AND VENUE**

**29.1** This License shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of Licensee and shall be governed by and construed in accordance with the laws of the State of New York. Any and all claims asserted by or against the City or CPC arising under this License or related thereto shall be heard and determined either in the courts of the United States ("Federal Courts") located in New York City or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this License and intent, it is understood:

(a) If the City or CPC initiates any action arising out of this License against Licensee in Federal Court or in New York State Court, service of process may be made on Licensee either in person, wherever such Licensee may be found, or by registered mail addressed to Licensee as

their address is set forth in this License, or to such other address as Licensee may provide to the City in writing;

(b) With respect to any action arising out of this License between the City, CPC, and Licensee in New York State Court, Licensee expressly waives and relinquishes any rights they might otherwise have to:

- (i) move to dismiss on grounds of forum non conveniens;
- (ii) remove to Federal Court; or,
- (iii) move for change of venue to a New York State Court outside New York County.

(c) With respect to any action arising out of this License between the City, CPC, and Licensee in Federal Court located in New York City, Licensee expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.

(d) If Licensee commences any action arising out of this License against the City or CPC in a court located other than in the City and State of New York, upon request of the City or CPC, Licensee shall 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, Licensee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

### **CLAIMS AND ACTIONS THEREON**

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



provided.

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

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

#### **CLAIM AGAINST OFFICIALS OR EMPLOYEES**

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

#### **ALL LEGAL PROVISIONS DEEMED INCLUDED**

**32.1** It is the intent and understanding of the parties to this License that each and every provision of law required to be inserted in the License shall be and is inserted herein. Furthermore, it is hereby stipulated that 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 License 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.

#### **SEVERABILITY**

**33.1** If any provision(s) of this License is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

## **HEADINGS AND TABLE OF CONTENTS**

**34.1** The article headings and Table of Contents contained in this License are inserted for convenience only and shall not enlarge or limit the scope or meaning of the various and several articles hereof. Unless the context requires otherwise, words of any gender used in the License shall include the other gender and words in the singular number shall include the plural.

## **ENTIRE AGREEMENT**

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

## **MODIFICATION**

**36.1** This License may be modified from time to time by notice in writing duly executed by both parties hereto, but no modification of this License shall be effective until the same has been agreed to in writing and duly executed by both parties.

## **JUDICIAL INTERPRETATION**

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

## **COUNTERPARTS**

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

**IN WITNESS WHEREOF**, the parties hereto have caused this License to be signed and sealed on the day and year first above written.

CITY OF NEW YORK  
PARKS & RECREATION

CITY PARKS FOUNDATION, INC.

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

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

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

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

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

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

APPROVED AS TO FORM:  
Certified as to Legal Authority

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

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

[illegible]

On the \_\_\_\_ day of \_\_\_\_\_, 2019, before me personally came \_\_\_\_\_, who being duly sworn by me did depose and say that he/she resides at \_\_\_\_\_ and that he/she is the \_\_\_\_\_ of the City Parks Foundation, Inc., described herein and who executed the foregoing instrument and acknowledged that he/she executed the same in his/her official capacity and for the purposes mentioned therein.

NOTARY PUBLIC

[illegible]

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me personally came \_\_\_\_\_  
to me known and known to me to be the \_\_\_\_\_ of the Department of Parks &  
Recreation of the City of New York, and the said person described in and who executed the  
foregoing instrument, and he/she acknowledged that he/she executed the same in his/her official  
capacity and for the purpose mentioned therein.

NOTARY PUBLIC

**SCHEDULE A - CITY PROPERTY**

**SUMMERSTAGE®**

## **SCHEDULE B – SPONSORSHIP ACTIVITIES**

### **I. Signage**

*\*All signage size and specifications subject Parks approval.*

#### **Playfield/Central Park:**

- Artwork on entry signs at main and secondary entrance to the Playfield.
- Stage signage:
  - Artwork on two (2) side-stage LED screens with option for one Naming Rights Sponsor static image
  - Artwork on on-stage screen slides with one (1) dedicated Naming Rights Sponsor static image slide in ROS
  - Artwork on crown banner on top of stage
- Artwork on bleacher signage (3 or 4, depending upon final Playfield design)
- Artwork on each stage left and stage right trailer face
- Artwork on VIP area signage
- Artwork on one sign each at Fifth Avenue/72nd Street and 59th Street/Columbus Circle park entrances (location of signage subject to Parks approval)
- Artwork on approximately 50 bike rack dividers within the Playfield
- Artwork on all wayfinding signage including check-in banner, concessions and merchandise areas, and information booth
- Artwork on staff uniforms, ponchos, and lanyards/credentials/wristbands (not intended for sale to the public and will be produced only in a quantity suitable for distribution to event employees)
- Artwork on Rules/Regulations signage, ADA signage, and bag check signage

#### **Artwork on mobile stage or other Parks locations subject to Parks special event permits:**

- Center stage banner and two side-stage banners (space permitting in amphitheaters), festival program, and posters
- Two feather banners
- Artwork on staff uniforms, ponchos, and lanyards/credentials/wristbands (not intended for sale to the public and will be produced only in a quantity suitable for distribution to event employees)
- Artwork on Rules/Regulations signage, ADA signage, bag check signage, and other temporary signage

### **II. Artwork on ticketing:**

- Artwork on ticket purchase pages
- Artwork on the confirmation page and the confirmation email

### **III. Print/Media/Digital/Social Assets:**

Prior to the start of each new season, Licensee may implement a media plan to highlight Naming Rights Sponsor's sponsorship of the Program, which will include the Artwork on the following CPF-produced material:

- All print collateral: season brochures, house programs, postcards, posters, and membership cards
- All e-newsletters sent during the Program season and included in Program stories in monthly Licensee e-newsletters during the "off-season"

- Four (4) dedicated Naming Rights Sponsor Program e-newsletters
- Program partner page on Licensee website with a direct click-through link to Naming Rights Sponsor's home page.
- Media Clips: Prominent positioning in all Program press releases, press conferences, ceremonies and other public events.
- Print/Digital/Radio advertising
  - Television
- Social Media integration

**EXHIBIT A – MAINTENANCE AND OPERATION AGREEMENT**



**LICENSE AGREEMENT**

**BETWEEN**

**CITY OF NEW YORK  
PARKS & RECREATION**

**AND**

**CITY PARKS FOUNDATION**

**for**

**THE OPERATION OF SUMMERSTAGE**

**NEW YORK, NEW YORK**

**DATED: Jun 28, 2013**

**THIS LICENSE AGREEMENT** ("License") made as of the 28<sup>th</sup> day of June, 2013 between the City of New York ("the City") a municipal corporation of the State of New York acting by and through the City Department of Parks & Recreation ("Parks"), having an office at the Arsenal, Central Park, 830 Fifth Avenue, New York, NY 10065 and the City Parks Foundation, Inc. ("CPF" or "Licensee") a not-for-profit corporation duly incorporated under the laws of the State of New York, with an office at the Arsenal, Central Park, 830 Fifth Avenue, New York, NY 10065;

**WITNESSETH:**

**WHEREAS**, the Commissioner pursuant to Section 533 of the New York City Charter is charged with the duty to manage, maintain and operate all the parks and structures installed or erected therein under the jurisdiction of Parks, for the beneficial use of the people of the City and has the duty to plan, develop, conduct, and enter into arrangements for recreation programs for the benefit of the public; and,

**WHEREAS**, the Commissioner of Parks ("the Commissioner") recognizes the important cultural and educational value of the Summerstage Program ("Summerstage") which has contributed to the cultural heritage of the City by presenting concerts and other events to members of the public at no charge since 1986; and,

**WHEREAS**, the Commissioner finds that Rumsey Playfield (the "Playfield or the Site") located in Central Park, Manhattan, is the most appropriate venue for Summerstage productions;

and

**WHEREAS**, the Commissioner desires to ensure continuing access to and the highest and best use of the Playfield by the public; and

**WHEREAS**, the Commissioner and CPF wish to clarify certain issues regarding the ownership and use of trademarks and other intellectual property associated with Summerstage; and

**WHEREAS**, as of November 1, 1993, CPF has assumed responsibility for the management and operation of Summerstage; and

**WHEREAS**, CPF possesses the necessary expertise and is a leader in the promotion and production of concerts, and in particular, has, with the encouragement and cooperation of Parks, successfully operated concerts and other events at the Playfield; and

**WHEREAS**, the Commissioner desires that CPF, upon the terms and conditions set forth in this Agreement, assume the responsibilities for the operation of the Playfield as described herein and CPF is willing upon such terms and conditions, to undertake such responsibilities;

**NOW, THEREFORE**, in consideration of the promises and mutual covenants contained herein, the City and Licensee covenant and agree as follows:



## **1. GRANT**

Parks hereby grants to CPF and CPF hereby accepts from Parks a License to enter upon and use the Site for the purposes and subject to the terms and conditions set out herein.

Additionally, CPF may request from Parks, and the Commissioner, in her sole discretion, may grant to CPF permission to use the areas outside and adjacent to the Site (hereinafter referred to as the "Adjacent Areas") and/or the "Pergola" in connection with CPF's events. If permission is granted, CPF must submit Special Event permit applications to the Manhattan Special Event permit office and depending on the nature of the event, additional fees may apply. In addition, CPF must request vehicle permits for the use of the Adjacent Areas and/or the Pergola, from the office of Citywide Special Events, which Parks in its reasonable discretion may provide. Exhibit A, as attached, shows the Site, the Adjacent Areas and the Pergola.

Additionally, Parks grants CPF permission to erect temporary promotional and directional signs within the Park facing Central Park West at 72<sup>nd</sup> Street and within the Park facing Fifth Avenue at 72<sup>nd</sup> Street, the specific location, content and graphics of such signs is subject to prior written approval by Parks. Parks reserves the right to have the Parks logo present on all signs.

## **2. TERM**

The term ("Term") of this License shall commence upon the execution of both parties and is terminable at will by either party upon written notice in accordance with Section 20 or upon notice by the Commissioner as provided for in Section 19. In the event such notice is not given, the Term shall expire on the fifth anniversary date of the commencement of this License. This License may be renewed, for one (1) additional five (5) year term upon mutual agreement in

writing by the parties, such renewal being subject to the same terms and conditions contained herein. Upon the termination or expiration of this license, CPF shall quit the Site as provided hereinafter in Section 20.

### **3. NO LEASE**

It is expressly understood that the City has title to the Site and that no space or equipment is leased to Licensee, but that during the Term of this License, Licensee shall have the use of the Site and shall continue to use and occupy same in compliance with each and every provision and condition in this License.

### **4. NO INFLAMABLES**

Licensee shall not use or permit the storage of any illuminating oils, oil lamps, turpentine, benzene, naphtha, or similar substances or explosives of any kind or any substances or items prohibited in the standard policies of insurance companies in the State of New York. However, CPF shall be allowed to keep a small quantity of gasoline on the Site in order to fuel its vehicles in order to perform its obligations under this License provided that such storage does not conflict with the terms and conditions of CPF's insurance policies.

### **5. USE AND OPERATIONS**

a) During the Operating Season (defined below), CPF shall use, operate, and manage the Playfield as a public theater for the production of cultural, recreational, film and/or educational presentations for the benefit of the people of the City of New York through the production of public presentations or exhibitions of dramatic works, musical performances, dance



performances, prose and poetry readings, and/or educational works. For the purposes of promoting development of the visual and performing arts and encouraging and cultivating public and knowledge and appreciation of all such art CPF may also use the Site for such other uses as are ancillary to the foregoing uses, as may be approved by Parks. CPF may request the use of the Adjacent Areas, and/or the Pergola for events authorized pursuant to this Section 5. If permission is granted, CPF must submit Special Event permit applications to the Manhattan Special Event permit office and depending on the nature of the event, additional fees may apply. If and when CPF has been granted permission to use (i) the Adjacent Areas, or (ii) the Pergola, CPF's responsibilities for such locations for the period of time CPF is granted permission to use such areas will be the same as CPF's responsibilities for the Site under this License.

b) CPF's use under this License for set up, breakdown and events shall be limited to the period between April 1 and October 17 of each term year ("Operating Season"). During the other time period of each term year ("Off-Season"), use, operation, and management of the Playfield shall be under the exclusive control of Parks. Notwithstanding the foregoing, CPF may apply to Parks for permission to use the Playfield at any time during the Off-Season through the Manhattan Special Event office.

c) (i) As soon as practicable each year but no later than December 1<sup>st</sup> of each year, CPF shall provide to Parks' Chief of Citywide Special Events, for Parks' review and approval, a preliminary schedule covering its suggested utilization of the Site, indicating when the Playfield is being used or made ready for use by CPF or its authorized designees or sublicensees. The schedule will include repair and rehabilitation periods, rehearsal preparation, rehearsals, set loading, performances, periods between performances and/or productions, and shut downs. CPF shall use its best effort to submit a final schedule to Park's Chief of Citywide Special Events,



including all items mentioned herein no later than April 15<sup>th</sup> of each year, and shall provide to Parks prompt written notice of any changes to such schedule. The work schedule provided by CPF and finally approved by Parks in accordance with this License shall be subject to modification by mutual agreement of the parties in order to accommodate use by Parks during the Operating Season and during the Off-Season, provided that such modifications will not alter unreasonably CPF's performance schedule, including load-in, performance, and breakdown . In the event such modification is required to accommodate use by Parks in the Operating Season, including for example, requiring expedited shut-down by CPF, Parks and CPF will negotiate in good faith to determine what reimbursement, if any, CPF should receive for any additional costs reasonably incurred thereby, provided CPF presents written documentation of such actual additional costs satisfactory to Commissioner or her designee.

(ii) In the event that Parks issues permits for the Great Lawn during the Operating Season, Parks shall use its reasonable efforts to provide CPF with written notice of such event prior to the preparation of CPF's final schedule, but in any event, as far in advance of the event as possible.

(iii) As soon as reasonably determined by the Parties, but no later than November 1<sup>st</sup>, Park's Chief of Citywide Special Events shall provide to CPF a preliminary schedule covering the intended utilization of annual returning special events (i.e. AIDS Walk, NYRR events) to be held at the Naumberg Bandshell. All issues concerning scheduling shall be handled through Parks' Chief of Citywide Special Events; from time to time and whenever necessary a meeting may be held with representatives from CPF and Parks' Marketing and Special Events Division to discuss issues or conflicts arising from scheduling. As practical, a monthly meeting shall be held with representatives from CPF and Parks' Marketing and Special Events Division beginning on



or around November 1<sup>st</sup> to begin scheduling discussions. A CPF representative's attendance shall also be required to meet with Parks and with the Police Department as needed on planning, crowd control, emergency exit issues, and other such operational concerns. This meeting can be satisfied by having a representative attend the weekly Central Park Conservancy Operations meeting (hereinafter "Yard"), currently held each Wednesday at 9:00 a.m.

d) During the Operating Season, at such times as the Site is not scheduled for use by CPF, Parks reserves the right, upon consultation with CPF, to make use of the Site for programs, events, and activities sponsored or approved by Parks which will not unreasonably interfere with the License hereby granted.

e) The following types of events may take place at the Site and the maximum allowable attendance for each such event is 6,000 patrons.

i) During the Operating Season, CPF may enter into sublicenses or sponsorship agreements for the approved use of the Site by performers or groups for cultural, recreational, and/or educational activities consistent with this License. The uses permitted hereunder that are free and open to the public are herein after called "Free Events." Each such sublicense shall state that all rights granted thereunder are subject to and subordinate in all aspects to each and every term, condition, and provision of this License.

ii) Upon the approval of the Commissioner or her designee, CPF may use the Playfield for events other than Free Events, providing that Free Events constitute more than 60% of the total number of events during the Operating Season. Any Parks sponsored or approved event pursuant to Section 5(d) above, excluding any event for which CPF has entered into a sublicense or which CPF has sponsored, will not count towards CPF's obligation to provide Free Events for more than 60% of the total Operating Season.



f) At all times during the Operating Season, including when the Playfield is not being used by CPF or its authorized designees, CPF shall ensure that the Playfield is safe and secure for persons and property; however, when the Playfield is being used by Parks or its designees during the Operating Season, Parks shall secure the Playfield or cause the Playfield to be secured.

g) Nothing in this License shall limit the number of events that may be held by or under the auspices of Parks at the Site during the Operating Season or Off-Season, subject to Parks' obligation to consult with CPF pursuant to paragraph d of this section.

h) Upon request, CPF must provide Parks with fully executed copies of all sublicenses or other agreements for any activities permitted at the Playfield, subject to this License, as well as any agreements regarding revenue generating activity in connection with the Playfield, including but not limited to food and beverage concessions, if any, related to any permitted activity at the Playfield within ten (10) days of execution whether or not Parks needs to approve such agreements or sublicenses in advance.

i) The Commissioner may require Licensee, effective immediately, to terminate any agreement that Licensee is authorized to enter into pursuant to this License or cancel any event at the Site. However, if Commissioner requires Licensee to terminate any event agreement or cancel any event at the Site, other than a termination or cancellation based upon (i) health, safety or welfare, , (ii) preventing damage to the Site or to Central Park, or (iii) because the agreement is with a sublicensee that (A) has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or (B) that directly or indirectly controls, is controlled by, or is under common control with a person or entity that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or



that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, the parties agree to negotiate in good faith to make CPF whole for the loss of such scheduled events. For purpose of this section the determination as to whether any person or entity is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure or directly or indirectly controls, is controlled by, or is under common control with a person or entity that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure shall be within the sole discretion of Parks exercised reasonably and in good faith.

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

k) Licensee shall be responsible for providing or causing there to be provided appropriate security for any events or productions at the Playfield that Licensee is allowed to stage pursuant to this License. Licensee shall provide to Parks no less than one week prior to the first performance at Summerstage a security plan for the season, which shall include the name of security company(s) number of security officers, supervisors, post positions around the venue, and hours on duty. However, this obligation shall not apply to any events authorized under 5(d) of this Section.

## **6. FEES**

a) CPF may charge its actual production costs for events allowed pursuant to section 5(e) (ii); such production costs shall be determined by CPF and based on an itemized production rate card (Exhibit B), but such costs and the production rate card must be approved by Parks.

b) CPF may charge a fee, subject to a template schedule approved by the Commissioner, for any other than Free Events authorized pursuant to 5(e) (ii), a copy of which is annexed hereto as Schedule A, which may only be revised by mutual agreement between Parks and CPF.

c) All fees or costs charged by CPF, including but not limited to any fees related to broadcast or recording rights shall be used as required by Section 9(d), and included in the books of account and records required to be maintained and submitted to the Commissioner pursuant to Section 9(e).

## **7. APPROVALS**

a) Upon the approval of the Commissioner or her designee, CPF shall have the right to erect signs related to its productions at the Playfield. Such signs, including any commercial sponsorship information or signs identifying products available for sale at the Playfield may contain appropriate sponsor recognition or identification (however, no tobacco sponsorship or identification will be allowed) or identification of those products available for sale at the Playfield and are subject to the approval of Parks. All signs must face inward towards the Playfield and not out towards the other areas of Central Park, except those required for directional or instructional purposes.

b) During the Operating Season, CPF may request 48 hours in advance of the event, a



reasonable number of parking permits in connection with the production of the activities authorized under this License. The parking permits and location of the parking must be coordinated with and approved by Parks, specifically the office of Marketing and Special Events. All vehicles must be escorted by CPF staff while operating in accordance with Parks' Vehicle Rules and Regulations (*see* Exhibit C).

c) Prior to the Operating Season, CPF must submit a Crowd Control Plan to the Chief of Citywide Special Events that outlines line management and designated areas for crowd overflow.

d) The Director of Summerstage (or his or her designee) is responsible for event coordination for all events, and must be available by phone or pager to Parks during set up, take down, and during the course of all events.

e) For all Summerstage performances, a description of the event ("event physical") shall be distributed by a representative from CPF to a distribution list mutually agreed upon by Parks and CPF.

## **8. ARTISTIC CONTROL**

Subject to the terms and conditions of this License, CPF shall have sole artistic and programmatic control and sole administrative control regarding activities conducted by CPF at the Site. Parks, however, specifically reserves the right to cancel performances due to security and/or public safety concerns, including, but not limited to, concerns regarding damage to the Site and Parks property with prior consultation where reasonably practicable.

