

REQUEST FOR PROPOSALS



**Request for Proposals
For
Concession for the Pier 84 Indoor/Outdoor Café in Hudson River Park**

RFP Release Date: October 1, 2018

Submission Deadline: November 16, 2018 at 5:00 PM

RFP# L5021

Premises: Pier 84 Café with approximately 2,346 SF interior and approximately 3,930 SF exterior outdoor spaces located at West 44th Street in the Maritime Entertainment section of Hudson River Park

Premises is offered in “as-is” condition

Permitted Use: Café with indoor and outdoor seating; take-away service; two mobile food concessions; Concessionaire may seek full SLA license provided the provision of alcoholic beverages is ancillary to food service

Term: Five years to December 31, 2023

Extension Period: Four additional years to December 31, 2027

Concession Fee: Fixed monthly fee with annual escalations plus a percentage of gross receipts on first dollar or in excess of a threshold

Security Deposit: Construction period deposit of \$100,000 adjusted at restaurant opening to two (2) months of Annual Base Concession Fee (as defined below)

Submission Deadline: November 16, 2018 at 5:00 PM



I. The Opportunity

The Hudson River Park Trust (“**Trust**”) seeks submissions to this request for proposals (“**RFP**”) from experienced and qualified operators for an indoor/outdoor café concession at Pier 84 (“**Pier 84 Food Concession**”) located at West 44th Street in Hudson River Park (the “**Park**”). The Pier 84 Food Concession is located at the very heavily trafficked Pier 84 located in the Maritime Entertainment section of the Park, situated between the Circle Line (Pier 83) and the Intrepid Museum (Pier 86), and near the base of the busy 42nd Street. The selected respondent to this RFP (“**Concessionaire**”) will manage and assume responsibility for the operation of the “**Premises**” (defined in Section VII) in accordance with the terms and conditions set forth in this RFP and the concession agreement to be subsequently issued by the Trust (“**Concession Agreement**”) in a form attached in Appendix 7- Form Concession Agreement. Two “**Mobile Concession Units**” (as defined in Section VII) are permitted as part of the operation of the Pier 84 Food Concession. No food trucks will be considered.

The Concessionaire shall cater to Park patrons, including tourist visitors and local residents, with a food-focused menu along with, subject to Community Board review and SLA license issuance, ancillary alcoholic beverage service. The Concessionaire shall be required to maintain year-round food and beverage service and may offer take-out food as well. The operation of the Pier 84 Food Concession must be compatible with the use of Pier 84 by Park patrons, the neighboring

residential community, and other Trust tenants, permittees and concessionaires. The Pier 84 Food Concession shall be operated for customers of all-ages and is not intended to be a “bar,” a “club” or any business that may present a nuisance to Park patrons or the neighboring residential community. On-Premises customers are expected to consume food and beverage seated, not standing.

Area Description

Pier 84, as one of the Park’s longest piers, offers spectacular views and special features to Park visitors. Pier 84 was completed in 2006 and has numerous amenities including a boathouse operated by Manhattan Kayak Company, an educational center operated by the Trust, lawns, a fountain, a dog run, and a bike rental shop operated by Blazing Saddles. The Trust hosts free special events on Pier 84 during the summer including Big City Fishing, jazz concerts, exercise classes and the pop-up Maker Space. To the south, the Circle Line operates one of the City’s most popular sightseeing and dinner cruise venues from Piers 81 and 83 with over one million customers annually. To the north, the Intrepid Sea, Air, and Space Museum also hosts over one million visitors per year at Pier 86.

In addition to high volume tourist traffic, the blocks directly across West Street are experiencing a rapid growth of commercial, residential, and government buildings (see Area Map in [Appendix 4](#)).

Some of the nearby residential towers include:

- Riverbank West — 560 West 43rd Street (418 units)
- Silver Towers — 610 West 42nd Street (882 units)
- Atelier Condos — 635 West 42 Street (478 units)
- Gotham West — 550 West 45th Street (554 units)
- Sky — 605 West 42nd Street (1,175 units)
- The Helix — 520 West 43 Street (375 units)

Term

The term of the Concession Agreement will extend to December 31, 2023 (the “**Initial Term**”) with a four year renewal option (“**Extension Period**” and together with the Initial Term, the “**Term**”) available to the Concessionaire, subject to the prior approval of the Trust. The Initial Term, together with approved Extension Period set forth above, may extend to December 31, 2027. The Trust approval of the Extension Periods will be subject to certain performance criteria by the Concessionaire, such as compliance with the provisions of the Concession Agreement and attaining the gross receipts levels negotiated and set forth in the Concession Agreement.

Timeline to Opening in Summer 2019

The Trust anticipates completing its evaluation of RFP submissions and contacting the selected respondent by November 30, 2018. The selected respondent must negotiate and agree to a Concession Agreement, a form of which is attached as Appendix 7- Form Concession Agreement, with the Trust by on or about **December 21, 2018**, and contemporaneously submit a construction period security deposit to the Trust upon completion of same.

The Concession Agreement will thereafter be executed with the commencement date effective the date the Trust has provided possession of the Premises to Concessionaire and the Trust has provided notice to Concessionaire of its receipt of the Temporary Certificate of Completion (“TCC”) from the New York City Department of Small Business Services (“DSBS”) for the base building work (the “Commencement Date”). The Trust is responsible for all base building work. The Concessionaire may take possession of the Premises on the Commencement Date.

At the present time the TCC for the base building has not been issued, but is expected prior to the Commencement Date. Should the TCC not be secured by January 1, 2019 then all dates in this timeline shall be extended on a day-for-day basis until TCC issuance.

Upon execution of the Concession Agreement, the Concessionaire shall prepare plans for a Fit-Out (as such the term is defined in Section IX) of the Premises sufficient for a building alteration work permit application (“Permit Application”). The Concessionaire shall submit such plans to the Trust for its review and approval on or about **January 18, 2019**. The Concessionaire shall thereafter prepare and submit the Permit Application to New York City Department of Buildings (“DOB”) or DSBS on or about **February 1, 2019**.

The “Fit-Out” period shall commence within fifteen (15) days following Concessionaire’s receipt of the DOB/ DSBS approved Permit Application.

The Pier 84 Food Concession shall be open to the public for food and beverage service by the later of: (i) July 1, 2019, and (ii) the completion of the Fit- Out work (the “Restaurant Opening Date”). The Concessionaire shall be entitled to a “Base Concession Fee-Free” period until the later of these dates, i.e. if the Restaurant Opening Date is prior to July 1, 2019, no Annual Base Concession Fee calculated on a monthly basis shall be due until July 1, 2019.

The Pier 84 Food Concession offered under this RFP is “net” to the Trust

The Concessionaire will be responsible for the performance and payment of any and all Fit-Out necessary and/or desirable for its use and occupancy of the Premises, and shall be required to obtain, at its sole cost and expense, all state and local governmental approvals, permits and licenses as required for the planning, preparation, operation and maintenance of the Pier 84 Food Concession. The Premises is offered in “as-is” condition. The Trust will not offer any “allowance” for fit-out costs or any other monetary contribution toward the operating expenses of the Pier 84 Food Concession.

II. Specific Terms, Deadlines and Requirements

1. **Submission Deadline: November 16, 2018 at 5:00 PM** by hand, express mail or other nationally-known overnight courier.
2. Proposals must be submitted to the Trust at Pier 40 at 353 West Street, Suite 201, New York, N.Y. 10014, Attn: Rashi Puri.
3. Number of proposals to be submitted: Three (3) hard copies and one (1) electronic version. Please note that the electronic version of the proposal along with an Excel version of the nine year pro forma referenced in Section III (7) below is required to be emailed to Pier84RFP@hrpt.ny.gov.

4. Hard copies of proposals should be submitted in one or more sealed envelopes labeled: “Proposal for Pier 84 Indoor/Outdoor Concession, RFP# L5021”.
5. Optional Pre-Proposal Meeting/ Site Inspection: **October 17, 2018 at 11:30 AM** at Pier 84 at West 44th Street on the Hudson River Park esplanade (an RSVP email sent to Pier84RFP@hrpt.ny.gov is required if you will attend).
6. Last date to submit questions regarding the RFP: **October 24, 2018 at 5:00 PM** to Pier84RFP@hrpt.ny.gov or to the Trust as set forth in Section VI.
7. Answers to questions regarding the RFP and any technical addenda issued in connection with the RFP will be made available on the Trust’s website at: <http://www.hudsonriverpark.org/about-us/bids-business-opportunities> on **October 31, 2018**. Respondents are solely responsible for monitoring the Trust’s website for such postings.

Any respondent with a physical disability who cannot deliver its proposal to the Trust’s office at Pier 40 by hand, express or overnight mail should contact Nicole Steele at (212) 627-2020 or at Pier84RFP@hrpt.ny.gov at least 48 hours prior to the submission deadline for special submission arrangements.

III. Submission Requirements

Each respondent should include the following with its submitted proposal. Please label and number each section.

1. Name, address, phone number, and email address of the primary contact for the respondent.
2. A description of the respondent’s organizational structure, key management personnel, number of years in operation, type and address of other real property presently or formerly occupied by respondent (including those offering alcohol), and a detailed description of how the utilization of the Premises and operation of the Pier 84 Food Concession complements the respondent’s existing business model.
3. A detailed description of the respondent’s specific proposed uses and operations at the Premises including, but not limited to the following:
 - a. Sample menu inclusive of alcohol (if proposed) with prices;
 - b. Dates for operations including seasonality and days/hours of operation;
 - c. Marketing plan, including target market;
 - d. Staffing plan, including total number of employees;
 - e. Description of take-away services and Mobile Concession Unit operations; and
 - f. Plan for securing outdoor furniture, trash receptacles, Mobile Concession Units at closing.
 - g. Explanation of anticipated revenue percentage derived from alcohol (if proposed)
4. An operational plan including schedules for deliveries, rubbish removal and cleaning (see Section VIII below); customer access point(s) showing take-out window or counter (if applicable), and other essential elements.

5. A description and drawings (or photographs) illustrating the proposed improvements to the Premises including furniture, signage, and kitchen layout together with a hard and soft cost budget. Include a detailed timetable describing all governmental approvals, design and capital work necessary to complete in advance of the opening of food and beverage service to the public.
6. A completed “**Fee Schedule**” for the Premises as provided in Appendix 6. The “**Concession Fee**” is comprised of:
 - (a) An annual base concession fee (“**Annual Base Concession Fee**”) for the Term payable monthly , including annual escalations of not less than three percent (3%) per year (compounded annually) of the Annual Base Concession Fee over the Term; and
 - (b) A percentage of annual gross receipts excluding sales and use taxes (the “**Percentage Concession Fee**”) that may be expressed as in excess of a stated annual threshold or from the first dollar generated by the Concessionaire at the Premises from all sources including but not limited to: (i) sales of products or services sold at or from the Premises, and (ii) all ancillary business income generated from the Premises.

Respondents may submit a Fee Schedule that includes a different amount for in-season months (May through October) and off-season months (November through April). Annual Base Concession Fee commencement for Year 1 will be at the later of **July 1, 2019** and the Restaurant Opening Date. If the Percentage Concession Fee is calculated as a percentage in excess of an annual threshold amount (of gross receipts), that annual threshold shall be calculated on a calendar year basis. Since the first calendar year of the Concession Agreement in which Concessionaire is open to the public will include less than twelve (12) months, the Percentage Concession Fee threshold applicable for the first year should be lower than for the subsequent eight (8) full years (with Extension Periods) of operations.

Concessionaire shall pay all state, municipal and federal taxes in connection with the use and operation of the Premises. However, the Concessionaire will not be required to make any payment to the Trust with respect to any real estate taxes (or in lieu thereof) or escalations tied to increases in real estate tax assessments.

7. A pro forma from January 1, 2019 to December 31, 2027 (unless respondent is not seeking Extension Period) detailing expected start-up costs, Fit-Out costs, monthly revenue, monthly expenses, and Annual Base Concession Fee and Percentage Concession Fee payable to the Trust. This pro forma should be submitted in both a hard copy and electronic version in Excel format per Section II(3) above.
8. Financial statements, including balance sheet and income statement for the most recently completed fiscal year, for each company, corporation, partnership, or joint venture entity which comprises the respondent, provided that any such company, corporation, partnership or joint venture must be already established and shall have completed at least

one full year of operation. Individual owners and any newly or to be formed company, corporations, partnerships, or joint ventures must provide, as applicable: (1) certified financial statements of net worth for individual owners, principals, members and contributors, and/or (2) financial statements for constituent corporate and partnership owners or control entities with at least one year of operating experience. **All financial information, other than that submitted by public companies, will be treated as confidential and proprietary by the Trust subject to the standards specified in the Freedom of Information Law, Article 6 of the Public Officers Law of the State of New York. The Trust may conduct a credit check and/or undertake further due diligence for each respondent through Dun & Bradstreet, banking and/or trade references, and each respondent is deemed to consent upon its submission of a proposal to the Trust pursuant to this RFP to such credit/reference check.** Note that a financially capable individual, corporation, partnership, or joint venture entity that has an interest in, or is affiliated with, the respondent may be asked to co-sign the Concession Agreement or to be party to an industry standard “Good Guy” guarantee with respect to Concessionaire’s obligations. Respondent’s agreement to such arrangement may be a condition to its designation as Concessionaire.

9. Names and contact information including both phone number and email address of three references with whom respondent has done business similar to that proposed under this RFP.
10. Any other information that respondent believes useful in consideration of its proposal.

IV. Evaluation Criteria / Selection

RFP responses shall be evaluated in accordance with the following criteria.

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| 30% | Quality of the proposed operation, including menu, appropriateness to Park and neighborhood setting, and likely market acceptance of business concept for the location. |
| 25% | Proposed Fee Schedule, along with ability to make all proposed payments based upon soundness of business concept and financial strength of respondent and/or co-signer/guarantor(s). |
| 25% | Quality and extent of proposed Fit-Out (i.e., design, physical improvements, equipment, other capital improvements), total investment, integration into surrounding Park and respondent’s capacity to undertake and complete the work in a timely fashion in accordance with identified schedules. |
| 20% | Respondent’s prior experience, reputation, organizational and business capability. |

V. Selection

The Trust will review each respondent's proposal in totality and select the respondent that best satisfies the evaluation criteria and whose proposal is most advantageous to the Trust's mission and objectives. Interviews may be held with any or all of the respondents after the receipt and initial review by the Trust of proposals. When feasible, employees of the Trust may visit existing facilities operated by respondents as part of the evaluation process. The selected respondent will be asked to attend one or more meetings of Manhattan Community Board 4 and/or block associations (West 44th Street/ West 45th Street) to describe the proposed use of the Premises and respond to questions.

VI. Limited Permissible Contact

All questions concerning the RFP shall be directed to:

Rashi Puri
Hudson River Park Trust
353 West Street, Room 201
New York, New York 10014
Email: Pier84RFP@hrpt.ny.gov

VII. Premises

The Premises, as depicted in Appendix 5, consist of the following interior and exterior spaces:

- The concession building with interior seating space, kitchen, and bar measures approximately 2,346 SF;
- A western outdoor customer seating area measuring approximately 3,500 SF (the “**Western Area**”) and a northern outdoor seating/take out area measuring approximately 430 SF (the “**Northern Area**”);
- A trash room of approximately 86 SF (note: this area may be reviewed for expansion); and
- Locations for two Mobile Concession Units (as defined below) approved by the Trust.

An outdoor bar is currently located in the Northern Area and may, at the election of the Concessionaire, be relocated from the Northern Area to the Western Area provided customers are seated and also served food. The Northern Area may, at the election of the Concessionaire, be used for take-away service.

The Western Area may be enclosed using banner branded barricades or of similar likeness to distinguish the private customer seating area from public areas of the Park. The Western Area must be enclosed if the Concessionaire will serve alcohol. Branded banners may not contain advertising except for the name and/or logo of the Concessionaire and/or Hudson River Park. The design and placement of all barricades must be approved by the Trust prior to any installation.

Concessionaire may operate a maximum of two carts, either a pushcart or a processing cart (herein collectively referred to as “**Mobile Concession Unit(s)**”) on Pier 84 in accordance with the following guidelines:

- **Pushcarts**

Pushcarts are manually propelled carts or barrows that are only utilized for the sale of pre-packaged foods or foods which required limited preparation.

Pushcarts cannot be more than 6.5 feet long and 3.5 feet wide including all handles, extensions, and protuberances. If the unit is designed so that the operator stands within the unit, the width of the unit, including its wheels, axles, and other appurtenances may not exceed 4.5 feet.

- **Processing Carts**

Processing carts (limited to maximum of 10’ in length) are utilized for the sale of foods that require cooking or any other treatment such as slicing, mixing, packaging, or any other preparation that exposes the food to possible contamination.

Suggested locations for the Mobile Concession Units are shown in Appendix 5. Alternate locations may be proposed by respondents; Concessionaire may change the locations of Mobile Concession Units during the Term with the approval of the Trust.

Designs for the Mobile Concession Units are subject to the review and approval of the Trust.

Mobile Concession Unit must be securely stored at the Premises at the Concessionaire’s sole risk or taken off-site at the end of each day.

VIII. Operations and Maintenance

Hours of Operations

The Concessionaire shall operate the Concession from May to October during the hours of 8:00 AM to midnight daily and November to April from 8:00 AM to 7:00 PM. Operating hours may be reduced during November to April, subject to prior approval of the Trust, but the Pier 84 Food Concession must remain open daily. Any change in daily hours of operation must be submitted to the Trust in writing, and are subject to the Trust’s approval. The Park is closed daily from 1:00 AM to 6:00 AM.

Acknowledgement of Hudson River Park

Concessionaire shall acknowledge location of the restaurant in written materials and on social media and other media as being within Hudson River Park.

Food and Beverage Service

Respondents must submit a sample menu and pricing schedule with their proposal submissions in accordance with Section III (3). All food and beverage items, as well as prices, are subject to approval by the Trust (which approval shall be granted if reasonable and similar to comparable

venues). A price list, approved by the Trust, must be prominently displayed at the facility at all times. Respondents should include some lower-cost food items on their menus.

The Trust envisions a Concession that will serve both on-Premises Park patrons and take-away customers.

Food quality is a priority. The Trust encourages the use of fresh ingredients, seasonal fare, and healthy menu items that reflect the Park location.

The Concessionaire may not sell non-food or beverage items unless specifically approved by the Trust.

Sale of Alcoholic Beverages

Concessionaire may, with the prior written approval of the Trust, sell alcohol at the Premises (no take-away of alcohol will be permitted) provided that: (1) such sales are ancillary to customer food sales; (2) the consumption of alcohol by customers is strictly limited to the private indoor and outdoor seating areas, and signage to such effect is prominently displayed; (3) the Trust has reviewed Concessionaire's sales plan for alcohol and determined, in the Trust's sole discretion, that the plan is acceptable to the Trust; (4) Concessionaire has secured all public approvals, including but not limited to a liquor license application approval from Manhattan Community Board 4 and the issuance of a State Liquor Authority license for the sale of alcohol, and submitted evidence of same to the Trust; and (5) Concessionaire has provided the Trust with evidence of liquor liability insurance coverage in accordance with the requirements of [Appendix 3](#).

At the option of Concessionaire, the Northern Area may be utilized as a seasonal take-out/ice-cream vending location and the Western Area may be utilized for food and liquor sales, provided a liquor license is obtained. Music or entertainment options may be proposed provided such use is strictly indoor and subject to Section VIII "Noise" below.

Restroom Facility

The Concessionaire's employees and customers will have non-exclusive use of the public restrooms located directly to the south of the Premises in the Pier 84 West 44th Street Park building. The current hours of the public restrooms are 8:00 AM to 12:00 AM daily (April – November) and 8:00 AM to 7:00 PM daily (December – March). The Concessionaire shall be charged an additional restroom service charge as reasonably determined by the Trust if the Concessionaire's hours of operation (including those for private events) extend beyond these regular times, particularly during the off-season months.

Private Events

The Concessionaire may utilize the Premises for "private events", defined as events that close the entire inside and/or outside seating areas to the public provided that such private events may not occur more than twice per month during May through October and not more than eight (8) times per month during November through April without the prior written consent of the Trust. The Concessionaire must provide the Trust with at least one week prior written notice of all

proposed private events. Concessionaire's private events may not occur at the same time as previously scheduled Trust public events on Pier 84 without the written approval of the Trust.

Security

The Trust contracts with NYC Parks Enforcement Patrol to provide park-wide security; however, the security of the Concessionaire's equipment and property on the Premises is the sole responsibility of the Concessionaire. It is recommended that camera security be provided on the Premises by the Concessionaire with Trust access to the cameras.

All outdoor furniture and other café accessory equipment must be secured daily by the Concessionaire.

Parking / Service Access

Parking and vehicular access is not available at the Premises. Deliveries to the Premises by vehicle will be limited to the Pier 84 service road, as depicted in Appendix 5. The Pier 84 service road may be used only for active delivery including pick-up and drop-off and not for parking. The Concessionaire shall propose a delivery schedule in consultation with, and approval by, the Trust. Delivery motor vehicles are not allowed to drive through the Park. All deliveries and removals through the Pier 84 service road must be performed using hand carts or an electric utility vehicle.

Maintenance and Repair

Concessionaire shall maintain the Premises in good repair and condition at its sole cost and expense, including repairs of all mechanical, electrical, and plumbing systems, windows, doors and hardware, and exterior paving within the outdoor areas. The Trust shall only be responsible for maintaining the Building's structural components (exterior walls, roof, and foundation).

Garbage and Cleaning

The Concessionaire shall keep the Premises and immediately adjacent public esplanade areas clean at all times and must maintain a regular cleaning schedule that shall be submitted to the Trust for its approval. Refuse may not be left anywhere in the Premises or in other Park disposal areas except as set forth below.