## **9. ADVERTISING, PUBLICITY, SPONSORSHIPS, AND REVENUES**

a) Licensee shall establish an appropriate advertising and promotional program in



connection with its activities and productions at the Playfield, to the extent financially feasible. Such advertising and promotional program shall acknowledge the support of the Mayor of the City of New York and the Commissioner in an appropriate manner as approved by the Commissioner. Licensee shall have the right to print or to arrange for the printing of programs for events containing any advertising matter consistent with its rights hereunder regarding its artistic and programmatic control of the activities conducted by Licensee at the Playfield. Licensee agrees to provide copies of the annual brochure, the website promotional materials, the season press release, and all full page ads paid for by CPF to the Commissioner or her designee for her review and approval prior to publication. All such print materials shall include the Parks logo. In the event Commissioner or her designee finds any element in such material contrary to Parks' policies regarding Parks-authorized or sponsored events, then the Commissioner or her designee shall so advise Licensee, and Licensee and Parks shall immediately proceed to discuss modifications to such advertising matter, as may be mutually agreeable to both parties.

b) In the event that Licensee issues written press releases regarding its activities at the Playfield pursuant to this License, and if after public issuance of any such press release, the Commissioner believes that such release is factually inaccurate or misleading, then the Commissioner or her designee shall so advise Licensee. Licensee shall immediately withdraw such press release.

c) The parties acknowledge and agree that CPF may retain commercial sponsors for Summerstage (although no tobacco sponsors will be permitted), provided that such sponsors, and any proposed sponsor identification, or product sampling to be conducted at all productions and events, are approved by the Commissioner or her designee, such requests for approval to be responded to within 48 hours.



d) All revenues generated by CPF through Summerstage shall be used strictly to cover the cost of the Free Events and for maintenance and operation of the Site and administrative expenses directly related to the operation of SummerStage or other free performing arts programming in City parks agreed upon by CPF and Parks.

e) Licensee shall keep books of account and records of all expenses and revenues resulting from Licensee's operations pursuant to this License in a manner satisfactory to the Commissioner, and upon request shall allow an inspection of said accounts and records by the Commissioner or any governmental agency having jurisdiction. Additionally, Licensee shall furnish to the Commissioner a detailed financial statement for each fiscal year during the Term of this License, which subject to the Commissioner's reasonable approval may be satisfied by submission of Licensee's annual financial statement for the entire organization. Such statements shall include the salaries of all paid staff. Such statements shall be prepared by an independent Certified Public Accountant retained at the cost and expense of Licensee. Such annual statement shall be submitted to the Commissioner no later than 120 days after the close of each fiscal year. Copies of sales tax reports, if any, shall be submitted whenever requested by the Commissioner.

## **10. MAINTENANCE AND REPAIR**

a) During the Operating Season, CPF shall maintain the Site in a good, clean, and orderly condition and shall make all repairs necessary to keep the Site in good and safe condition in order to operate the Site for the purpose of this Agreement. Such ongoing maintenance and repairs shall include, but not be limited to: (i) keeping the Site and adjacent areas free from trash, litter, stickers, graffiti, and debris; and (ii) making all repairs to utilities, seating, stage, and dressing areas necessary to keep the Playfield in good and safe condition. CPF shall clean the



Site and adjacent areas each evening during the Operating Season and every morning following an event. CPF shall be responsible for repairing any damage caused to the Site by any third parties who were hired under contract by CPF to Parks' reasonable satisfaction. CPF shall cooperate with Parks and with the Police Department to restrict product sampling outside the Site. At such times during the Operating Season as the Site is under the control of Parks or its designees, Parks shall be responsible for the performance of the maintenance and repair work described hereinabove; however, CPF may perform such maintenance and repair work at the request of Parks and shall be reimbursed by Parks for the costs of performing the work requested by Parks provided CPF presents written documentation of such additional costs satisfactory to Commissioner or her designee. The Parties agree that they will perform a "walk through" of the Site with a representative of CPF and Parks at the beginning and end of the Operating Season to assess the condition of the Site.

b) During the Off-Season, except as otherwise operated by CPF pursuant to a separate special events permit, Parks shall be responsible for all maintenance and repair of the Site. In addition, Parks shall be responsible for the continuing care of fencing, turf, trees, plants, and landscaping adjacent to the Site at all times.

c) CPF is responsible for the clean up and removal from Central Park of refuse generated at the Site and Adjacent Areas during the Term pursuant to subsection (a) hereinabove.

d) Parks shall be responsible for all structural and other major reconstruction or renovation necessary to keep the Playfield in good and safe condition with the exception of CPF's responsibility under section 16. CPF must restore the Site to the original condition after each Operating Season, except for capital repairs to the asphalt pathways within the Site. Such restoration work cannot interfere with Parks use in the Off Season and a schedule of such work



must be provided to Parks prior to the end of each season.

e) All maintenance and repair efforts by CPF are subject to the review and approval of the Commissioner or her designated representative, which approval shall not be unreasonably withheld.

f) Parks shall be responsible for performing any work on or at the Playfield necessary to provide winterizing protection to the Playfield.

## **11. EQUIPMENT**

a) All lighting, props, or other equipment or paraphernalia utilized by CPF incident to the productions licensed hereunder shall be secured, maintained, and repaired at the sole cost and expense of CPF. Parks shall, however, be responsible for fixing or replacing any loss, damage, or injury caused to any equipment or property of CPF, directly, by the actions, conduct, or omissions of Parks or its designees, when the Playfield is being managed by Parks, with no operation or management by CPF or its designees, and to the extent that such damage is not caused by Licensee's negligence or willful conduct.

b) The scheduling and undertaking of the delivery and/or removal of all equipment and other paraphernalia utilized in connection with the productions permitted under this License shall be approved in advance by Parks. Such approval shall be based on scheduling information to be provided by CPF concerning the delivery and removal of such equipment and materials utilized by CPF at the Playfield, as may be supplemented by verbal communications between Parks and CPF.

c) All portable toilets shall be placed within the approved area as agreed upon in Exhibit



## **12. CONCESSIONS**

Notwithstanding CPF's right to provide services within the Playfield as described in Section 5 of this License, CPF's right to receive any revenues derived from within the Site, Adjacent Areas or the Pergola shall be subject to any and all City authorization, approvals, permits, and compliance with other processes which may be necessary, including without limitation, any necessary approval by the Franchise and Concession Review Committee ("FCRC"). The Commissioner and Parks hereby agree to reasonably assist CPF in obtaining, maintaining and renewing any such additional approvals, permits, authorizations, and compliance with other processes relating to the services described herein at Section 5.

## **13. PARKS SUPPORT**

To the extent feasible, as determined by available resources and consistent with past practice, Parks may, but is not obligated to, provide limited equipment and services to CPF to assist in the production of the activities authorized under this License. Such equipment may include, but not be limited to, an electric generator, Park vehicles, bleachers, golf carts, and benches. Such services may include Parks Enforcement Patrol ("PEP") acting in the interest of public safety at Parks' discretion. However, Parks will not be responsible for security at the Site, Adjacent Areas and/or Pergola during any event or production authorized under this License, unless it is an event or production authorized pursuant to Section 5(d) or the Commissioner expressly approves the use of PEP to provide security at the Site. In addition, Parks shall not be responsible, however, for securing barricades, trash receptacles, and range fencing for the Site, Adjacent Areas and the Pergola.

#### **14. STORAGE**

Licensee shall have the use of the Playfield Building (as shown on Exhibit A) during the Term of the License for the Operating and the Off-Season for storage relating to the activities authorized under this License. Licensee accepts the Playfield Building in an "as is" condition and Parks makes no representation for its suitability for Licensee's use. In addition, City shall not be liable for any theft or damage to Licensee's property stored at the Playfield Building. Notwithstanding the foregoing, upon ten days written notice to CPF, Parks may require the use of the Playfield Building for Parks purposes and CPF shall give Parks any access to the Playfield Building required for such use. Subject to availability and at Parks discretion and upon such conditions as are mutually acceptable to the parties, Parks may provide CPF with other off-site storage and transportation as needed to move Licensee's property stored at the Playfield Building at no expense to Licensee.

#### **15. PERMITS AND AMPLIFIED SOUND**

Licensee is responsible for obtaining all necessary approvals, permits, and other authorizations required by any existing federal, state or City laws, rules, regulations and orders applicable to any aspect of the operation of the Site, and when permitted, the Adjacent Areas and the Pergola. Licensee agrees to operate and play sound equipment and music only at a sound level no greater than that necessary for live televising, broadcasting, filming, taping and suitable for an outdoor concert performance before a very large audience, and which sound level does not cause an unreasonable nuisance to neighbors living and working near the Site, the Adjacent Areas and the Pergola and consistent with the Rules of the City of New York, Title 56 RCNY §1-05(d)(2), the Administrative Code of the City of New York, §24-201 et. seq. thereof, and all



applicable laws, rules, and regulations.

Licensee shall be responsible for payment of any and all fees or royalties to ASCAP, BMI, or such other entity as required by law for such music or film programming in connection with its operation of the Site and when permitted, the Adjacent Areas and the Pergola. .

## **16. UTILITIES**

Parks shall provide all necessary utilities and shall pay for the cost of such utilities reasonably necessary for CPF's use and operation of the Playfield pursuant to this License. CPF shall exercise its best efforts to conserve utilities and energy and shall implement conservation programs promulgated from time to time by the City as directed by Parks and CPF must maintain at its sole cost and expense all utilities above grade during each Operating Season. CPF shall comply with any applicable city, state or federal rules, regulations or codes regarding utilities during each Operating Season. Prior to the beginning of each Operating Season and prior to the end of each Operating Season, Parks and CPF will conduct a walk-through of the Site to inspect for any damage to utilities that are above grade. If damage is discovered prior to the beginning of the Operating Season it will be Parks' responsibility to repair such damage at its sole cost and expense. If damage is discovered prior to the end of the Operating Season it will be CPF responsibility to repair such damage at its sole cost and expense. Parks, at its own expense, shall make reasonable efforts to supply CPF with telephone, fax, internet, e-mail, and modem services on site at the Playfield.

## **17. ACCESS AND INSPECTION**

Licensee shall permit access to the Site, including but not limited to the Playfield

Building, by the Commissioner and/or her duly authorized representatives, including Parks Inspectors, at all times and to the New York Police Department and other City agency, New York State, or federal representatives for any lawful purpose. Parks shall have the right to have representatives of Parks or of the City or of the State or federal governments present at the Site to observe Licensee's operations.

#### **18. WAIVER OF BREACH**

No failure on the part of Parks at any time to require the performance by CPF of any term or condition of this License shall in any way affect Parks' rights to enforce such term or condition, nor shall any waiver by Parks of any breach hereof be taken or held to be a waiver of any other breach hereof. No right under this License may be waived by Parks, except by a written agreement or amendment executed by Parks.

#### **19. TRADEMARKS AND SERVICE MARKS**

a) The City owns all right, title and interest in and to trademarks, service marks, trade names, logos and domain names regarding the name "SUMMERSTAGE" and any other programs developed or used by CPF in the course of operating the Site (the "Marks"). CPF acknowledges that the Marks are valid and subsisting and shall take no action inconsistent with the City's ownership of the Marks.

b) CPF shall assign to the City all right, title and interest in and to any pending applications or existing registrations with the U.S. Patent and Trademark Office for the mark SUMMERSTAGE and any other Marks, at such time as any application or registration becomes assignable under U.S. trademark law. CPF acknowledges that the City may, in its sole



discretion, register the Marks with the U.S. Patent and Trademark Office or any other government agency. CPF will cooperate in this effort, and agrees to provide any further documentation necessary to accomplish such registrations. CPF shall not adopt, use, license, register or seek to register the Marks or any variation or simulation thereof or any marks, logos or names that are confusingly similar thereto without the prior written agreement of the Commissioner.

c) The City hereby licenses to CPF during the term of this License the right to use the Marks in support of operation of the Site. Such right shall be exclusive to CPF, subject to the City's reserved right to use the Marks for publicity, press and other uses implicit in the City's ownership and promotion of the Site, including but not limited to promoting the Site on the Parks website and in any Parks written publications. To the extent that the City seeks to use the Marks other than as set forth above, it shall confer with CPF prior to such use of the Marks and the parties shall use their best efforts to reach a mutually satisfactory understanding with respect to such use. Moreover, the City acknowledges that it currently has no plans to seek the use of the Marks in connection with any other performance venues.

d) All goodwill associated with the Marks is the exclusive property of the City and CPF shall take no actions inconsistent with such rights. CPF recognizes and acknowledges that the Marks are the exclusive property of the City and that they communicate to the public, worldwide, a reputation for high standards of quality and service, which reputation and goodwill have been and continue to be unique to the City. CPF further recognizes and acknowledges that the Marks have acquired secondary meaning in the mind of the public. The Marks shall not be used in connection with any illegal, illicit or immoral purpose or activity, or in any manner which would be inconsistent with or damaging to the City's name and reputation. The City shall



have the right to terminate the license granted by this section immediately, upon written notice, in the event that any part of the Marks are used by CPF in connection with any illegal, illicit or immoral activity. In addition, in the event that any of the Marks are used by CPF in any way which, in the reasonable judgment of the Commissioner, is inconsistent with or damaging to the City's name or reputation, the Commissioner shall so notify CPF in writing and the Commissioner shall have the right to terminate this License immediately upon written notice to CPF unless CPF ceases and halts all such uses within two (2) business days following receipt of such notice.

e) During the term of this Agreement, CPF shall use the Marks solely for the purpose of operating the Site and promoting events at the Site and in other City parks subject to Parks' prior written approval. Should CPF use the Marks for any activities not approved pursuant to this Agreement, or which extend beyond the scope of CPF's licensed activities, the City may terminate this License effective immediately.

f) Upon termination of this License and written notice to CPF, CPF shall immediately cease any and all uses of the Marks. CPF acknowledges and agrees that its failure to cease use of the Marks upon expiration or termination of this Agreement and notice from Parks will result in immediate and irreparable harm to the City. CPF further acknowledges and admits that the City has no adequate remedy at law for such failure by CPF, and that the City shall therefore be entitled to equitable or injunctive relief, in addition to any and all other remedies at law that are available to the City.

g)) The City agrees that it will take all appropriate steps to secure and maintain the registration of the Marks and enforce the Marks against third-party infringers. All such decisions shall be within the exclusive discretion of the Commissioner.



## 20. TERMINATION

a) Notwithstanding any other provision of this License, Commissioner may terminate this License, at will, upon twenty-five (25) days' written notice to the Licensee as provided in Section 2 or immediately as provided for in Section 19.

b) Commissioner may also terminate this License upon twenty-five (25) days written notice if Licensee fails to: i) perform the duties and obligations contained herein to Commissioner's reasonable satisfaction; or ii) maintain the insurance policies pursuant to Section 24.

c) Licensee may terminate this License at will, as provided in Section 2, or if Parks breaches its obligations under this License and fails to cure any such breach, upon 30 days written notice to Parks.

d) Upon receipt of such notice, as provided in subparagraphs (a) and (b) above, or the delivery of such notice as provided in subparagraph (c) Licensee shall quit the Site within 25 days and surrender same in good, clean and orderly condition, ordinary wear and tear excepted. In the event this License is terminated as provided herein, all rights of Licensee herein shall be terminated without any claim for damages against Parks, the City or their officers, employees, or agents with respect to such termination.

e) Licensee agrees that upon the expiration, or sooner termination, of this License, it shall immediately cease all operations pursuant to this License and shall vacate the Site within 25 days without any further notice by City. Upon the expiration, or sooner termination, of this License, City reserves the right to take immediate possession of the Site.

f) Licensee shall, on or prior to the expiration or termination date, remove all personal possessions from the Site. Licensee acknowledges that any personal property remaining at the



Site after the expiration, or sooner termination, of this License, is intended by Licensee to be abandoned. Licensee shall remain liable to the City for any damages, including lost revenues and the cost of removal or disposal of property should Licensee fail to cease operations, vacate and/or remove all possessions from the Site on or before the expiration or termination date, except that Licensee shall not be liable for any damages or costs incurred due to delays caused by Parks' failure to perform any act necessary to enable Licensee to vacate the Site.

g) Any insurance or indemnification obligations of CPF shall remain in full effect until CPF has quit the Site and removed all of its property from the Site.

## **21. NOTICE TO CURE**

a) Should Licensee breach or fail to comply with any of the provisions of this License, any federal, state, or local law, or any rule, regulation or order of Parks affecting this License or the Site, Commissioner shall give written notice of such default to Licensee, and unless such default is cured or Licensee is in the process of curing such default within ten days after receipt of such notice, and diligently pursues the same to completion, Licensee shall be in default and the License shall terminate, provided, however, that if the nature of the default is such that it cannot be cured within said ten-day period, Licensee may have such additional time as may be reasonably necessary to cure such default, in Commissioner's sole discretion, so long as Licensee proceeds promptly after receipt of City's notice and proceeds diligently at all times to completion of said cure.

b) (i) Notwithstanding anything contained herein to the contrary, if during the Operating Season the Commissioner determines, in her sole reasonable discretion, that any condition exists at the Site which constitutes an immediate hazard or danger she may give Licensee notice of



such emergency condition and Licensee shall cure said condition within twenty-four (24) hours of receipt of such notice. However, if the Commissioner determines that immediate action is required or if the Licensee fails to cure said condition within twenty-four hours (24) of receipt of such notice, the Commissioner may take whatever action she deems necessary, including but not limited to a partial or complete suspension of operation in the area affected by the immediate hazard or danger or suspension or termination of this License. Commissioner shall provide Licensee with notice of any such suspension. If Commissioner determines that such emergency condition cannot be corrected within 24 hours time, Commissioner may extend such time to permit Licensee to complete the cure, under such terms and conditions as she deems appropriate.

(ii) In the event that Licensee believes that any such emergency condition existing at the Site was caused by Parks or its designees, then CPF shall so notify the Commissioner or her designee and, at the Commissioner's direction, shall cure or remove such condition in accordance with the provisions of this paragraph. In such event the 24-hour cure period (and other related provisions) described in (b)(i) above shall not commence until Licensee has been advised in writing of such determination by the Commissioner or her designee. Licensee shall be reimbursed by Parks for all costs of undertaking and performing such work, provided that and to the extent that such emergency condition is determined to have been caused or created by Parks or its designees, or other settlement is reached between the parties. Any such emergency condition caused by Parks or its designees shall not provide the basis for termination of the License by the Commissioner.

c) This section shall not apply to CPF's obligations with respect to Section 19 and the specific cure periods provided by Section 19 of this License shall apply to those obligations.

## 22. ALTERATIONS

a) As used in this License, "Alteration" shall have the following meaning:

(i) any restoration, rehabilitation, modification, or improvement to the Playfield (excepting ordinary maintenance);

(ii) any work or construction which would or might affect in any manner, or have any impact whatsoever upon the structure, character, appearance or design of any portion of the Playfield;

(iii) any work excluding ordinary maintenance and repair, affecting the Playfield's plumbing, heating, electrical, mechanical, ventilating or other systems;

b) All alterations to the Playfield undertaken by Licensee, its agents, employees or contractors shall be at Licensee's sole cost and expense subject to the prior review and approval by Parks' Capital Division, and such alterations shall not commence until Licensee obtains such written approval from Parks and all appropriate permits required by any agency or entity of government with pertinent jurisdiction.

c) To guarantee prompt payment of moneys due to a contractor or such contractor's subcontractors and to all persons furnishing labor and materials to the contractor or such subcontractor in the prosecution of any alteration with an estimated cost exceeding two hundred fifty thousand dollars (\$250,000), Licensee will be required to post a payment bond or other form of undertaking approved by Parks in the amount of one hundred percent (100%) of the cost of such alterations. Notwithstanding the above, to the extent than an alteration is funded in whole or in part through a separate contract with the State or City, Licensee will comply with the terms of such contract regarding payment bonds for the work to be performed under such



contract, including any requirements to obtain a payment bond pursuant to State Finance Law 137 or Section 5 of the Lien Law, as applicable.

c) All alterations shall be undertaken in a good and workerlike manner, completed in full accordance with the plans, designs and specifications approved by Parks and in full compliance with all applicable laws, rules and regulations.

d) In those instances where a contractor is employed, selection of the contractor to perform work hereunder shall be subject to Commissioner's prior written approval, which approval shall not be unreasonably denied, and said contractor shall be authorized to do business in the State of New York.

### **23. ALTERATIONS BY PARKS**

Parks may, in its sole judgment, make additions, alterations, repairs, decorations or improvements to the Playfield at the City's expense, but nothing herein contained shall be deemed to obligate or require Parks to make any additions, alterations, repairs, decorations or improvements, nor shall this provision in any way affect or impair Licensee's obligations in any respect. Parks will use reasonable efforts to schedule any such alteration, additions, decorations, repairs, or improvements to be made by Parks at such times as will cause the least interference with Licensee's operation of programs.

### **24. NUISANCE AND WASTE**

Licensee shall not create or suffer to be created any nuisance or danger to the public safety or public property in, on or about the Playfield and shall not commit or cause any waste, damage, disfigurement or injury to the Playfield and Adjacent Area.

## **25. USE OF PROPERTY AND TITLE TO IMPROVEMENTS**

It is understood and agreed that Licensee shall have the non-exclusive use of the Site, fixtures, furniture, landscaping and other improvements now or hereafter during the Term located or installed on, affixed to or within the Site pursuant to the terms and conditions set out herein. Title to all alterations, fixtures, furniture, landscaping and other improvements made to, installed, attached, or affixed to the Site shall pass to the City , at its option, immediately upon construction, installation, attachment or affixation thereto.

## **26. WORKERS' COMPENSATION AND INSURANCE**

### **a) Licensee's Obligation to Insure**

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

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

### **b) Commercial General Liability Insurance**

(i) The Licensee shall maintain Commercial General Liability insurance in the amount of at least Three Million Dollars (\$3,000,000) per occurrence. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Premises and such per-location aggregate shall be at least Two Million Dollars



(\$2,000,000). This insurance shall protect the Licensee, Parks, the City and the Central Parks Conservancy ("CPC") from claims for property damage and/or bodily injury, including death, that may arise from any of the operations under this License. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 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."

(ii) Such Commercial General Liability insurance shall name the City and CPC, together with their officials and employees, as an Additional Insured with coverage at least as broad as the most recent edition of ISO Form CG 2026.

**c) Workers' Compensation, Employers Liability, and Disability Benefits Insurance**

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

**d) Liquor Law Liability Insurance**

(i) In the event the Licensee shall serve alcohol on the Licensed Premises, the Licensee shall carry or cause to be carried liquor law liability insurance in an amount not less than Five Million Dollars (\$5,000,000) per occurrence, and name CPC and the City as additional insureds pursuant to ISO Form CG 20 26. Such insurance shall be effective prior to the commencement

of any such service of alcohol and continue throughout such operations.

(ii) In the event the Licensee shall permit sublicensees or others to serve alcohol on the Licensed Premises, the Licensee shall carry or cause each such person to carry liquor law liability insurance in an amount not less than Two Million Dollars (\$2,000,000) per occurrence, and name CPF, CPC and the City as additional insureds pursuant to ISO Form CG 20 26. Such insurance shall be effective prior to the commencement of any service of alcohol by such person on the Licensed Premises and continue throughout such operations.

**e) General Requirements for Insurance Coverage and Policies**

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

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

(iii) There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Commissioner. The Licensee shall ensure that any such self-insurance program provides the City and CPC with all rights that would be



provided by traditional insurance under this Article, including but not limited the defense and indemnification obligations that insurers are required to undertake in liability policies.

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

(v) All required policies, except for Workers' Compensation insurance, Employers Liability insurance, Disability Benefits insurance, and United States Longshoremen's and Harbor Workers Act and/or the Jones Act 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, New York City Department of Parks & Recreation, 830 5<sup>th</sup> Avenue, New York, New York 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.

(vi) All required policies, except Workers' Compensation, Employers Liability, Disability Benefits, and United States Longshoremen's and Harbor Workers Act and/or the Jones

Act insurance, shall include a waiver of the right of subrogation with respect to all insureds and loss payees named therein.

**f) Proof of Insurance**

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

(ii) For Workers' Compensation, Employers Liability Insurance, Disability Benefits, and United States Longshoremen's and Harbor Workers Act and/or the Jones Act insurance policies, the Licensee shall submit one of the following:

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

(iii) For all insurance required under this Article other than Workers Compensation, Employers Liability, Disability Benefits and United States Longshoremen's and Harbor Workers



Act and/or the Jones Act insurance, the Licensee shall submit one or more Certificates of Insurance in a form acceptable to the Commissioner. All such Certificates of Insurance shall (a) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) be accompanied by the provision(s) or endorsement(s) in the Licensee's policy/ies (including its general liability policy) by which the City and CPC has been made an additional insured or loss payee, as required herein. All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form required by the Commissioner or certified copies of all policies referenced in such Certificate of Insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

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

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

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

**g) Miscellaneous**

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

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

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



date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. The Licensee shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007 and to CPC at 14 E. 60th St, New York, NY, 10022

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

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

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

(vii) The Licensee waives all rights against the City and CPC, including their officials and employees, for any damages or losses that are covered under any insurance required under

this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Licensee and/or its employees, agents, or servants of its contractors or subcontractors.

(viii) In the event the Licensee requires any entity, by contract or otherwise, to procure insurance with regard to any operations under this License and requires such entity to name the Licensee as an additional insured under such insurance, the Licensee shall ensure that such entity also name the City and CPC, including their officials and employees, as an additional insured with coverage at least as broad as ISO form CG 20 26.

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

## **27. INDEMNIFICATION**

- a) The Licensee, limited only to the extent of the limits of its insurance policies



under this License, shall indemnify, defend, and hold harmless the City, Parks, CPC, and their officers, employees, and agents from any and all claims, actions, or judgments, in law or equity, liabilities, penalties, or expenses which may arise out of any negligent or willful act of Licensee under this License, any violation of any law and from any and all claims for loss, damage, or injury, including death, or property damage of whatever kind or nature including the negligence or carelessness of the Licensee's officers, managerial personnel, agents, servants, and employees, or any person, firm, company, agent, or others engaged by Licensee as experts, consultants, specialist, or subcontractors, hereunder, or independent contractors, **PROVIDED HOWEVER** that such indemnification protection shall not apply to any claims arising solely out of the negligence, gross negligence or intentional actions of the City, Parks, their agents, employees, or officers.

## **28. EMPLOYEES**

All personnel of the Licensee are employees of the Licensee and not of Parks or the City, and the Licensee alone is responsible for their work, direction, compensation, and personal conduct while engaged in connection with this License. Nothing included in this section or in any other provision of this License shall be construed to impose any liability or duty upon Parks or the City to persons, firms, or corporations employed or engaged by the Licensee as consultants, experts, or independent contractors, or in any other capacity whatsoever or as employees, servants, or agents of the Licensee, or to make Parks or the City liable to any person, firm, corporation, association, or to any government for the acts, omissions, liabilities, obligations, and taxes of whatsoever nature, including unemployment insurance of the Licensee or its consultants, experts, employees, servants, agents, or independent contractors.



## 29. INVESTIGATIONS

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

b) (i) If any person who has been advised that his or her statement and any information from such statement will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract or license entered into with the City, 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 under oath, or by the Inspector General of the governmental agency that is a party in interest in and is seeking testimony concerning the award of or performance under any transaction, agreement, lease, permit, contract or license entered



into with the City, State or any political subdivision thereof or any local development corporation with the City, then;

c) (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.

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

(i) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person or entity of which such person was a member at the time the testimony was sought from submitting bids for, 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 such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this License, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

e) The Commissioner or agency head shall consider and address in reaching her 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 which may be relevant and appropriate:

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

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

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

(iv) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under (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 proved that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.



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

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

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

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

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

### 30. NOTICE

All notices from Licensee to Parks shall be in writing and delivered by mailing a copy of such notice by registered or certified mail, return receipt requested, to the attention of the General Counsel, City of New York Parks & Recreation, The Arsenal, Central Park, 830 Fifth



Avenue, New York, New York 10065. All notices from Parks to Licensee shall be dispatched in the same manner.

### **31. COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS**

The Licensee shall faithfully perform and carry out the provisions of this License and cause its agents, employees and invitees to conform to all rules, regulations and orders now prescribed or which may hereafter be prescribed by the Commissioner and comply with all laws, regulations, rules and orders of any kind whatsoever and of any agency or entity of government whatsoever applicable to the Site and the Licensee's use and occupation thereof. This provision includes, but is not limited to, applicable tax and labor laws relating to non-discrimination in employment. Likewise, this provision includes the requirement that all performances that occur under this License shall be properly licensed and comply with the terms of copyright law.

### **32. REPRESENTATIONS, WARRANTIES, AND COVENANTS**

a) Licensee makes the following representations and warranties:

(i) Licensee is a corporation duly organized, validly existing and in good standing under the laws of the State of New York and has all requisite and authority to execute, deliver and perform this agreement.

(ii) This agreement has been duly authorized by all necessary corporate action on the part of Licensee, has been duly executed and delivered by Licensee, and assuming due execution and delivery by the City, constitutes a legal, valid, binding and enforceable obligation of Licensee.

(iii) The execution and delivery of this agreement, and compliance with the



provisions hereof, do not and will not conflict with or constitute a violation of or default under Licensee's Certificate of Incorporation, by-laws, or any statute, indenture, mortgage, deed of trust or other agreement or instrument to which Licensee is bound, or, to the knowledge of Licensee, any order, rule or regulation of any court, governmental agency, or body having jurisdiction over Licensee or any of its activities or properties.

(iv) Licensee has neither been asked to pay, offered to pay nor paid any illegal consideration, whether monetary or otherwise, in connection with the procurement of this agreement.

(v) Licensee has not employed any person to solicit or procure this agreement, and has not made and shall not make any payment of any commission, percentage, brokerage, contingent fee or any other compensation in connection with the procurement of the agreement.

b) City hereby represents and warrants that this agreement has been duly authorized by all necessary action on the part of the City, has been duly executed and delivered by the City and assuming due execution and delivery by Licensee, constitutes a legal, valid, binding and enforceable obligation of the City.

### **33. CONFLICTS OF INTEREST**

Licensee represents and warrants that neither it nor any of its officers, trustees, employees, or volunteers has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. Licensee further represents and warrants that in the performance of this agreement 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 Parks, nor any

person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this License which affects his or her personal interest or the interest of any corporation, partnership, or association in which he is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this agreement or in the proceeds thereof.

**34. NO ASSIGNMENT**

Licensee shall not sell, assign, mortgage, or otherwise transfer any interest provided for herein, or consent, allow or permit any other person or party to use any part of the Site, except as provided herein or approved in writing by the Commissioner, nor shall this License be transferred by operation of law, it being the purpose and spirit of this License to grant this License and privilege solely to Licensee.

**35. NO DISCRIMINATION**

Licensee agrees to comply with all applicable federal, state, and local civil rights and human rights laws with reference to equal employment opportunities and the provision of services. Licensee shall not restrict entry to the Site on the basis of race, color, creed, religion, national origin, ethnic origin, disability, marital status, or sexual orientation. Licensee shall comply with the Americans with Disabilities Act ("ADA") and regulations pertaining thereto as applicable. Any violation of this paragraph shall be a material breach of this License.

**36. JURY TRIAL**

Licensee hereby expressly waives all rights to trial by jury in any summary proceeding



hereafter instituted by City against Licensee or any counterclaim or cause of action directly or indirectly arising out of the terms, covenants, or conditions of this License or the use and occupation of the Playfield or any matter whatsoever in any way connected with this License, including but not limited to, the relationship between the City and Licensee. The provision relating to waiver of jury trial shall survive the expiration or termination of this License or any renewals thereof.

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

This License shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of Licensee and shall be governed by and construed in accordance with the laws of the State of New York. Any and all claims asserted by or against the City arising under this License or related thereto shall be heard and determined either in the courts of the United States ("Federal Courts") located in New York City or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this License and intent, it is understood:

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

b) With respect to any action arising out of this agreement between the City and Licensee in New York State Court, Licensee expressly waives and relinquishes any rights they 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 change of venue to a New York State Court outside New York County.

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

d) If Licensee commences any action arising out of this agreement against the City in a court located other than in the City and State of New York, upon request of the City, Licensee shall 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, Licensee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

### **38. CLAIMS AND ACTIONS THEREON**

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

b) No action shall lie or be maintained against the City by Licensee upon any claims based upon this agreement unless such action shall be commenced within six months after the date of filing in the Office of the Comptroller of the City of the certificate for the final payment hereunder, or within six months of the termination or conclusion of this agreement, or within six



months after the accrual of the cause of action, whichever first occurs.

(c) In the event any claim is made or any action brought in any way relating to the agreement herein, Licensee shall diligently render to the City of New York without additional compensation any and all assistance which the City of New York may require of Licensee.

#### **39. CLAIM AGAINST OFFICERS AGENTS OR EMPLOYEES**

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

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

It is the intent and understanding of the parties to this agreement that each and every provision of law required to be inserted in the agreement shall be and is inserted herein. Furthermore, it is hereby stipulated that 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 agreement 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.

#### **41. SEVERABILITY**

If any provision(s) of this agreement is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

**42. HEADINGS**

The article headings contained in this License are inserted for convenience only and shall not enlarge or limit the scope or meaning of the various and several articles hereof. Unless the context requires otherwise, words of any gender used in the License shall include the other gender and words in the singular number shall include the plural.

**43. ENTIRE AGREEMENT**

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

**44. MODIFICATION**

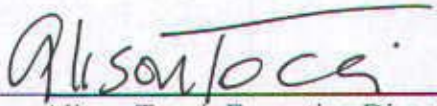
This License may be modified from time to time by notice in writing duly executed by both parties hereto, but no modification of this License shall be effective until the same has been agreed to in writing and duly executed by both parties.

**IN WITNESS WHEREOF**, the parties hereto have caused this License to be signed and sealed on the day and year first above written.

CITY OF NEW YORK  
PARKS & RECREATION

By:   
Veronica White, Commissioner

CITY PARKS FOUNDATION

By:   
Alison Tocci, Executive Director



Dated: 6/26/13

Dated: 6/28/13

APPROVED AS TO FORM:

Sharon Cantor  
Acting Corporation Counsel

Dated: JUN 06 2013

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF New York     )

On the 28 day of June, 2013, before me personally came Allison Tocci, who being duly sworn by me did depose and say that she is the Executive Director of City Parks Foundation described herein and who executed the foregoing instrument and acknowledged that she executed the same in her official capacity and for the purposes mentioned therein.



SIMON CHU  
Notary Public, State of New York  
No. 01CH6160154  
Qualified in NY County  
Commission Expires Jan. 29, 2015  
Notary Public

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF NEW YORK     )

On this 26<sup>TH</sup> day of JUNE, 2013, before me personally came Veronica White to me known and known to me to be the Commissioner of the Department of Parks & Recreation of the City of New York, and the said person described in and who executed the foregoing instrument, and she acknowledged that she executed the same in her official capacity and for the purpose mentioned therein.

*Faustina A. Osei-Owusu*

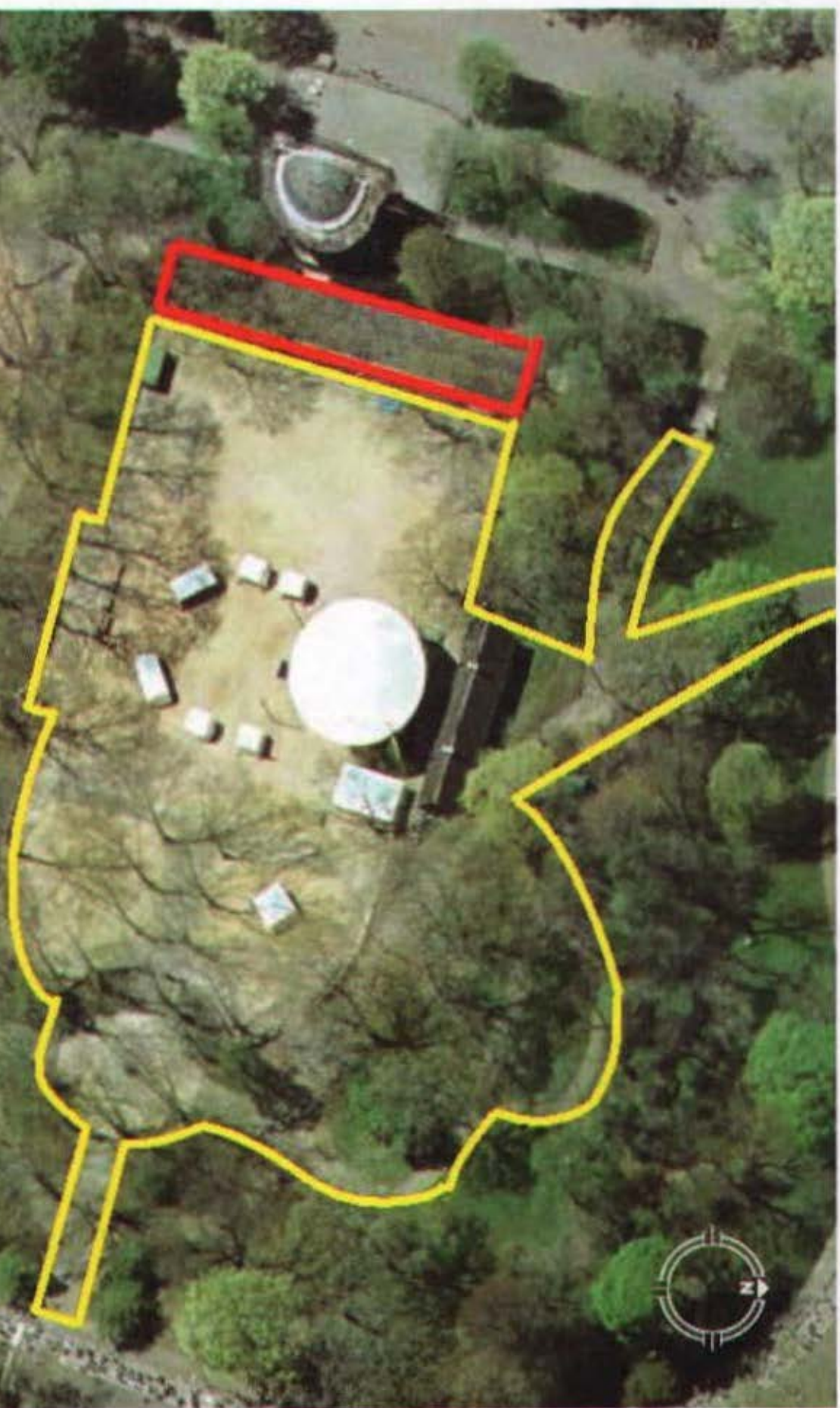
Notary Public

Faustina A. Osei-Owusu  
Notary Public, State of New York  
No. 010S6232313  
Qualified in Bronx County  
Commission Expires December 6, 2014

Commission Expires Dec. 6, 2014  
Qualified in Bronx County  
No. 010S6232313  
Faustina A. Osei-Owusu  
Notary Public, State of New York

**EXHIBIT A**





Pergola

Summerstage Licensed Premises



© 2006 Europa Technologies

© 2006 Navteq

Image © 2006 Sanborn

Pointer 40°46'21.26" N 73°58'12.62" W elev 77 ft Streaming 100%

Google

Eye alt 665 ft



**SCHEDULE A**  
**RUMSEY PLAYFIELD FEES**

Annual AIDS Walk	\$8,000 plus production expenses
Legacy Cultural Events (Israeli Day, German-American Friendship Day)	\$16,000 plus production expenses
SummerStage Benefit Concerts	\$17,000, plus production expenses
Corporate Client Managed Events	\$54,000, plus production expenses

LICENSE AGREEMENT between CITY OF NEW YORK PARKS & RECREATION and  
CITY PARKS FOUNDATION for OPERATION of SUMMERSTAGE

**2013 Rumsey Playfield Schedule A  
Production Expenses by Line Item**

Line Item	Expense Formula	Expense
<b>Stage &amp; Sound Equipment</b>		
House Sound System	\$2,600 flat fee per day	\$ 2,600.00
Stage Lights	\$2,500 flat fee per day	\$ 2,500.00
Genie Lift	\$300 flat fee per day	\$ 300.00
<b>House &amp; Field Equipment</b>		
Office Trailer	\$500 flat fee per day	\$ 500.00
Artist Trailers	\$1,250 flat fee per day	\$ 1,250.00
Radios	\$25 per unit x 45 units	\$ 1,125.00
Standard Portosan	\$65 per unit, 20 units	\$ 1,300.00
Handicapped Portosan	\$165 per unit, 4 units minimum	\$ 660.00
Portosan Servicing & Delivery	\$12 per 24 units	\$ 288.00
Trash Carting	\$450 per event day	\$450.00
Field & Turf Supplies	If applicable, for damage and repairs	TBD
<b>Production Crew Labor</b>		
Director of Production	Day Rate	\$ 700.00
Production Manager	Day Rate	\$ 600.00
Stage Manager	Day Rate	\$ 400.00
Audio Engineer FOH	Day Rate	\$ 660.00
Audio Engineer Monitors	Day Rate	\$ 660.00
Local One Stage Crew	\$44 x 8 hands x 8 hrs	\$ 2,816.00
Local One Stage Crew	\$66 OT x 8 hands x 6 hrs	\$ 3,168.00
Rigger	\$60 per hour (6 hr minimum), if required	\$ 360.00
<b>House Crew Labor</b>		
Venue Manager	Day Rate	\$ 500.00
House Crew Set Up & Clean Up	Day Rate	\$ 3,200.00
Hospitality Manager	Day Rate	\$ 300.00
Vehicle Escort	\$325 Day Rate	\$ 325.00
Counters	\$25 per hour x 3 counters x 6 hours	\$ 450.00
<b>Security Crew Labor</b>		
Security Supervisor	Day Rate	\$ 450.00
Security Staff/Fire Guards	\$25 x 15 security guards x 7 hours	\$ 2,625.00

## **EXHIBIT B - PAID SICK LEAVE LAW RIDER**

### **Introduction and General Provisions**

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

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

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

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

The PSLL is summarized below for the convenience of the Concessionaire.

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

Pursuant to the PSLL and the Rules:

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

An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSLL (“Year”) must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage.

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

Employers are not required to provide more than forty hours of sick time to an employee in any Year.

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

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

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

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

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

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

### Exemptions and Exceptions



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

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

### Retaliation Prohibited

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

### Notice of Rights

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

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

### Records

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

### Enforcement and Penalties

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

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

### More Generous Policies and Other Legal Requirements

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

LICENSE AGREEMENT

BETWEEN

**CITY OF NEW YORK  
PARKS & RECREATION**

AND

**CITY PARKS FOUNDATION**

*for*

NAMING RIGHTS SPONSORSHIP TO THE SUMMERSTAGE FESTIVAL

NEW YORK, NEW YORK

**M10-71-O**

DATED: \_\_\_\_\_, 2019

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THIS LICENSE AGREEMENT (“License” or “Agreement”), made this \_\_\_\_\_ day of \_\_\_\_\_, 2019 between the City of New York (“City”), a municipal corporation of the State of New York (“State”) acting by and through the Commissioner of the Department of Parks & Recreation (“Commissioner” and “Parks”, respectively), having an office at The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065; and City Parks Foundation, Inc. (“CPF” or “Licensee”), a not-for-profit corporation organized in accordance with the laws of the State, with an office at The Arsenal, Central Park, 830 Fifth Avenue, 2<sup>nd</sup> Floor, New York, NY 10065.