Concessionaire must make arrangements with a private carting company to remove all refuse off-site on a daily basis. Concessionaire may utilize wheeled hoppers approved by the Trust to transport trash from the Premises to the trash room and from the trash room to the Pier 84 service road for pick-up.

Concessionaire, as required under New York City law, must also have its private carter provide recycling services. For more information, please visit:

<http://www1.nyc.gov/assets/dsny/zerowaste/businesses/recycling-for-businesses.shtml>

All graffiti on the Premises must be removed within 24 hours of discovery. The Trust may require that the Concessionaire install additional trash receptacles at Concessionaire's expense if the existing trash receptacles are inadequate as determined by the Trust.

The Concessionaire shall present a "Green Cleaning Program" to the Trust for its approval.

Concessionaire may only utilize toxic cleaning agents on the Premises if no alternative green cleaning products are commercially available. Concessionaire must take all reasonable precautions to prevent leaks of toxic fluids from equipment, toxic leaks associated with the cleaning of equipment and toxic leaks of fluids (including contaminated water) into/onto the ground, pier, or into the Hudson River. If a toxic leak occurs on a the Pier or into/onto the ground, Concessionaire shall immediately contain the leak and remediate that part of the Pier or ground impacted by the toxic leak. If a toxic fluid leaks into the Hudson River, Concessionaire shall immediately notify the Trust of such leak.

Waste products that require special handling or disposals must be removed by the Concessionaire pursuant to all legal requirements.

The Concessionaire shall place mats or other protective surfaces under each Mobile Concession Unit to protect paved surface from staining, and shall comply with waste management plans then in effect for the Park.

Noise

Music or other noise emanating from the Premises shall not be audible outside of the Premises at levels that may disturb Park patrons, residents of neighboring buildings, other Trust tenants, permittees, or concessionaires. Please note that the Trust may restrict or prohibit amplified music in the exterior areas of the Premises.

Utilities

Concessionaire shall pay all utility charges (electric, water & sewer and gas service) whether directly metered or sub-metered. The Concessionaire shall provide, as necessary, any new utility hookups in addition to currently available electric, water and sanitary sewer connections. All such proposed work must be clearly identified to the Trust in the respondent's proposal.

The Trust has installed the following services at the Pier 84 building:

a. Electric:

The building contains two separately metered sources of electric power (230volt /600amp/3phase each). All electric services are installed and shall not be modified or otherwise altered without Trust authorization.

Concessionaire must pay for electrical service by establishing and maintaining an account directly with Con Edison. All work to tie into and distribute the power supply must be performed by a qualified and licensed contractor in accordance with all applicable legal requirements, including power and fixtures for food storage/preparation service, HVAC systems, water heaters, lighting, security, etc.

b. Water

Water is available and metered via two sub-meters. Concessionaire shall pay water and sewer usage costs based upon the metered water usage. All work to tie into and distribute water from the meters must be performed by a qualified and licensed plumbing contractor and is subject to prior Trust written authorization.

c. Gas

A gas meter and valve outlet is available. All gas service work must be (a) performed by a licensed plumbing contractor in accordance with all Consolidated Edison rules and regulations; (b) comply with all applicable legal requirements; and (c) is subject to prior Trust written authorization. The Concessionaire must pay for gas service by establishing and maintaining an account directly with Con Edison.

d. Sanitary

Connections to the building's sanitary system are available. All work to tie into or modify the building's sanitary system must be performed by a qualified and licensed plumbing contractor and is subject to prior Trust written authorization.

e. Heat

Hot water for heating is provided from the building's central heating system. Any additions or modifications to the heating systems within the indoor space must be performed by a licensed plumbing contractor in accordance with all local codes, rules and regulations, and is subject to prior Trust written authorization. Concessionaire must undertake measures to conserve heat during the winter months. The Trust may charge Concessionaire with a monthly heating fee based upon the square footage of the indoor space.

f. Data

Telephone and data service is not available in the building but may be installed by Concessionaire at its sole cost and expense. Concessionaire shall pay for all such data service.

IX. Fit-Out/Construction

Concessionaire shall undertake and pay for all construction work in connection with the fit-out of the Premises, including mechanical, electrical, and plumbing systems, upgrades, and modifications to the heating, ventilation and air conditioning systems (“**Fit-Out**”). Respondents shall include a detailed description of the Fit-Out work along with cost estimates and detailed schedule for such work that clearly outlines the completion dates within a not greater than four (4) month build out period. The Trust favors capital improvements that feature environmentally sensitive building materials, equipment and building practices. Respondents are advised that the building may experience flooding during extreme storm events, and that certain equipment should be protected and/or elevated whenever feasible.

All construction work must comply with all applicable requirements of the City and State of New York, and must be filed with the DSBS and/or the DOB, as applicable. Prior to opening, Concessionaire must have filed all necessary food service applications with and received all necessary licenses and permits for operation from the New York City Department of Health.

All construction work plans are subject to the Trust's written approval prior to any filings with DSBS and/or DOB. The staging and timing for Fit-Out work shall be coordinated between the Concessionaire and the Trust. The Concessionaire shall reimburse the Trust for the reasonable

out of pocket costs and expenses incurred by the Trust related to the review of the Concessionaire's construction plans.

The interior portion of the Concession building shall be provided to the Concessionaire as "Core and Shell". All existing equipment within the building shall be removed by the Trust prior to possession by the Concessionaire. The Concessionaire should assume that new flooring is a required improvement.

The Concessionaire shall purchase, install and maintain all kitchen equipment necessary to prepare, serve and store food and supplies required for the operation of the Pier 84 Food Concession.

Any installations or modifications of additional grease traps, fire suppression systems/equipment and exhaust vents at the Premises must comply with all applicable laws and regulations. Concessionaire must provide appropriate cleaning and maintenance of same.

Supplemental partitions and finishes, including installation and alterations of flooring, wall and ceiling treatments at the Premises must be pre-approved by the Trust in writing; work must be performed by qualified licensed contractors and meet all of the necessary code and legal requirements.

At the Trust's option, all fixtures permanently affixed to the Premises will become the Trust's property upon the expiration or sooner termination of the Concession Agreement. Should the Trust choose not to exercise this option, the Concessionaire shall remove all fixtures and restore the Premises in a condition as good as or better than at the commencement of the Term.

Concessionaire shall accept the Premises "as-is" and will not at any time make any claim that the Premises (including, without limitation, any structures or other improvements located thereon) are not in a suitable state of repair or condition for the uses and purposes of the Concession Agreement, nor will Concessionaire at any time make any claim for or by way of reduction of the Concession Fee, or otherwise, for damages arising from, out of, or otherwise in connection with the use or occupancy of the Premises. Concessionaire, at its sole cost and expense, shall perform any necessary improvement(s) and/or repair(s) to bring the Premises into compliance with all applicable legal standards and requirements.

X. Internal Controls / Revenue Reporting

Throughout the Term, and for a period of at least six (6) years following the expiration or earlier termination of the Concession Agreement, Concessionaire shall maintain adequate systems of internal control and shall keep and preserve complete and accurate records, books of account and data, including daily sales and receipts records. Specifically, sales information for the Concession must be recorded electronically, with Concessionaire's revenue control system ("POS") approved by the Trust in writing.

Monthly Statements of Gross Receipts

Concessionaire shall submit a monthly statement of gross receipts generated from its POS for all categories of income in a format approved in writing by the Trust by not later than the fifteenth (15th) day of the subsequent month. The Percentage Concession Fee will be payable monthly with an annual “true up” at the time of submission of the annual statement of gross receipts (see below). Gross receipts shall exclude the amount of any State or City sales taxes that are paid by Concessionaire and all voluntary contributions to the Trust that may be made by customers (see below). Separate gross receipts reporting shall be made for Mobile Concession Units.

Annual Statement of Gross Receipts

Within sixty (60) days of the end of each calendar year, Concessionaire must submit to the Trust a statement of annual gross receipts from all categories of income prepared by a certified public accountant on behalf of Concessionaire and certified by Concessionaire as to truthfulness, completeness and accuracy. In addition, Concessionaire must promptly provide, at the request of the Trust, tax returns or other tax filings that support the statement of annual gross receipts.

Contributions to the Park

Concessionaire shall include on each customer’s bill/check, a line that allows the customer to make a voluntary contribution to Hudson River Park Trust. Concessionaire shall collect such voluntary contributions and remit all such amounts to the Trust on a monthly basis. All voluntary contributions shall be excluded from gross receipts.

Appendix 1
Additional RFP Terms and Conditions

1. This is a “Request for Proposals” and **not** a “Request for Bids”. The Trust shall be the sole judge of whether a proposal conforms to the requirements of this RFP and of the merits and acceptability of the individual proposals. Notwithstanding anything to the contrary contained herein, the Trust reserves the right to take any of the following actions in connection with this RFP: amend, modify or withdraw this RFP; waive any requirements of this RFP; require supplemental statements and information from any respondent; award a contract to as many or as few or none of the respondents as the Trust may select; accept or reject any or all proposals received in response to this RFP; extend the deadline for submission of proposals; negotiate or hold discussions with one or more of the respondents; permit the correction of deficient proposals that do not completely conform with this RFP; waive any conditions or modify any provisions of this RFP with respect to one or more respondents; reject any or all proposals and cancel this RFP, in whole or in part, for any reason or no reason, in the Trust's sole discretion. The Trust may exercise any such rights at any time, without notice to any respondent or other parties and without liability to any respondent or other parties for their costs, expenses or other obligations incurred in the preparation of a proposal or otherwise. All proposals submitted shall become the property of the Trust.
2. Notwithstanding anything to the contrary set forth in this RFP, the Trust and its respective officers, directors, agents, members and employees make no representation or warranty and assume no responsibility for the accuracy of the information set forth in this RFP. Further, the Trust does not warrant or make any representations as to the quality, content, accuracy or completeness of the information, text, graphics, links or any other facet of this RFP once it has been downloaded or printed from any server, and hereby disclaim any liability for any technical errors or difficulties of any nature that may arise in connection with the website on which this RFP is posted, or in connection with any other electronic medium utilized by respondents or potential respondents in connection with or otherwise related to the RFP.
3. Recipients of this RFP shall make no news/press release pertaining to this RFP or anything contained or referenced herein without the prior written approval of the Trust in its sole discretion. Any news release pertaining to this RFP may only be made in coordination with the Trust.
4. The Trust is subject to the New York State Freedom of Information Law (“FOIL”), which governs the process for the public disclosure of certain records maintained by Trust (see New York Public Officers Law, Sections 87 and 89). Proposal submission materials will generally be made available for inspection and copying upon written request, except when exempted from disclosure under the FOIL. Respondent may request that the Trust exempt all or part of its proposal, such as financial statements and tax returns, from public disclosure in accordance with one or more of the exemptions set forth in Section 87.

5. The selected Concessionaire shall enter into a Concession Agreement with the Trust in the Trust's standard concession form in the form attached hereto and upon such terms and conditions as shall be more particularly negotiated upon selection, but including the specific terms set forth in Appendix 2.

Appendix 2
Specific Terms of the Concession Agreement

The Concession Agreement shall contain, among other terms and conditions, certain provisions required by law and by policies of the Trust, including without limitation, the following:

1. Advertising of product brands and signage indicating Concessionaire's presence at the Pier 84 Food Concession is not permitted without the Trust's prior written approval.
2. Concessionaire shall defend, indemnify and save harmless the Hudson River Park Trust, the State of New York, the New York State Office of Parks, Recreation and Historic Preservation, the Department of Environmental Conservation, the City of New York, the New York City Department of Parks and Recreation, and each of their respective commissioners, officers, agents, employees, successors and assigns ("Indemnities") from and against any and all liabilities, claims, demands, penalties, fines, settlements, damages, costs, expenses and judgments (including reasonable attorneys' fees and expenses) which: (i) arise out of injury to any person, or persons, including death, or any damage to property of any nature, occasioned wholly or in part by any act(s) or omission(s) of Concessionaire, its directors, officers, employees, guests, invitees, contractors, subcontractors, representatives or agents, that occurs on or in proximity to the Premises, or arise out of or as a result of the Concession Agreement, or (ii) relate to or arise from any and all liens and encumbrances which may be filed or recorded against the premises or any public improvement lien filed against any funds of the Trust, the State or the City of New York, as a result of actions taken by or on behalf of Concessionaire, its directors, officers, contractors, subcontractors, agents, representatives, employees, guests or invitees.
3. Concessionaire shall not assign, grant use of, license or transfer use of the Concession Agreement, whether by merger, consolidation, purchase of assets, transfer of stock in Concessionaire, transfer of joint venture or partnership interests in Concessionaire, operation of law or otherwise, nor allow any other person/entity to conduct business at the Premises, without the prior written consent of the Trust in each instance.
4. Concessionaire warrants and represents that no officer, agent, employee or representative of the Trust, has received any payment or other consideration for the granting of the Concession Agreement and that no officer, agent, employee or representative of the Trust has any interest, directly or indirectly in Concessionaire, this RFP, or the proceeds thereof. Concessionaire acknowledges that the Trust is relying on the warranty and representation contained in this section and that the Trust would not enter into the Concession Agreement absent the same. It is specifically agreed that, in the event the facts hereby warranted and represented prove, in the opinion of the Trust, to be incorrect, the Trust shall have the right to terminate the Concession Agreement upon twenty-four (24) hours' notice to Concessionaire and to rescind this transaction in all respects without any liability whatsoever to Concessionaire.

5. The parties to the Concession Agreement agree to cooperate fully with any investigation, audit, or inquiry conducted by a State of New York (“State”) or City of New York (“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, permit, lease or license that is the subject of the investigation, audit or inquiry.
6. In accordance with Article 15 of the New York State Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Concessionaire will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status.
7. Disputes involving the Concession Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration but must, instead, be heard in a court of competent jurisdiction of the State of New York.
8. The Concession Agreement shall be construed under, and be governed by, the laws of the State of New York. No legal proceeding shall be commenced by Concessionaire against the Trust in any court other than a court of competent jurisdiction of the State of New York in the County of New York. EACH OF CONCESSIONAIRE AND THE TRUST AGREES TO WAIVE ALL RIGHTS TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING TO WHICH CONCESSIONAIRE AND THE TRUST ARE PARTIES ARISING OUT OF OR OTHERWISE RELATED TO THIS CONCESSION AGREEMENT.
9. The Trust may inspect the Premises and Concessionaire’s operations to determine compliance with the Concession Agreement.
10. Concessionaire must comply with the insurance requirement provided in the following Appendix 3 for the Premises.
11. Concessionaire will not be allowed to finance improvements or access working capital by permitting any lender’s security interest(s) in the Premises or the Concession Agreement. The financing of Concessionaire’s trade fixtures that are not attached to, or secured by any interest in, the Premises or the Concession Agreement will be allowed.

Appendix 3
Insurance

- a) Upon the execution date of the Concessionaire or as of the date indicated in a “Notice to Proceed”, the Concessionaire shall provide the Trust with (i) Certificates of Insurance naming the Additional Insureds set forth below and, (ii) at the request of the Trust, the “Schedules of Forms and Endorsements” and copies of the Forms and Endorsements evidencing compliance with all coverage requirements contained in this Appendix 3. Such certificates and Schedules of Forms and Endorsements shall be in form and substance acceptable to the Trust. Acceptance and/or approval of such certificates and/or Schedules of Forms and Endorsements and copies of the Forms and Endorsements by the Trust do not, and shall not, be construed to relieve the Concessionaire of any obligations, responsibilities or liabilities under this Appendix 3.

- b) All insurance required by this Appendix 3 shall include the following as “Additional Insured” if such coverage is available under such insurance policies: Hudson River Park Trust, the State of New York, the New York State Office of Parks, Recreation and Historic Preservation, the New York State Department of Environmental Conservation, the City of New York, and the New York City Department of Parks and Recreation. The Trust offices are located at Pier 40 - 353 West Street, Suite 201, New York, NY 10014 - Attn: Insurance Manager. The Additional Insured protection on the General Liability policy shall be provided on form CG 20 10 11 85 or its equivalent, or may be obtained through a combination of CG 20 10 07 04 and CG 20 37 07 04 or their equivalents. Additional Insured coverage must apply to direct and vicarious liability for both on-going and completed operations.

- c) Concessionaire shall require that any subcontractors or sub-subcontractors that perform work for the Concessionaire under this Concession Agreement in a sub-contract amount of **Five Thousand Dollars (\$5,000)** or more carry insurance with the same limits and provisions provided herein unless otherwise approved by the Trust on a case-by-case basis. All subcontractor insurance policies must include ISO Endorsement CG 20 38 or its equivalent to ensure additional insured protection is afforded the Trust without regard to privity of contract.

- d) Each insurance carrier must be rated at least “A-” Class “VII” in the most recently published A.M. Best’s Insurance Report. If, during the term of the policy, a carrier’s rating falls below “A-” Class “VII”, the insurance policy must be replaced no later than the renewal date of the policy with an insurer acceptable to the Trust and rated at least “A-” Class “VII” in the most recently published A.M. Best’s Insurance Report.

- e) Concessionaire shall cause all insurance to be in full force and effect as of the execution date of the Concession Agreement, or as of the date indicated in a “Notice to Proceed” if issued by the Trust, and to remain in full force and effect throughout the Term of the Concession Agreement and as further required by this Appendix 3. Concessionaire shall not take any action, or omit to take any action, that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect. Coverage shall:
1. Be primary and non-contributing to any insurance or self-insurance maintained by the Trust.
 2. Be obtained at the sole cost and expense of Concessionaire or its respective subcontractor(s), and shall be maintained with insurance carriers authorized to do business in New York State and acceptable to the Trust.
 3. Provide written notice to the Trust, at least thirty (30) days prior to the termination, cancellation or non-renewal or material alteration of such insurance policies; notice shall be sent, via express or certified mail to:

Hudson River Park Trust
Attn: Insurance Manager
353 West Street
Pier 40, Second Floor
New York, NY 10014
 4. Be solely responsible for the payment of their respective deductibles and self-insured retentions to which such insurance policies are subject. Self-Insured Retentions may not exceed **Ten Thousand (\$10,000)** per claim unless otherwise approved by the Trust. General liability and umbrella/excess policies shall contain no deductibles in excess of **Ten Thousand Dollars (\$10,000)** per claim unless otherwise approved by the Trust.
- f) Under no circumstances shall any insurance policies exclude coverage for claims that result from the imposition of New York Labor Law Section 240 (Scaffold Law) or for any Public Open Space or any portions of the premises used or for Public Access and Public Benefit Uses.
- g) Upon the renewal date of any insurance policies, the Concessionaire shall supply the Trust with updated replacement proofs of coverage on Certificates of Insurance.
- h) Concessionaire shall cause to be included in each of its insurance policies a waiver of the insurer’s right of subrogation against the Trust and/or any Additional Insureds.

- i) Concessionaire, throughout the Term of the Concession Agreement, or as otherwise required by this Appendix 3, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of this Appendix 3, or as required by law, whichever is greater (limits may be provided through a combination of endorsements, primary and umbrella/excess policies):
- a. Commercial General Liability Insurance** with a limit of not less than **Five Million Dollars (\$5,000,000)** per occurrence. Such insurance shall be written on ISO Form CG 00 01 12 07 or substitute form providing equivalent coverage and shall cover liability arising from premises operations, independent contractors, products-completed operations, personal and advertising injury, cross liability coverage, blanket contractual liability (including tort liability of another assumed in a contract), extended bodily injury coverage, and damage to rented premises. If such insurance includes an aggregate limit, it shall apply separately on a per project or per location basis.
 - b. Comprehensive Business Automobile Liability Insurance** with a limit of not less than **One Million Dollars (\$1,000,000)** Combined Single Limit. Such insurance shall cover owned, leased, hired and non-owned automobiles; shall cover bodily injury, property damage and medical payments, and include uninsured and underinsured motorists' coverage.
 - c. Workers Compensation, Employers Liability and Disability Benefits Insurance** at statutory limits as applicable to the Concessionaire's operations and required by law. Proof of Workers Compensation coverage must be presented on the NYS WCB C-105.2 or equivalent form; proof of Disability coverage must be provided on a DB-120.1 form.
 - a. The New York State Workers' Compensation Board guideline regarding these requirements is available at:
<http://www.wcb.ny.gov/content/main/forms/AllForms.jsp>
 - b. If Concessionaire is exempt from Workers' Compensation and/or Disability Benefits, please refer to the following link and provide proof on the CE200 form issued by the New York State Workers' Compensation Board:
<http://www.wcb.ny.gov/content/ebiz/wcdbexemptions/requestExemptionOverview.jsp>
 - c. If the Concessionaire is not a NY State based business, then the Concessionaire must provide a copy of its Workers' Compensation policy's Declarations Page to show that New York is listed in Part 3A

and to confirm the policy provides statutory Employer's Liability coverage applicable in NYS.

- d. **Commercial Property Insurance** on the premises and Capital Installations protecting the Concessionaire and the Trust against loss of, or damage to, the premises and Capital Installations by fire and other risks of physical loss, or damage now or hereafter embraced by ISO "Special Form" or its equivalent, which shall be in the amount of the full replacement value of the damages to the premises and Capital Installations (without depreciation or obsolescence clause). Such insurance shall designate the Trust as a loss payee and Concessionaire as named insured.

During the performance of any construction work, restoration or alteration, "**All Risk**" **Builder's Risk Insurance** written on a completed value (non-reporting) basis in an amount sufficient to prevent Concessionaire and the Trust from becoming coinsurers under provisions of applicable policies of insurance covering the perils insured under the ISO special causes of loss form extended coverage, including fire, vandalism, malicious mischief, collapse, water damage, and transit and theft of building materials, with deductible reasonably approved by the Trust, as well as during transit and at any off-site storage location intended for use with respect to the Site, naming the Trust and Concessionaire as their respective interests may appear. The policy shall cover the cost of removing debris, including demolition as may be legally necessary by the operation of any law, ordinance or regulation.