**WITNESSETH**

**WHEREAS**, the Commissioner pursuant to Section 533 of the New York City Charter is charged with the duty to manage, maintain, and operate City parks, buildings, and recreation facilities under the jurisdiction of Parks for the beneficial use of the people of the City, and has the duty to plan, develop, conduct, and enter into arrangements on behalf of Parks and for the benefit of the public; and,

**WHEREAS**, Licensee was formed in 1989 for the purpose of offering various park programs throughout the five (5) boroughs of the City; and,

**WHEREAS**, Licensee supports City neighborhood parks that lack access to private resources by presenting free arts, sports, educational, and community building programs, and making City neighborhood parks a focal point for community development; and,

**WHEREAS**, the Commissioner has jurisdiction over the National Historic Landmark park known as Central Park, located in the Borough of Manhattan; and,

**WHEREAS**, since 1986, the SummerStage Program (“SummerStage” or “the Program”), one of the most popular arts programs in Central Park (and elsewhere in parks throughout New

York City), has contributed to the cultural heritage of the City by presenting performances by emerging and established musicians, dancers, and literary figures from around the globe; and,

**WHEREAS**, the Central Park portion of SummerStage runs from April 1<sup>st</sup> through October 17<sup>th</sup> each year (“Operating Season”) and presents approximately thirty-five (35) days of free performing arts events to an average audience of one hundred sixty thousand (160,000) New Yorkers and visitors annually; and,

**WHEREAS**, the non-Central Park portion of SummerStage runs each summer and is anticipated to present approximately fifty-two (52) free performing arts events to an anticipated audience of seventy thousand (70,000) New Yorkers each summer; and,

**WHEREAS**, Licensee has assumed responsibility for the management and operation of SummerStage since 1993; and,

**WHEREAS**, in June 2013, Parks and Licensee entered into a license agreement (“Maintenance and Operation Agreement” attached hereto as Exhibit A) for the management and operation of SummerStage in Central Park and through Parks’ special event permits Licensee has operated SummerStage events at other Parks locations throughout the City; and,

**WHEREAS**, the total cost of the free events and the maintenance and operation of SummerStage is approximately seven million dollars (\$7,000,000.00) annually and the revenue generated from the Maintenance and Operation Agreement does not cover these costs; and,

**WHEREAS**, Licensee desires to enter into an agreement with a third-party entity (the “Naming Rights Sponsor”) granting certain sponsorship rights related to the presentation of live events at SummerStage in Central Park and other locations approved by Parks and use any revenue generated to offset the high costs of the maintenance and operations of the Rumsey Playfield (“Playfield”) in Central Park and other locations where SummerStage events take place, and

programming free events as part of SummerStage including but not limited to attracting a more diverse and higher profile slate of performers; and,

**WHEREAS**, the Commissioner and Licensee desire to ensure that the coordinated efforts of Parks and Licensee will continue to serve the best interest of the public; and,

**WHEREAS**, Parks and Licensee have collectively created an effective public-private partnership whereby Parks and Licensee complement each other's efforts in connection with ensuring that the public continues to have access to free programs on the Playfield and other locations throughout the City; and,

**WHEREAS**, the Franchise and Concession Review Committee ("FCRC"), has authorized Parks to use a different procedure to enter into this Sole Source License Agreement with CPF.

**NOW, THEREFORE**, in consideration of the promises and mutual covenants contained herein, the City and Licensee covenant and agree as follows:

#### **GRANT OF LICENSE**

**1.1** Parks hereby grants to Licensee and Licensee hereby accepts from Parks a non-exclusive license throughout the Term (i) to enter into an agreement with a Naming Rights Sponsor ("Naming Rights Sponsorship Agreement"), subject to the specifications, terms, reservations and restrictions of this Agreement, for the purpose of publicly identifying and associating SummerStage with such Naming Rights Sponsor, and (ii) to collect all revenues generated by such Sponsorship activities (the "Concession").

**1.2** The terms and conditions of any such Naming Rights Sponsorship Agreement and the entity selected as the Naming Rights Sponsor shall be subject to the prior written approval of the Commissioner. Any such Naming Rights Sponsorship Agreement which is authorized hereunder shall be subject and subordinate to the terms and conditions of this License and the Maintenance



and Operation Agreement and Licensee shall require the Naming Rights Sponsor to acknowledge in writing that it received a copy of this License and the Maintenance and Operation Agreement and that all provisions of this License, and the portions of the Maintenance and Operation Agreement and any other permits applicable to the operations under this License, including but not limiting to those regarding signage and use of the City Property (as hereinafter defined), shall be equally applicable to any Naming Rights Sponsor. Licensee shall require any Naming Rights Sponsor to agree in writing that it will comply with Parks' directives and the provisions of this License and the Maintenance and Operation Agreement applicable to Licensee with respect to the use of the City Property including, but not limited to indemnifying the City as set forth in Paragraph 10 herein, and shall be responsible for assuring such compliance. If the Naming Rights Sponsor does not comply with this License and the Maintenance and Operation Agreement insofar as applicable to it, such Naming Rights Sponsor's operations shall be terminated by Licensee upon direction of Parks. No Naming Rights Sponsorship Agreement may be assigned without the prior written consent of Parks, and Licensee shall ensure that the Naming Rights Sponsorship Agreement provides that the City shall be named a third-party beneficiary of any such Naming Rights Sponsorship Agreement. Any subsequent Naming Rights Sponsorship Agreements will be subject to the terms and conditions as set forth in this License.

**1.3** Licensee shall obtain any and all approvals, permits, and other licenses required by Federal, State and City laws, rules, regulations, and orders which are or may become necessary to operate this Concession, in whole or in part, in accordance with the terms of this License. In order to be in compliance with this License, Licensee must fulfill in all material respects all of the obligations contained herein. Failure to fulfill in all material respects any of the obligations set forth herein for any reason may be deemed as a default by the Commissioner. Whenever any act, consent, approval, or permission is required of the City or the Commissioner under this License, the same

shall be valid only if it is, in each instance, in writing and signed by the Commissioner or his duly authorized representative, and such approval or permission shall not be unreasonably withheld or delayed. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon the City, the Commissioner, or their agents, unless the same is, in each instance, in writing and duly signed by the Commissioner or his duly authorized representative.

1.4 Licensee shall ensure that any Naming Rights Sponsor whose aggregate value of City contracts, franchises, and concessions awarded during the past twelve-month period equals or exceeds one hundred thousand dollars (\$100,000) enrolls in the Mayor's Office of Contract Services' Procurement and Sourcing Solutions Portal (PASSPort).

## **TERM**

2.1 This License shall become effective upon registration with the Comptroller and commence upon the date written in a written Notice to Proceed issued to Licensee by Parks ("Commencement Date") and, unless terminated sooner in accordance with this License, shall terminate on the same date as the Maintenance and Operation Agreement (June 27, 2023) ("Termination Date"). The period between the Commencement Date and the Termination Date shall be the "Term." In no event shall the Term exceed the term of the Maintenance and Operation Agreement.

2.2 Notwithstanding any language contained herein, this License is terminable at will by the Commissioner at any time. Such termination shall be effective upon twenty-five (25) days' written notice to Licensee. The City, its employees, and its agents shall not be liable for damages to Licensee if this License is terminated by Commissioner as provided for in this Section 2.2.

## **LICENSING AND INTELLECTUAL PROPERTY**

3.1 Subject to the limitations, terms and conditions set forth in this Agreement, the City hereby grants to Licensee a non-exclusive license to use, during the Term, the City trademark (the "City Property"), attached hereto as Schedule A, to, upon prior written approval by the

Commissioner, directly or indirectly develop, market, and promote the Program in connection with the Naming Rights Sponsorship Agreement.

**3.2** Licensee shall work with the Naming Rights Sponsor to develop, at Licensee's expense, a graphic design ("Artwork") incorporating the Sponsor's trademarks, logos, servicemarks, and other intellectual property identified and given prior approval in writing by the Commissioner for use in connection with this Naming Rights Sponsorship agreement, (individually and/or collectively the "Sponsor Property"), City Property, and/or Licensee's trademarks, logos, servicemarks, and other intellectual property identified and given prior approval in writing by the Commissioner for use in connection with this Naming Rights Sponsorship agreement, (individually and/or collectively the "Licensee Property") to be used for marketing and promotional purposes in connection with the Program. Such Artwork shall be subject to the Commissioner's prior written approval. To the extent that the Artwork incorporates City Property, the City shall own the portion of any Artwork that consists of or includes City Property.

**3.3** Licensee agrees to use the applicable trademark and copyright notices as directed by the City (™, ® or ©), as well as any additional notations directed by the City in connection with the first and most prominent usages of the City Property in any manner authorized by this Agreement: "SUMMERSTAGE and its design is the property of the City of New York and may not be reproduced without written consent. © 2019. City of New York. All rights reserved."

Licensee agrees to display the applicable notices and notations as directed by the City on all web sites, displays, advertising, sales brochures, instruction manuals, and other promotional materials (hereinafter the "Promotional Materials"): "SUMMERSTAGE and its design is the property of the City of New York and may not be used or reproduced without prior written consent. © 2019. City of New York. All rights reserved." Any shortened version of such notices may be used only with the Commissioner's prior written approval. Licensee shall require the Naming Rights

Sponsor to comply with the provisions of this Section 3.3 in any Naming Rights Sponsorship Agreement. Any failure to do so shall constitute a material breach of this Agreement by Licensee and be cause for immediate termination. The right to terminate the Agreement pursuant to this Section 3.3 is in addition to any other rights to terminate set forth in this Agreement.

**3.4** Upon termination or expiration of this Agreement, Licensee shall immediately cease using the City Property and cause the Naming Rights Sponsor to cease using the City Property. Failure to do so shall cause immediate and irreparable harm to the City and Licensee and its Naming Rights Sponsor shall acknowledge this and the City shall be entitled to equitable relief in the event that use of City Property does not immediately cease upon termination or expiration of this Agreement.

**3.5** Licensee may not use the City Property or the Artwork for merchandising purposes under this Agreement. The Naming Rights Sponsor may not use the City Property or the Artwork for any merchandising purposes whatsoever. Violation of this section 3.5 shall constitute a material breach of this Agreement by Licensee and be cause for immediate termination. The right to terminate the Agreement pursuant to this Section 3.5 is in addition to any other rights to terminate set forth in this Agreement.

## **OPERATIONS**

**4.1** Licensee, at its sole cost and expense, shall operate the 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 laws, rules, regulations, and orders of government agencies having jurisdiction, including but not limited to the New York City Paid Sick Leave Law, attached hereto as Exhibit B. Licensee shall obtain written approval from the Commissioner prior to entering into the Naming Rights Sponsorship Agreement. The Naming Rights Sponsor entering



into the Naming Rights Sponsorship Agreement with Licensee may be afforded signage and sponsorship rights as set forth in Schedule B.

**4.2** Licensee shall record all revenue generated as a result of the operation of this License and keep books and records as required and in compliance with the provisions set forth in Paragraphs 12 and 14 and as deemed acceptable by the Commissioner.

**4.3** Licensee shall designate an officer or representative to act as a direct point of contact for the operation of this License or employ an operations manager (“Manager”), qualified to manage operations of the Concession in a manner that is reasonably satisfactory to the Commissioner. Licensee shall replace any Manager, officer, employee, sublicensee, or subcontractor whenever reasonably requested by Commissioner.

**4.4** Licensee shall provide for the transfer of all monies collected to Licensee’s designated banking institution and bear the loss of any lost, stolen, misappropriated, or counterfeit monies derived from operations under this License.

**4.5** Licensee shall comply with all applicable laws, rules and regulations in force as of the date of this Agreement and which may hereafter be adopted.

## **COMPENSATION**

**5.1** In lieu of a license fee, Licensee shall use any revenue it receives from the Naming Rights Sponsorship Agreement to offset the high costs of the maintenance and operations of the Playfield and other locations where SummerStage events take place, and programming free events as part of SummerStage, including but not limited to attracting a more diverse and higher profile slate of performers (“Operating Costs”). In no event shall the revenue received by Licensee from the Naming Rights Sponsorship Agreement during any fiscal year exceed the difference between the Operating Costs and the revenue received by Licensee from sources other than the Naming Rights

Sponsorship pursuant to separate agreements (“Other Revenue Sources”) that is applied to the Operating Costs (the “Difference”). If at any time revenue received from the operation of the Concession is projected by Parks to exceed the Difference, Parks shall direct Licensee to implement a plan to provide additional SummerStage related services, including but not limited to additional free events, subject to the prior written approval of the Commissioner. Failure of Licensee to comply with such written directive within the time frame specified therein shall be deemed a material breach of this License and as such will be subject to immediate termination. The right to terminate the Agreement pursuant to this Section 5.1 is in addition to any other rights to terminate set forth in this Agreement. Operating Costs shall include any and all administrative expenses directly related to the cost of events at the Playfield and other locations where SummerStage events take place and operation and maintenance of the Playfield and other locations where SummerStage events take place, including, but not limited to:

- (a) any allocation of Licensee’s office rent or overhead;
- (b) any portion of the salary of the Executive Director or development professionals employed by Licensee; and,
- (c) any other cost, such as insurance, which is expressly stated to be a cost to be borne by Licensee pursuant to this License.

**5.2** No later than sixty (60) days after the end of each Operating Season, Licensee shall deliver to Parks an accounting setting forth its calculation of annual Operating Costs, Other Revenue Sources, and revenue received by Licensee from the operation of the Program for the preceding Operating Season, in accordance with Article 12 herein.

## **SIGNS**

**6.1** Pursuant to the provisions of the Maintenance and Operation Agreement, Licensee shall display, at its sole cost and expense and with the Commissioner’s reasonable approval, such signs

as may be needed to guide and inform the public as to the location, purpose, hours of operation, and related fees of the Playfield. Licensee shall maintain such signs in good condition and repair and shall also include the Parks logo and indicate that the Playfield is operated by Licensee through a license agreement with Parks. All signs must face inward towards the Playfield and not out towards the other areas of Central Park, except those required for directional or instructional purposes. As to any signage under this Agreement related to Program events outside of Central Park, such signage shall be subject to the terms and conditions set forth in the special event permit for that event.

**6.2** Pursuant to the provisions of the Maintenance and Operation Agreement, Licensee shall, at its sole cost and expense, post throughout the Playfield such signs as may be necessary to direct patrons to its services and facilities. Such signs shall include the necessary wording and arrows to direct patrons to Licensee's attendants. Licensee shall, obtain any necessary approvals or permits from any governmental agency with jurisdiction over any nearby highways, streets, or other specified location contemplated for the placement of any signs off-site of the Playfield. The design and content of all such signs, whether on or off Parks' property, are subject to Commissioner's prior written approval. As to any signage under this Agreement related to Program events outside of Central Park, such signage shall be subject to the terms and conditions set forth in the special event permit for that event and subject to the Commissioner's prior written approval.

## **ADVERTISING**

**7.1** Licensee may establish with the Naming Rights Sponsor an advertising and promotion program in compliance with Schedule B, which shall be subject to the Commissioner's prior written approval. Licensee and/or the Naming Rights Sponsor shall have the right to print or to arrange for the printing of programs or brochures containing City Property and/or the Artwork in connection with any advertising matter except advertising matter which in the sole discretion of

the Commissioner is indecent, in obvious bad taste, which demonstrates a lack of respect for public morals or conduct, or which adversely affects the reputation of SummerStage or the City of New York. If the Commissioner, in the Commissioner's discretion, finds any advertising or other releases to be unacceptable, then Licensee and/or the Naming Rights Sponsor shall cease or alter such advertisements or releases as directed by the Commissioner. The Commissioner shall have prior written approval as to design and distribution of all advertising and promotional materials. The Commissioner shall have prior written approval as to design and distribution of all advertising and promotional materials containing City Property or the Artwork, such as season brochures, which approval shall be exercised within a reasonable period of time following such request.

**7.2** Licensee shall not use City Property or the Artwork to advertise any product brands, commercial goods or services, or any third party without the Commissioner's prior written approval.

## **TRADEMARK OWNERSHIP**

**8.1** Licensee agrees that by virtue of this Agreement it does not and shall not claim any right, title, or interest in the City Property, or any other intellectual property right owned or claimed by the City or any part thereof (except the right to use them in accordance with this Agreement), and that any and all uses thereof by Licensee shall inure to the benefit of the City, to the extent that such uses incorporate City Property. Licensee acknowledges the City's sole right, title, and interest in and to, and ownership of the City Property (and in the Artwork to the extent it incorporates City Property) and the validity of the trademarks and service marks that are part of the City Property (or Artwork to the extent that it incorporates City Property) and the City's rights therein. Licensee agrees that neither it nor the Naming Rights Sponsor will raise or cause to be raised any challenges, questions, or objections to the validity, registrability, or enforceability of the City Property; the Artwork, to the extent that it includes City Property; to



Article 3, Article 8, and Article 9 herein; or to the validity of the City Property (or the Artwork to the extent that it incorporates City Property) and the City's rights therein, and shall not contest such right and title, nor do or permit to be done any act or omission which will in any way impair the rights of the City with respect to such City Property or the Artwork to the extent that it incorporates City Property. Licensee shall require the Naming Rights Sponsor to comply with the provisions of this Section 8.1 in any Naming Rights Sponsorship Agreement. Any failure to do so shall constitute a material breach of this Agreement by Licensee and be cause for immediate termination.

**8.2** Licensee agrees to assist the City in protecting the City's rights to the City Property (and the Artwork to the extent that it incorporates City Property), including but not limited to reporting to the City any infringement or imitation of the City Property or the Artwork. The City shall have the sole right to determine whether to institute litigation with respect to such infringements of City Property or the Artwork to the extent that it incorporates City Property, as well as the sole right to select counsel. The City may commence or prosecute any claims or suits for infringement of the City Property or the Artwork to the extent that it incorporates City Property in its own name or in the name of Licensee or join Licensee as a party thereto. If the City brings an action against any infringement of the City Property or the portion of any Artwork that infringes City Property, Licensee shall cooperate with the City at its own cost.

**8.3** If claims are made against the City, or Licensee with respect to the use of the City Property or the Artwork to the extent that it incorporates City Property, then the Parties agree to consult with each other on a suitable course of action. In no event shall Licensee, without the prior written consent of the City, have the right to acknowledge the validity of the claim of such party, to obtain or seek a license from such party, or to take any other action which might impair the ability of the City to defend or otherwise contest the claim of such party. The City shall have

the right to participate at its own expense in the defense of any claims or suit instituted against Licensee with respect to the use by Licensee or the Naming Rights Sponsor of the City Property or any Artwork that incorporates City Property.

**8.4** Licensee agrees to make modifications requested by the City in Licensee's or Naming Rights Sponsor's use of the City Property or any Artwork incorporating City Property, if the City, in its sole discretion, determines such action to be necessary or desirable to resolve or settle a claim or suit or to eliminate the threat of a claim or suit by any party.

## **GOODWILL**

**9.1** Licensee and any Naming Rights Sponsor recognize and acknowledge that the City Property, any Artwork to the extent that it incorporates City Property, and the City's name and reputation are the exclusive property of the City and that they communicate to the public, worldwide, a reputation for high standards of quality and service, which reputation and goodwill have been and continue to be unique to the City. Licensee further recognizes and acknowledges that the City Property has acquired secondary meaning in the mind of the public. The City Property or any Artwork to the extent that it incorporates City Property shall not be used in connection with any illegal, illicit or immoral purpose or activity, or in any manner which would be inconsistent with or damaging to the City's name and reputation. The City shall have the right to terminate the license granted by this section immediately, upon written notice, in the event that any part of the City Property or any Artwork to the extent that it incorporates City Property are used by Licensee or the Naming Rights Sponsor in connection with any illegal, illicit or immoral activity. In addition, in the event that any City Property or any Artwork to the extent that it incorporates City Property are used by Licensee or the Naming Rights Sponsor in any way which, in the reasonable judgment of the Commissioner, is inconsistent with or damaging to the City's name or reputation, the Commissioner shall so notify Licensee in writing and the

Commissioner shall have the right to terminate this License immediately upon written notice to Licensee. Licensee and its Naming Rights Sponsor acknowledge that failure to do so shall cause immediate and irreparable harm to the City and the City shall be entitled to equitable relief in the event that use of City Property or any Artwork to the extent that it incorporates City Property does not immediately cease upon termination or expiration of this Agreement. Licensee shall require the Naming Rights Sponsor to comply with the provisions of this Section in any Naming Rights Sponsorship Agreement. Any failure to do so shall constitute a material breach of this Agreement by Licensee and be cause for immediate termination. The right to terminate the Agreement pursuant to this Section 9.1 is in addition to any other rights to terminate set forth in this Agreement.

**9.2** Licensee and any Naming Rights Sponsor shall use the City Property and any Artwork incorporating City Property only in the manner specified by the City. Licensee acknowledges and agrees, and will require any Naming Rights Sponsor to acknowledge and agree, that all use of and goodwill in the City Property and Artwork shall inure to the sole benefit of the City or the trademark owner whose marks are incorporated into the Artwork. Except for the rights granted under this Agreement, neither Licensee nor any Naming Rights Sponsor shall acquire any rights in the City Property or Artwork by virtue of any use it makes of the City Property. Neither Licensee nor any Naming Rights Sponsor shall attempt to register the City Property alone or as part of any other trademark, service mark, trade name, or corporate identifier (including without limitation its own trademark), nor shall Licensee or any Naming Rights Sponsor use, adopt as its own, or attempt to register any marks, names, domain names, designations, or indicia that are the same as or similar to the City Property or Artwork except to the extent that such use is preapproved in advance in writing by the City and any marks, names, domain names, designations or indicia that are the same as or similar to the City Property or the Artwork are

used, adopted or registered for the benefit of the City, and are assigned to the City, at the expiration or termination of this Agreement.