- e. If the work involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any hazardous material or substance, the Concessionaire shall maintain in full force and effect throughout the term hereof, **Pollution Liability Insurance** with limits of not less than **Two Million Dollars (\$2,000,000)**, providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically damaged. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against the Trust arising from Concessionaire's work.
 - i. If coverage is written on a claims-made policy, the Concessionaire warrants that any applicable retroactive date precedes the effective date of the Concession Agreement; and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than two (2) years from the time work under the Concession Agreement is completed.

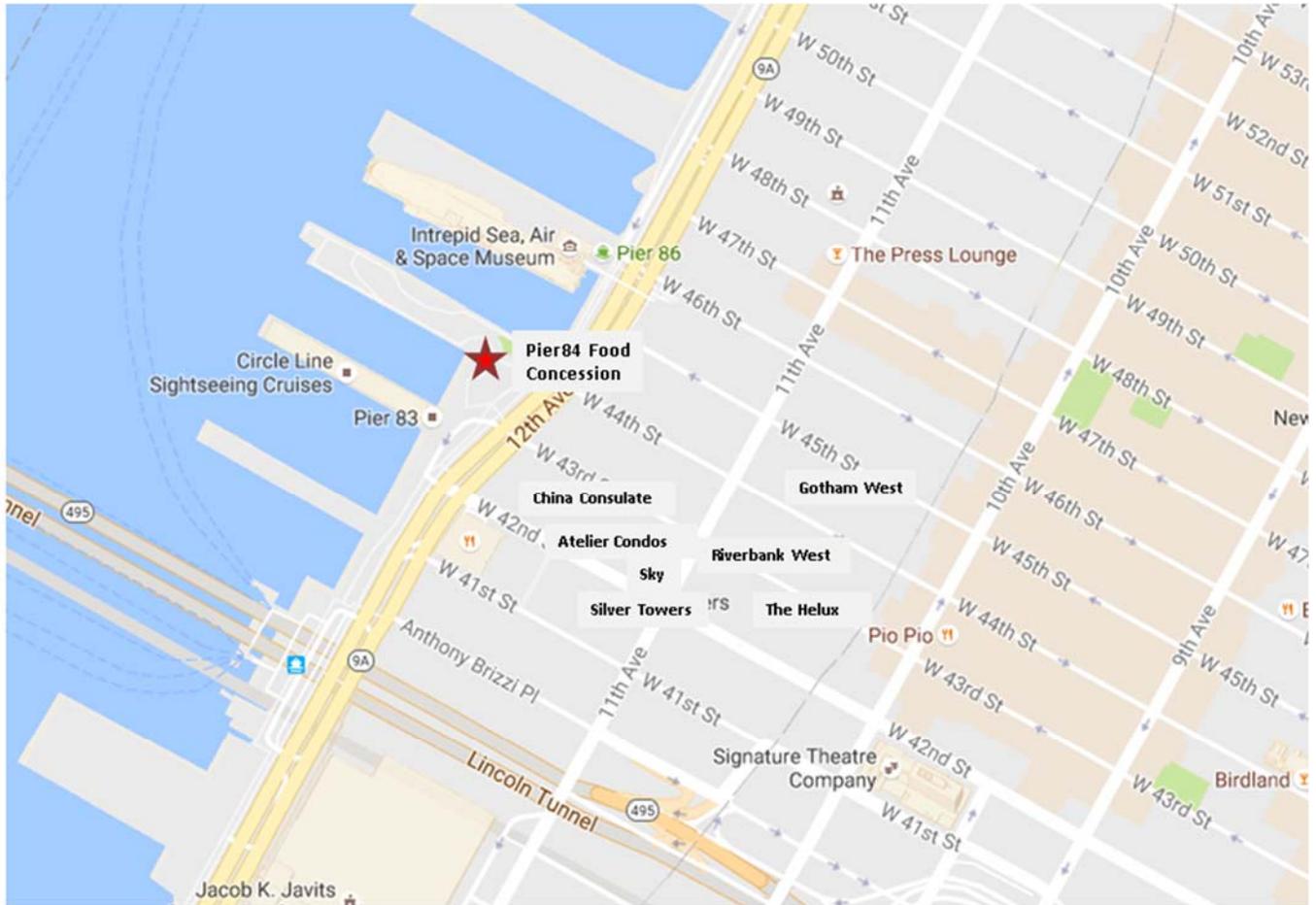
- ii. If coverage is written on a claims-made policy, the Concessionaire warrants that any applicable retroactive date precedes the effective date of the Concession Agreement; and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than two (2) years from the time work under the Concession Agreement is completed.

- f. If Concessionaire is providing or subcontracting professional services, Concessionaire shall certify that that the Concessionaire and/or its consultant(s) and subconsultant(s) maintain **Errors and Omissions Liability Insurance** with coverage of not less than **Three Million Dollars (\$3,000,000)** per claim and as an aggregate annual limit. Policy limits must be adequate to cover both the cost of defense and damages arising out of any resulting judgments and court costs.
 - i. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by the Concession Agreement.
 - ii. If coverage is written on a claims-made policy, Concessionaire warrants that any applicable retroactive date precedes the effective date of the Concession Agreement; and that continuous coverage will be maintained, or an extended period exercised for not less than three (3) years and shall cover third party claims resulting from invasion of privacy, theft of data, data corruption and restoration.

- g. **Liquor Liability Insurance** with a limit of not less than **Two Million Dollars (\$2,000,000)** per common cause is required if the Concessionaire is in the business of manufacturing, distributing, selling, serving, or furnishing alcoholic beverages. This coverage must be carried by any subcontractor of the Concessionaire that is in the business of manufacturing, distributing, selling, serving, or furnishing alcoholic beverages.

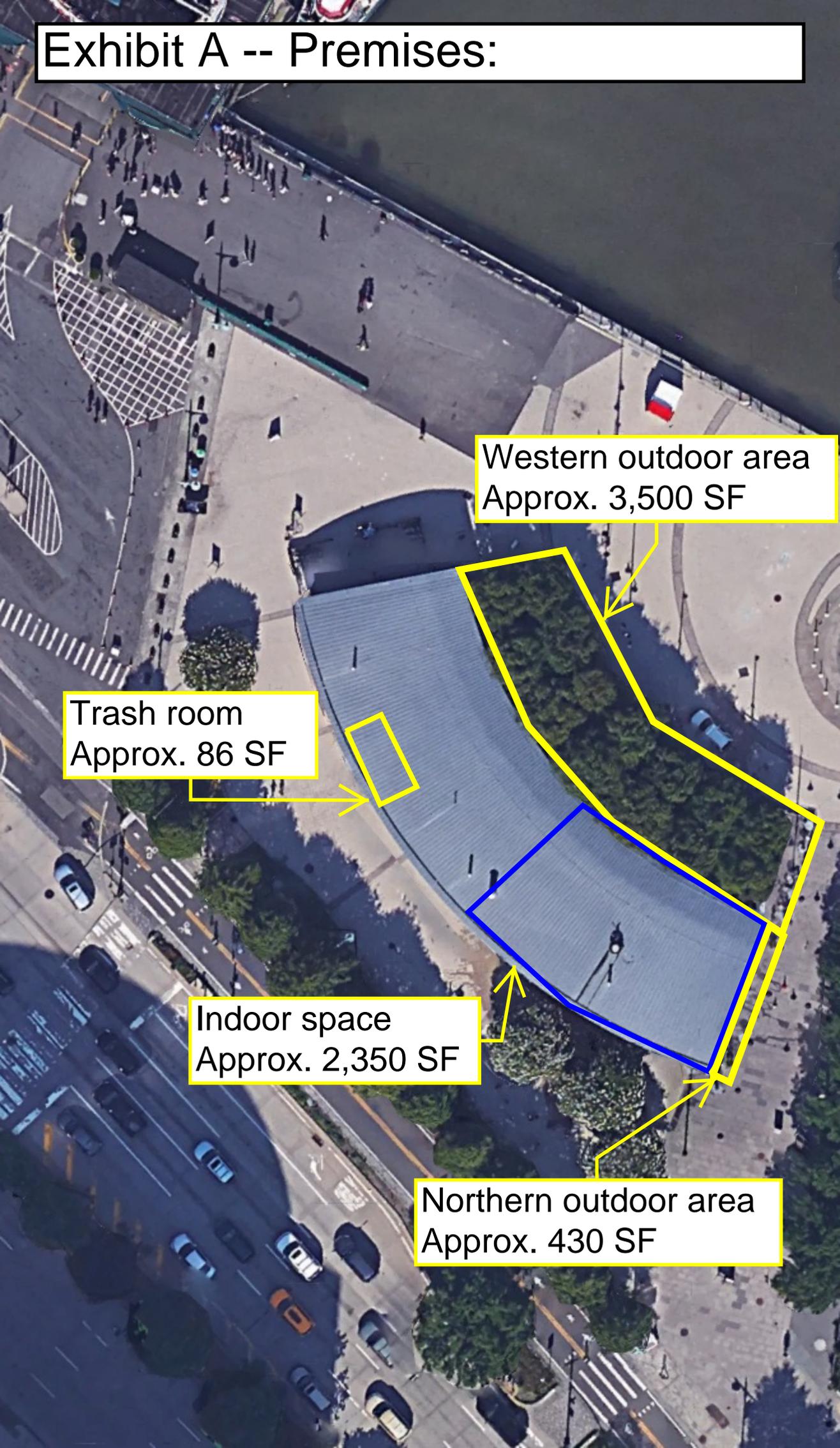
The Trust and the Concessionaire shall cooperate in connection with the collection of any insurance proceeds that may be due in the event of loss, and each party shall execute and deliver such proofs of loss and other instruments that may be required for the purpose of obtaining the recovery of any such insurance proceeds. Concessionaire's obligations as set forth in this Appendix 3 shall survive the expiration or earlier termination of the Concession Agreement.

Appendix 4
Area Map



Appendix 5
Premises

Exhibit A -- Premises:



Western outdoor area
Approx. 3,500 SF

Trash room
Approx. 86 SF

Indoor space
Approx. 2,350 SF

Northern outdoor area
Approx. 430 SF

Exhibit B -- Layby Area / Delivery Plan

Layby Area

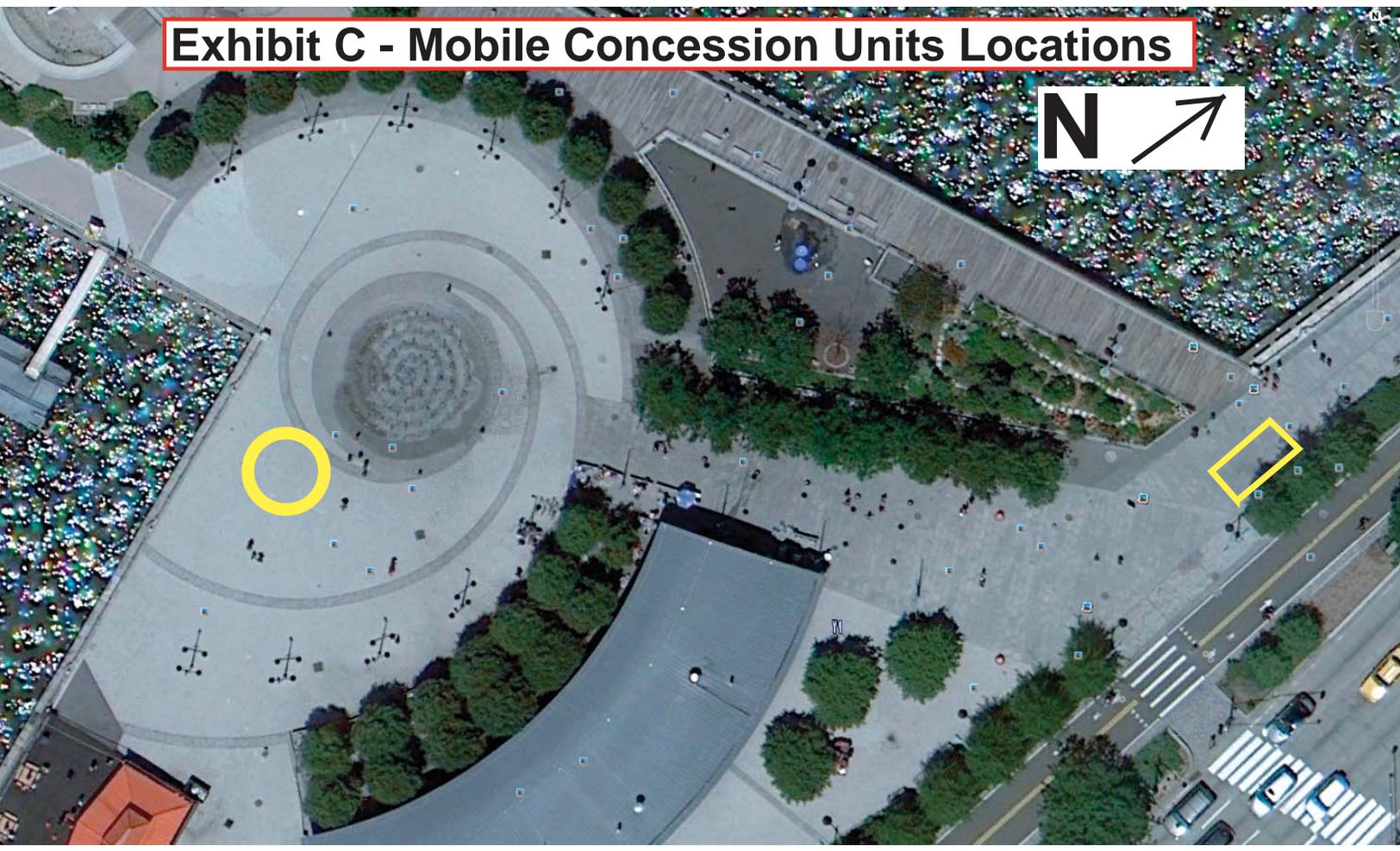
The selected Respondent, and/or its vendors, contractors, or sub-contractors, may hand truck supplies, materials, equipment, etc. from the Layby Area to the Premises or storage room. Vehicle parking in the Layby Area performing such delivery will be limited to one (1) hour.

N →

Premises



Exhibit C - Mobile Concession Units Locations



Appendix 6
Fee Schedule

Base Fee	<u>Initial Term</u>					<u>Extension Period</u>			
Month	<u>Concession</u> Year 1	<u>Concession</u> Year 2	<u>Concession</u> Year 3	<u>Concession</u> Year 4	<u>Concession</u> Year 5	<u>Concession</u> Year 6	<u>Concession</u> Year 7	<u>Concession</u> Year 8	<u>Concession</u> Year 9
January									
February									
March									
April									
May									
June									
July									
August									
September									
October									
November									
December									
Total									
Percentage Fee									
Applicable Percentage									
Applicable Threshold									

Appendix 7
Form Concession Agreement

**HUDSON RIVER PARK TRUST
PIER 84 FORM CONCESSION AGREEMENT**

PART I (Specific Terms and Conditions)

Concession Agreement Summary

HUDSON RIVER PARK TRUST (the “**Trust**”) and **CONCESSIONAIRE** identified below, in consideration of the mutual covenants contained in the concession agreement and other valuable and good consideration, do hereby agree to all of the terms and conditions set forth in (i) these Specific Terms and Conditions (Part I) set forth immediately below, (ii) the General Terms and Conditions (Part II) annexed hereto and made a part hereof, and (iii) the Exhibits (Part III) annexed hereto and made a part hereof (collectively, the “**Concession Agreement**”).

1. Specific Terms and Conditions:

- 1.1 **Grantor of this Concession:** The Trust
- 1.2 **Concessionaire:** _____
- 1.3 **Premises:** Portions of Pier 84 Building (the “**Building**”), including the interior restaurant space, the Trash Room and the Exterior Terrace in Hudson River Park (the “**Park**”), as more specifically described in Exhibit A, together with two locations for two Mobile Concession Units. The Premises are adjacent to the Exterior Common Area, the Pedestrian Esplanade, the Restroom and the Bikeway as each are more specifically described in the Site Plan attached hereto as Exhibit A-1.
- 1.4 **Date of Concession Agreement:** _____ (the “**Execution Date**”)
- 1.5 **Term:** Commencing on the date the Trust has provided possession of the Premises to Concessionaire and the Trust has provided notice to Concessionaire of its receipt of the Temporary Certificate of Completion (“**TCC**”) from the New York City Department of Small Business Services for the Building (the “**Commencement Date**”), and ending on _____ (the “**Term**”), with one (4) four-year option to extend (the “**Extension Term**”) exercisable by the Concessionaire with the approval of the Trust, as more specifically described in Section 6.
- 1.6 **Use:** Pier 84 Indoor/Outdoor Café with Mobile Concession Units more specifically described in Exhibit B (the “**Concession**”).
- 1.7 **Fees:** Concessionaire shall pay the Trust for the Term and the Extension Term: (a) the “**Annual Base Concession Fee**,” (b) the “**Percentage Concession Fees**” on Gross Sales¹ as described below and (c) additional charges as set forth herein (the “**Additional Charges**”).
- 1.7.1 **During Term:** For the period beginning on the Annual Base Concession Fee Commencement Date and ending on _____, the Term: (a) an Annual Base Concession Fee payable, as applicable, at the rate of _____ monthly, which amount shall increase on January 1 of each succeeding calendar year during the Term by 3%, (b) Annual Percentage Fees on Gross Sales calculated in accordance with Part II, Section 7 hereof, and (c) the Additional Charges.
- 1.7.2 **During Extension Term:** For the period beginning _____ and ending on _____: (a) an Annual Base Fee payable during calendar year ____ at the rate of _____ monthly which shall increase on

¹The term “Gross Sales” is defined in Part II, Section 7(d) hereof.

Annual Percentage Fee of Gross Sales calculated in accordance with Part II, Section 7 hereof, and (c) the Additional Charges.

- 1.8 **Security Deposit:** Concessionaire shall provide the Trust a pre-opening Security Deposit in an amount equal to One Hundred Thousand Dollars (\$100,000) on the Commencement Date, which amount shall be reduced to _____ upon the date that the restaurant opens for business to the public pursuant to the Legal Requirements (as hereinafter defined) (the “**Restaurant Opening Date**”). Concessionaire shall thereafter maintain a deposit to secure its obligations hereunder equal to not less than twice the amount of the monthly portion of the Annual Base Concession Fee then due. The terms and conditions for the Security Deposit shall be as further described in Part II, Section 8, hereof.
- 1.9 **Insurance:** Concessionaire shall provide Commercial General Liability Insurance (\$5,000,000.00 per occurrence); Automobile Liability Insurance (\$1,000,000.00 per occurrence); Workers Compensation and Disability Insurance (in statutory amounts); Employer’s Liability (\$1,000,000 per occurrence); All Risk Property Insurance (covering the full replacement cost of personal property and improvements), Flood Insurance (covering the full replacement cost of improvements, betterments, equipment, and all other related expenses incurred due to flood); All Risks Builder’s Risk insurance covering not less than 100% of the full replacement value of work performed; and, as applicable, Pollution Legal Liability (\$2,000,000), Errors and Omissions Liability Insurance (\$3,000,000), and Liquor Liability Insurance (\$2,000,000), each as more specifically described in Exhibit C.
2. **Hours of Operation:** Following the Restaurant Opening Date, Concessionaire shall, except as provided herein, operate the Concession on a year round basis, seven days per week, during “**Restaurant Hours.**” For the purposes hereof, Restaurant Hours during both the Term and, as applicable, the Extension Term shall mean the following:
- May 1 through October 31: 8:00 a.m. through midnight.
 - November 1 through April 30 of the following calendar year: 10:00 a.m. through 7:00 p.m.
- a. **Restaurant Opening Date Notice.** Concessionaire shall provide Notice of the Restaurant Opening Date to the Trust within seven (7) days prior to the opening of the Concession.
- b. **Restaurant Use Outside of Park Operating Hours.** Concessionaire acknowledges and agrees that no employees or customers of Concessionaire shall be permitted on the Premises or in the Park outside the Park’s operating hours (which are currently 6:00 a.m. to 1:00 a.m.) except that Concessionaire shall be permitted to have a limited number of employees working within the Premises during such hours so long as (x) such employees have valid identification indicating that they are employees of Concessionaire (and shall present such identification to the Trust or its agents upon request), (y) Concessionaire provides the Trust with a roster of the employees who may be working during such hours, which roster shall be updated by Concessionaire from time to time as necessary to ensure it remains current and accurate, and (z) the Concession is not open for sales or service to customers, whether private or public, during such hours.

during such hours.

- c. **Additional Restaurant Hours.** Concessionaire shall be permitted to operate for sales or service to customers during hours in addition to the Restaurant Hours which may be as late of 12:30 a.m. and as early as 6:30 a.m. (the “**Additional Restaurant Hours**”) with prior written notice to the Trust and prior arrangements made with the Trust to extend the hours of the Restroom as set forth below.
 - d. **Shortened Restaurant Hours.** The Trust shall not unreasonably withhold its consent to a written request from Concessionaire to change the closing time of the Restaurant Hours during the period from November 1 to April 30 (to as early as 8:00 p.m.) and the opening time of the Restaurant Hours during the period from November 1 to April 30 (to as late as 10:00 a.m.) if Concessionaire can demonstrate to the Trust’s reasonable satisfaction that, after commercially reasonable efforts during its operations for at least one (1) full period from November 1 to April 30, patronage at the Concession after 8:00 p.m. or before 10 a.m. is not commercially viable. Concessionaire shall have no obligation to operate during Restaurant Hours on days and at times that the Trust has closed that portion of the Park that includes the Premises. Notwithstanding the requirements set forth herein regarding Restaurant Hours, Concessionaire may, in its sole but reasonable discretion, shorten the hours of operation of the Mobile Concession Units based on weather conditions and observable patronage patterns.
 - e. **Restroom Service Charge.** Should Concessionaire operate its business during the Additional Restaurant Hours, Concessionaire agrees to make payment to the Trust, as Additional Charges, a monthly “**Restroom Service Charge.**” Such Restroom Service Charge shall equal the amount, determined by the Trust from time to time in its sole but reasonable judgment, to be the Trust’s actual cost of keeping the Restroom open during such additional hours (and/or postponing the cleaning of the Restroom to such later time specified by Concessionaire), multiplied by 1.2. The Trust shall, upon request by Concessionaire, provide an estimate of the Restroom Service Charge.
3. **Improvements:** Subject only to Excusable Delay (as defined hereafter), Concessionaire shall complete the Fit-Out Work detailed in Exhibit D₁ as approved by the Trust pursuant to this Concession Agreement, by not later than _____ (the “**Opening Deadline**”). For the purposes set forth herein, “**Excusable Delay**” shall mean delays caused by strikes, lockouts, acts of God, environmental conditions, inability to obtain labor or materials, government statutes, ordinances, decrees, orders or restrictions, unusually severe weather, litigation that results in an injunction or other order prohibiting or otherwise delaying the continuity of construction or other acts related thereto, civil commotion or war, fire, unavoidable casualty or any other cause, whether similar or dissimilar, beyond the reasonable control of either the Trust or Concessionaire, but shall not include (i) unavailability of funds or (ii) any monetary obligation that can be satisfied by the payment of a fixed sum. Notwithstanding the foregoing, Excusable Delays shall at no time operate to excuse Concessionaire from any obligations for payment of Annual Base Concession Fees, Percentage Concession Fees, Additional Charges or any other payments required by the terms of this Concession Agreement, when the same are due, and all such amounts shall be paid when due.

- 4. Notices:** Any notice, approval, consent, acceptance, request, bill, demand or statement required or permitted to be given hereunder (a “**Notice**”) from either party to the other shall be in writing and shall be deemed given when received by hand delivery, overnight mail or when deposited with the United States Postal Service in a postage prepaid envelope, certified or registered mail, addressed to the other party at the address set forth herein.

If to the Trust:

Hudson River Park Trust
Pier 40, Second Floor
353 West Street
New York, New York 10014
Attn.: Property Manager

With a copy to:

Hudson River Park Trust
Pier 40, Second Floor
353 West Street
New York, New York 10014
Attn.: General Counsel

If to Concessionaire:

Either party may at any time change such address or add additional parties to receive a Notice by mailing, as aforesaid, to the other party a Notice thereof.

PART II (General Terms and Conditions)

- 1. Compliance with Law:** Concessionaire shall, at its sole cost and expense, comply with, as may be amended, modified or supplemented from time to time, any and all laws, rules, regulations, orders, ordinances, statutes, codes, executive orders, resolutions and requirements of all federal, state and local governmental authorities, agencies, departments or bureaus having jurisdiction over the Premises and the Concession (the “**Governmental Authorities**”) applicable now or at any time during the Term and, as applicable, the Extension Term, to the Premises, including, without limitation, the Hudson River Park Act and the requirements and restrictions contained in or established by the Park Rules (detailed below), and the New York City Noise Control Code (N.Y.C. Admin. Code Sections 24-201, et seq.), as amended (the “**Noise Control Code**”) (collectively, the “**Legal Requirements**”).
- 2. Park Rules:** Concessionaire shall, with respect to the Premises and the Concession, comply with, or cause compliance with, all Hudson River Park rules and regulations posted on the Trust’s website at www.hudsonriverpark.org (the “**Park Rules**”).
- 3. Authorizations, Approvals and Requirements:**

- a. The Trust does not grant authority for any operation or use that may require any authorization(s), permit(s), or approval(s) from any Governmental Authorities. Except as set forth herein, Concessionaire must obtain all such authorization(s), permit(s), or approval(s), as applicable, at its sole cost and expense.
 - b. The Trust shall not be liable for any inability to deliver possession of the Premises to Concessionaire for any reason. The Trust shall not be subject to any liability for failure to make possession of the Premises available on any date certain, and Concessionaire hereby waives all such liability. Notwithstanding the foregoing, the Trust's inability to deliver possession of the Premises (for any reason) beyond [INSERT DATE] shall postpone the Opening Deadline on a day-for-day basis.
4. **Investigation:** The parties to the Concession Agreement agree to cooperate fully with any investigation, audit, or inquiry conducted by the 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, permit, lease or license that is the subject of the investigation, audit or inquiry.
5. **Use in General:**
- a. **Prohibited Use:** Concessionaire shall not use or occupy the Premises, or permit or suffer the Premises or any part thereof to be used or occupied for any unlawful, illegal or hazardous business, use or purpose, or in violation of any Legal Requirements.
 - b. **Hazardous Materials:** If any governmental license or permit shall be required for the proper and lawful conduct of Concessionaire's business, including, without limitation, disposal of Hazardous Materials², Concessionaire shall be responsible for and shall procure and maintain such license or permit. Concessionaire shall not cause or permit, as the result of any intentional or unintentional act or omission on the part of Concessionaire, its agents, employees, or other occupants of the Premises to release Hazardous Materials in or from any portion of the Premises in violation of any Legal Requirements.

² For purposes of the Concession Agreement, "Hazardous Materials" means (i) any "hazardous waste" as defined under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., or (ii) "hazardous substance" as defined under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., or (iii) "hazardous materials" as defined under the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq., or (iv) "hazardous waste" as defined under New York Environmental Conservation Law Section 27-0901 et seq., or (v) "hazardous substance" as defined under the Clean Water Act, 33 U.S.C. Section 1321 et seq. or (vi) petroleum or petroleum products, crude oil or any by-products thereof, natural gas or synthetic gas used for fuel; any asbestos, asbestos-containing material or polychlorinated biphenyl; or (vii) any additional substances or materials which from time to time are classified or considered to be hazardous or toxic or a pollutant or contaminant under the laws of the City of New York, State of New York (including, without limitation, the New York State Navigation Law), and/or the United States of America.

- c. Park Closures: The Trust reserves the right to close the entirety or portions of the Park, including the Premises, to ensure public safety at any time. Notwithstanding the above, employees of Concessionaire shall, upon request by Concessionaire, be allowed limited access to the Premises to protect and secure Concessionaire's property and inventory and make the Premises safe in event of such Park closure affecting the Premises. If the Park is closed in whole or in part such that it precludes Concessionaire's access to the Premises for more than seven (7) consecutive days, the Trust shall off-set that portion of the Annual Base Concession Fee due and payable for that portion of the Term or the Extension Term in which such closure occurs in excess of such seven (7) consecutive day period.

6. Concession Term and Extension(s):

- a. The term of the Concession Agreement (the "**Term**") shall begin on the Commencement Date indicated in Part I, Section 1.5 and shall automatically continue until _____, unless extended as describe below for the "**Extension Term,**" or terminated earlier in accordance with the terms and conditions provided hereof (whichever date shall first occur shall be referred to as the "**Expiration Date**").
- b. Concessionaire shall have one option to extend the Concession Agreement for one additional four-year term (the "**Extension Term**") provided: (1) Concessionaire provides Notice to the Trust by not more than eleven (11) months, or less than eight (8) months, prior to the expiration of the Term (the "**Extension Notice**"); (2) Concessionaire is open for business at the Premises in accordance with the relevant provisions of this Concession Agreement and no Event of Default (as defined hereafter) is outstanding and no event has occurred which, but for the giving of notice or passage of time or both, would constitute an Event of Default, (3) unless waived in writing by the Trust in its sole and absolute discretion, Gross Sales (as defined hereafter) subject to Percentage Concession Fees in calendar year _____ is not less than _____, and (4) Concessionaire's record of compliance with the terms of Concession Agreement during the Term has not created an undue administrative burden on the Trust.

7. Fees:

- a. Concessionaire's obligation to pay the "**Annual Base Concession Fee**" shall commence on the later of the Restaurant Opening Date and the Opening Deadline but in no event later than _____ (the "**Annual Base Concession Fee Commencement Date**"). The Annual Base Concession Fee for each calendar year during the Term and, as applicable, the Extension Term shall be paid to the Trust in advance in equal monthly installments on or before the first day of each calendar month, as outlined in Table A (below) with the first payment due on the Annual Base Concession Fee Commencement Date pro-rated for the number of days remaining in such calendar month. Concessionaire shall have no obligation to pay the Annual Base Concession Fee for the period beginning on the Commencement Date through the Annual Base Concession Fee Commencement Date.

TABLE A

Year	Annual Base Concession Fee	Monthly Base Concession Fee
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- b. In addition to the Annual Base Concession Fee, Concessionaire shall pay to the Trust the **“Percentage Concession Fee”** in an amount equal to: _____ percent of Concessionaire’s Gross Sales in excess of _____ (“Threshold A”), provided however that for calendar year 2019, Threshold A shall equal (i) the number of calendar days from the Restaurant Opening Date to and including December 31, 2019, (ii) divided by three hundred sixty-five (365), and (iii) multiplied by _____.
- c. When and as Gross Sales exceeds Threshold A for each respective year in the Term and, as applicable, the Extension Term, Percentage Concession Fees shall be paid monthly on all such Gross Sales in excess of Threshold A, and said payments shall be due and payable by no later than the due date for submission by Concessionaire of the Monthly Gross Sales Statement (as hereafter defined) beginning with the due date for the Monthly Gross Sales Statement for the month in which Gross Sales first exceeds the Threshold A for the applicable calendar year as required herein. For the purpose of calculating Percentage Concession Fees for any year in which the Premises are closed and not operating for a period of seven (7) days or more in the aggregate, Threshold A for such year shall be adjusted by (i) multiplying _____ Threshold A by (ii) a fraction (x) the numerator of which is the number of days in which the Premises are open and operating during such year, and (y) the denominator of which is three hundred sixty-five (365). Payment of any Percentage Concession Fee due the Trust and not yet paid for any year during the Term shall be due and payable by no later than the due date for submission by Concessionaire to the Trust of the written statement of Gross Sales for that year as set forth in Section 7(f)(2). In the case of any overpayment of the Percentage Concession Fee, Concessionaire shall request from the Trust a credit as against the next monthly amount of Annual Base Concession Fee which may be due for that year. This provision and the obligation to pay the Percentage Concession Fee shall survive the Expiration Date or earlier termination of this Concession Agreement. Unless otherwise provided here, any overpayment due Concessionaire with respect to the Percentage Concession Fee for the final year or partial year of the Term shall be remitted by the Trust to Concessionaire within sixty (60) days of Concessionaire’s submission, and the Trust’s review and approval, of the written statement of Gross Sales for that year as set forth in Section 7(f)(2).
- d. Gross Sales. The term **“Gross Sales”** wherever used herein shall be defined to mean the gross dollar aggregate of:
1. All funds received by Concessionaire in connection with its operations at the Premises, without deduction or set-off of any kind, from the sale of food and beverages, wares, merchandise or services of any kind.

2. All funds received for orders placed with Concessionaire or made at the Premises, although delivery of merchandise or services may be made outside or away from the Premises, and shall include all Concessionaire's receipts for services to be rendered or orders taken at the Premises for services to be rendered by Concessionaire in the future either at or outside of the Premises. For example, if the Concessionaire receives a \$1,000 deposit for services to be provided at a later date, the deposit must be reported at the time of payment, not when the service is provided. All sales made or services rendered by Concessionaire from the Premises shall be construed as made and completed therein even though payment therefor may be made at some other place, and although delivery of merchandise sold or services rendered upon the Premises may be made other than at the Premises.
3. All receipts from all sponsorships, whether in cash or as discounts against purchase price of materials, equipment or commodities.
4. All sales made by any other operator or operators using the Premises under a properly authorized sublicense or subcontract agreement.
5. All sales made for cash or credit (credit sales shall be included in Gross Sales as of the date of the sale) regardless of whether the sales are paid or uncollected, it being the distinct intention and agreement of the parties that all sums due to be received by Concessionaire from all sources from the operation of this Concession Agreement shall be included in Gross Sales, provided however that any Gratuities transmitted by Concessionaire directly or indirectly to employees and staff shall not be included within Gross Sales.
 - a. With respect to non-catered restaurant operations, a "Gratuity" shall mean a charge that: (i) is separately stated on the bill or invoice given to Concessionaire's customer, (ii) is specifically designated as a gratuity, or purports to be a gratuity, and (iii) Concessionaire receives and pays over in total to its employees who are primarily engaged in the serving of food or beverage to guests, patrons or customers, including but not limited to, wait staff, bartenders, captains, bussing personnel and similar staff who are paid a cash wage as a "food service worker" pursuant to NY Labor Law. Concessionaire shall provide documentation reasonably satisfactory to the Trust to prove that Gratuities were paid to employees in addition to their regular salaries, and were otherwise in accordance with the foregoing provisions. Such documentation shall be signed and verified by an officer of Concessionaire. "Regular Salary" for purposes of this subsection shall mean the set hourly wage for the applicable employee.
 - b. With respect to Concessionaire's Events or other catered events, a "Gratuity" shall be an amount no greater than twenty percent

(20%) of the catering food and beverage sales for the event, provided that such Gratuity is a charge that: (i) is separately stated on the bill or invoice given to Concessionaire's customer, (ii) is specifically designated as a gratuity, or purports to be a gratuity, and (iii) is paid over by Concessionaire in total to its employees who actually provide services at the event, and who are primarily engaged in the serving of food or beverages to guests, patrons or customers, including, but not limited to, wait staff, bartenders, captains, bussing personnel, and similar staff. "Regular Salary" for purposes of this subsection shall mean the set hourly wage for the applicable employee. Concessionaire shall provide documentation reasonably satisfactory to the Trust to prove that Gratuities were paid to employees in addition to their Regular Salaries, and were otherwise in accordance with the foregoing provisions. Such documentation shall be signed and verified by an officer of Concessionaire.

6. All sales effected by means of mechanical or other vending devices in the Premises.
 7. All monies or other things of value received by Concessionaire from Concessionaire's operations at, upon or from the Premises, which are neither included in nor excluded from Gross Sales by the other provisions of this definition, but without any duplication, including, without limitation, finance charges, cost of gift or merchandise certificates and all deposits not refunded to customers.
 8. Net proceeds of business interruption or similar insurance policies after payment of all reasonable, out-of-pocket costs and expenses incurred in collecting the same.
- e. Exclusion from Gross Sales. Notwithstanding the foregoing, and in addition to the exclusions cited above, Gross Sales shall not include the following items:
1. Sales of merchandise returned by customers up to the amount of cash refunded, credit given, or discounts and allowance granted or exchanges made, provided that the sale price of said items has been originally included in Gross Sales;
 2. The amount of any sales, use or gross receipts tax, or excise tax, imposed by any governmental authority directly on sales and collected from the customers, providing the amount of said tax is separately recorded;
 3. The value of exchanges of merchandise between stores of Concessionaire, when such exchanges are made solely for the operation of Concessionaire's business and not for the purpose of consummating a sale which has been made at, in or from the Premises;

4. The value of merchandise returned for credit to shippers, jobbers, wholesalers or manufacturers;
5. Gross Sales from the sale of Concessionaire's business or the sale of trade fixtures not in the ordinary course of business and sums or credits received in settlement of claims for loss or damage to merchandise;
6. Refunds to patrons reported for the month in which the payment is refunded;
7. The amount of Voluntary Donations collected by Concessionaire and remitted to the Trust; and
8. The cost of food and beverages from the restaurant operated at the Premises consumed by Concessionaire's principals and non-paying guests in connection with marketing and promoting such restaurant; provided, however, such cost shall in no event exceed one percent (1%), in the aggregate, of the Gross Sales in any year.

f. Reporting.

1. Concessionaire shall submit to the Trust, on or before the twentieth (20th) day of each month of each year during the Term and, as applicable, the Extension Term, commencing with the second month following the Annual Base Concession Fee Commencement Date, a statement signed by an officer of Concessionaire or Concessionaire's CPA, certified as true and correct, showing the Gross Sales earned by Concessionaire (or, in the event of a permitted sub-concession hereunder, such sub-concessionaire) from the Premises for the preceding calendar month and any deductions taken therefrom as permitted herein (the "**Monthly Gross Sales Statement**").
2. On or before sixty (60) days following the close of each year during the Term and, as applicable, the Extension Term, Concessionaire shall furnish to the Trust a statement, prepared in accordance with generally accepted accounting principles by Concessionaire's CPA, of the Gross Sales earned by Concessionaire from the Premises during the preceding year and all deductions taken therefrom as permitted herein (the "**Annual Gross Sales Statement**"). In addition, Concessionaire shall, upon request by the Trust, make available to the Trust Concessionaire's filed Federal Income Tax return for such year.
3. If Concessionaire does not timely submit any such Monthly Gross Sales Statement or Annual Gross Sales Statement, the Trust shall be permitted to impose a Two Hundred Dollar (\$200.00) late reporting fee which Concessionaire shall pay as Additional Charges; provided, however, if Concessionaire fails to timely submit any such Monthly Gross Sales Statement more than two (2) times in any twelve (12) consecutive month period the Trust shall be permitted to impose a One

Hundred Dollar (\$100.00) late reporting fee for each day beyond said deadline that Concessionaire does not submit any such statement during the succeeding twelve (12) month period.

4. Concessionaire will be required to maintain a Gross Sales control system to ensure the accurate and complete recording of all Gross Sales, in a form and manner acceptable to the Trust. This Gross Sales control system must maintain detailed sales information from each sales transaction which shall be made available to the Trust upon request. Specifically, sales information must be recorded electronically, which details each sales transaction, the item(s) sold, time, date of sale and price of the item sold. Such information, if provided to the Trust, shall be treated as confidential business information. Concessionaire must also establish a dedicated bank account for deposits of the Concession-generated Sales. All accounting and internal control related records shall be maintained for a minimum of six (6) years from the date of creation of the record in paper or electronic format.
5. If Concessionaire shall fail to prepare and deliver any statement of Gross Sales required herein, which failure continues for five (5) Business Days after written notice thereof from the Trust to Concessionaire, the Trust shall have the right to do any or all of the following: (i) elect to treat Concessionaire's failure to report as an Event of Default; and/or (ii) elect to make an audit of all books and records of Concessionaire, at Concessionaire's sole cost and expense, which in any way pertain to or show Gross Sales and to prepare the statement or statements which Concessionaire has failed to prepare and deliver. The statement or statements so prepared shall be conclusively deemed to be correct, and Concessionaire shall pay on demand, as Additional Charges, all reasonable, actual, out-of-pocket expenses of such audit, exclusive of travel and lodging costs, and of the preparation of any such statements and all sums as may be shown by such audit to be due as Percentage Concession Fees.
6. If Concessionaire's Gross Sales is required to be reported on any federal, state or local sales tax or similar tax return and Gross Sales as so reported on any of said returns shall exceed the Gross Sales as reported by Concessionaire to the Trust, then the Gross Sales shall be deemed to be the highest figure as so reported. If any Governmental Authority shall increase the Gross Sales reported by Concessionaire on any such tax return, after audit for any year for which such sales have been reported, then Concessionaire shall notify the Trust promptly of such increase, furnish to the Trust a true copy of such audit, and pay at that time (as Additional Charges) any additional Percentage Concession Fees due as a result thereof.

g. Books and Records.

1. Concessionaire shall keep on the Premises, or at its principal offices in New York City, accurate books and records of all business conducted at the Premises in accordance with generally accepted accounting principles, and said records shall be open for examination at all reasonable times to the Trust, or Trust's representatives, or the Comptroller of the City of New York, or the Comptroller of the State of New York, upon reasonable notice to Concessionaire, for the purpose of ascertaining or verifying the Gross Sales and the amount payable as Percentage Concession Fees. All records referred to in this Section shall be retained by Concessionaire for examination by the Trust or the Trust's representatives, or the Comptroller of the City of New York, or the Comptroller of the State of New York for a period of at least six (6) years following the end of the Concession Year for which said records apply.
2. For the purposes hereinbefore recited, Concessionaire shall prepare, preserve and maintain, for a minimum of six (6) years, each of the following to the Trust or the Trust's representatives, or the Comptroller of the City of New York, or the Comptroller of the State of New York upon request:
 - a. Daily sales computer records that reflect in any manner sales, income or Sales generated in or from the Premises;
 - b. Bank accounts into which all receipts of business or other sales from operations on or from the Premises are deposited;
 - c. All bank statements detailing transactions in or through any business bank account;
 - d. Daily or weekly sales recapitulations;
 - e. A sales journal;
 - f. A general ledger or a summary record of all cash receipts and disbursements from operations on or from the Premises;
 - g. Copies of all New York State and New York City Sales and Use Tax returns, New York State and Federal Income Tax returns which reflect in any manner sales or sales generated in or from the Premises; and
 - h. Such other records or accounts as the Trust may reasonably require in order to ascertain, document, or substantiate reportable Gross Sales.
3. If upon inspection or examination of Concessionaire's available books and records of account, the Trust reasonably determines that Concessionaire has failed to maintain, preserve, or retain the above-

recited documents, books, and records of account in substantially and materially the manner detailed herein, same shall constitute an Event of Default for which Concessionaire shall have a 60-day cure period following written notice thereof from the Trust. Further, if Concessionaire is found to be deficient in maintaining any of the above-recited documents, books or records of account, Concessionaire shall reimburse the Trust for reasonable, actual, out-of-pocket expenses incurred by the Trust in determining said deficiencies, including any audit or examination fees incurred by the Trust, exclusive of travel and lodging costs.