**9.3** Any artwork or other materials conceived under or resulting from this Agreement and the Naming Rights Sponsorship (other than any Sponsor Property or the marks or property of a third party), including but not limited to copyrighted materials and trademarks, trade names, service marks, service names and trade dress and the like, photographs, sound and/or video recordings, films, broadcasts, brochures, printed material, or any other tangible work in any media (including but not limited to social media) or format, now known or hereafter discovered, as well as copies of any of these, whether developed by Licensee or on behalf of Licensee, shall be considered “work made for hire” within the meaning of 17 U.S.C. §101 and is the exclusive property of the City upon creation. In the event that such materials are deemed not to be a work made for hire, Licensee hereby irrevocably assigns to the City its entire right, title, and interest in and to such work and any derivative works thereof (including without limitation all rights of copyright). Licensee agrees, and will require any Naming Rights Sponsor to agree, to execute any documents as may be deemed necessary or desirable by the City to register in its own name, record, confirm, clarify, or otherwise cause the foregoing assignment of rights to the City to have full legal effect worldwide. If Licensee or any Naming Rights Sponsor desire to develop any new or different material, including but not limited to any design for any mark, symbol, logo, character or other element related to the Program, Licensee or any Naming Rights Sponsor shall first obtain the Commissioner’s written approval, and in any event all such designs shall be fully subject to the provisions of this paragraph and owned in full by the City to the extent that they do not incorporate Sponsor Property or other third party marks.

**9.4** Licensee acknowledges that, from time to time and without notice to Licensee, it may be necessary or desirable for the City to modify certain elements of the City Property, to include



additional elements to the City Property, or to discontinue use of some or all of the elements of the City Property. Accordingly, the City does not represent or warrant that the City Property or any elements thereof will be maintained or used in any particular fashion by the City. Any new elements or modifications to existing elements used by the City following the execution of this Agreement may be included in, or deleted from (as applicable), the City Property at the sole discretion of the City. Licensee agrees to comply with the City's written request to include such elements as, or to delete such elements from, the City Property within a reasonable period of time from Licensee's receipt of such written request. The Parties shall mutually agree on the manner in which such request shall be implemented.

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

### **Licensee Responsibility**

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

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

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

### **10.2 Indemnification and Related Obligations**

(a) To the fullest extent permitted by law, Licensee shall indemnify, defend and hold the City and the Central Park Conservancy (“CPC”), and their respective officials and employees, harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements) arising out of or related to any of the operations under this License (regardless of whether or not Licensee itself had been negligent) and/or Licensee’s failure to comply with the law or any of the requirements of this License. Insofar as the facts or law relating to any of the foregoing would preclude the City or CPC, or their respective officials and employees, from being completely indemnified by Licensee, the City and CPC, and their officials and employees, shall be partially indemnified by Licensee to the fullest extent permitted by law.

(b) Licensee shall defend, indemnify and hold the City and CPC harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages and from costs and expenses to which the City and CPC may be subject to or which it may suffer or incur allegedly arising out of or in connection with any infringement by Licensee of any copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party by Licensee or the Naming Rights Sponsor in the performance of this Agreement. Licensee shall defend, indemnify, and hold the City and CPC harmless regardless of whether or not the alleged infringement arises out of compliance with this Agreement. Insofar as the facts or law relating to any claim would preclude the City and CPC from being completely indemnified by Licensee, the City and CPC shall be partially indemnified by Licensee to the fullest extent permitted by law.

## **ASSUMPTION OF RISK**

**11.1** Licensee assumes all risk in the operation of this License.

## **INSPECTION OF RECORDS AND AUDITS**

**12.1** Licensee will establish and maintain accurate records and accounts, in a manner satisfactory to the Commissioner, which sufficiently and properly reflect all revenues and direct and indirect costs of any nature resulting from Licensee's operations pursuant to this License, and set forth, in a manner reasonably acceptable to the Commissioner, its expenditures in any way connected to Licensee's Operating Costs. Such records must include, but not be limited to, the details of how Licensee has applied the revenue it received in connection with its operation of the Concession to the Operating Costs as further described in Article 8. Such records and accounts shall conform to generally accepted accounting principles ("GAAP").

**12.2** Licensee shall furnish to the Commissioner a detailed income and expense report for each fiscal year during the Term of this License. Such statements shall be prepared by an independent Certified Public Accountant retained at the sole cost and expense of Licensee. Such annual statement shall be submitted to the Commissioner no later than sixty (60) days after the close of each fiscal year. Copies of sales tax reports, if any, shall be submitted whenever requested by the Commissioner. In addition, Licensee shall provide the Commissioner within thirty (30) days of execution, any required tax filings with the Internal Revenue Service (such as the Form 990 and any successor form) and any required financial reports with the New York State Department of Law (such as an annual report to be filed with the Charities Bureau or any successor report). Finally, no more than thirty (30) days after the end of each Operating Season, Licensee shall provide the Commissioner with detailed statements concerning any revenue generated pursuant to this Agreement as well as concerning Other Revenue Sources, and detailed statements to the Commissioner's reasonable satisfaction, concerning the expenses that Licensee has incurred in connection with the Operating Costs as described in Article 5.

**12.3** Licensee 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. Licensee must also establish a dedicated bank account for all deposits related to the Concession's revenue. The books and records maintained pursuant to this License shall be conveniently segregated from other business matters of Licensee and shall include, but not be limited to: all Federal, State and local tax returns and schedules Licensee's records of daily bank deposits of the entire receipts from transactions related to the Program, whether maintained in hard copy or in electronic form, sales slips, daily dated sales receipts, sales books, and duplicate bank deposit slips and bank statements, whether maintained in hard copy or in electronic form.

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

**12.5** The failure or refusal of the Licensee to furnish any of the statements required to be furnished under this Article 12 within thirty (30) days after its due date, the failure or refusal of the Licensee to maintain adequate internal controls or to keep any of the records as reasonably required by this Article 12 or the existence of any unexplained discrepancy in the amount of fees required to be due and paid hereunder, as disclosed by audit conducted by Parks and/or the Comptroller, of more than five percent (5%) in any two (2) out of three (3) consecutive months or more than ten percent (10%) in one month, shall be presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder, which shall entitle Parks, at its option, to terminate this License. Licensee shall make available to the office of the Comptroller,



and/or Parks' auditor, on demand, all books, records, documents, and correspondence pertaining to the License Agreement, for the purpose of examination, audit, review, or any purpose deemed necessary by the office of the Comptroller and/or Parks

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

### **NO REMOVAL OF RECORDS**

**13.1** Where performance of this License may involve the use by Licensee of Parks' papers, files, data, or records at Parks' facilities or offices, Licensee shall not remove any such papers, files, data, or records, therefrom without the prior written approval of the Commissioner.

### **RETENTION OF RECORDS**

**14.1** Licensee agrees to retain all books, records, and other documents relevant to this License for ten (10) years from the date of the creation of the record. City, State, and Federal auditors shall have full access to and the right to examine any of said materials during this period, upon reasonable prior notice.

### **PERSONNEL**

**15.1** All experts, consultants and employees of Licensee or any Naming Rights Sponsor who are employed by Licensee or any Naming Rights Sponsor to perform work under this License Agreement are neither employees of the City or CPC, nor under contract to the City or CPC, and Licensee alone is responsible for their work, direction, compensation and personal conduct while engaged under this License Agreement. Nothing in this License Agreement shall impose any liability or duty on the City or CPC for acts, omissions, liabilities or obligations of Licensee, any Naming Rights Sponsor, or any person, firm, company, agency, association, corporation or organization engaged by Licensee or any Naming Rights Sponsor as expert, consultant,

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

### **NO DISCRIMINATION**

**16.1** Licensee shall not unlawfully discriminate against any employee, applicant for employment, or patron because of race, creed, color, national origin, age, sex, disability, marital status, or sexual orientation. Licensee shall comply with the Americans with Disabilities Act (“ADA”) and regulations pertaining thereto as applicable. Any violation of this Article 17 shall be a material breach of this License.

### **WAIVER OF COMPENSATION**

**17.1** Licensee hereby expressly waives any and all claims for compensation for any and all loss or damage sustained by reason of any defects, including, but not limited to, deficiency or impairment of the water supply system, gas mains, electrical apparatus or wires furnished for the Playfield and/or at the site of any of the non-Central Park portions of SummerStage, or by reason of any loss of any gas supply, water supply, heat or current which may occur from time to time, or for any loss resulting from fire, water, windstorm, tornado, explosion, civil commotion, strike or riot, and Licensee hereby expressly releases and discharge the Commissioner, the Commissioner's agents, and the City from any and all demands, claims, actions, and causes of action arising from any of the aforementioned causes.

**17.2** Licensee further expressly waives any and all claims for compensation, loss of profit, or refund of its investment, or any other payment whatsoever, in the event this License is terminated by the Commissioner earlier than the fixed Term because the Playfield, and/ or the site of any of the non-Central Park portions of SummerStage is required for any park or other public purpose, or because the License was terminated or revoked for any reason as provided herein.

## **INVESTIGATIONS**

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

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

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

(A) The Commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days' written notice to the parties involved to determine if any penalties should attach for the failure of any person to testify.

(B) If any non-governmental party to the hearing requests an adjournment, the Commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Section 18.1(d) below without the City incurring any penalty or damages for delay or otherwise.

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

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

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

(d) The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Section 18.1(d)(i) and (ii)



below. He or she may also consider, if relevant and appropriate, the criteria established in Sections 18.1(d)(iii) and (iv) below in addition to any other information which may be relevant and appropriate.

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

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

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

(iv) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under (c) above, provided that the party or entity has given actual notice to the Commissioner or agency head upon the acquisition of the interest, or at the hearing called for in Section 18.1(b)(ii)(A) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potentially adverse impact a penalty will have on such person or entity.

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

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

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

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

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

## **NOTICE**

**19.1** All notices from Licensee to Parks shall be in writing and delivered by mailing a copy of such notice by registered or certified mail, return receipt requested, to the Office of the Revenue Division, New York City Department of Parks & Recreation, The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065, or such other address as Parks may designate, with copies sent to Parks' General Counsel at the same address. All notices from Parks to Licensee shall be dispatched in the same manner, and delivered to Licensee at The Arsenal, Central Park, 830 Fifth Avenue, 2<sup>nd</sup> Floor, New York, NY 10065, Executive Director, or such other address as may be notified from time to time.

## **PARKS' RIGHT TO TERMINATE**

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

(a) Should Licensee materially breach or fail to comply with any of the provisions of this License or any Federal, State, or local law, rule, regulation, or order affecting the License or the Program with regard to any and all matters, the Commissioner shall in writing order Licensee to remedy such breach or comply with such provision, law, rule, regulation, or order. In the event that Licensee fails to respond in a reasonable manner to the Commissioner, substantially comply with such written notice, or commence, in good faith and with due diligence, efforts to comply with such order within the time frame set forth in said notice from the mailing thereof, subject to unavoidable delays beyond reasonable control of Licensee and notwithstanding any other provisions herein, then this License may immediately terminate. If said breach or failure to comply is corrected, and a repeated violation of the same provision, law, rule, regulation, or order follows thereafter, the Commissioner, by notice in writing, may revoke and terminate this License. Such revocation and termination shall be immediately effective on the mailing thereof.

(b) The following shall constitute events of default for which this License may be terminated on three (3) days' notice:

(i) the appointment of any receiver of Licensee's assets;

(ii) the making of a general assignment for the benefit of creditors;

(iii) the occurrence of any act which operates to deprive Licensee permanently of the rights, powers and privileges necessary for the proper conduct and operation of the License;

and,

(iv) the levy of any attachment or execution which substantially interferes with Licensee's operations under this License and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty (60) days.

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

(d) Upon expiration or earlier termination of this License by the Commissioner, all rights of Licensee herein shall be forfeited without claim for loss, damages, refund of investment, or any other payment whatsoever against the Commissioner or City.

(e) Licensee agrees that upon the expiration or earlier termination of this License, it shall immediately cease all operations pursuant to this License without any further notice by City and without resort to any judicial proceeding by the City.

#### **COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS**

**21.1** Licensee shall faithfully perform and carry out the provisions of this License and cause its agents, employees, and invitees, including any Naming Rights Sponsor, to conform to all rules, regulations, and orders prescribed as of the date hereof or which may hereafter be reasonably prescribed by the Commissioner, provided Commissioner shall use reasonable efforts to give Licensee notice of any rules, regulations, or orders hereafter prescribed by Parks, and comply with all laws, regulations, rules, and orders of any kind whatsoever and of any agency or entity of government whatsoever applicable to the Playfield and the site of any of the non-Central Park portions of SummerStage and the Licensee's use and occupation thereof. This provision includes, but is not limited to, the Parks' Rules and Regulations as set forth in 56 RCNY §1-01 et seq., the New York State Not-for-Profit Corporation Law, applicable tax and labor laws relating to non-discrimination in employment, and laws protecting youths from child abuse and maltreatment.

#### **REPRESENTATIONS, WARRANTIES, AND COVENANTS**

**22.1** Licensee makes the following representations and warranties:

(a) Licensee is a not-for-profit corporation duly organized, validly existing and in good



standing under the laws of the State of New York and has all requisite and authority to execute, deliver, and perform this License.

(b) This Agreement has been duly authorized by all necessary corporate action on the part of Licensee, has been duly executed and delivered by Licensee, and assuming due execution and delivery by the City, constitutes a legal, valid, binding, and enforceable obligation of Licensee.

(c) The execution and delivery of this License, and compliance with the provisions herein, do not and will not conflict with or constitute a violation of or default under Licensee's Certificate of Incorporation, by-laws, or any statute, indenture, mortgage, deed of trust, or other agreement or instrument to which Licensee is bound, or, to the knowledge of Licensee, any statute, order, rule, or regulation of any court, governmental agency or body having jurisdiction over Licensee or any of its activities or properties.

(d) Licensee has neither been asked to pay, offered to pay nor paid any illegal consideration, whether monetary or otherwise, in connection with the procurement of this License.

(e) Licensee has not employed any person to solicit or procure this License, and has not made and shall not make any payment of any commission, percentage, brokerage, contingent fee, or any other compensation in connection with the procurement of this License.

(f) Licensee is the sole and exclusive owner of the Licensee Property required in connection with promoting the Program during the Term of this Agreement; it is free, clear, and unencumbered; no part of it is taken from or based on any other work; no part violates the right of any other person or infringes any copyright, trademark, or any other intellectual property right; and the reproduction, publication, exhibition, or any other use by the City of the Licensee Property in any form whatever will not in any way, directly or indirectly, infringe on the rights of any person. Licensee shall ensure that the Naming Rights Sponsorship Agreement provides that the Naming Rights Sponsor represents and warrants that the Naming Rights Sponsor is the sole

and exclusive owner of the Sponsor Property required in connection with promoting the Program during the Term of this Agreement; it is free, clear, and unencumbered; no part of it is taken from or based on any other work; no part violates the right of any other person or infringes any copyright, trademark or any other intellectual property right; and the reproduction, publication, exhibition, or any other use by the City of the Sponsor Property in any form whatever will not in any way, directly or indirectly, infringe on the rights of any person.

**22.2** Licensee covenants and agrees that during the Term, it shall maintain its corporate existence under the laws of the State of New York as a not-for-profit corporation, and shall maintain its tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

### **CONFLICT OF INTEREST**

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

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

**24.1** Subject to the terms of this Article 24, Licensee shall not sell, transfer, assign, sublicense or encumber in any way this License, ten percent (10%) or more of the shares of or interest in

Licensee, or any equipment furnished as provided herein, or any interest therein, or consent, allow or permit any other person or party to use any part of the Playfield, and/or the site of any of the non-Central Park portions of SummerStage, buildings, space or facilities covered by this License, nor shall this License be transferred by operation of law, unless approved in advance in writing by Commissioner, it being the purpose of this License Agreement to grant this License solely to Licensee herein named.

Should Licensee choose to assign or sublicense the management and operation of any element of the Playfield, and/or the site of any of the non-Central Park portions of SummerStage to another party, Licensee shall seek the approval of the Commissioner by submitting a written request including proposed assignment documents as provided herein which approval shall not be unreasonably withheld or delayed. The Commissioner may request any additional information she deems reasonably necessary and Licensee shall promptly comply with such requests.

The term "assignment" shall be deemed to include any direct or indirect assignment, sublet, sale, pledge, mortgage, transfer of or change in ten percent (10%) or more in stock or voting control of or interest in Licensee, including any transfer by operation of law. No sale or transfer of the stock of or interest in Licensee or its nominee may be made under any circumstance if such sale or transfer will result in a change of control of Licensee violative of the intent of this Section 24.

**24.2** No assignment or other transfer of any interest in this License Agreement shall be permitted which, alone or in combination with other prior or simultaneous transfers or assignments, would have the effect of changing the ownership or control, whether direct or indirect, of ten percent or more of stock or voting control of Licensee in the Playfield and/or the site of any of the non-Central Park portions of SummerStage without the prior written consent of Commissioner, which shall not be unreasonably withheld. Licensee shall present to Commissioner

the assignment or sublicense agreement for approval, together with any and all information as may be required by the City for such approval, including a statement prepared by a certified public accountant indicating that the proposed assignee or sublicensee has a financial net worth acceptable to the Commissioner together with a certification that it shall provide management control acceptable to the Commissioner for the management and operation of the Playfield and/or the site of any of the non-Central Park portions of SummerStage. The constraints contained herein are intended to assure the City that the Playfield and the site of any of the non-Central Park portions of SummerStage are operated by persons, firms and corporations, which are experienced and reputable operators and are not intended to diminish Licensee's interest in the Playfield and/or the site of any of the non-Central Park portions of SummerStage.

**24.3** No consent to or approval of any assignment or sublicense granted pursuant to this Section 24 shall constitute consent to or approval of any subsequent assignment or sublicense. Failure to comply with this provision shall cause the immediate termination of this License. The right to terminate the Agreement pursuant to this Section 24.3 is in addition to any other rights to terminate set forth in this Agreement.

#### **FEDERAL EMPLOYER IDENTIFICATION NUMBER**

**25.1** Licensee represents that it is not in arrears to the City upon any debt, contract, or taxes and is not a defaulter as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of Licensee to receive public contracts or concessions. The Federal Employer Identification Number of Licensee is 13- 3561657.

#### **PARKS' RESERVATION OF RIGHTS AND INTERESTS**



**26.1 Public Events.** The parties to this License will give each other timely written notice in advance of all press conferences, public ceremonies, or other public or planned news events relating to the subject of this License.

**26.2 Public Communications.** In any statement or release made to the public relating to the subject of this License, Licensee will conspicuously acknowledge the involvement of Parks. If the Commissioner finds that any release, advertisement, or statement made to the public relating to the programs and activities offered through the Program is incorrect or unacceptable, Licensee and the Commissioner agree in good faith to make such release, advertisement, or statement accurate and acceptable to both parties.

**26.3 Publications.** If Licensee publishes a work discussing any aspect of performance of any service covered by this License, Licensee will acknowledge therein the involvement, if any, of the City, when appropriate, and the City will have a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use and authorize others to use such publication.

**26.4** Intentionally Omitted.

**26.5** Parks reserves the right to use the Playfield and/or the site of any of the non-Central Park portions of SummerStage for events or programs sponsored or permitted by Parks, upon consultation with Licensee and with reasonable advance notice to Licensee, provided that Parks shall use reasonable efforts to ensure that such use will not alter unreasonably Licensee's performance schedule at the Playfield and/or the site of any of the non-Central Park portions of SummerStage, including load-in, performance, and breakdown. In the event such use is required by Parks, Parks and Licensee will negotiate in good faith to determine what reimbursement, if any, Licensee should receive for any additional costs reasonably incurred thereby, provided Licensee presents written documentation of such actual additional costs satisfactory to Commissioner or Commissioner's designee.

**26.6** Large-Scale Citywide Events. Should any large-scale citywide event as determined by the City be awarded to the City during the Term:

- (a) the City, at its sole discretion, may require Licensee to cease to sell and place advertising at the Playfield and/or other locations during the event period;
- (b) the City, at its sole discretion, may impose restrictions on the parties who may advertise at the Playfield and/or other locations and/or the nature of the advertising during the event period;
- (c) the City or its designated representative may assume control of advertising sales and placement during the event period;
- (d) the Licensee shall continue to comply with all other terms of this Agreement, except as expressly set forth herein.

Any material displayed or placed in violation of Section 26.6 shall be removed by Licensee within forty-eight (48) hours of notice from Parks. If Licensee fails to do so, the City shall have the right to remove such material without any liability to Licensee and Licensee shall pay to the City the costs incurred in connection with such removal and for any other costs or damages incurred by the City in connection with such removal including, but not limited to repair and restoration costs, arising out of the performance of such work.