4. If after receiving the aforesaid notice, and upon expiration of the sixty (60) day time period specified herein, Concessionaire fails to cure the noted deficiencies, the Trust may, at its option, at Concessionaire's sole cost and expense, retain a reputable independent accounting or bookkeeping firm to prepare and maintain the above-recited documents, books and records of accounts. If the Trust exercises said option, the representative or representatives of said accounting or bookkeeping firm will have full right of entry and access to the Premises and existing financial records, and full cooperation by Concessionaire, for the purpose of establishing and maintaining the documents, records and books of account recited hereinabove. Any expenses incurred by the Trust in connection with enforcing its rights hereunder shall be deemed Additional Charges for the Premises due and payable by Concessionaire with the next installment of Annual Base Concession Fees.
 5. In the event an examination of the records of Concessionaire to verify said Gross Sales shall disclose a deficiency of more than two percent (2%) in the payment of Percentage Concession Fees made by Concessionaire (a) the Trust shall have the right, at Concessionaire's sole cost and expense, to audit Concessionaire's books for each of the six (6) years during the Term or Extension Term, or more if available, immediately preceding the audited year; and (b) any additional Percentage Concession Fee found due and owing as a result of said audit shall be immediately paid by Concessionaire to the Trust upon demand, together with interest thereon at the Default Rate (as hereafter defined), computed from the date such Percentage Concession Fees should have been paid (had Concessionaire not understated its Gross Sales) to the date of Concessionaire's actual payment to the Trust, and (c) in the event such examination discloses a deficiency in excess of two (2%) percent of the Gross Sales reported for said year, Concessionaire shall pay to the Trust, as Additional Charges, immediately upon demand, the reasonable costs and expenses of such audit, exclusive of travel and lodging costs.
- h. Nothing contained in this Section shall be construed to create a partnership or joint venture between the Trust and Concessionaire or render the Trust in any way responsible for the debts or losses of Concessionaire, it being the express intention

that the relationship of the parties hereto shall at all times be that of grantor and concessionaire.

- i. In addition, and without limitation, to Concessionaire's obligations with respect to payment of Annual Base Concession Fees, Percentage Concession Fees and, as applicable, Additional Charges, Concessionaire will establish and request a voluntary donation for the beautification and environmental education of Hudson River Park on all food and beverage bills ("**Voluntary Donation**"). Such form of bill will provide the customer with the option to add the suggested donation below the "tip" line on the bill and credit card authorization and a brief explanation of the Voluntary Donation shall appear at the bottom of the bill and credit card authorization. Concessionaire will train all staff to explain the purpose and value of the Voluntary Donation. Donations should be tracked by the Concessionaire's revenue control system (POS). All Voluntary Donations collected shall be remitted to the Trust by no later than the 15th of the month following the donation. Concessionaire shall include language within its printed menus containing information about Hudson River Park and soliciting donations to Hudson River Park Friends, which language shall be subject to the Trust's prior written approval.
- j. Late Charges: In the event the Trust does not receive from Concessionaire any fees as described in Section 7 hereof ("**Fees**") within ten (10) days following the due date of said Fees, then Concessionaire shall pay, as Additional Charges, (a) an administrative fee in the amount of two percent (2%) of the applicable installment of the Fees (it being understood that the actual amount of such administrative cost incurred by the Trust is difficult or impossible to ascertain) plus (b) interest at the rate of eighteen percent (18%) per annum on any such sums due the Trust from the due date to the date of actual receipt by the Trust of such sums; provided, however, that if it shall be unlawful to charge Concessionaire at such rate, then the interest rate thereon shall be reduced to the highest rate per annum chargeable to Concessionaire pursuant to law (the "**Default Rate**"). Any payment to be made by Concessionaire under this Concession Agreement shall be deemed to have been paid upon the date that it is received by the Trust. If Concessionaire's check for the payment of Fees or any other sum due the Trust hereunder is returned by Concessionaire's bank because of insufficient funds or any other reason attributable to Concessionaire, Concessionaire shall, in addition to immediately providing the Trust with a sufficiently funded replacement check, reimburse the Trust, as Additional Charges, an amount equal to the greater of (i) Two Hundred Fifty Dollars (\$250.00) or (ii) the actual costs incurred by the Trust as a result of such insufficient funds. Such reimbursement shall be due with the next ensuing monthly installment of Annual Base Concession Fees. If, within a period of twelve (12) consecutive months, the Trust receives from Concessionaire two or more checks that have been dishonored for a reason attributable to Concessionaire, all checks for the next period of twelve (12) months thereafter from Concessionaire shall, at the Trust's option, be either certified or cashier's checks.
- k. Unless otherwise specified herein, Concessionaire shall remit all Additional Charges within thirty (30) days of issuance of a notice and invoice from the Trust.

8. Security Deposit:

- a. On the Commencement Date and thereafter as required pursuant to the Concession Agreement, Concessionaire shall deposit with the Trust the amounts specified in Part I, Section 1.8 (“**Security Deposit**”) by certified check payable to “Hudson River Park Trust” or to the order of such other entity as the Trust may designate in writing or a letter of credit. If the Security Deposit is in the form of a Letter of Credit, then such Letter of Credit shall be a clean, irrevocable, unconditional, automatically renewable stand-by letter of credit. The Security Deposit Letter of Credit shall be automatically renewed and renewable such that the expiry date of the final renewal thereof shall occur sixty (60) days after the date that is the later to occur of the following: (x) the expiration of the Term, or the expiration date of the Extension Term, as applicable, and (y) the date on which the Percentage Concession Fee for the final year of the Term or, as applicable, the Extension Term, has been finally determined in accordance with this Concession Agreement and paid by Concessionaire. Such Letter of Credit shall provide that if the issuer intends to not renew the Letter of Credit upon the expiry date thereof, it shall deliver written notice to the the Trust of such intention at least thirty (30) days prior to the expiry date. Upon the Trust’s receipt from issuer of such a notice of intention not to renew, the Trust shall have the right to immediately draw the full amount of such Letter of Credit. Concessionaire shall have the right to provide to the Trust, as beneficiary, a letter of credit from a different issuer satisfactory to the Trust (a “**Replacement Letter**”). If said Replacement Letter is in form reasonably satisfactory to the Trust, then the Trust shall return to Concessionaire the proceeds from the Trust’s draw on the Letter of Credit.
- b. If there is a reasonable possibility that (i) the issuer of a Letter of Credit then held by the Trust may be incapable of, unable to, or be prohibited from, honoring such Letter of Credit, or (ii) if the credit rating of the issuer of a Letter of Credit is reduced below “A”, or such issuer is placed into receivership or conservatorship by the Federal Deposit Insurance Corporation or any successor or similar entity, then the Trust shall have the right to demand that Concessionaire obtain a Replacement Letter in form reasonably satisfactory to the Trust within ten (10) days following the Trust’s written demand therefor, and Concessionaire shall have the obligation hereunder to so cause the issuance of a Replacement Letter within said ten (10) day period.
- c. The Trust may use, retain or apply all or any portion of the Security Deposit to satisfy any cost or expense arising from the occurrence of a default by Concessionaire hereunder, or any other cost or expense incurred by the Trust in connection with the failure of Concessionaire to pay Fees hereunder, when such Fees or other amount becomes due and payable, or the failure of Concessionaire to perform when due any other term, covenant or condition of the Concession Agreement, or to satisfy any liability incurred by Concessionaire to the Trust, provided that the application of any portion of the Security Deposit to the cure of any such default shall not be deemed to have cured such default unless the entire outstanding amount due or damages suffered by the Trust shall have been paid in full. If the Trust uses or applies the Security Deposit or any part thereof for any of the foregoing purposes, Concessionaire shall immediately deposit with the Trust an amount sufficient to restore the Security Deposit to its amount prior to such use or application. The Security Deposit shall be returned to the Concessionaire within thirty (30) days after the expiration or termination of the Concession Agreement, without any interest earned, subject to any

outstanding substantiated claims, costs or liabilities that the Trust, has or may reasonably expect to have, that are attributable to or arise out of the use of the Premises by the Concessionaire. The Trust shall provide Concessionaire with a written notice that includes the reasons for any draw down(s) of the Security Deposit.

9. **Security:** Concessionaire acknowledges that the Trust employs New York City Park Enforcement Patrol (“**PEP**”) officers to maintain public safety and security and enforce regulations, rules and law at the Premises and the Park, and agrees that it shall at all times abide by the directives of PEP officers acting in their official capacity (or officers, employees or agents of such successor security entity designated by the Trust) and, to the best of its ability, cause its customers, employees, vendors, contractors and invitees to obey such directives. Concessionaire agrees that the Trust’s employment of PEP (or successor entity) officers does not relieve, reduce or substitute for its own obligation to provide security services related to its operations at the Premises as set forth herein. Security at the Premises and for the equipment, furniture and personal property located therein is the sole responsibility of the Concessionaire.

10. **Utility Costs:**

- a. Concessionaire shall, during the Term hereof, and, as applicable the Extension Term, pay for all its own utilities, including, but not limited to, water, sewer, gas, and electric, based upon direct metered or sub-metered usage, as levied or specifically charged against the Premises by the providing utility company or the Trust. If water and sewer charges are billed to the Trust by the New York City Water Board, then the Trust shall bill Concessionaire, as Additional Charges, for water and sewer service on a monthly estimated basis with quarterly adjustments based on actual sub-metered consumption measurements on a pass-through basis, without any markup or override. Should the Trust determine, in its reasonable judgment, that installation of a sub-meter to measure utility usage for a portion of the Premises which is not otherwise on Concessionaire’s direct account with a utility is impractical or uneconomic, the Trust may establish a reasonable estimation of usage and bill Concessionaire, as Additional Charges, for such usage on the same pass-through basis, without any markup or override.
- b. To the extent permitted by law, the Trust may, upon prior notice to Concessionaire, install re-registering meters and collect any and all charges so metered from Concessionaire provided that Concessionaire shall not be charged more for the same services if furnished directly to the Premises by a public utility for comparable services.
- c. If any utilities are used in common with any other occupants in the Building, Concessionaire will pay to the Trust, as Additional Charges, a proportionate share of such charges for utilities used in common based on square footage of floor space assigned to each occupant using such common utilities or based on such other method as may be reasonably determined by the Trust. Concessionaire shall have the right to install meters or submeters, at Concessionaire’s expense, for any utilities not already separately metered or submetered to the Premises with the Trust’s reasonable consent and supervision.

11. Termination of the Concession Agreement:

- a. Termination for Failure to Receive Approvals.
 - i. If Concessionaire is unable, despite timely submittals as set forth herein, to secure approvals for work permits from the City for the proposed Fit-Out Work within six (6) months following the Execution Date for any reason not under the reasonable control of Concessionaire (it being expressly acknowledged by Concessionaire that the timely submission of complete work plans and work permit applications prepared by licensed professionals to the City is within the reasonable control of Concessionaire), then the Trust or Concessionaire may, with written notice, elect to (i) terminate the Concession Agreement, or (ii) with the approval of the other party, extend the period in which such termination election may be exercised by either party by a stated number of calendar days (the date, whether or not so extended, the “**Early Termination**”).
 - ii. The Trust, its directors, employees and/or agents shall not be liable for damages to Concessionaire or have any other liability to Concessionaire in the event that the Concession Agreement is terminated by an Early Termination, except for return of the Security Deposit in accordance with the provisions of the Concession Agreement.
- b. Termination for Cause. The Trust may terminate the Concession Agreement for cause, including:
 - i. a material breach of the Concession Agreement that is not cured in accordance with the Concession Agreement;
 - ii. if the Concessionaire shall default in the timely and diligent performance of any of its obligations under the Concession Agreement and such default shall continue for a period of thirty (30) days after written notice from the Trust specifying the occurrence, omission or failure giving rise to such default, or if in the reasonable opinion of the Trust, by reason of the nature of a non-monetary default, such default cannot be cured within such thirty (30) days period (such default, an “**Extended Cure Default**”) and the Concessionaire has not promptly prosecuted the curing of such default;
 - iii. if Concessionaire has failed to complete the cure of an Extended Cure Default by a date that is not more than sixty (60) days after written notice from the Trust specifying the occurrence, omission or failure giving rise to such default (unless the Trust, in its sole absolute discretion has granted a further extension period for curing), provided that Concessionaire is diligently and continuously prosecuting such cure;

- iv. any material representation or warranty made or deemed to have been made under the Concession Agreement by the Concessionaire shall prove to be untrue in any material respect;
 - v. any material representation or warranty made or deemed to have been made by Concessionaire in its Request for Proposals response dated _____, 2018 shall prove to be untrue in any material respect; or
 - vi. Concessionaire shall make a general assignment for the benefit of its creditors, or a receiver or trustee shall have been appointed on account of Concessionaire's insolvency, or Concessionaire otherwise shall be or become insolvent, or an order for relief shall have been entered against Concessionaire under Chapter 7 or Chapter 11 of Title 11 of the United States Bankruptcy Code.
- c. If Concessionaire fails to correct any default within the applicable time period, the Trust shall have the right, but not the obligation, to cure the default at Concessionaire's expense and impose an Additional Charge with respect thereto or terminate the Concession Agreement.
 - d. Upon the Expiration Date, all rights of Concessionaire herein shall be forfeited without claim for loss, damage, refund of investment or any other payment whatsoever against the Trust, its directors, employees or agents.
 - e. Concessionaire agrees that upon the Expiration Date, Concessionaire shall immediately cease all operations pursuant to the Concession Agreement, remove all personal possessions, and vacate the Premises without any further notice by the Trust. Any of **Concessionaire's Trade Fixtures** or **Personal Property** (as defined in Exhibit F) remaining on the Premises within thirty (30) days after the Expiration Date shall be considered by the Trust to be abandoned. Concessionaire shall remain liable to the Trust for any damages, including the cost of removal or disposal of property left at the Premises, should Concessionaire fail to remove all such property on or before the Expiration Date or sooner termination date.
 - f. Nothing contained in the Concession Agreement shall limit in any manner any and all rights or remedies otherwise available to the Trust by reason of a default by Concessionaire under the Concession Agreement. Concessionaire agrees that any agreement or contract entered into it with any contractor in connection with the services identified herein shall provide for termination for convenience and cause for the reasons and pursuant to the procedures set forth in the Concession Agreement. Concessionaire's failure to terminate a contractor for cause when grounds for such termination exist and the Trust has requested such termination shall be grounds for the Trust's termination of the Concession Agreement for cause.
 - g. All provisions of the Concession Agreement relative to indemnification, audit and reporting shall survive the cancellation, expiration or earlier termination of the Concession Agreement. For the purposes of the Concession Agreement, the terms cancel and terminate and the terms cancellation and termination may be used

interchangeably and shall have the same meaning, impact, and effect.

- h. Should the Trust elect to terminate the Concession Agreement for any of the above reasons the Trust shall provide a minimum of fifteen (15) days' written notice to Concessionaire. Upon cancellation, termination and/or expiration of the Concession Agreement, Concessionaire shall deliver possession of the Premises to the Trust in the same condition as existed as of the Commencement Date, except for capital or other permanent improvements and less reasonable wear and tear, unless otherwise directed in writing by the Trust. Concessionaire shall be liable for any deficiencies or other damages suffered by the Trust at law or in equity.

12. Premises "As Is":

- a. Concessionaire has inspected the condition of the Premises and accepts Premises "as-is" and will not at any time make any claim that the Premises or structures thereon are not in suitable repair or condition for the uses and purposes of the Concession, nor will Concessionaire at any time make any claim for or by way of reduction of charge, or otherwise, for damage arising from or consequent upon any repairs that the Trust or Concessionaire may do or cause to be done or in consequence of the occupation of the Premises by the Trust or its agents or contractors. Concessionaire acknowledges that as of the Execution Date it has received "as-built" plans and specifications for the Building.
- b. Other than the provision of the TCC, the Trust has not made nor does it make any representation or warranty as to the condition of the Premises or its suitability for any particular use or as to any other matter affecting the Concession. Concessionaire, at its sole cost and expense, shall be responsible for performing any necessary improvement(s) and/or repair(s) to bring the Premises up to the required standards and applicable legal requirements of the City, and any other governing agencies for the **Permitted Use** detailed in Exhibit B.
- c. Concessionaire's accepts the Premises "as-is" relates to the condition of the Premises as they were when Concessionaire first entered into possession thereof, or on the Commencement Date, whichever is earlier.

13. Indemnification:

- a. Obligation to Protect The Trust against Liability: Concessionaire is solely responsible for the safety and security of the Premises and Concessionaire's operations on, above or about the Premises so as to avoid bodily injury and/or property damage. Concessionaire shall not perform any act, or do anything, or permit that any act be performed or thing done at the Premises and the Exterior Common Area, or any portion thereof that subjects the Trust to any liability for injury to any person or damage to property for any reason whatsoever, including, without limitation, by reason of any violation of any Legal Requirement, and Concessionaire shall exercise such control over the Premises so as to fully defend, preserve and protect the Trust against any such liability.

- b. Obligation to Indemnify. To the fullest extent permitted by applicable Legal Requirements, Concessionaire shall defend, indemnify and save the Trust, the New York State Executive Department, the New York State Office of Parks, Recreation and Historic Preservation, the New York State Department of Environmental Conservation, the New York City Region of State Parks, Recreation and Historic Preservation Commission, the City of New York, the City of New York Department of Parks and Recreation, and each of their respective commissions and each of their respective commissioners, directors, officers, employees, agents, servants, successors and assigns (collectively, the “**Indemnitees**”) harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, court costs and reasonable attorneys’ fees and disbursements, that may be imposed upon, or incurred by, or asserted against, any of the Indemnitees by reason of any of the following:
- i. Any Concessionaire work, alterations, or other act associated therewith in, on, or about the Premises or any part thereof by or on behalf of Concessionaire;
 - ii. The condition of, or Concessionaire’s (or any of its affiliates’, sub-concessionaires’, occupants’, employees’, contractors’, agents’ or invitees’) control, use, vacation, abandonment, possession, occupation, alteration, operation, maintenance or management of, the Premises, or any part thereof, or of the Exterior Common Area, including, without limitation, any violations imposed by any Governmental Authorities in respect of any of the foregoing;
 - iii. Any act or failure to act on the part of Concessionaire or any of its respective officers, directors, agents, contractors, servants, employees, sub-concessionaires, licensees or invitees;
 - iv. Any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in, on, or about the Premises, or any part thereof, or the Exterior Common Area or, if caused by Concessionaire’s use, possession, control or occupancy thereof any area immediately adjacent thereto;
 - v. Concessionaire’s failure to make any payment or to perform or comply with any of the other covenants, agreements, terms or conditions contained in this Concession Agreement on Concessionaire’s part to be kept, observed, performed or complied with and/or the exercise by the Trust or its designee of any remedy provided in the Concession Agreement with respect to such failure;
 - vi. Any lien, encumbrance or claim that may be alleged to have been imposed or arisen against or on the Premises, or any lien, encumbrance or claim created or permitted to be created by Concessionaire or any of its members, partners, joint venturers, officers, shareholders, directors, agents, contractors, servants, employees, licensees or invitees against any assets of, or funds appropriated to, the Trust, or any liability that may be asserted against the Trust with respect thereto;

- vii. Any failure on the part of Concessionaire to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in, any other contracts and agreements affecting the Premises or the Park, on Concessionaire's part to be kept, observed or performed;
 - viii. With respect to the Trust in its proprietary capacity, any contest or proceeding brought by Concessionaire, or permitted to be brought by Concessionaire pursuant to this Concession Agreement;
 - ix. Any claim for brokerage commissions, fees or other compensation by any person who acted or alleges to have acted for Concessionaire in connection with this Concession Agreement or the transactions contemplated by this Concession Agreement; or
 - x. The presence, storage, transportation, disposal, release or threatened release of any Hazardous Materials over, under, in, on, from or affecting the Premises or the Park, or any persons, real property, personal property, or natural substances thereon or affected thereby, including, without limitation, any such liability, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses imposed upon, incurred by or asserted against any of the Indemnitees under any applicable Legal Requirement, but excluding the release of Hazardous Materials caused by the Trust or any party claiming by, through or under the Trust during the Term.
- c. Contractual Liability. The obligations of Concessionaire under this Section 13 shall not be affected in any way by the absence of insurance coverage, or by the failure or refusal of any insurance carrier to perform an obligation on its part to be performed under insurance policies affecting the Premises.
- d. Defense of Claim, Etc. If any claim, action or proceeding is made or brought against any of the Indemnitees in connection with any event referred to in Section 13 hereof, then upon demand of the Trust, Concessionaire shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee's name, by the attorneys for, or approved by, Concessionaire's insurance carrier (if such claim, action or proceeding is covered by insurance), or by such other attorneys as Concessionaire may retain and that the Trust shall reasonably approve. The foregoing notwithstanding, any such Indemnitee may engage its own attorneys in addition to any counsel appointed by Concessionaire's insurance carrier or otherwise retained by Concessionaire to defend such Indemnitee, or to assist such Indemnitee in such Indemnitee's defense of such claim, action or proceeding, as the case may be, at such Indemnitee's sole cost and expense.
- e. Notification and Payment. Promptly, upon having actual knowledge thereof, an Indemnitee shall notify Concessionaire of any cost, liability or expense incurred by, asserted against, or imposed on, such Indemnitee, as to which cost, liability or expense Concessionaire has agreed to indemnify such Indemnitee pursuant to the Concession Agreement. Concessionaire agrees to pay such Indemnitee all amounts due under this Section 13 within thirty (30) business days after the Trust's request therefor, if Concessionaire is obligated to make such payment pursuant to the terms of this

Concession Agreement. The provisions of this Section 13 shall survive the termination or non-renewal of the Concession Agreement.

14. **Access:** Concessionaire shall, upon reasonable notice of not less than 24 hours, or sooner in the case of an emergency as reasonably determined by the Trust, permit access, inspection and examination of the Premises by the Trust's agents, employees, consultants and representatives during reasonable business hours. Such right of access, inspection or examination shall include, but is not limited to, determining whether Concessionaire is complying with the terms of the Concession Agreement and whether the Premises are in good repair and maintenance, structurally sound, and that there are no hazardous, unsanitary, or defective conditions present; and to conduct tests, procedures, investigations and inspections in connection with developing plans for construction or improvements in, on, around or near the Premises. Such access shall be undertaken and coordinated with Concessionaire so as not to interfere with Concessionaire's operations to the maximum extent feasible.

15. **No Assignment or Subletting:**

- a. Concessionaire shall not assign, grant use of, or permit the whole or any part of the Premises or the Concession, nor allow the same to be occupied and/or operated by any person or entity other than Concessionaire, whether by merger, consolidation, purchase of assets, transfer of stock in Concessionaire, transfer of joint venture or partnership interests in Concessionaire, operation of law or otherwise without the prior written consent of the Trust in each instance, which shall not be unreasonably withheld, conditioned or delayed.
- b. Notwithstanding anything to the contrary contained herein, the Trust may, in its sole and absolute discretion, condition or disapprove any assignment, sublease, license or any other agreement for the use of the Premises or any part of the Concession which is (i) proposed by Concessionaire within the first four (4) year of the Term, or (ii) is proposed to grant Control, or a direct or indirect ownership interest in excess of forty-nine percent (49%), to any entity that has a direct or indirect ownership interest in any tenant, subtenant, concessionaire, sub-concessionaire, licensee or sub-licensee of the Trust, or any such other similar party in interest with a relationship to the Trust, that operates within Hudson River Park. For the purpose of this Section 15(b), "Control" shall mean possession, directly or indirectly, of the power to exercise, restrain or direct, or cause the direction of, the management and policies of Concessionaire.
- c. Concessionaire shall not mortgage or pledge the Concession Agreement or any part thereof, or in any way charge or encumber the rights granted herein, or any part thereof. Notwithstanding the above, Concessionaire may enter in one or more financing agreements for Concessionaire's Trade Fixtures and Concessionaire's Personal Property with third parties with the Trust's consent, such consent not to be unreasonably delayed, conditioned or denied.

16. **Access Permit:** Upon the Execution Date, the Trust shall issue, at no cost to Concessionaire, an access permit in a form attached hereto as Exhibit G (the "**Access Permit**") allowing Concessionaire to enter upon the Premises for the purposes of taking measurements, conducting surveys and other non-invasive investigations and testing, reasonably necessary to

prepare the Plans and Specifications, confirm costs and for other business planning purposes. The term of the Access Permit can terminate upon the Commencement Date.

17. **Liens Against Premises:** Concessionaire shall not create, cause to be created or allow any lien, encumbrance or charge upon the Premises or any part thereof. If any mechanic's, laborer's, vendor's, materialman's or similar statutory lien is filed against the Premises or any part thereof, then Concessionaire shall within thirty (30) days after receipt of notice of the filing of such lien, cause such lien to be vacated or discharged of record by payment, deposit, bond, order of court of competent jurisdiction or otherwise.
18. **No Property Interest Conveyed:** The parties acknowledge that the Concession Agreement is not a lease but is merely a license to occupy and use, and therefore a Landlord-Tenant relationship is not hereby created; and further, that since the Concession Agreement is not a lease, Section 5-321 of the General Obligations Law does not apply to the Concession Agreement to the extent permitted by law. No leasehold ownership or other property interest shall vest in Concessionaire by virtue of the Concession Agreement.
19. **Non Discrimination:** In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Concessionaire will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Neither shall the Concessionaire discriminate in the use of these Premises nor any access to these Premises if such Premises is used as a public accommodation or in connection with a public service.
20. **Conflict of Interest:** Concessionaire warrants and represents that no officer, agent, employee or representative of the Trust, has received any payment or other consideration for the granting of the Concession Agreement and that no officer, agent, employee or representative of the Trust has any interest, directly or indirectly in Concessionaire, the Concession Agreement, or the proceeds thereof. Concessionaire acknowledges that the Trust is relying on the warranty and representation contained in this Section and that the Trust would not enter into the Concession Agreement absent the same. It is specifically agreed that, in the event the facts hereby warranted and represented prove, in the opinion of the Trust, to be incorrect, the Trust shall have the right to terminate the Concession Agreement
21. **Warranty:** The undersigned signatory for Concessionaire warrants that he or she has the power and authority to enter into the Concession Agreement on behalf of Concessionaire and to bind Concessionaire to the terms and conditions of the Concession Agreement.
22. **Guaranty:** This Agreement is contingent upon the execution of a limited guaranty (the "Guaranty"), in the form set forth on Exhibit H, by XX (the "Guarantor"). Concessionaire acknowledges that the Guaranty is a material inducement to the execution of the Concession Agreement by the Trust and that if a default occurs under any provision of the Guaranty, or if the Guarantor is prevented from performing its obligations under the Guaranty for any reason, including operation of the law, then the same shall constitute a default hereunder, subject to the Trust's rights and remedies provided herein or by applicable law or equity.
23. **Entire Agreement; No Oral Modification; Counterparts:** The Concession Agreement states

the entire agreement between the Trust and the Concessionaire and supersedes all prior negotiations, representations and agreements, whether written or oral. The Concession Agreement may not be altered, modified or amended in any manner whatsoever except by a written instrument signed by the Trust and Concessionaire. The Concession Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

24. **Severability:** If any of the provisions of the Concession Agreement are held invalid, such invalidity shall not affect or impair other provisions of the Concession Agreement that can remain in effect without the invalid provisions, and therefore, the provisions of the Concession Agreement are severable.
25. **No Arbitration:** Disputes involving the Concession Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration but must, instead, be heard in a court of competent jurisdiction of the State of New York.
26. **Venue and Governing Law:** The Concessionaire hereby irrevocably agrees that any action brought against the Trust 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 Trust arising under the Concession Agreement or related hereto shall be heard and determined either in the Federal Courts, located in the City or in the New York State Courts located in the City and County of New York.
27. **WAIVER OF JURY TRIAL: EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THE CONCESSION AGREEMENT.**
28. **Service of Process:** In addition to the methods of service allowed by the State Civil Practice Law & Rules (“CPLR”), Concessionaire hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Concessionaire’s actual receipt of process or upon the Trust’s receipt of the return thereof by the United States Postal Service as refused or undeliverable. Concessionaire must promptly notify the Trust, in writing, of each and every change of address to which service of process can be made. Service by the Trust to the last known address shall be sufficient.
29. **Interest of Others:** Nothing in the Concession Agreement shall be construed to give any person other than the Trust and Concessionaire any legal equitable right, remedy or claim. The Concession Agreement shall be held to be for the sole and exclusive benefit of the Trust and Concessionaire.

THE TRUST:

CONCESSIONAIRE:

HUDSON RIVER PARK TRUST

By: _____

By: _____

Name:

Name:

Title:

Title:

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

On this _____ day of _____, 2018, before me personally came _____ to me known, who being duly sworn, did depose and say that she is the President of Hudson River Park Trust, and the said person described in and who executed the foregoing instrument, and she acknowledged that she executed same in her/his official capacity and for the purpose mention therein.

Notary Public

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

On this _____ day of _____, 2018, before me personally came _____ to me known, who being duly sworn, did depose and say that s/he is the _____ of _____, and the said person described in and who executed the foregoing instrument, and s/he acknowledged that s/he executed same in her/his official capacity and for the purpose mention therein.

Notary Public

Exhibit A -- Premises:

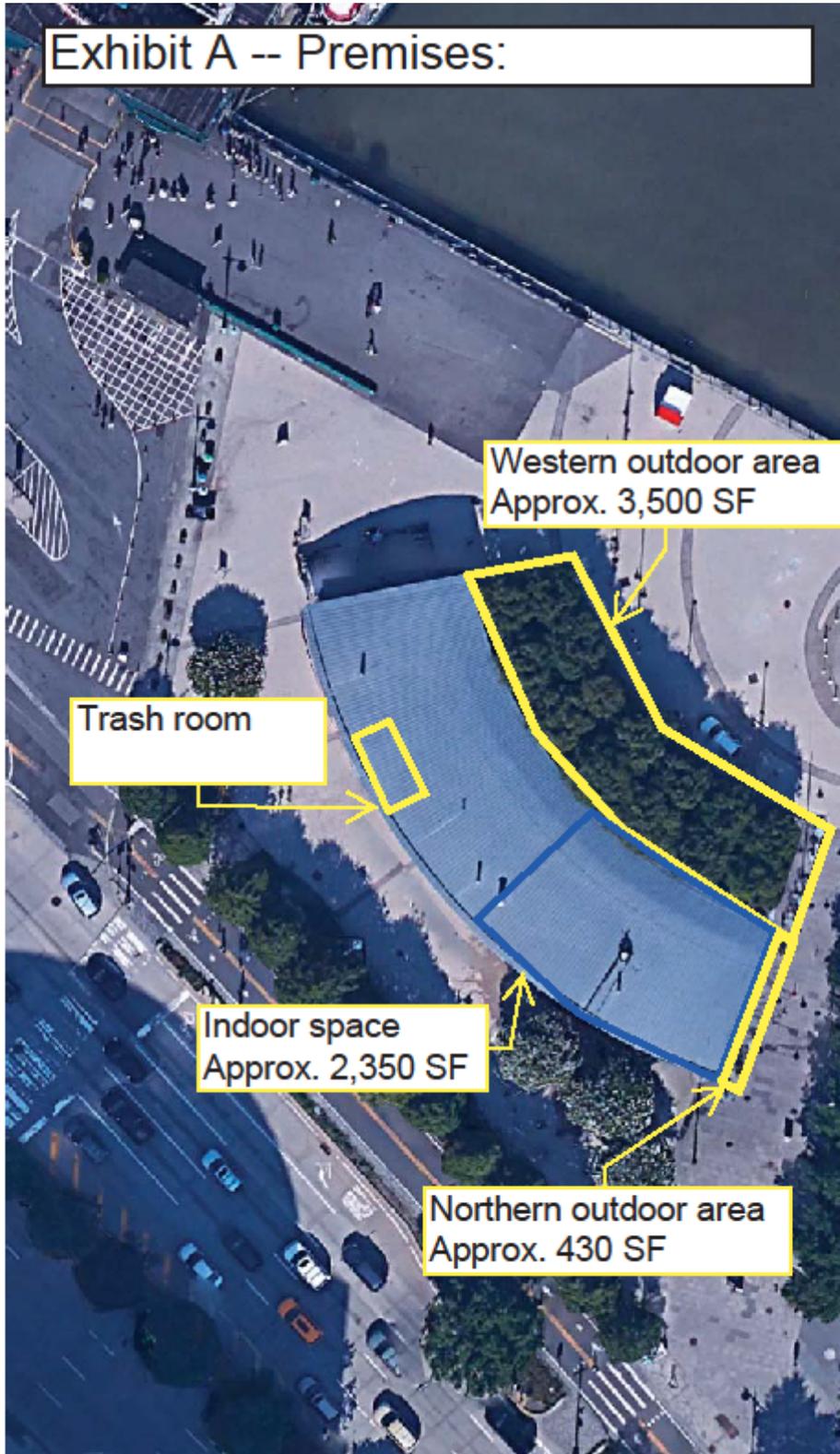


EXHIBIT A-1

SITE PLAN

EXHIBIT B

PERMITTED USE, MANNER OF OPERATION, TRUST'S USE OF THE PREMISES

1. **Permitted Use.** Concessionaire shall occupy and use the Premises as and for a full service quality restaurant offering casual indoor/outdoor dining together with food service from two Mobile Concession Units, the operation of which: (i) is generally consistent with the concept plan (the "Restaurant Concept") described in Concessionaire's proposal to the Trust dated _____ a copy of which is attached hereto as Exhibit B-1 ("Concessionaire's Concept Proposal"), and (ii) provides an initial menu and pricing substantially similar to the menu attached hereto as Exhibit B-2 (the "Menu Offering"), and for no other occupancy, use or purpose (the "Permitted Uses"). Subject to the requirements of this Exhibit B and all other provisions of this Concession Agreement, as applicable, the Permitted Uses shall be deemed to include, as components of the restaurant operation: (i) bar service, (ii) pick-up and delivery service, (iii) private and public events; and (iv) the aforesaid operation of two Mobile Concession Units. Notwithstanding the foregoing, but subject to (a) Concessionaire's continuing obligation to operate the aforesaid restaurant, and (b) the requirements of this Exhibit B and all other provisions of this Concession Agreement as applicable, Concessionaire may, from time to time, modify or change the Restaurant Concept and/or Menu Offering, including but not limited to modifying or changing type of cuisine, to, in Concessionaire's commercially reasonable judgment, best create and serve a customer base which ensures profitability and long-term stability (each such modification or change, a "Modified Operation"). The implementation of each Modified Operation shall be subject to the prior written approval of the Trust, which shall not be unreasonably withheld, conditioned or delayed. Concessionaire must provide the Trust with not less than forty-five (45) days advance written notice of any proposed Modified Operation with respect to the Restaurant Concept and not less than seven (7) days written advance notice of any proposed Modified Operation with respect to the Menu Offering, provided however that Concessionaire may, without prior notice to or approval by the Trust, make seasonal and other changes in the ordinary course of business to the Menu Offering provided that the new or changed menu items are of a type and within a price range comparable to the Menu Offering most recently approved by the Trust. For the purposes set forth above, Concessionaire's right to propose a Modified Operation is intended to allow Concessionaire the flexibility to offer quality restaurant service to Park users and visitors.

2. **Manner of Operation.**
 - a. Concessionaire shall conduct its business at the Premises for the Permitted Uses in the manner of operation set forth in this Exhibit B.

 - b. Concessionaire shall at all times operate in such manner prescribed by, and as permitted by, and in compliance with, the Legal Requirements with respect to the use and occupancy of the Premises and conduct of the business therein. Concessionaire shall at all times operate in accordance with the provisions of any and all required licenses or permits issued by such Governmental Authorities.

 - c. Concessionaire must obtain, and cause its food service employees to obtain, the appropriate permits and authorizations required by New York City Department of Health

and Mental Hygiene (“DOHMH”). At least one (1) staff person with a valid DOHMH food handler’s license must be present during all hours of operation. Such staff assigned by Concessionaire to sell food and beverages to the public must possess all Federal, State, and City authorizations and at all times, display the appropriate DOHMH permits.

d. Concessionaire shall ensure that all food service employees follow safe food handling procedures. Concessionaire warrants that all food, beverage, and services of any kind sold pursuant to this Concession Agreement shall be of a high quality. Concessionaire shall have a sufficient number of staff available at the Premises during Restaurant Hours to ensure proper operation. Concessionaire, at its sole cost and expense, shall provide, hire, train, supervise and be responsible for the acts of all personnel necessary for the proper operation of Concessionaire’s business at the Premises, including but not limited to: (1) operating and maintaining the Premises on a year-round basis, (2) conducting and supervising all activities to be engaged in upon the Premises, and (3) collecting and safeguarding all monies generated by Concessionaire under this Concession Agreement.

e. Concessionaire shall employ environmentally friendly practices including but not limited to: (i) prohibiting the use of polystyrene packaging or food containers and minimizing the use of disposable plastic items, (ii) managing and recycling kitchen grease through an outside vendor approximately once weekly, or as needed, (iii) maximizing the use of recycled paper items, (iv) employing a reusable linen service, (v) using sustainable and local ingredients when feasible, (vi) installing and using energy and water efficient equipment, (vii) adhering to the guidelines of a “green” restaurant organization proposed by Concessionaire as may be reasonably acceptable to the Trust, and (viii) implementing, as deemed practical and commercially reasonable by Concessionaire, additional environmental friendly industry standards and practices including those commercially reasonable standards and practices which are recommended by the Trust.

f. Concessionaire shall not include breakable glass in any delivery or pick-up order, and shall not allow glass to be taken from the Premises by any customer. All beverages sold as delivery or pick-up orders must be in non-glass, shatterproof containers.

g. Concessionaire shall comply with all City, State and Federal laws relating to access for persons with disabilities. Concessionaire shall comply with all City, State and Federal requirements to provide safe and accessible opportunities for everyone, including persons with disabilities. Concessionaire must comply with ADA and provide ADA accessibility and compliance throughout the Premises, including but not limited to installing ADA signage, ADA accessible seating, and ramps where needed, as required by all City, State and Federal codes and regulations. Such accessibility shall be clearly indicated by signs and included in all of Concessionaire’s advertising. Concessionaire shall create a plan that describes how it intends to make facilities and services available at the Premises readily accessible and useable by individuals with disabilities, and shall provide a copy of such plan to the Trust and include same in Concessionaire’s promotional materials.

h. Concessionaire shall not place or store, or allow others to place or store, any flammable, explosive, hazardous, toxic or corrosive materials, debris of any description, garbage or any materials commonly referred to as “junk” within the Premises.

j. Concessionaire shall not suffer or permit the Premises or any part thereof to be used

in any manner, or anything to be done therein, or suffer or permit anything to be brought into or kept therein, that would in any way (i) result in the Premises not being operated in an manner to be inconsistent with the nature and the operation of similar concessions within Hudson River Park, (ii) make void or voidable any fire or liability insurance policy then in force with respect to the Premises, (iii) make unobtainable from reputable insurance companies authorized to do business in New York State any fire insurance with extended coverage, or liability, or other insurance at standard rates, (iv) cause, or in the Trust's reasonable opinion be likely to cause, physical damage to the Premises, (v) constitute a public or private nuisance, or (vi) impair the appearance, character or reputation of the Premises or the Park.

k. Smoking on the Premises shall be strictly prohibited. Concessionaire shall not sell or cause to be sold on or about the Premises cigarettes, cigars, or other tobacco products. No signs or any other kind of advertising for tobacco products shall be permitted at the Premises. In connection with the Premises, Concessionaire shall not accept sponsorships of any kind on behalf of any kind of tobacco products.

l. Provided all required licenses from Governmental Authorities are obtained, Concessionaire's patrons may be served alcohol by Concessionaire as specifically set forth herein. Concessionaire may sell alcohol as an accessory to food sales to its customers, with the consumption of alcohol limited to within the Building and the outside seating area of the Premises only, provided that: (1) Concessionaire's sale of alcohol shall be consistent with Concessionaire's Restaurant Concept, (2) Concessionaire has secured all public approvals, including but not limited to a New York State Liquor Authority license ("SLA"), for the sale of alcohol and submitted evidence of same to the the Trust, (3) Concessionaire has provided the Trust with evidence of liquor liability insurance coverage in the amount set forth herein, and (4) Concessionaire complies with all applicable Legal Requirements. Notwithstanding anything to the contrary contained herein: (i) Concessionaire shall secure a new SLA license, the application for which shall be subject to Community Board Review, (ii) the service of alcohol shall be limited such that the majority of sales from the Concession shall be derived from food rather than alcohol and the Concession shall not be promoted primarily as a "bar," and (iii) should Concessionaire fail to satisfy any of the conditions set forth above, then Concessionaire shall not have the right under this Concession Agreement to sell alcohol at the Premises.

m. Alcoholic beverages may not be included with any delivery or pick-up order. Concessionaire shall not allow restaurant customers to remove alcoholic beverages from the Premises and shall train all staff members to monitor and enforce such prohibition.

n. Concessionaire acknowledges that it is operating within the Park and the generation of noise which is clearly audible outside of the Premises, including outside of the Park in the neighboring residential blocks, may disturb Park patrons and community residents. Concessionaire shall not permit or allow concerts or other musical events or use sound amplification devices that may generate noise that is clearly audible outside of the Premises without the express written approval of the Trust in its sole and absolute discretion. Without limitation to this restriction, Concessionaire shall not mount loudspeakers on, or place them outside of, the exterior walls of the Premises. Should Concessionaire play recorded music within the Building, it shall be responsible

for, and shall pay, any and all fees or royalties to the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), or such other entity as Concessionaire may require for such music or music programming.

o. Concessionaire may conduct private and public events related to the restaurant operation at the Premises, including but not limited to, social events, charity events, corporate or other business meetings that cause Concessionaire to close for public use either or both of the entire interior restaurant space or entire outdoor terrace space for general purpose food service for either lunch or dinner (each such event use, a “Concessionaire Event”). Between May 1st and October 31st of each year during the Term and, as applicable, the Extension Term, Concessionaire shall be allowed to conduct not more than four (4) Concessionaire Events per month, nor more than one (1) Concessionaire Events per week, at the Premises without the Trust’s prior written approval; provided that Concessionaire shall not conduct Concessionaire Events that cause the closure of both entire interior restaurant space and the entire exterior terrace space to the general public on either a Friday or Saturday more than two (2) times during such period of May 1st to October 31st. During the months of November, December and March of each year during the Term and, as applicable, the Extension Term, Concessionaire shall be allowed to conduct not more than four (4) Concessionaire Events per week at the Premises without the Trust’s prior written approval. During the months of January and February of each year during the Term and, as applicable, the Extension Term, Concessionaire shall be allowed to conduct Concessionaire Events without limit. Concessionaire shall inform the Trust not less than seven (7) days in advance of each Concessionaire Event. Should the Trust, in its sole but reasonable judgment, determine that a Concessionaire Event may cause disruption or interference to the public’s use of the Pedestrian Esplanade or Bikeway, then Concessionaire shall, at the direction of the Trust, employ a qualified traffic control agent to direct Concessionaire’s customers, delivery services, or other entities seeking access to the Premises in connection with such Concessionaire Event so as to minimize or eliminate such potential disruption or interference.

p. Concessionaire acknowledges that the portion of Pier 84 that is not encompassed within the Premises may be used by the Trust or others including, without limitation, public and private events conducted by, or permitted by, the Trust (each such event use, a “Trust Event”). The Trust shall inform Concessionaire not less than forty-eight (48) hours in advance of each Trust Event. Subject to security and other public safety considerations, the Trust shall not obstruct, deny, or impede Concessionaire’s customers’ access to the Premises other than to a minimum extent during a Trust Event. Should the Trust determine in its sole but reasonable judgment that the imposition of security or other public safety restrictions are necessary, then the Trust shall in good faith consult with Concessionaire to determine whether such restrictions can be imposed in a manner that minimizes, to the extent practicable and commercially reasonable, any adverse effect on Concessionaire’s business operation. Concessionaire shall ensure that its business operation at the Premises is performed in such a manner as to not unreasonably cause interruption, obstruction, noise or disturbance to the Trust’s concessionaires, permittees and other occupants of the Building and their customers, invitees and patrons.

q. Concessionaire shall not, at any time, (i) stage or transport any equipment, goods or vehicles other than on the Premises or as approved in Concessionaire’s Operations Plan

without prior written approval of the Trust (such approval to be in the Trust's sole and absolute discretion), or (ii) obstruct or otherwise materially interfere with access and circulation by the public on the Pedestrian Esplanade, Bikeway, or public restrooms. If and to the extent that there is any customer queue line for the Premises in connection with Concessionaire's business operation, such line shall be managed by Concessionaire's staff to prevent obstructing or otherwise interfering with access and circulation by the public on the Pedestrian Esplanade or Bikeway by directing restaurant patrons to form lines on the east side of the Building, as set forth in the diagram attached hereto as Exhibit B-3.

r. The Trust shall reasonably cooperate, at Concessionaire's sole cost and expense, with Concessionaire and execute all forms, applications and permits that Concessionaire shall request the Trust to sign in order that Concessionaire may operate its restaurant business at the Premises in accordance with and pursuant to the terms and conditions of this Concession Agreement.

s. Concessionaire shall not place or have any claim or interest in any vending machines at the Premises.

t. Concessionaire acknowledges and agrees that it shall be solely responsible for security at the Premises. Concessionaire shall provide for a minimum of one (1) trained security person on duty at all times during Restaurant Hours. Concessionaire shall also provide for additional security personnel for Concessionaire Events according to need based upon the size and nature of the events. During times that the Premises are closed and no security personnel are present, Concessionaire shall manage security through an electronic surveillance and alarm system. Throughout the Term, Concessionaire shall provide reasonable cooperation to the Trust to (i) assist in the investigations of incidents concerning public and park employee safety and non-compliant behavior, and (ii) to enhance public and park employee safety and security, both at or about the Premises.

u. Concessionaire shall not conduct or solicit business or distribute advertising or promotional material on the Pedestrian Esplanade or Bikeway in the vicinity of the Premises or at any other location within the Park without the express written consent of the Trust.

v. There is no designated area for private vehicular pick-ups and/or drop-offs of Concessionaire's guests and employees at the Premises or within the Park. Concessionaire shall instruct its guests and employees to arrive by public transportation that services the location, or to otherwise be picked-up and/or dropped-off at an appropriate and safe location east of Route 9A from which they may access the Premises via a cross walk. Alternately, employees and guests may arrive and depart via the Pedestrian Esplanade, Bikeway and, if available, waterborne transportation.