#### **WAIVER OF JURY TRIAL**

**27.1** Licensee hereby expressly waives all rights to trial by jury in any summary proceeding hereafter instituted by the City or CPC against Licensee or any counterclaim or cause of action directly or indirectly arising out of the terms, covenants, or conditions of this License or the use and occupation of the Playfield and/or the site of any of the non-Central Park portions of SummerStage or any matter whatsoever in any way connected with this License, including, but

not limited to, the relationship between the City and Licensee. The provision relating to waiver of jury trial shall survive the expiration or earlier termination of this License.

#### **USE OF NAME**

**28.1** The parties will not use the name of the other party, its subsidiaries, or affiliates in any sales or marketing publication or advertisement without prior full disclosure of such use and the written consent of the other party, such consent not to be unreasonably withheld or delayed. This provision will survive any termination of this License.

#### **CHOICE OF LAW/CONSENT TO JURISDICTION AND VENUE**

**29.1** This License shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of Licensee and shall be governed by and construed in accordance with the laws of the State of New York. Any and all claims asserted by or against the City or CPC arising under this License or related thereto shall be heard and determined either in the courts of the United States (“Federal Courts”) located in New York City or in the courts of the State of New York (“New York State Courts”) located in the City and County of New York. To effect this License and intent, it is understood:

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

(b) With respect to any action arising out of this License between the City, CPC, and Licensee in New York State Court, Licensee expressly waives and relinquishes any rights they might otherwise have to:

(i) move to dismiss on grounds of forum non conveniens;

- (ii) remove to Federal Court; or,
- (iii) move for change of venue to a New York State Court outside New York County.

(c) With respect to any action arising out of this License between the City, CPC, and Licensee in Federal Court located in New York City, Licensee expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.

(d) If Licensee commences any action arising out of this License against the City or CPC in a court located other than in the City and State of New York, upon request of the City or CPC, Licensee shall 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, Licensee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

### **CLAIMS AND ACTIONS THEREON**

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

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

**30.3** In the event any claim is made or any action brought in any way relating to this License

other than an action or proceeding in which Licensee, CPC, and the City are adverse parties, Licensee shall diligently render to the City and CPC without additional compensation any and all assistance which the City or CPC may reasonably require of Licensee.

#### **CLAIM AGAINST OFFICIALS OR EMPLOYEES**

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

#### **ALL LEGAL PROVISIONS DEEMED INCLUDED**

**32.1** It is the intent and understanding of the parties to this License that each and every provision of law required to be inserted in the License shall be and is inserted herein. Furthermore, it is hereby stipulated that 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 License 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.

#### **SEVERABILITY**

**33.1** If any provision(s) of this License is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

#### **HEADINGS AND TABLE OF CONTENTS**

**34.1** The article headings and Table of Contents contained in this License are inserted for convenience only and shall not enlarge or limit the scope or meaning of the various and several articles hereof. Unless the context requires otherwise, words of any gender used in the License shall include the other gender and words in the singular number shall include the plural.

#### **ENTIRE AGREEMENT**



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

#### **MODIFICATION**

**36.1** This License may be modified from time to time by notice in writing duly executed by both parties hereto, but no modification of this License shall be effective until the same has been agreed to in writing and duly executed by both parties.

#### **JUDICIAL INTERPRETATION**

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

#### **COUNTERPARTS**

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

**IN WITNESS WHEREOF**, the parties hereto have caused this License to be signed and sealed on the day and year first above written.

CITY OF NEW YORK  
PARKS & RECREATION

CITY PARKS FOUNDATION, INC.

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

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

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

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

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

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

APPROVED AS TO FORM:  
Certified as to Legal Authority

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

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

[illegible]

On the \_\_\_\_ day of \_\_\_\_\_, 2019, before me personally came \_\_\_\_\_, who being duly sworn by me did depose and say that he/she resides at \_\_\_\_\_ and that he/she is the \_\_\_\_\_ of the City Parks Foundation, Inc., described herein and who executed the foregoing instrument and acknowledged that he/she executed the same in his/her official capacity and for the purposes mentioned therein.

NOTARY PUBLIC

[illegible]

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me personally came \_\_\_\_\_  
to me known and known to me to be the \_\_\_\_\_ of the Department of Parks &  
Recreation of the City of New York, and the said person described in and who executed the  
foregoing instrument, and he/she acknowledged that he/she executed the same in his/her official  
capacity and for the purpose mentioned therein.

NOTARY PUBLIC

**SCHEDULE A - CITY PROPERTY**

**SUMMERSTAGE®**

## **SCHEDULE B – SPONSORSHIP ACTIVITIES**

### **I. Signage**

*\*All signage size and specifications subject Parks approval.*

#### **Playfield/Central Park:**

- Artwork on entry signs at main and secondary entrance to the Playfield.
- Stage signage:
  - Artwork on two (2) side-stage LED screens with option for one Naming Rights Sponsor static image
  - Artwork on on-stage screen slides with one (1) dedicated Naming Rights Sponsor static image slide in ROS
  - Artwork on crown banner on top of stage
- Artwork on bleacher signage (3 or 4, depending upon final Playfield design)
- Artwork on each stage left and stage right trailer face
- Artwork on VIP area signage
- Artwork on one sign each at Fifth Avenue/72nd Street and 59th Street/Columbus Circle park entrances (location of signage subject to Parks approval)
- Artwork on approximately 50 bike rack dividers within the Playfield
- Artwork on all wayfinding signage including check-in banner, concessions and merchandise areas, and information booth
- Artwork on staff uniforms, ponchos, and lanyards/credentials/wristbands (not intended for sale to the public and will be produced only in a quantity suitable for distribution to event employees)
- Artwork on Rules/Regulations signage, ADA signage, and bag check signage

#### **Artwork on mobile stage or other Parks locations subject to Parks special event permits:**

- Center stage banner and two side-stage banners (space permitting in amphitheaters), festival program, and posters
- Two feather banners
- Artwork on staff uniforms, ponchos, and lanyards/credentials/wristbands (not intended for sale to the public and will be produced only in a quantity suitable for distribution to event employees)
- Artwork on Rules/Regulations signage, ADA signage, bag check signage, and other temporary signage

### **II. Artwork on ticketing:**

- Artwork on ticket purchase pages
- Artwork on the confirmation page and the confirmation email

### **III. Print/Media/Digital/Social Assets:**

Prior to the start of each new season, Licensee may implement a media plan to highlight Naming Rights Sponsor's sponsorship of the Program, which will include the Artwork on the following CPF-produced material:

- All print collateral: season brochures, house programs, postcards, posters, and membership cards
- All e-newsletters sent during the Program season and included in Program stories in monthly Licensee e-newsletters during the "off-season"



- Four (4) dedicated Naming Rights Sponsor Program e-newsletters
- Program partner page on Licensee website with a direct click-through link to Naming Rights Sponsor's home page.
- Media Clips: Prominent positioning in all Program press releases, press conferences, ceremonies and other public events.
- Print/Digital/Radio advertising
  - Television
- Social Media integration

**EXHIBIT A – MAINTENANCE AND OPERATION AGREEMENT**

**LICENSE AGREEMENT**

**BETWEEN**

**CITY OF NEW YORK  
PARKS & RECREATION**

**AND**

**CITY PARKS FOUNDATION**

**for**

**THE OPERATION OF SUMMERSTAGE**

**NEW YORK, NEW YORK**

**DATED: Jun 28, 2013**

**THIS LICENSE AGREEMENT** ("License") made as of the 28<sup>th</sup> day of June, 2013 between the City of New York ("the City") a municipal corporation of the State of New York acting by and through the City Department of Parks & Recreation ("Parks"), having an office at the Arsenal, Central Park, 830 Fifth Avenue, New York, NY 10065 and the City Parks Foundation, Inc. ("CPF" or "Licensee") a not-for-profit corporation duly incorporated under the laws of the State of New York, with an office at the Arsenal, Central Park, 830 Fifth Avenue, New York, NY 10065;

**WITNESSETH:**

**WHEREAS**, the Commissioner pursuant to Section 533 of the New York City Charter is charged with the duty to manage, maintain and operate all the parks and structures installed or erected therein under the jurisdiction of Parks, for the beneficial use of the people of the City and has the duty to plan, develop, conduct, and enter into arrangements for recreation programs for the benefit of the public; and,

**WHEREAS**, the Commissioner of Parks ("the Commissioner") recognizes the important cultural and educational value of the Summerstage Program ("Summerstage") which has contributed to the cultural heritage of the City by presenting concerts and other events to members of the public at no charge since 1986; and,

**WHEREAS**, the Commissioner finds that Rumsey Playfield (the "Playfield or the Site") located in Central Park, Manhattan, is the most appropriate venue for Summerstage productions;

and

**WHEREAS**, the Commissioner desires to ensure continuing access to and the highest and best use of the Playfield by the public; and

**WHEREAS**, the Commissioner and CPF wish to clarify certain issues regarding the ownership and use of trademarks and other intellectual property associated with Summerstage; and

**WHEREAS**, as of November 1, 1993, CPF has assumed responsibility for the management and operation of Summerstage; and

**WHEREAS**, CPF possesses the necessary expertise and is a leader in the promotion and production of concerts, and in particular, has, with the encouragement and cooperation of Parks, successfully operated concerts and other events at the Playfield; and

**WHEREAS**, the Commissioner desires that CPF, upon the terms and conditions set forth in this Agreement, assume the responsibilities for the operation of the Playfield as described herein and CPF is willing upon such terms and conditions, to undertake such responsibilities;

**NOW, THEREFORE**, in consideration of the promises and mutual covenants contained herein, the City and Licensee covenant and agree as follows:



## **1. GRANT**

Parks hereby grants to CPF and CPF hereby accepts from Parks a License to enter upon and use the Site for the purposes and subject to the terms and conditions set out herein.

Additionally, CPF may request from Parks, and the Commissioner, in her sole discretion, may grant to CPF permission to use the areas outside and adjacent to the Site (hereinafter referred to as the "Adjacent Areas") and/or the "Pergola" in connection with CPF's events. If permission is granted, CPF must submit Special Event permit applications to the Manhattan Special Event permit office and depending on the nature of the event, additional fees may apply. In addition, CPF must request vehicle permits for the use of the Adjacent Areas and/or the Pergola, from the office of Citywide Special Events, which Parks in its reasonable discretion may provide. Exhibit A, as attached, shows the Site, the Adjacent Areas and the Pergola.

Additionally, Parks grants CPF permission to erect temporary promotional and directional signs within the Park facing Central Park West at 72<sup>nd</sup> Street and within the Park facing Fifth Avenue at 72<sup>nd</sup> Street, the specific location, content and graphics of such signs is subject to prior written approval by Parks. Parks reserves the right to have the Parks logo present on all signs.

## **2. TERM**

The term ("Term") of this License shall commence upon the execution of both parties and is terminable at will by either party upon written notice in accordance with Section 20 or upon notice by the Commissioner as provided for in Section 19. In the event such notice is not given, the Term shall expire on the fifth anniversary date of the commencement of this License. This License may be renewed, for one (1) additional five (5) year term upon mutual agreement in

writing by the parties, such renewal being subject to the same terms and conditions contained herein. Upon the termination or expiration of this license, CPF shall quit the Site as provided hereinafter in Section 20.

### **3. NO LEASE**

It is expressly understood that the City has title to the Site and that no space or equipment is leased to Licensee, but that during the Term of this License, Licensee shall have the use of the Site and shall continue to use and occupy same in compliance with each and every provision and condition in this License.

### **4. NO INFLAMABLES**

Licensee shall not use or permit the storage of any illuminating oils, oil lamps, turpentine, benzene, naphtha, or similar substances or explosives of any kind or any substances or items prohibited in the standard policies of insurance companies in the State of New York. However, CPF shall be allowed to keep a small quantity of gasoline on the Site in order to fuel its vehicles in order to perform its obligations under this License provided that such storage does not conflict with the terms and conditions of CPF's insurance policies.

### **5. USE AND OPERATIONS**

a) During the Operating Season (defined below), CPF shall use, operate, and manage the Playfield as a public theater for the production of cultural, recreational, film and/or educational presentations for the benefit of the people of the City of New York through the production of public presentations or exhibitions of dramatic works, musical performances, dance



performances, prose and poetry readings, and/or educational works. For the purposes of promoting development of the visual and performing arts and encouraging and cultivating public and knowledge and appreciation of all such art CPF may also use the Site for such other uses as are ancillary to the foregoing uses, as may be approved by Parks. CPF may request the use of the Adjacent Areas, and/or the Pergola for events authorized pursuant to this Section 5. If permission is granted, CPF must submit Special Event permit applications to the Manhattan Special Event permit office and depending on the nature of the event, additional fees may apply. If and when CPF has been granted permission to use (i) the Adjacent Areas, or (ii) the Pergola, CPF's responsibilities for such locations for the period of time CPF is granted permission to use such areas will be the same as CPF's responsibilities for the Site under this License.

b) CPF's use under this License for set up, breakdown and events shall be limited to the period between April 1 and October 17 of each term year ("Operating Season"). During the other time period of each term year ("Off-Season"), use, operation, and management of the Playfield shall be under the exclusive control of Parks. Notwithstanding the foregoing, CPF may apply to Parks for permission to use the Playfield at any time during the Off-Season through the Manhattan Special Event office.

c) (i) As soon as practicable each year but no later than December 1<sup>st</sup> of each year, CPF shall provide to Parks' Chief of Citywide Special Events, for Parks' review and approval, a preliminary schedule covering its suggested utilization of the Site, indicating when the Playfield is being used or made ready for use by CPF or its authorized designees or sublicensees. The schedule will include repair and rehabilitation periods, rehearsal preparation, rehearsals, set loading, performances, periods between performances and/or productions, and shut downs. CPF shall use its best effort to submit a final schedule to Park's Chief of Citywide Special Events,



including all items mentioned herein no later than April 15<sup>th</sup> of each year, and shall provide to Parks prompt written notice of any changes to such schedule. The work schedule provided by CPF and finally approved by Parks in accordance with this License shall be subject to modification by mutual agreement of the parties in order to accommodate use by Parks during the Operating Season and during the Off-Season, provided that such modifications will not alter unreasonably CPF's performance schedule, including load-in, performance, and breakdown . In the event such modification is required to accommodate use by Parks in the Operating Season, including for example, requiring expedited shut-down by CPF, Parks and CPF will negotiate in good faith to determine what reimbursement, if any, CPF should receive for any additional costs reasonably incurred thereby, provided CPF presents written documentation of such actual additional costs satisfactory to Commissioner or her designee.

(ii) In the event that Parks issues permits for the Great Lawn during the Operating Season, Parks shall use its reasonable efforts to provide CPF with written notice of such event prior to the preparation of CPF's final schedule, but in any event, as far in advance of the event as possible.

(iii) As soon as reasonably determined by the Parties, but no later than November 1<sup>st</sup>, Park's Chief of Citywide Special Events shall provide to CPF a preliminary schedule covering the intended utilization of annual returning special events (i.e. AIDS Walk, NYRR events) to be held at the Naumberg Bandshell. All issues concerning scheduling shall be handled through Parks' Chief of Citywide Special Events; from time to time and whenever necessary a meeting may be held with representatives from CPF and Parks' Marketing and Special Events Division to discuss issues or conflicts arising from scheduling. As practical, a monthly meeting shall be held with representatives from CPF and Parks' Marketing and Special Events Division beginning on



or around November 1<sup>st</sup> to begin scheduling discussions. A CPF representative's attendance shall also be required to meet with Parks and with the Police Department as needed on planning, crowd control, emergency exit issues, and other such operational concerns. This meeting can be satisfied by having a representative attend the weekly Central Park Conservancy Operations meeting (hereinafter "Yard"), currently held each Wednesday at 9:00 a.m.

d) During the Operating Season, at such times as the Site is not scheduled for use by CPF, Parks reserves the right, upon consultation with CPF, to make use of the Site for programs, events, and activities sponsored or approved by Parks which will not unreasonably interfere with the License hereby granted.

e) The following types of events may take place at the Site and the maximum allowable attendance for each such event is 6,000 patrons.

i) During the Operating Season, CPF may enter into sublicenses or sponsorship agreements for the approved use of the Site by performers or groups for cultural, recreational, and/or educational activities consistent with this License. The uses permitted hereunder that are free and open to the public are herein after called "Free Events." Each such sublicense shall state that all rights granted thereunder are subject to and subordinate in all aspects to each and every term, condition, and provision of this License.

ii) Upon the approval of the Commissioner or her designee, CPF may use the Playfield for events other than Free Events, providing that Free Events constitute more than 60% of the total number of events during the Operating Season. Any Parks sponsored or approved event pursuant to Section 5(d) above, excluding any event for which CPF has entered into a sublicense or which CPF has sponsored, will not count towards CPF's obligation to provide Free Events for more than 60% of the total Operating Season.



f) At all times during the Operating Season, including when the Playfield is not being used by CPF or its authorized designees, CPF shall ensure that the Playfield is safe and secure for persons and property; however, when the Playfield is being used by Parks or its designees during the Operating Season, Parks shall secure the Playfield or cause the Playfield to be secured.

g) Nothing in this License shall limit the number of events that may be held by or under the auspices of Parks at the Site during the Operating Season or Off-Season, subject to Parks' obligation to consult with CPF pursuant to paragraph d of this section.

h) Upon request, CPF must provide Parks with fully executed copies of all sublicenses or other agreements for any activities permitted at the Playfield, subject to this License, as well as any agreements regarding revenue generating activity in connection with the Playfield, including but not limited to food and beverage concessions, if any, related to any permitted activity at the Playfield within ten (10) days of execution whether or not Parks needs to approve such agreements or sublicenses in advance.

i) The Commissioner may require Licensee, effective immediately, to terminate any agreement that Licensee is authorized to enter into pursuant to this License or cancel any event at the Site. However, if Commissioner requires Licensee to terminate any event agreement or cancel any event at the Site, other than a termination or cancellation based upon (i) health, safety or welfare, , (ii) preventing damage to the Site or to Central Park, or (iii) because the agreement is with a sublicensee that (A) has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or (B) that directly or indirectly controls, is controlled by, or is under common control with a person or entity that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or



that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, the parties agree to negotiate in good faith to make CPF whole for the loss of such scheduled events. For purpose of this section the determination as to whether any person or entity is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure or directly or indirectly controls, is controlled by, or is under common control with a person or entity that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure shall be within the sole discretion of Parks exercised reasonably and in good faith.

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

k) Licensee shall be responsible for providing or causing there to be provided appropriate security for any events or productions at the Playfield that Licensee is allowed to stage pursuant to this License. Licensee shall provide to Parks no less than one week prior to the first performance at Summerstage a security plan for the season, which shall include the name of security company(s) number of security officers, supervisors, post positions around the venue, and hours on duty. However, this obligation shall not apply to any events authorized under 5(d) of this Section.

## **6. FEES**

a) CPF may charge its actual production costs for events allowed pursuant to section 5(e) (ii); such production costs shall be determined by CPF and based on an itemized production rate card (Exhibit B), but such costs and the production rate card must be approved by Parks.

b) CPF may charge a fee, subject to a template schedule approved by the Commissioner, for any other than Free Events authorized pursuant to 5(e) (ii), a copy of which is annexed hereto as Schedule A, which may only be revised by mutual agreement between Parks and CPF.

c) All fees or costs charged by CPF, including but not limited to any fees related to broadcast or recording rights shall be used as required by Section 9(d), and included in the books of account and records required to be maintained and submitted to the Commissioner pursuant to Section 9(e).

## **7. APPROVALS**

a) Upon the approval of the Commissioner or her designee, CPF shall have the right to erect signs related to its productions at the Playfield. Such signs, including any commercial sponsorship information or signs identifying products available for sale at the Playfield may contain appropriate sponsor recognition or identification (however, no tobacco sponsorship or identification will be allowed) or identification of those products available for sale at the Playfield and are subject to the approval of Parks. All signs must face inward towards the Playfield and not out towards the other areas of Central Park, except those required for directional or instructional purposes.

b) During the Operating Season, CPF may request 48 hours in advance of the event, a



reasonable number of parking permits in connection with the production of the activities authorized under this License. The parking permits and location of the parking must be coordinated with and approved by Parks, specifically the office of Marketing and Special Events. All vehicles must be escorted by CPF staff while operating in accordance with Parks' Vehicle Rules and Regulations (*see* Exhibit C).

c) Prior to the Operating Season, CPF must submit a Crowd Control Plan to the Chief of Citywide Special Events that outlines line management and designated areas for crowd overflow.

d) The Director of Summerstage (or his or her designee) is responsible for event coordination for all events, and must be available by phone or pager to Parks during set up, take down, and during the course of all events.

e) For all Summerstage performances, a description of the event ("event physical") shall be distributed by a representative from CPF to a distribution list mutually agreed upon by Parks and CPF.

## **8. ARTISTIC CONTROL**

Subject to the terms and conditions of this License, CPF shall have sole artistic and programmatic control and sole administrative control regarding activities conducted by CPF at the Site. Parks, however, specifically reserves the right to cancel performances due to security and/or public safety concerns, including, but not limited to, concerns regarding damage to the Site and Parks property with prior consultation where reasonably practicable.