3. **Mobile Concession Units.**

(a) Mobile Concession Units are permissible at the following two (2) locations, each depicted in Exhibit A-1:

(b) The pricing for the items sold from the Mobile Concession Unit shall be the same or less than the pricing offered at the Concessionaire's restaurant. Concessionaire's current sample menu with pricing is attached hereto as Exhibit B-1. Concessionaire may update the menu and pricing from time to time with the prior approval of the Trust.

(c) Concessionaire shall (i) keep the Mobile Concession Units clean, free from graffiti, and in good condition (reasonable wear and tear excepted); and (ii) ensure that the Mobile Food Units do not leak any type of fluid, including water, onto the ground. The Trust may require that Concessionaire, at its sole cost and expense, replace Mobile Concession Units that are in poor condition as reasonably determined by the Trust.

(d) The design of signage, umbrellas, canopies, and other equipment attached to Mobile Concession Units are subject to prior written approval by the Trust and shall be maintained in good condition (reasonable wear and tear excepted).

(e) Each Mobile Concession Unit must clearly display: (i) a valid Trust Permit; (ii) a valid Department of Health Certificate; and (iii) an authorized Menu/Price List.

(f) Concessionaire shall obtain a Department of Health ("DOH") Vendor License for each person designated as an operator of a Mobile Concession Unit and a DOH Mobile Food Vending Unit permit for the Mobile Concession Unit (collectively, the "**DOH Permits**"). Concessionaire must submit the DOH Permits to the Trust prior to the commencement of any Mobile Concession Unit operations; otherwise, Concessionaire shall (i) be instructed to cease such operations; and (ii) be subject to fines and confiscation of the Mobile Concession Unit by PEP, the New York City Police Department, New York Fire Department and/or the DOHMH.

4. **Trust Use of Premises.** The Trust and the Hudson River Park Friends ("Friends") shall have the right to use the Premises (or a portion thereof) and employ Concessionaire's services on an exclusive basis, at no cost or expense to the Trust or Friends other than for reimbursement to Concessionaire for its direct and actual out-of-pocket costs in connection therewith, up to two (2) times during each calendar year during the Term, for up to four (4) hours per use, for the Trust's or Friends' fundraisers, events or meetings (each, a "Trust Use"); provided, however, that no such Trust Use shall occur (i) on Fridays or Saturdays during the period from May 1st through October 31st of any year or (ii) on New Year's Eve or the Fourth of July. The Trust shall notify Concessionaire in writing of its intent to use the Premises or a portion thereof for such Trust Use as soon as reasonably practicable, which notice shall set forth the proposed date of such Trust Use. The Trust shall purchase all of its alcohol (if any) for any such Trust Use from Concessionaire, provided Concessionaire offers the same at competitive prices. Concessionaire shall thereafter cooperate with the Trust to confirm or reschedule such proposed date for the Trust Use. The exercise of any such right by the Trust shall not entitle Concessionaire to any compensation other than as set forth in this Exhibit B, or any abatement or diminution of Annual Base Concession Fee, Percentage Concession Fee or Additional Charges or to impose any liability upon the Trust or Friends by reason of inconvenience to Concessionaire, or interruption of Concessionaire's business, or otherwise.

5. **Marketing Partnerships.** The Trust may develop "marketing partnership" agreements identifying specific brands as the "designated" products of the Trust and specific service providers as the "designated" service providers of the Trust. In connection therewith, within thirty (30) days

of written notice to Concessionaire, Concessionaire shall (i) sell the products identified in such notice (the "Partner Products") to the extent the Concessionaire sells goods of substantially the same type as the Partner Products, and (ii) obtain the services identified in such notice from the specified service provider, to the extent (A) Concessionaire needs or otherwise takes advantage of such services and (B) such service provider provides the services at a competitive price. In addition, upon written notice from the Trust, Concessionaire shall purchase the Partner Products from designated distributors, provided that (x) said distributors supply the Partner Products at a competitive price, (y) the foregoing restrictions shall not apply to products made by or specifically for Concessionaire and (z) marketing partnerships developed by the Trust with respect to alcoholic beverages shall be non-exclusive. By way of example, if the Trust enters into a "marketing partnership" with a financial institution that provides credit card service, Concessionaire will be required to include that payment card among the credit cards that they accept as means of payment. Concessionaire may be required to give the Trust's marketing representative priority in the placement and scheduling of advertising, merchandising and/or signage to the extent advertising, merchandising and/or signage is otherwise permitted on the Premises by Concessionaire.

6. Location Identification. Unless specifically directed to the contrary by the Trust, Concessionaire will identify its location as being at Hudson River Park's Pier 84 in all self-produced literature, brochures, email, social media, website(s), handouts, advertising, and dissemination of information of any kind respecting the Premises and the Permitted Uses hereunder and use commercially reasonable efforts to have independent third party produced literature, brochures, email, social media, digital media, website(s), handouts, advertising, and dissemination of information of any kind respecting the Premises and the uses permitted hereunder identify the location as being at Hudson River Park's Pier 84.

7. Signage.

a. Concessionaire shall not install or display any public-facing signage in, on, about or adjacent to the Premises, without the Trust's prior written consent, unless such signage is required by law. "Signage" includes, without limitation, any public-facing sign not provided by the Trust that identifies, directs, regulates or displays information to the public, including banners, wraps and windmaster posters. The design of all Signage must comply with the Hudson River Park Concessionaire Signage Standards ("Signage Standards"), annexed hereto as Exhibit B-4. All plans/renderings of Signage shall be submitted to and approved by the Trust in advance of production, which approval the Trust agrees it shall not unreasonably withhold, condition or delay provided that Signage Standards are met and the brand being advertised is unique to the Concession. Signage installed prior to issuance of the Signage Standards shall be temporary and subject to replacement. Notwithstanding the foregoing, the Trust hereby consents and agrees to the installation of Signage pursuant to and in accordance with the plans and renderings attached hereto as Exhibit B-4. Concessionaire shall obtain all permits and licenses for the installation, maintenance and operation of Concessionaire's Signage.

b. Unless otherwise approved by the Trust in accordance with this Exhibit B, no advertising material or interior Signage of any kind shall be placed in such manner and location so as to be intended to be visible from the exterior of the Building. No pennants, banners or other advertising matter shall be suspended from the ceiling or interior walls of the Premises in a manner that affects the structure of the Building or such that the same are unintentionally visible from the exterior of the Building without the Trust's approval,

which approval shall not be unreasonably withheld, conditioned or delayed (it being agreed that the Trust shall only have the right to object to any such pennants, banners or other advertising matter that does not affect the structure of the Building to the extent the Trust reasonably deems such matter to be offensive). All window displays, including, without limitation, advertising material and Signage, shall be neat and professionally manufactured and in compliance with the reasonable rules and regulations adopted by the Trust from time to time and in keeping with the character and standards of the improvements within the Building as determined by the Trust in its sole discretion, exercised reasonably. The Trust shall also have the right to temporarily remove and re-install any of Concessionaire's exterior Signage to enable the Trust to perform repairs to the Building or other areas of the Park. The Trust shall use commercially reasonable efforts (which shall include the use of overtime or premium labor if Concessionaire pays for the incremental costs of such overtime or premium labor in excess of the cost of such labor at regular rates during Business Hours) to perform such work in such a manner so as to minimize interference that might be occasioned to Concessionaire's business operations. The Trust shall promptly repair any damage caused by the Trust or the Trust's agents in the Premises during such work, including any repair or replacement required to any finishes in the Premises as a result of such work.

8. Vehicle Access at Premises.

Concessionaire's vehicular product and service delivery and trash pick-up service shall be conducted in accordance with Concessionaire's Logistics Plan attached hereto as Exhibit B-5. Concessionaire's Logistics Plan may be modified from time to time with prior written consent of the Trust.

9. Use of Restrooms.

Concessionaire's employees and customers shall have non-exclusive use of the restrooms located within the Building to the south of the indoor portion of the Premises (the "Restrooms"). Concessionaire shall monitor such use and shall promptly inform the Trust of any damage or need for additional cleaning services at the Restrooms. The Trust may, in its sole but reasonable discretion, impose as "Restroom Service Charges", its actual cost of making repairs and performing additional cleaning services to the Restroom in excess of normal cleaning and repair services to other public restrooms located elsewhere in the Park.

EXHIBIT B-1

Concessionaire's Concept Proposal

EXHIBIT B-2

Concessionaire's Menu Offering

EXHIBIT B-3

Concessionaire's Management of Queues for Restaurant Patrons

EXHIBIT B-4

Hudson River Park Concessionaire Signage Standards

EXHIBIT B-5

Concessionaire's Operational Plan

EXHIBIT C

INSURANCE

- a) Upon the execution date of the Concession Agreement or as of the date indicated in a “Notice to Proceed”, the Concessionaire shall provide the Trust with (i) Certificates of Insurance naming the Additional Insureds set forth below and, (ii) at the request of the Trust, the “Schedules of Forms and Endorsements” and copies of the Forms and Endorsements evidencing compliance with all coverage requirements contained in this **Exhibit C**. Such certificates and Schedules of Forms and Endorsements shall be in form and substance acceptable to the Trust. Acceptance and/or approval of such certificates and/or Schedules of Forms and Endorsements and copies of the Forms and Endorsements by the Trust do not, and shall not, be construed to relieve the Concessionaire of any obligations, responsibilities or liabilities under this **Exhibit C**.
- b) All insurance required by this **Exhibit C** shall include the following as “Additional Insured” if such coverage is available under such insurance policies: Hudson River Park Trust, the State of New York, the New York State Office of Parks, Recreation and Historic Preservation, the New York State Department of Environmental Conservation, the City of New York, and the New York City Department of Parks and Recreation. The Trust offices are located at Pier 40 - 353 West Street, Suite 201, New York, NY 10014 - Attn: Insurance Manager. The Additional Insured protection on the General Liability policy shall be provided on form CG 20 10 11 85 or its equivalent, or may be obtained through a combination of CG 20 10 07 04 and CG 20 37 07 04 or their equivalents. Additional Insured coverage must apply to direct and vicarious liability for both on-going and completed operations.
- c) Concessionaire shall require that any subcontractors or sub-subcontractors that perform work for the Concessionaire under this Concession in a sub-contract amount of **Five Thousand Dollars (\$5,000)** or more carry insurance with the same limits and provisions provided herein unless otherwise approved by the Trust on a case-by-case basis. All subcontractor insurance policies must include ISO Endorsement CG 20 38 or its equivalent to ensure additional insured protection is afforded the Trust without regard to privity of contract.
- d) Each insurance carrier must be rated at least “A-” Class “VII” in the most recently published A.M. Best’s Insurance Report. If, during the term of the policy, a carrier’s rating falls below “A-” Class “VII”, the insurance policy must be replaced no later than the renewal date of the policy with an insurer acceptable to the Trust and rated at least “A-” Class “VII” in the most recently published A.M. Best’s Insurance Report.

- e) Concessionaire shall cause all insurance to be in full force and effect as of the execution date of the Concession Agreement, or as of the date indicated in a “Notice to Proceed” if issued by the Trust, and to remain in full force and effect throughout the Term of the Concession and as further required by this **Exhibit C**. Concessionaire shall not take any action, or omit to take any action, that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect. Coverage shall:
1. Be primary and non-contributing to any insurance or self-insurance maintained by the Trust.
 2. Be obtained at the sole cost and expense of Concessionaire or its respective subcontractor(s), and shall be maintained with insurance carriers authorized to do business in New York State and acceptable to the Trust.
 3. Provide written notice to the Trust, at least thirty (30) days prior to the termination, cancellation or non-renewal or material alteration of such insurance policies; notice shall be sent, via express or certified mail to:

Hudson River Park Trust
Attn: Insurance Manager
353 West Street
Pier 40, Second Floor
New York, NY 10014
 4. Be solely responsible for the payment of their respective deductibles and self-insured retentions to which such insurance policies are subject. Self-Insured Retentions may not exceed **Ten Thousand (\$10,000)** per claim unless otherwise approved by the Trust. General liability and umbrella/excess policies shall contain no deductibles in excess of **Ten Thousand Dollars (\$10,000)** per claim unless otherwise approved by the Trust.
- f) Under no circumstances shall any insurance policies exclude coverage for claims that result from the imposition of New York Labor Law or for any Public Open Space or any portions of the premises used or for Public Access and Public Benefit Uses.
- g) Upon the renewal date of any insurance policies, the Concessionaire shall supply the Trust with updated replacement proofs of coverage on Certificates of Insurance.
- h) Concessionaire shall cause to be included in each of its insurance policies a waiver of the insurer’s right of subrogation against the Trust and/or any Additional Insureds.

- i) Concessionaire, throughout the Term of the Concession, or as otherwise required by this **Exhibit C**, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of this **Exhibit C**, or as required by law, whichever is greater (limits may be provided through a combination of endorsements, primary and umbrella/excess policies):

(1) Commercial General Liability Insurance with a limit of not less than **Five Million Dollars (\$5,000,000)** per occurrence. Such insurance shall be written on ISO Form CG 00 01 12 07 or substitute form providing equivalent coverage and shall cover liability arising from premises operations, independent contractors, products-completed operations, personal and advertising injury, cross liability coverage, blanket contractual liability (including tort liability of another assumed in a contract), extended bodily injury coverage, and damage to rented premises. If such insurance includes an aggregate limit, it shall apply separately on a per project or per location basis. If the Concessionaire's work includes construction activities of any kind, then the Concessionaire must include a completed Acord 855 NY form when providing evidence of insurance.

(2) Comprehensive Business Automobile Liability Insurance with a limit of not less than **One Million Dollars (\$1,000,000)** Combined Single Limit. Such insurance shall cover owned, leased, hired and non-owned automobiles; shall cover bodily injury, property damage and medical payments, and include uninsured and underinsured motorists' coverage.

(3) Workers Compensation and Employers Liability and Disability Benefits Insurance at statutory limits as applicable to the Concessionaire's operations and required by law. Proof of Workers Compensation coverage must be presented on the NYS WCB C-105.2 or equivalent form; proof of Disability coverage must be provided on a DB-120.1 form.

- a. The NY State Workers Compensation Board guideline regarding these requirements is available at:

<http://www.wcb.ny.gov/content/main/forms/AllForms.jsp>

- b. If Exempt from Worker Compensation please refer to the following link and provide proof on the CE200 form issues by the NY State Workers Compensation Board:

http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp

- c. If the Concessionaire is not a NY State based business, then the Concessionaire must provide a copy of its Workers' Compensation policy's Declarations Page to

show that New York is listed in Part 3A and to confirm the policy provides statutory Employer's Liability coverage applicable in NYS.

(4) **Liquor Liability Insurance** with a limit of not less than **Two Million Dollars (\$2,000,000)** per common cause is required if the Concessionaire is in the business of manufacturing, distributing, selling, serving, or furnishing alcoholic beverages. This coverage must be carried by any subcontractor of the Concessionaire that is in the business of manufacturing, distributing, selling, serving, or furnishing alcoholic beverages.

(5) **Commercial Property Insurance** on the premises and Capital Installations protecting the Concessionaire and the Trust against loss of, or damage to, the premises and Capital Installations by fire and other risks of physical loss, or damage now or hereafter embraced by ISO "Special Form" or its equivalent, which shall be in the amount of the full replacement value of the damages to the premises and Capital Installations (without depreciation or obsolescence clause). Such insurance shall designate the Trust as a loss payee and Concessionaire as named insured.

(6) During the performance of any construction work, restoration or alteration, **"All Risk" Builder's Risk Insurance** written on a completed value (non-reporting) basis in an amount sufficient to prevent Concessionaire and the Trust from becoming coinsurers under provisions of applicable policies of insurance covering the perils insured under the ISO special causes of loss form extended coverage, including fire, vandalism, malicious mischief, collapse, water damage, and transit and theft of building materials, with deductible reasonably approved by the Trust, as well as during transit and at any off-site storage location intended for use with respect to the Premises, naming the Trust and Concessionaire as their respective interests may appear. The policy shall cover the cost of removing debris, including demolition as may be legally necessary by the operation of any law, ordinance or regulation.

(7) If the work involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any hazardous material or substance, the Concessionaire shall maintain in full force and effect throughout the term hereof, **Pollution Liability Insurance** with limits of not less than **Two Million Dollars (\$2,000,000)**, providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically damaged. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against the Trust arising from Concessionaire's work.

a. If coverage is written on a claims-made policy, the Concessionaire warrants that any applicable retroactive date precedes the effective date of the Concession; and

that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than two (2) years from the time work under the Concession is completed.

- b. If the Concession includes disposal of materials from the job site, the Concessionaire must furnish the Trust with evidence of Pollution Legal Liability insurance, in an amount satisfactory to the Trust, that is maintained by the disposal site operator for losses arising from the disposal site accepting waste under the Concession.

(8) If Concessionaire is providing or subcontracting professional services, Concessionaire shall certify that that the Concessionaire and/or its consultant(s) and subconsultant(s) maintain **Errors and Omissions Liability Insurance** with coverage of not less than **Three Million Dollars (\$3,000,000)** per claim and as an aggregate annual limit. Policy limits must be adequate to cover both the cost of defense and damages arising out of any resulting judgments and court costs.

- a. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by the Concession Agreement.
- b. If coverage is written on a claims-made policy, Concessionaire warrants that any applicable retroactive date precedes the effective date of the Concession; and that continuous coverage will be maintained, or an extended period exercised for not less than three (3) years and shall cover third party claims resulting from invasion of privacy, theft of data, data corruption and restoration.

The Trust and the Concessionaire shall cooperate in connection with the collection of any insurance proceeds that may be due in the event of loss, and each party shall execute and deliver such proofs of loss and other instruments that may be required for the purpose of obtaining the recovery of any such insurance proceeds. Concessionaire's obligations as set forth in this **Exhibit C** shall survive the expiration or earlier termination of the Concession Agreement.

EXHIBIT D

1. Concessionaire's Fit-Out/Construction Work:

- a. All work required for Concessionaire's occupancy and opening for business in the Premises as a restaurant ("Fit-Out Work") shall be diligently and promptly performed and completed by Concessionaire: (i) at its sole cost and expense, (ii) in accordance with the provisions of this Exhibit D, and (iii) on or prior to the Opening Deadline.