## **9. ADVERTISING, PUBLICITY, SPONSORSHIPS, AND REVENUES**

a) Licensee shall establish an appropriate advertising and promotional program in



connection with its activities and productions at the Playfield, to the extent financially feasible. Such advertising and promotional program shall acknowledge the support of the Mayor of the City of New York and the Commissioner in an appropriate manner as approved by the Commissioner. Licensee shall have the right to print or to arrange for the printing of programs for events containing any advertising matter consistent with its rights hereunder regarding its artistic and programmatic control of the activities conducted by Licensee at the Playfield. Licensee agrees to provide copies of the annual brochure, the website promotional materials, the season press release, and all full page ads paid for by CPF to the Commissioner or her designee for her review and approval prior to publication. All such print materials shall include the Parks logo. In the event Commissioner or her designee finds any element in such material contrary to Parks' policies regarding Parks-authorized or sponsored events, then the Commissioner or her designee shall so advise Licensee, and Licensee and Parks shall immediately proceed to discuss modifications to such advertising matter, as may be mutually agreeable to both parties.

b) In the event that Licensee issues written press releases regarding its activities at the Playfield pursuant to this License, and if after public issuance of any such press release, the Commissioner believes that such release is factually inaccurate or misleading, then the Commissioner or her designee shall so advise Licensee. Licensee shall immediately withdraw such press release.

c) The parties acknowledge and agree that CPF may retain commercial sponsors for Summerstage (although no tobacco sponsors will be permitted), provided that such sponsors, and any proposed sponsor identification, or product sampling to be conducted at all productions and events, are approved by the Commissioner or her designee, such requests for approval to be responded to within 48 hours.



d) All revenues generated by CPF through Summerstage shall be used strictly to cover the cost of the Free Events and for maintenance and operation of the Site and administrative expenses directly related to the operation of SummerStage or other free performing arts programming in City parks agreed upon by CPF and Parks.

e) Licensee shall keep books of account and records of all expenses and revenues resulting from Licensee's operations pursuant to this License in a manner satisfactory to the Commissioner, and upon request shall allow an inspection of said accounts and records by the Commissioner or any governmental agency having jurisdiction. Additionally, Licensee shall furnish to the Commissioner a detailed financial statement for each fiscal year during the Term of this License, which subject to the Commissioner's reasonable approval may be satisfied by submission of Licensee's annual financial statement for the entire organization. Such statements shall include the salaries of all paid staff. Such statements shall be prepared by an independent Certified Public Accountant retained at the cost and expense of Licensee. Such annual statement shall be submitted to the Commissioner no later than 120 days after the close of each fiscal year. Copies of sales tax reports, if any, shall be submitted whenever requested by the Commissioner.

## **10. MAINTENANCE AND REPAIR**

a) During the Operating Season, CPF shall maintain the Site in a good, clean, and orderly condition and shall make all repairs necessary to keep the Site in good and safe condition in order to operate the Site for the purpose of this Agreement. Such ongoing maintenance and repairs shall include, but not be limited to: (i) keeping the Site and adjacent areas free from trash, litter, stickers, graffiti, and debris; and (ii) making all repairs to utilities, seating, stage, and dressing areas necessary to keep the Playfield in good and safe condition. CPF shall clean the



Site and adjacent areas each evening during the Operating Season and every morning following an event. CPF shall be responsible for repairing any damage caused to the Site by any third parties who were hired under contract by CPF to Parks' reasonable satisfaction. CPF shall cooperate with Parks and with the Police Department to restrict product sampling outside the Site. At such times during the Operating Season as the Site is under the control of Parks or its designees, Parks shall be responsible for the performance of the maintenance and repair work described hereinabove; however, CPF may perform such maintenance and repair work at the request of Parks and shall be reimbursed by Parks for the costs of performing the work requested by Parks provided CPF presents written documentation of such additional costs satisfactory to Commissioner or her designee. The Parties agree that they will perform a "walk through" of the Site with a representative of CPF and Parks at the beginning and end of the Operating Season to assess the condition of the Site.

b) During the Off-Season, except as otherwise operated by CPF pursuant to a separate special events permit, Parks shall be responsible for all maintenance and repair of the Site. In addition, Parks shall be responsible for the continuing care of fencing, turf, trees, plants, and landscaping adjacent to the Site at all times.

c) CPF is responsible for the clean up and removal from Central Park of refuse generated at the Site and Adjacent Areas during the Term pursuant to subsection (a) hereinabove.

d) Parks shall be responsible for all structural and other major reconstruction or renovation necessary to keep the Playfield in good and safe condition with the exception of CPF's responsibility under section 16. CPF must restore the Site to the original condition after each Operating Season, except for capital repairs to the asphalt pathways within the Site. Such restoration work cannot interfere with Parks use in the Off Season and a schedule of such work



must be provided to Parks prior to the end of each season.

e) All maintenance and repair efforts by CPF are subject to the review and approval of the Commissioner or her designated representative, which approval shall not be unreasonably withheld.

f) Parks shall be responsible for performing any work on or at the Playfield necessary to provide winterizing protection to the Playfield.

## **11. EQUIPMENT**

a) All lighting, props, or other equipment or paraphernalia utilized by CPF incident to the productions licensed hereunder shall be secured, maintained, and repaired at the sole cost and expense of CPF. Parks shall, however, be responsible for fixing or replacing any loss, damage, or injury caused to any equipment or property of CPF, directly, by the actions, conduct, or omissions of Parks or its designees, when the Playfield is being managed by Parks, with no operation or management by CPF or its designees, and to the extent that such damage is not caused by Licensee's negligence or willful conduct.

b) The scheduling and undertaking of the delivery and/or removal of all equipment and other paraphernalia utilized in connection with the productions permitted under this License shall be approved in advance by Parks. Such approval shall be based on scheduling information to be provided by CPF concerning the delivery and removal of such equipment and materials utilized by CPF at the Playfield, as may be supplemented by verbal communications between Parks and CPF.

c) All portable toilets shall be placed within the approved area as agreed upon in Exhibit

## **12. CONCESSIONS**

Notwithstanding CPF's right to provide services within the Playfield as described in Section 5 of this License, CPF's right to receive any revenues derived from within the Site, Adjacent Areas or the Pergola shall be subject to any and all City authorization, approvals, permits, and compliance with other processes which may be necessary, including without limitation, any necessary approval by the Franchise and Concession Review Committee ("FCRC"). The Commissioner and Parks hereby agree to reasonably assist CPF in obtaining, maintaining and renewing any such additional approvals, permits, authorizations, and compliance with other processes relating to the services described herein at Section 5.

## **13. PARKS SUPPORT**

To the extent feasible, as determined by available resources and consistent with past practice, Parks may, but is not obligated to, provide limited equipment and services to CPF to assist in the production of the activities authorized under this License. Such equipment may include, but not be limited to, an electric generator, Park vehicles, bleachers, golf carts, and benches. Such services may include Parks Enforcement Patrol ("PEP") acting in the interest of public safety at Parks' discretion. However, Parks will not be responsible for security at the Site, Adjacent Areas and/or Pergola during any event or production authorized under this License, unless it is an event or production authorized pursuant to Section 5(d) or the Commissioner expressly approves the use of PEP to provide security at the Site. In addition, Parks shall not be responsible, however, for securing barricades, trash receptacles, and range fencing for the Site, Adjacent Areas and the Pergola.



#### **14. STORAGE**

Licensee shall have the use of the Playfield Building (as shown on Exhibit A) during the Term of the License for the Operating and the Off-Season for storage relating to the activities authorized under this License. Licensee accepts the Playfield Building in an "as is" condition and Parks makes no representation for its suitability for Licensee's use. In addition, City shall not be liable for any theft or damage to Licensee's property stored at the Playfield Building. Notwithstanding the foregoing, upon ten days written notice to CPF, Parks may require the use of the Playfield Building for Parks purposes and CPF shall give Parks any access to the Playfield Building required for such use. Subject to availability and at Parks discretion and upon such conditions as are mutually acceptable to the parties, Parks may provide CPF with other off-site storage and transportation as needed to move Licensee's property stored at the Playfield Building at no expense to Licensee.

#### **15. PERMITS AND AMPLIFIED SOUND**

Licensee is responsible for obtaining all necessary approvals, permits, and other authorizations required by any existing federal, state or City laws, rules, regulations and orders applicable to any aspect of the operation of the Site, and when permitted, the Adjacent Areas and the Pergola. Licensee agrees to operate and play sound equipment and music only at a sound level no greater than that necessary for live televising, broadcasting, filming, taping and suitable for an outdoor concert performance before a very large audience, and which sound level does not cause an unreasonable nuisance to neighbors living and working near the Site, the Adjacent Areas and the Pergola and consistent with the Rules of the City of New York, Title 56 RCNY §1-05(d)(2), the Administrative Code of the City of New York, §24-201 et. seq. thereof, and all

applicable laws, rules, and regulations.

Licensee shall be responsible for payment of any and all fees or royalties to ASCAP, BMI, or such other entity as required by law for such music or film programming in connection with its operation of the Site and when permitted, the Adjacent Areas and the Pergola. .

## **16. UTILITIES**

Parks shall provide all necessary utilities and shall pay for the cost of such utilities reasonably necessary for CPF's use and operation of the Playfield pursuant to this License. CPF shall exercise its best efforts to conserve utilities and energy and shall implement conservation programs promulgated from time to time by the City as directed by Parks and CPF must maintain at its sole cost and expense all utilities above grade during each Operating Season. CPF shall comply with any applicable city, state or federal rules, regulations or codes regarding utilities during each Operating Season. Prior to the beginning of each Operating Season and prior to the end of each Operating Season, Parks and CPF will conduct a walk-through of the Site to inspect for any damage to utilities that are above grade. If damage is discovered prior to the beginning of the Operating Season it will be Parks' responsibility to repair such damage at its sole cost and expense. If damage is discovered prior to the end of the Operating Season it will be CPF responsibility to repair such damage at its sole cost and expense. Parks, at its own expense, shall make reasonable efforts to supply CPF with telephone, fax, internet, e-mail, and modem services on site at the Playfield.

## **17. ACCESS AND INSPECTION**

Licensee shall permit access to the Site, including but not limited to the Playfield



Building, by the Commissioner and/or her duly authorized representatives, including Parks Inspectors, at all times and to the New York Police Department and other City agency, New York State, or federal representatives for any lawful purpose. Parks shall have the right to have representatives of Parks or of the City or of the State or federal governments present at the Site to observe Licensee's operations.

#### **18. WAIVER OF BREACH**

No failure on the part of Parks at any time to require the performance by CPF of any term or condition of this License shall in any way affect Parks' rights to enforce such term or condition, nor shall any waiver by Parks of any breach hereof be taken or held to be a waiver of any other breach hereof. No right under this License may be waived by Parks, except by a written agreement or amendment executed by Parks.

#### **19. TRADEMARKS AND SERVICE MARKS**

a) The City owns all right, title and interest in and to trademarks, service marks, trade names, logos and domain names regarding the name "SUMMERSTAGE" and any other programs developed or used by CPF in the course of operating the Site (the "Marks"). CPF acknowledges that the Marks are valid and subsisting and shall take no action inconsistent with the City's ownership of the Marks.

b) CPF shall assign to the City all right, title and interest in and to any pending applications or existing registrations with the U.S. Patent and Trademark Office for the mark SUMMERSTAGE and any other Marks, at such time as any application or registration becomes assignable under U.S. trademark law. CPF acknowledges that the City may, in its sole

discretion, register the Marks with the U.S. Patent and Trademark Office or any other government agency. CPF will cooperate in this effort, and agrees to provide any further documentation necessary to accomplish such registrations. CPF shall not adopt, use, license, register or seek to register the Marks or any variation or simulation thereof or any marks, logos or names that are confusingly similar thereto without the prior written agreement of the Commissioner.

c) The City hereby licenses to CPF during the term of this License the right to use the Marks in support of operation of the Site. Such right shall be exclusive to CPF, subject to the City's reserved right to use the Marks for publicity, press and other uses implicit in the City's ownership and promotion of the Site, including but not limited to promoting the Site on the Parks website and in any Parks written publications. To the extent that the City seeks to use the Marks other than as set forth above, it shall confer with CPF prior to such use of the Marks and the parties shall use their best efforts to reach a mutually satisfactory understanding with respect to such use. Moreover, the City acknowledges that it currently has no plans to seek the use of the Marks in connection with any other performance venues.

d) All goodwill associated with the Marks is the exclusive property of the City and CPF shall take no actions inconsistent with such rights. CPF recognizes and acknowledges that the Marks are the exclusive property of the City and that they communicate to the public, worldwide, a reputation for high standards of quality and service, which reputation and goodwill have been and continue to be unique to the City. CPF further recognizes and acknowledges that the Marks have acquired secondary meaning in the mind of the public. The Marks shall not be used in connection with any illegal, illicit or immoral purpose or activity, or in any manner which would be inconsistent with or damaging to the City's name and reputation. The City shall



have the right to terminate the license granted by this section immediately, upon written notice, in the event that any part of the Marks are used by CPF in connection with any illegal, illicit or immoral activity. In addition, in the event that any of the Marks are used by CPF in any way which, in the reasonable judgment of the Commissioner, is inconsistent with or damaging to the City's name or reputation, the Commissioner shall so notify CPF in writing and the Commissioner shall have the right to terminate this License immediately upon written notice to CPF unless CPF ceases and halts all such uses within two (2) business days following receipt of such notice.

e) During the term of this Agreement, CPF shall use the Marks solely for the purpose of operating the Site and promoting events at the Site and in other City parks subject to Parks' prior written approval. Should CPF use the Marks for any activities not approved pursuant to this Agreement, or which extend beyond the scope of CPF's licensed activities, the City may terminate this License effective immediately.

f) Upon termination of this License and written notice to CPF, CPF shall immediately cease any and all uses of the Marks. CPF acknowledges and agrees that its failure to cease use of the Marks upon expiration or termination of this Agreement and notice from Parks will result in immediate and irreparable harm to the City. CPF further acknowledges and admits that the City has no adequate remedy at law for such failure by CPF, and that the City shall therefore be entitled to equitable or injunctive relief, in addition to any and all other remedies at law that are available to the City.

g)) The City agrees that it will take all appropriate steps to secure and maintain the registration of the Marks and enforce the Marks against third-party infringers. All such decisions shall be within the exclusive discretion of the Commissioner.



## 20. TERMINATION

a) Notwithstanding any other provision of this License, Commissioner may terminate this License, at will, upon twenty-five (25) days' written notice to the Licensee as provided in Section 2 or immediately as provided for in Section 19.

b) Commissioner may also terminate this License upon twenty-five (25) days written notice if Licensee fails to: i) perform the duties and obligations contained herein to Commissioner's reasonable satisfaction; or ii) maintain the insurance policies pursuant to Section 24.

c) Licensee may terminate this License at will, as provided in Section 2, or if Parks breaches its obligations under this License and fails to cure any such breach, upon 30 days written notice to Parks.

d) Upon receipt of such notice, as provided in subparagraphs (a) and (b) above, or the delivery of such notice as provided in subparagraph (c) Licensee shall quit the Site within 25 days and surrender same in good, clean and orderly condition, ordinary wear and tear excepted. In the event this License is terminated as provided herein, all rights of Licensee herein shall be terminated without any claim for damages against Parks, the City or their officers, employees, or agents with respect to such termination.

e) Licensee agrees that upon the expiration, or sooner termination, of this License, it shall immediately cease all operations pursuant to this License and shall vacate the Site within 25 days without any further notice by City. Upon the expiration, or sooner termination, of this License, City reserves the right to take immediate possession of the Site.

f) Licensee shall, on or prior to the expiration or termination date, remove all personal possessions from the Site. Licensee acknowledges that any personal property remaining at the



Site after the expiration, or sooner termination, of this License, is intended by Licensee to be abandoned. Licensee shall remain liable to the City for any damages, including lost revenues and the cost of removal or disposal of property should Licensee fail to cease operations, vacate and/or remove all possessions from the Site on or before the expiration or termination date, except that Licensee shall not be liable for any damages or costs incurred due to delays caused by Parks' failure to perform any act necessary to enable Licensee to vacate the Site.

g) Any insurance or indemnification obligations of CPF shall remain in full effect until CPF has quit the Site and removed all of its property from the Site.

## **21. NOTICE TO CURE**

a) Should Licensee breach or fail to comply with any of the provisions of this License, any federal, state, or local law, or any rule, regulation or order of Parks affecting this License or the Site, Commissioner shall give written notice of such default to Licensee, and unless such default is cured or Licensee is in the process of curing such default within ten days after receipt of such notice, and diligently pursues the same to completion, Licensee shall be in default and the License shall terminate, provided, however, that if the nature of the default is such that it cannot be cured within said ten-day period, Licensee may have such additional time as may be reasonably necessary to cure such default, in Commissioner's sole discretion, so long as Licensee proceeds promptly after receipt of City's notice and proceeds diligently at all times to completion of said cure.

b) (i) Notwithstanding anything contained herein to the contrary, if during the Operating Season the Commissioner determines, in her sole reasonable discretion, that any condition exists at the Site which constitutes an immediate hazard or danger she may give Licensee notice of



such emergency condition and Licensee shall cure said condition within twenty-four (24) hours of receipt of such notice. However, if the Commissioner determines that immediate action is required or if the Licensee fails to cure said condition within twenty-four hours (24) of receipt of such notice, the Commissioner may take whatever action she deems necessary, including but not limited to a partial or complete suspension of operation in the area affected by the immediate hazard or danger or suspension or termination of this License. Commissioner shall provide Licensee with notice of any such suspension. If Commissioner determines that such emergency condition cannot be corrected within 24 hours time, Commissioner may extend such time to permit Licensee to complete the cure, under such terms and conditions as she deems appropriate.

(ii) In the event that Licensee believes that any such emergency condition existing at the Site was caused by Parks or its designees, then CPF shall so notify the Commissioner or her designee and, at the Commissioner's direction, shall cure or remove such condition in accordance with the provisions of this paragraph. In such event the 24-hour cure period (and other related provisions) described in (b)(i) above shall not commence until Licensee has been advised in writing of such determination by the Commissioner or her designee. Licensee shall be reimbursed by Parks for all costs of undertaking and performing such work, provided that and to the extent that such emergency condition is determined to have been caused or created by Parks or its designees, or other settlement is reached between the parties. Any such emergency condition caused by Parks or its designees shall not provide the basis for termination of the License by the Commissioner.

c) This section shall not apply to CPF's obligations with respect to Section 19 and the specific cure periods provided by Section 19 of this License shall apply to those obligations.



## 22. ALTERATIONS

a) As used in this License, "Alteration" shall have the following meaning:

(i) any restoration, rehabilitation, modification, or improvement to the Playfield (excepting ordinary maintenance);

(ii) any work or construction which would or might affect in any manner, or have any impact whatsoever upon the structure, character, appearance or design of any portion of the Playfield;

(iii) any work excluding ordinary maintenance and repair, affecting the Playfield's plumbing, heating, electrical, mechanical, ventilating or other systems;

b) All alterations to the Playfield undertaken by Licensee, its agents, employees or contractors shall be at Licensee's sole cost and expense subject to the prior review and approval by Parks' Capital Division, and such alterations shall not commence until Licensee obtains such written approval from Parks and all appropriate permits required by any agency or entity of government with pertinent jurisdiction.

c) To guarantee prompt payment of moneys due to a contractor or such contractor's subcontractors and to all persons furnishing labor and materials to the contractor or such subcontractor in the prosecution of any alteration with an estimated cost exceeding two hundred fifty thousand dollars (\$250,000), Licensee will be required to post a payment bond or other form of undertaking approved by Parks in the amount of one hundred percent (100%) of the cost of such alterations. Notwithstanding the above, to the extent than an alteration is funded in whole or in part through a separate contract with the State or City, Licensee will comply with the terms of such contract regarding payment bonds for the work to be performed under such

contract, including any requirements to obtain a payment bond pursuant to State Finance Law 137 or Section 5 of the Lien Law, as applicable.

c) All alterations shall be undertaken in a good and workerlike manner, completed in full accordance with the plans, designs and specifications approved by Parks and in full compliance with all applicable laws, rules and regulations.

d) In those instances where a contractor is employed, selection of the contractor to perform work hereunder shall be subject to Commissioner's prior written approval, which approval shall not be unreasonably denied, and said contractor shall be authorized to do business in the State of New York.

### **23. ALTERATIONS BY PARKS**

Parks may, in its sole judgment, make additions, alterations, repairs, decorations or improvements to the Playfield at the City's expense, but nothing herein contained shall be deemed to obligate or require Parks to make any additions, alterations, repairs, decorations or improvements, nor shall this provision in any way affect or impair Licensee's obligations in any respect. Parks will use reasonable efforts to schedule any such alteration, additions, decorations, repairs, or improvements to be made by Parks at such times as will cause the least interference with Licensee's operation of programs.

### **24. NUISANCE AND WASTE**

Licensee shall not create or suffer to be created any nuisance or danger to the public safety or public property in, on or about the Playfield and shall not commit or cause any waste, damage, disfigurement or injury to the Playfield and Adjacent Area.



## **25. USE OF PROPERTY AND TITLE TO IMPROVEMENTS**

It is understood and agreed that Licensee shall have the non-exclusive use of the Site, fixtures, furniture, landscaping and other improvements now or hereafter during the Term located or installed on, affixed to or within the Site pursuant to the terms and conditions set out herein. Title to all alterations, fixtures, furniture, landscaping and other improvements made to, installed, attached, or affixed to the Site shall pass to the City , at its option, immediately upon construction, installation, attachment or affixation thereto.

## **26. WORKERS' COMPENSATION AND INSURANCE**

### **a) Licensee's Obligation to Insure**

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

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

### **b) Commercial General Liability Insurance**

(i) The Licensee shall maintain Commercial General Liability insurance in the amount of at least Three Million Dollars (\$3,000,000) per occurrence. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Premises and such per-location aggregate shall be at least Two Million Dollars

(\$2,000,000). This insurance shall protect the Licensee, Parks, the City and the Central Parks Conservancy ("CPC") from claims for property damage and/or bodily injury, including death, that may arise from any of the operations under this License. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 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."

(ii) Such Commercial General Liability insurance shall name the City and CPC, together with their officials and employees, as an Additional Insured with coverage at least as broad as the most recent edition of ISO Form CG 2026.

**c) Workers' Compensation, Employers Liability, and Disability Benefits Insurance**

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

**d) Liquor Law Liability Insurance**

(i) In the event the Licensee shall serve alcohol on the Licensed Premises, the Licensee shall carry or cause to be carried liquor law liability insurance in an amount not less than Five Million Dollars (\$5,000,000) per occurrence, and name CPC and the City as additional insureds pursuant to ISO Form CG 20 26. Such insurance shall be effective prior to the commencement



of any such service of alcohol and continue throughout such operations.

(ii) In the event the Licensee shall permit sublicensees or others to serve alcohol on the Licensed Premises, the Licensee shall carry or cause each such person to carry liquor law liability insurance in an amount not less than Two Million Dollars (\$2,000,000) per occurrence, and name CPF, CPC and the City as additional insureds pursuant to ISO Form CG 20 26. Such insurance shall be effective prior to the commencement of any service of alcohol by such person on the Licensed Premises and continue throughout such operations.

**e) General Requirements for Insurance Coverage and Policies**

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

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

(iii) There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Commissioner. The Licensee shall ensure that any such self-insurance program provides the City and CPC with all rights that would be

provided by traditional insurance under this Article, including but not limited the defense and indemnification obligations that insurers are required to undertake in liability policies.

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

(v) All required policies, except for Workers' Compensation insurance, Employers Liability insurance, Disability Benefits insurance, and United States Longshoremen's and Harbor Workers Act and/or the Jones Act 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, New York City Department of Parks & Recreation, 830 5<sup>th</sup> Avenue, New York, New York 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.

(vi) All required policies, except Workers' Compensation, Employers Liability, Disability Benefits, and United States Longshoremen's and Harbor Workers Act and/or the Jones



Act insurance, shall include a waiver of the right of subrogation with respect to all insureds and loss payees named therein.

**f) Proof of Insurance**

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

(ii) For Workers' Compensation, Employers Liability Insurance, Disability Benefits, and United States Longshoremen's and Harbor Workers Act and/or the Jones Act insurance policies, the Licensee shall submit one of the following:

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

(iii) For all insurance required under this Article other than Workers Compensation, Employers Liability, Disability Benefits and United States Longshoremen's and Harbor Workers

Act and/or the Jones Act insurance, the Licensee shall submit one or more Certificates of Insurance in a form acceptable to the Commissioner. All such Certificates of Insurance shall (a) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) be accompanied by the provision(s) or endorsement(s) in the Licensee's policy/ies (including its general liability policy) by which the City and CPC has been made an additional insured or loss payee, as required herein. All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form required by the Commissioner or certified copies of all policies referenced in such Certificate of Insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

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

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



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

**g) Miscellaneous**

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

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

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

date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. The Licensee shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007 and to CPC at 14 E. 60th St, New York, NY, 10022

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

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

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

(vii) The Licensee waives all rights against the City and CPC, including their officials and employees, for any damages or losses that are covered under any insurance required under



this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Licensee and/or its employees, agents, or servants of its contractors or subcontractors.

(viii) In the event the Licensee requires any entity, by contract or otherwise, to procure insurance with regard to any operations under this License and requires such entity to name the Licensee as an additional insured under such insurance, the Licensee shall ensure that such entity also name the City and CPC, including their officials and employees, as an additional insured with coverage at least as broad as ISO form CG 20 26.

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

## **27. INDEMNIFICATION**

- a) The Licensee, limited only to the extent of the limits of its insurance policies

under this License, shall indemnify, defend, and hold harmless the City, Parks, CPC, and their officers, employees, and agents from any and all claims, actions, or judgments, in law or equity, liabilities, penalties, or expenses which may arise out of any negligent or willful act of Licensee under this License, any violation of any law and from any and all claims for loss, damage, or injury, including death, or property damage of whatever kind or nature including the negligence or carelessness of the Licensee's officers, managerial personnel, agents, servants, and employees, or any person, firm, company, agent, or others engaged by Licensee as experts, consultants, specialist, or subcontractors, hereunder, or independent contractors, **PROVIDED HOWEVER** that such indemnification protection shall not apply to any claims arising solely out of the negligence, gross negligence or intentional actions of the City, Parks, their agents, employees, or officers.

## **28. EMPLOYEES**

All personnel of the Licensee are employees of the Licensee and not of Parks or the City, and the Licensee alone is responsible for their work, direction, compensation, and personal conduct while engaged in connection with this License. Nothing included in this section or in any other provision of this License shall be construed to impose any liability or duty upon Parks or the City to persons, firms, or corporations employed or engaged by the Licensee as consultants, experts, or independent contractors, or in any other capacity whatsoever or as employees, servants, or agents of the Licensee, or to make Parks or the City liable to any person, firm, corporation, association, or to any government for the acts, omissions, liabilities, obligations, and taxes of whatsoever nature, including unemployment insurance of the Licensee or its consultants, experts, employees, servants, agents, or independent contractors.



## 29. INVESTIGATIONS

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

b) (i) If any person who has been advised that his or her statement and any information from such statement will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract or license entered into with the City, 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 under oath, or by the Inspector General of the governmental agency that is a party in interest in and is seeking testimony concerning the award of or performance under any transaction, agreement, lease, permit, contract or license entered



into with the City, State or any political subdivision thereof or any local development corporation with the City, then;

c) (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.

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

(i) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person or entity of which such person was a member at the time the testimony was sought from submitting bids for, 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 such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this License, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

e) The Commissioner or agency head shall consider and address in reaching her 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 which may be relevant and appropriate:

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

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

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

(iv) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under (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 proved that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.



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

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

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

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

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

### 30. NOTICE

All notices from Licensee to Parks shall be in writing and delivered by mailing a copy of such notice by registered or certified mail, return receipt requested, to the attention of the General Counsel, City of New York Parks & Recreation, The Arsenal, Central Park, 830 Fifth



Avenue, New York, New York 10065. All notices from Parks to Licensee shall be dispatched in the same manner.

### **31. COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS**

The Licensee shall faithfully perform and carry out the provisions of this License and cause its agents, employees and invitees to conform to all rules, regulations and orders now prescribed or which may hereafter be prescribed by the Commissioner and comply with all laws, regulations, rules and orders of any kind whatsoever and of any agency or entity of government whatsoever applicable to the Site and the Licensee's use and occupation thereof. This provision includes, but is not limited to, applicable tax and labor laws relating to non-discrimination in employment. Likewise, this provision includes the requirement that all performances that occur under this License shall be properly licensed and comply with the terms of copyright law.

### **32. REPRESENTATIONS, WARRANTIES, AND COVENANTS**

a) Licensee makes the following representations and warranties:

(i) Licensee is a corporation duly organized, validly existing and in good standing under the laws of the State of New York and has all requisite and authority to execute, deliver and perform this agreement.

(ii) This agreement has been duly authorized by all necessary corporate action on the part of Licensee, has been duly executed and delivered by Licensee, and assuming due execution and delivery by the City, constitutes a legal, valid, binding and enforceable obligation of Licensee.

(iii) The execution and delivery of this agreement, and compliance with the



provisions hereof, do not and will not conflict with or constitute a violation of or default under Licensee's Certificate of Incorporation, by-laws, or any statute, indenture, mortgage, deed of trust or other agreement or instrument to which Licensee is bound, or, to the knowledge of Licensee, any order, rule or regulation of any court, governmental agency, or body having jurisdiction over Licensee or any of its activities or properties.

(iv) Licensee has neither been asked to pay, offered to pay nor paid any illegal consideration, whether monetary or otherwise, in connection with the procurement of this agreement.

(v) Licensee has not employed any person to solicit or procure this agreement, and has not made and shall not make any payment of any commission, percentage, brokerage, contingent fee or any other compensation in connection with the procurement of the agreement.

b) City hereby represents and warrants that this agreement has been duly authorized by all necessary action on the part of the City, has been duly executed and delivered by the City and assuming due execution and delivery by Licensee, constitutes a legal, valid, binding and enforceable obligation of the City.

### **33. CONFLICTS OF INTEREST**

Licensee represents and warrants that neither it nor any of its officers, trustees, employees, or volunteers has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. Licensee further represents and warrants that in the performance of this agreement 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 Parks, nor any

person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this License which affects his or her personal interest or the interest of any corporation, partnership, or association in which he is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this agreement or in the proceeds thereof.

**34. NO ASSIGNMENT**

Licensee shall not sell, assign, mortgage, or otherwise transfer any interest provided for herein, or consent, allow or permit any other person or party to use any part of the Site, except as provided herein or approved in writing by the Commissioner, nor shall this License be transferred by operation of law, it being the purpose and spirit of this License to grant this License and privilege solely to Licensee.

**35. NO DISCRIMINATION**

Licensee agrees to comply with all applicable federal, state, and local civil rights and human rights laws with reference to equal employment opportunities and the provision of services. Licensee shall not restrict entry to the Site on the basis of race, color, creed, religion, national origin, ethnic origin, disability, marital status, or sexual orientation. Licensee shall comply with the Americans with Disabilities Act ("ADA") and regulations pertaining thereto as applicable. Any violation of this paragraph shall be a material breach of this License.

**36. JURY TRIAL**

Licensee hereby expressly waives all rights to trial by jury in any summary proceeding



hereafter instituted by City against Licensee or any counterclaim or cause of action directly or indirectly arising out of the terms, covenants, or conditions of this License or the use and occupation of the Playfield or any matter whatsoever in any way connected with this License, including but not limited to, the relationship between the City and Licensee. The provision relating to waiver of jury trial shall survive the expiration or termination of this License or any renewals thereof.

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

This License shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of Licensee and shall be governed by and construed in accordance with the laws of the State of New York. Any and all claims asserted by or against the City arising under this License or related thereto shall be heard and determined either in the courts of the United States ("Federal Courts") located in New York City or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this License and intent, it is understood:

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

b) With respect to any action arising out of this agreement between the City and Licensee in New York State Court, Licensee expressly waives and relinquishes any rights they 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 change of venue to a New York State Court outside New York County.

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

d) If Licensee commences any action arising out of this agreement against the City in a court located other than in the City and State of New York, upon request of the City, Licensee shall 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, Licensee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

### **38. CLAIMS AND ACTIONS THEREON**

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

b) No action shall lie or be maintained against the City by Licensee upon any claims based upon this agreement unless such action shall be commenced within six months after the date of filing in the Office of the Comptroller of the City of the certificate for the final payment hereunder, or within six months of the termination or conclusion of this agreement, or within six



months after the accrual of the cause of action, whichever first occurs.

(c) In the event any claim is made or any action brought in any way relating to the agreement herein, Licensee shall diligently render to the City of New York without additional compensation any and all assistance which the City of New York may require of Licensee.

#### **39. CLAIM AGAINST OFFICERS AGENTS OR EMPLOYEES**

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

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

It is the intent and understanding of the parties to this agreement that each and every provision of law required to be inserted in the agreement shall be and is inserted herein. Furthermore, it is hereby stipulated that 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 agreement 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.

#### **41. SEVERABILITY**

If any provision(s) of this agreement is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

**42. HEADINGS**

The article headings contained in this License are inserted for convenience only and shall not enlarge or limit the scope or meaning of the various and several articles hereof. Unless the context requires otherwise, words of any gender used in the License shall include the other gender and words in the singular number shall include the plural.

**43. ENTIRE AGREEMENT**

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

**44. MODIFICATION**

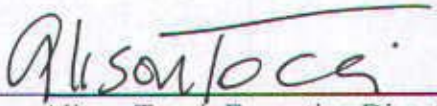
This License may be modified from time to time by notice in writing duly executed by both parties hereto, but no modification of this License shall be effective until the same has been agreed to in writing and duly executed by both parties.

**IN WITNESS WHEREOF**, the parties hereto have caused this License to be signed and sealed on the day and year first above written.

CITY OF NEW YORK  
PARKS & RECREATION

By:   
Veronica White, Commissioner

CITY PARKS FOUNDATION

By:   
Alison Tocci, Executive Director



Dated: 6/26/13

Dated: 6/28/13

APPROVED AS TO FORM:

Sharon Cantor  
Acting Corporation Counsel

Dated: JUN 06 2013

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF New York     )

On the 28 day of June, 2013, before me personally came Allison Tocci, who being duly sworn by me did depose and say that she is the Executive Director of City Parks Foundation described herein and who executed the foregoing instrument and acknowledged that she executed the same in her official capacity and for the purposes mentioned therein.



SIMON CHU  
Notary Public, State of New York  
No. 01CH6160154  
Qualified in NY County  
Commission Expires Jan. 29, 2015  
Notary Public

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF NEW YORK     )

On this 26<sup>TH</sup> day of JUNE, 2013, before me personally came Veronica White to me known and known to me to be the Commissioner of the Department of Parks & Recreation of the City of New York, and the said person described in and who executed the foregoing instrument, and she acknowledged that she executed the same in her official capacity and for the purpose mentioned therein.



*Faustina A. Osei-Owusu*

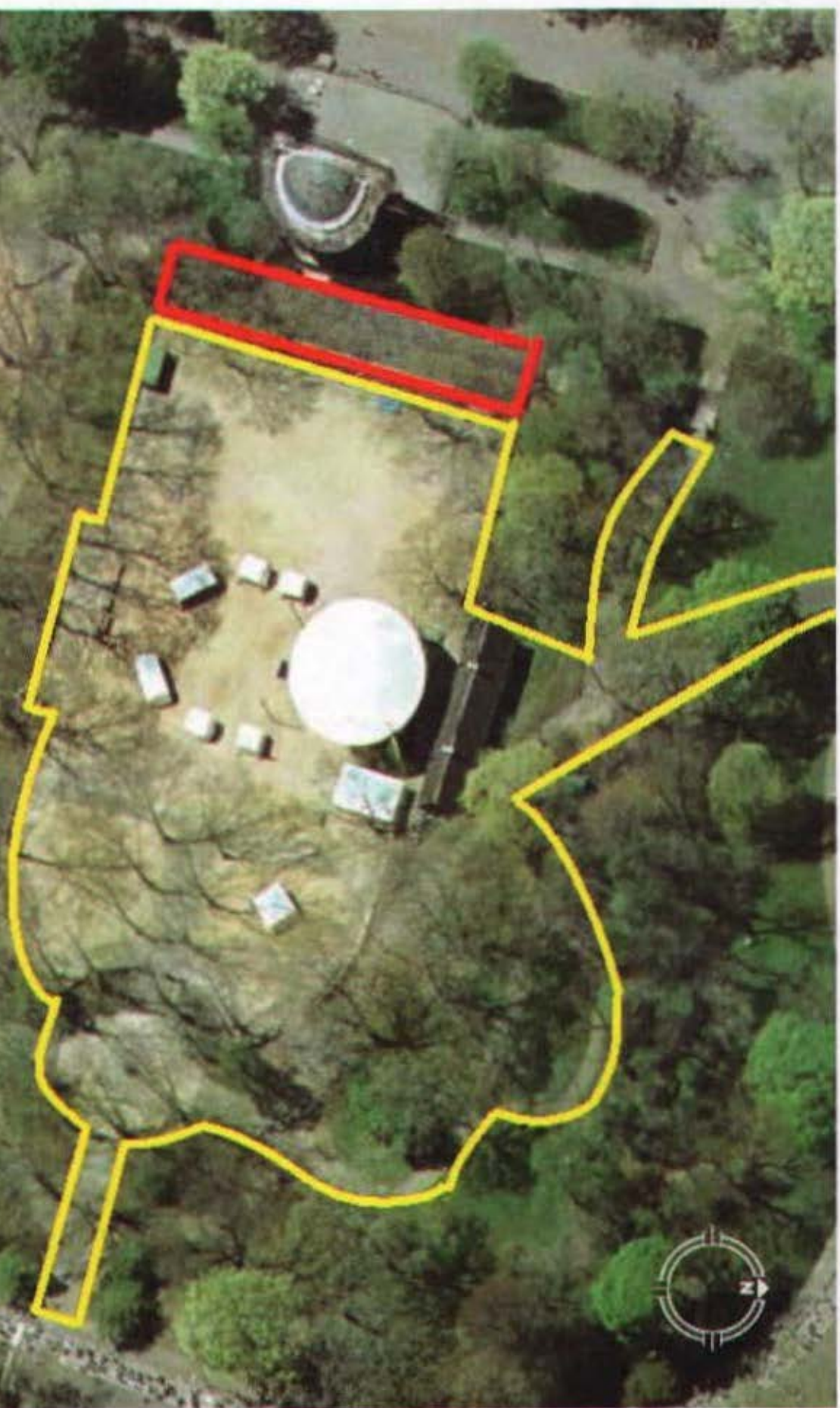
Notary Public

Faustina A. Osei-Owusu  
Notary Public, State of New York  
No. 010S6232313  
Qualified in Bronx County  
Commission Expires December 6, 2014

Commission Expires Dec. 6, 2014  
Qualified in Bronx County  
No. 010S6232313  
Faustina A. Osei-Owusu  
Notary Public, State of New York

**EXHIBIT A**





Pergola

Summerstage Licensed Premises



© 2006 Europa Technologies

© 2006 Navteq

Image © 2006 Sanborn

Pointer 40°46'21.26" N 73°58'12.62" W elev 77 ft Streaming 100%

Eye alt 665 ft

Google

**SCHEDULE A**  
**RUMSEY PLAYFIELD FEES**

Annual AIDS Walk	\$8,000 plus production expenses
Legacy Cultural Events (Israeli Day, German-American Friendship Day)	\$16,000 plus production expenses
SummerStage Benefit Concerts	\$17,000, plus production expenses
Corporate Client Managed Events	\$54,000, plus production expenses

LICENSE AGREEMENT between CITY OF NEW YORK PARKS & RECREATION and  
CITY PARKS FOUNDATION for OPERATION of SUMMERSTAGE



**2013 Rumsey Playfield Schedule A  
Production Expenses by Line Item**

Line Item	Expense Formula	Expense
<b>Stage &amp; Sound Equipment</b>		
House Sound System	\$2,600 flat fee per day	\$ 2,600.00
Stage Lights	\$2,500 flat fee per day	\$ 2,500.00
Genie Lift	\$300 flat fee per day	\$ 300.00
<b>House &amp; Field Equipment</b>		
Office Trailer	\$500 flat fee per day	\$ 500.00
Artist Trailers	\$1,250 flat fee per day	\$ 1,250.00
Radios	\$25 per unit x 45 units	\$ 1,125.00
Standard Portosan	\$65 per unit, 20 units	\$ 1,300.00
Handicapped Portosan	\$165 per unit, 4 units minimum	\$ 660.00
Portosan Servicing & Delivery	\$12 per 24 units	\$ 288.00
Trash Carting	\$450 per event day	\$450.00
Field & Turf Supplies	If applicable, for damage and repairs	TBD
<b>Production Crew Labor</b>		
Director of Production	Day Rate	\$ 700.00
Production Manager	Day Rate	\$ 600.00
Stage Manager	Day Rate	\$ 400.00
Audio Engineer FOH	Day Rate	\$ 660.00
Audio Engineer Monitors	Day Rate	\$ 660.00
Local One Stage Crew	\$44 x 8 hands x 8 hrs	\$ 2,816.00
Local One Stage Crew	\$66 OT x 8 hands x 6 hrs	\$ 3,168.00
Rigger	\$60 per hour (6 hr minimum), if required	\$ 360.00
<b>House Crew Labor</b>		
Venue Manager	Day Rate	\$ 500.00
House Crew Set Up & Clean Up	Day Rate	\$ 3,200.00
Hospitality Manager	Day Rate	\$ 300.00
Vehicle Escort	\$325 Day Rate	\$ 325.00
Counters	\$25 per hour x 3 counters x 6 hours	\$ 450.00
<b>Security Crew Labor</b>		
Security Supervisor	Day Rate	\$ 450.00
Security Staff/Fire Guards	\$25 x 15 security guards x 7 hours	\$ 2,625.00

## **EXHIBIT B - PAID SICK LEAVE LAW RIDER**

### **Introduction and General Provisions**

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

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

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

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

The PSLL is summarized below for the convenience of the Concessionaire.

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

Pursuant to the PSLL and the Rules:

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

An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSLL (“Year”) must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage.

---

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

Employers are not required to provide more than forty hours of sick time to an employee in any Year.

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

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

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

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

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

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

#### Exemptions and Exceptions



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

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

### Retaliation Prohibited

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

### Notice of Rights

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

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

### Records

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

### Enforcement and Penalties

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

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

### More Generous Policies and Other Legal Requirements

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