- b. In connection with the Fit-Out Work, Concessionaire shall:
 1. within forty-five (45) days of the Execution Date, submit to the Trust for its review and approval Concessionaire's plans and specifications (the "Plans and Specifications") for the Fit-Out Work;
 2. within the later of ten (10) days of the Trust's approval of the Plans and Specifications and the Commencement Date, and prior to commencing the Fit-Out Work, promptly apply for and diligently proceed to obtain all permits and licenses necessary for the performance of the Fit-Out Work, and promptly submit a copy of all such permits and licenses to the Trust and comply with all Legal Requirements relating to the conduct of the Fit-Out Work;
 3. perform the Fit-Out Work in accordance with Concessionaire's plans and specifications (the "Plans and Specifications") approved by Trust, which may not be modified except upon prior approval of the Trust, as described more fully in Section 2, below.
 4. commencing on the Commencement Date, provide and pay for all water, sewer, electricity, security, heat, garbage collection, and any other utilities used by Concessionaire or its agents during the performance of the Fit-Out Work or otherwise; it being acknowledged and agreed by Concessionaire that the Trust shall have no responsibility during the performance of the Fit-Out or otherwise to provide any utilities or environment control (including heating, cooling and security) as may be required by Concessionaire in connection with the performance of the Fit-Out Work hereunder; and prior to the commencement of the Fit-Out Work and until the completion thereof, maintain or cause to be maintained on behalf of itself, and each of its contractors and subcontractors, all necessary insurance protection as outlined more fully in Exhibit C, herein;
 5. use all new or like-new and first quality materials, equipment and appliances in the performance of the Fit-Out Work and installation of the Trade Fixtures (as hereinafter defined) necessary for the proper operation of Concessionaire's business;

6. maintain the Premises in a clean condition, subject to the Trust's reasonable approval;
 7. upon reasonable advance notice, which notice may be telephonic or by electronic mail, allow the Trust or the Trust's representative to inspect, at any time, the performance and progress of the Fit-Out Work. The Trust agrees that during any such inspection, the Trust shall use commercially reasonable efforts to minimize interference with the Fit-Out Work; and
 8. upon the completion of the Fit-Out Work and prior to the time Concessionaire has opened the Premises for business, furnish the Trust with (i) affidavits and lien waivers that comply with the mechanic's lien law of the State, showing that all subcontractors, materialmen, and laborers have been paid for all work, material, and labor furnished for said Premises; and (ii) deliver to the Trust copies of the temporary or permanent certificate of completion for the Premises and all filed permits, and two (2) complete and final sets of "as built" drawings for the Premises in hard copy form plus additional sets in both Adobe ".pdf" format and AutoCAD ".dwg" format (Release 14 or later), together with a plotter configuration file on CD. In addition, Concessionaire shall deliver to the Trust copies of all sign offs and applicable approvals of Governmental Authorities required in connection with the Premises and the Fit-Out Work as and when the same are available.
- c. Notwithstanding anything to the contrary contained in this Concession Agreement, including, without limitation, this Exhibit D, in the event Concessionaire fails or is unable to obtain the permits and licenses necessary for the performance of the Fit-Out Work within six (6) months following Commencement Date, the Trust may elect, upon prior written notice to Concessionaire and at Concessionaire's sole cost and expense, to attempt to obtain Concessionaire's building permit on behalf of Concessionaire (and, if the Trust so elects, Concessionaire shall cooperate with the Trust in connection with such attempt). The terms of this Section 1 (c), shall survive the expiration or earlier termination of Concession Agreement, in which case the right of use with regard to the Plans and Specifications shall reside with the Trust, provided that Concessionaire shall bear no further costs and expenses with respect thereto.
2. **Submission of Modifications to the Plans and Specifications for Approval:** Upon the Commencement Date, Concessionaire shall have provided the Trust, and the Trust shall have approved, the Plans and Specifications setting forth: (a) the Fit-Out Work, and (b) the schematic fixture plan attached thereto ("Concessionaire's Schematic Fixture Plan"). Concessionaire shall obtain the Trust's written approval (which approval shall not be unreasonably withheld, conditioned or delayed so long as such work is in accordance with the restaurant concept) of any revision or material modification to the Plans and Specifications for work to be performed by Concessionaire as part of the Fit-Out Work and Concessionaire's Schematic Fixture Plan on or for the Premises prior to commencement of any such work by Concessionaire or Concessionaire's agents, employees, contractors and/or subcontractors. Concessionaire shall prepare, at its sole cost and expense, and in full compliance with all Legal Requirements, revisions or modifications to the Plans and Specifications requiring such

compliance review prepared by a properly-licensed architect or engineer (“Concessionaire’s Modified Plans”). Concessionaire’s Modified Plans shall be prepared substantially in accordance with the Plans and Specifications, or if modified pursuant to this Section 2, the most recently approved Plans and Specifications or Concessionaire’s Schematic Fixture Plan. Concessionaire shall submit, in hard copy form, two (2) sets of reproducible prints of Concessionaire’s Modified Plans, plus an additional set of Concessionaire’s Modified Plans in electronic form in Adobe “.pdf” format, to the Trust or the Trust’s designated representative for approval. In no event shall the Trust’s approval of Concessionaire’s Modified Plans be deemed a representation by the Trust that Concessionaire’s Modified Plans comply with any or all Legal Requirements, nor create any responsibility or liability on the part of the Trust for their completeness or design sufficiency. The Trust shall advise Concessionaire within ten (10) days of receipt of Concessionaire’s Modified Plans whether same are acceptable and if not, the Trust shall specify its objections. Concessionaire shall revise Concessionaire’s Modified Plans as the Trust shall reasonably require and submit such revisions for the Trust’s approval within ten (10) days after Concessionaire’s receipt of the Trust’s objection notice. The Trust shall advise Concessionaire of the acceptability of such revisions within five (5) days of the Trust’s receipt of the same. This procedure shall be repeated until all of Concessionaire’s Modified Plans are approved by the Trust (the “Approved Concessionaire’s Modified Plans”). Upon approval by the Trust, the Approved Concessionaire’s Modified Plans shall be deemed incorporated in and made part of the Plans and Specifications. No material change to the Plans and Specifications or Concessionaire’s Schematic Fixture Plan, or any change that would materially affect the Building, may be made except, as determined by this Section 2. For the purposes set forth herein, changes to signage shall be treated as material.

3. **Concessionaire’s Trade Fixtures and Other Personal Property:** Concessionaire shall fully equip the Premises with trade fixtures (the “Trade Fixtures”) in accordance with Concessionaire’s Schematic Fixture Plan. Concessionaire shall, in addition, fully equip the Premises with all personal property, equipment, appliances, stock in trade, furniture and furnishings, signs, and other property necessary for the proper operation of Concessionaire’s business in Concessionaire’s reasonable and good faith discretion (collectively “Personal Property”). All of Concessionaire’s materials shall be compliant with all Legal Requirements. All Trade Fixtures and Personal Property put or installed in the Premises at Concessionaire’s expense, as distinguished from the Fit-Out Work, shall remain the property of Concessionaire and shall be removable at any time, but no later than the earlier of the Expiration Date or the early termination date (if any) (the “Personal Property and Trade Fixtures Removal Deadline”); provided that Concessionaire shall repair any damage to the Premises caused by the removal of the Trade Fixtures and Personal Property. If Concessionaire is in default on the Expiration Date or early termination date (as the case may be), the Trust shall have the benefit of any applicable lien on the Trade Fixtures and Personal Property located in or on the Premises as may be permitted under the laws of New York State, and in the event such lien is asserted by the Trust in any manner or by operation of law, Concessionaire shall not remove or permit the removal of the Trade Fixtures and Personal Property until the lien has been removed and all defaults have been cured; provided, however, that the Trust acknowledges and agrees that its rights under this Section 3 shall be subject and subordinate to the rights of any lender or security interest holder pursuant to a Security Agreement in accordance with the terms of Section 4 below. Any Trade Fixtures or Personal Property not removed by Concessionaire by the Personal Property and Trade Fixture Removal Deadline may be construed by the Trust as abandoned by Concessionaire, or the Trust may order Concessionaire to remove said items or

have the same removed at Concessionaire's expense. The Trust's rights under this Section 3 shall survive the Expiration Date or early termination date (if any).

4. Prohibition on Liens on Concessionaire's Trade Fixtures and Other Personal Property:

Any Trade Fixtures or Personal Property located or installed by Concessionaire in the Premises may be subject to a chattel mortgage, Uniform Commercial Code filing statement, conditional sale agreement or other title retention or security agreement (collectively, a "Security Agreement"), provided that (i) no such Security Agreement or Uniform Commercial Code filing statement shall be permitted to be filed as a lien against the Premises or any portion thereof, (ii) except as provided in the Security Agreement (but subject to clause (iii) below), no lender shall have any right to remove the Trade Fixtures or Personal Property from the Building without the Trust's approval, which approval may be withheld in the Trust's reasonable discretion and (iii) such Security Agreement shall provide that (x) prior to the removal of the Trade Fixtures or Personal Property, such lender shall give reasonable prior written notice to the Trust of its intent to remove the Trade Fixtures or Personal Property accompanied or promptly followed by a written statement setting forth the amount due under the Security Agreement, (y) the removal of the Trade Fixtures or Personal Property shall be performed under the supervision of the Trust or its agent and in a manner reasonably satisfactory to them, shall be subject to the Trust's reasonable rules and regulations with respect thereto, and provided that such lender shall repair any and all damage caused to the Premises by reason of such removal, and (z) the Trust shall have no liability to such lender in the event that the Trade Fixtures or Personal Property shall not be removed by such lender prior to the Expiration Date or earlier termination date, and such Trade Fixtures or Personal Property shall be deemed abandoned and shall be governed by the provisions of this Section 4.

5. Mechanics' Liens: Concessionaire shall take all actions and do all things necessary to prevent the filing of (i) any construction, mechanic's, or materialman's lien against the Premises, the Building or the Park by reason of any work, labor, services or materials performed or supplied or claimed to have been performed for or supplied to Concessionaire, or anyone holding the Premises, or any part thereof, through or under Concessionaire, or (ii) any other lien arising by reason of any acts or omissions of Concessionaire (collectively, a "Lien"). If any Lien shall at any time be filed, Concessionaire shall either cause the same to be vacated and canceled of record within sixty (60) days after the date of notice to Concessionaire of the filing thereof or, if Concessionaire in good faith determines that such Lien should be contested, Concessionaire shall furnish such security, by surety bond or otherwise, as may be necessary or be prescribed by law to release the same as a Lien against the real property and to prevent any foreclosure of such Lien during the pendency of such contest. Proof of such cancellation or security shall be submitted to the Trust within the foregoing sixty (60) day period. If Concessionaire shall fail to vacate or release such Lien in the manner and within the time period aforesaid, same shall constitute a default hereunder, and, in addition to any other right or remedy of the Trust resulting from Concessionaire's said default, the Trust may, but shall not be obligated to, vacate or release the same either by paying the amount claimed to be due or by procuring the release of such Lien by giving security or in such other manner as may be prescribed by law. Concessionaire shall repay to the Trust, upon demand, as Additional Charges, all sums disbursed or deposited by the Trust pursuant to the foregoing provisions of this Section 5, including the Trust's costs, expenses and reasonable attorneys' fees and disbursements incurred in connection therewith. Concessionaire shall also indemnify and save the Trust harmless from all loss, liability, costs, attorneys' fees, damages and/or interest charges incurred

by the Trust as a result of any such Lien. Nothing contained herein shall imply any consent or agreement on the part of the Trust to Concessionaire to subject the Trust's estate or interest to liability under any mechanic's or other lien law, whether or not the performance or the furnishing of such work, labor, services or materials to Concessionaire or anyone holding the Premises, or any part thereof, through or under Concessionaire, shall have been consented to by the Trust.

6. **Ownership of Improvements:** All betterments and improvements in or upon the Premises made by either party (except the Trade Fixtures and Personal Property), as Concessionaire Fit-Out Work or otherwise, including all heating, ventilating and air conditioning equipment and all pipes, ducts, conduits, wiring, paneling, partitions, railings and the like shall remain upon and be surrendered with the Premises as a part thereof upon the Expiration Date or early termination date (if any) and shall become the property of the Trust at such time.
7. **Design Review Fee:** Upon the Execution Date, Concessionaire shall payas Additional Charges, a non-refundable design review fee equal to \$10,000 in connection with the the Trust's review of plans and specifications submitted by Concessionaire hereunder. Such amount shall be deemed earned on payment and shall be in addition to, and not in lieu of, the fees and expenses of Concessionaire hereunder.
8. **Utility Service:**
 - a. The Trust shall provide stub-up connection to gas, water, sanitary sewer and electric service as shown on the Trust's as built-drawing of the Building, and for utility mains, feeders, ducts, conduits and lines from the street to the utility meters serving the Premises located within the Utility Room. Except as aforesaid, Concessionaire shall be solely responsible for the provision of electric, gas and water connections and service to the Premises, and upon the Commencement Date, Concessionaire shall be solely responsible for all utility connections from meters within the Utility Room to the Premises.
 - b. Concessionaire will furnish, install and extend all necessary facilities from the Utility Room to the Building (except as may be provided by the Trust upon the Commencement Date as shown on the Trust's as built-drawing of the Building), and within the Premises to provide utility services needed for its own use. Where necessary, Concessionaire shall make application for and arrange for the installation of all meters or other devices which directly meter services to each respective providing utility company. Except as otherwise provided herein, the Trust shall have no obligation to provide any other utilities or heating, ventilating, plumbing, electric or air-conditioning services or equipment. At all times during the Term, Concessionaire's use of any utility service shall not exceed the capacity of the mains, feeders, ducts, conduits and lines serving the Premises.

Concessionaire's Schematic Fixture Plan

EXHIBIT E

1. Concessionaire's Repair and Maintenance Obligation

(a) Except as expressly provided for herein, Concessionaire's shall keep and maintain the Premises in good condition and repair including Concessionaire's Fit-Out Work, Trade Fixtures and Personal Property; all glass windows and doors; flooring; utility lines; conduits; pipes; railings, lighting; exterior terrace pavement; and all Building systems and lines providing exclusive service to the Premises (including, without limitation, HVAC, plumbing and electrical systems). All repairs or replacements to the Premises or any installation, equipment, services or facilities therein or thereabout shall be made by Concessionaire at its sole cost and expense, including painting and decorating; the maintenance, repair and replacement of the heating, electrical and air-conditioning systems; plumbing and sewer systems within the Premises that exclusively serve the Premises; all fire alarm equipment in the Premises; storefronts, windows, and other glass; entrance and service doors; Signage; and any other mechanical or operational installations exclusively serving the Premises.

(b) All repairs and replacements required as a result of damage caused by fire and other casualty covered by Concessionaire's insurance shall be in quality, utility and class equal to the original work or item.

(c) The term "repairs" shall include all necessary replacements, removals, renewals, alterations, and additions and shall be made in compliance with the Legal Requirements, and all materials therefor shall be at least equal in functionality, quality and class to the original materials.

(d) Concessionaire shall give prompt notice to the Trust of any accident, casualty, damage or other similar occurrence in or to the Premises, the Trash Room, the Building, or the Exterior Common Area of which Concessionaire has knowledge.

(e) Concessionaire shall neither commit nor suffer, and shall use all reasonable precaution to prevent, waste, damage or injury to the Premises.

(f) Except as expressly provided for herein, the Trust shall not be required to supply any facilities, services or utilities whatsoever to the Premises and shall not have any duty or obligation to make any alteration, change, improvement, replacement, restoration or repair to the Premises. Concessionaire assumes the full and sole responsibility for the condition, operation, alteration, change, improvement, replacement, restoration, repair, maintenance and management of the Premises.

(g) Concessionaire shall have access to and the right to use any existing drains, vents, water and sewer and waste lines and facilities and existing ducts, chimneys, stacks, flues, signs and sign structures, air-conditioning and exhaust facilities and the like which may, in whole or in part, serve the Premises, so long as such access and use (a) is reasonable, and (b) Concessionaire's obligations to maintain and repair, and insure, defend, indemnify and hold the Trust harmless as required under the terms of the Concession Agreement shall apply to Concessionaire's access and use, but only to the extent such facilities are (i) the obligation of Concessionaire to maintain and repair (ii) wholly within the Premises, or (iii) damaged by Concessionaire.

2. Concessionaire's Alterations

Concessionaire shall make no alterations, additions or improvements in or to the Premises other than Concessionaire's Fit-Out Work, without the prior written consent of the Trust, which approval shall not be unreasonably denied, conditioned, or delayed. All such alterations, additions and improvements shall be done at Concessionaire's sole cost and expense and at such times and in such manner as the Trust may reasonably from time to time designate so as not to disturb other occupants of the Building or the Park or impede or interfere with any construction activities in the Park. The Trust's approval of Concessionaire's alterations, additions or improvements shall, however, create no responsibility or liability on the part of the Trust for their completeness, design sufficiency or compliance with Legal Requirements. All such alterations, changes and improvements (except for Concessionaire's Trade Fixtures and Personal Property) shall remain upon and be surrendered with the Premises as provided in the Concession Agreement.

3. Concessionaire's Maintenance of the Premises.

(a) Concessionaire shall, at its sole cost and expense, keep and maintain the Premises neat, clean, in proper repair and decor, and free from adverse waste and offensive odors, smoke, and fumes detectable in or outside of the Premises, and in an orderly and sanitary condition, free of vermin, rodents, insects and other pests. The Trust shall have no obligation to maintain any part of the Premises.

(b) Concessionaire shall properly vent and exhaust odors, smoke and fumes, from the Premises, and Concessionaire shall install, prior to opening the Premises for business and in compliance with all Requirements, such system or systems to accomplish the same as the Trust, in the exercise of its reasonable judgment, shall require; provided, however, that Concessionaire shall not be required to install any precipitator or similar equipment to the extent (i) such equipment is not required by applicable Legal Requirements and (ii) Concessionaire's ventilation and exhaust systems are sufficient to prevent odors, smoke and fumes that are offensive to patrons of the Park, as reasonably determined by the Trust. All such ventilation and exhaust system shall be consistent with Concessionaire's Fit-Out Work and approved by the Trust. If, in the Trust's commercially reasonable judgment, offensive or obnoxious odors, smoke, or fumes emanate from the Premises into other portions of the Building or the Park, or if Concessionaire's use otherwise poses a nuisance to others, Concessionaire shall promptly upon demand therefor, cause such offensive or obnoxious odors, smoke or fumes to cease emanating from the Premises or remedy or cure such other conditions to the Trust's reasonable satisfaction. The Trust acknowledges that the ordinary odors that will emanate from a business operated pursuant to the Permitted Uses are deemed not to be obnoxious or offensive. In the event Concessionaire does not comply with the foregoing, the Trust, at Concessionaire's expense, and as Additional Charges, may (i) close and seal any entrance to the Premises from other portions of the Building; (ii) take such actions as the Trust reasonably deems necessary or desirable to cause such odors, smoke or fumes to cease emanating from the Premises into other portions of the Building or the Park or to remedy or cure such other condition; and/or (iii) treat such failure by Concessionaire as an Event of Default subject to the curing of such condition as provided in the Concession Agreement.

(c) Concessionaire shall take reasonable precautions and steps to prevent vermin, rodents, insects and other pests from existing in the Premises or migrating into any other parts of the Building (including the Utility Space and the Trash Room) or the Park. Concessionaire shall retain a licensed professional exterminating company to service the Premises on a monthly basis

to keep the Premises free of vermin, rodents and insects. Concessionaire must (i) utilize an Integrated Pest Management (IPM) practices approved by the Trust and provide the Trust with two (2) Business Days' prior notice of any spraying or application of pesticides; and (ii) retain a certified applicator for such services in compliance with all Legal Requirements. Concessionaire shall furnish the Trust with a copy of the certified applicator's contract within five (5) business days of the Trust's request therefor.

(d) Concessionaire shall maintain all waste and sanitary lines within the Premises, and between the Premises and the Utility Space, and between the Premises and outside of the Building serving the Premises, and shall not misuse plumbing facilities or dispose of any foreign substances therein. Concessionaire shall not permit any food, waste, rubbish or other foreign substances to be thrown or drawn down any pipes. Concessionaire shall maintain the sanitary and plumbing lines of the Building in good order, repair and condition, and shall repair any damage resulting thereof. Concessionaire shall install and maintain a grease trap in the Premises to preclude the flow or leakage of grease into such sanitary or plumbing lines, which shall be cleaned at least once every 30 days (or more often if required by usage level or Legal Requirements).

(e) Concessionaire shall (i) install and maintain a restaurant-quality exhaust system, appropriate filters and grease traps to prevent accumulation of grease in the ducts used to exhaust fumes and vapors resulting from the preparation of food at the Premises; (ii) keep all filters, grease traps, range hoods and ducts therefrom clean and free of grease so as to avoid a fire hazard; (iii) clean out the filters, range exhaust ducts (horizontal and vertical) periodically as required by the Legal Requirements or whenever required to avoid a fire hazard; and (iv) install and maintain properly sized grease trap(s) for all sinks and dishwashers to prevent blockage of the Premises waste water system.

(f) Concessionaire shall install and maintain an automatic dry chemical extinguishing device approved by the New York Fire Insurance Rating Organization or other similar body over all hoods, ducts, deep frying, baking and all other cooking equipment, and shall keep such devices under service as required by such organization. Concessionaire shall install and maintain fire extinguishers of the type and capacity and in such locations as may be required by Legal Requirements, and in the absence of any such Legal Requirement, Concessionaire shall install and maintain in a readily available location within the Premises an ABC type, or equal, all purpose hand operated fire extinguisher containing a minimum capacity of ten (10) pounds in each cooking and indoor dining area.

(g) Concessionaire shall install and maintain gas cut-off devices (manual and automatic) as shall be approved by the Trust.

(h) Concessionaire shall employ a licensed contractor to perform Concessionaire's obligations for maintenance of the heating, cooling and ventilating units on the Premises and a contractor to perform Concessionaire's obligations for maintenance of all fire protection systems within the Premises. Such maintenance shall include at least semi-annual inspections and cleaning of said units and systems, together with such adjustments and servicing as each such inspection discloses to be required and, in addition, all repairs, testing and servicing as shall be necessary or reasonably required by the Trust or the Trust's insurance underwriter. Upon request, Concessionaire shall provide the Trust promptly a copy of reports of all such inspections.

(i) Concessionaire shall keep the Premises and the Exterior Common Area in clean and orderly condition, free from dirt, snow, ice, rubbish, obstructions and encumbrances (other than those placed by the Trust or other tenants at the Park) at all times. In furtherance of the foregoing, Concessionaire shall maintain a regular cleaning and trash receptacle schedule, which schedule is subject to the prior approval of the Trust. Concessionaire shall comply with a garbage removal plan for the removal of garbage from the Premises during off-peak park hours. Concessionaire shall, at its sole cost and expense, arrange for all waste, trash, recyclables, grease, oil and other refuse to be removed from the Premises and disposed of outside of the Park on a daily basis, which disposal shall be in accordance with all Legal Requirements. Concessionaire must shuttle trash using a hopper or rolling trash bin when transporting trash to the Trash Room that will not: (a) mar or otherwise damage the paved surface of the Exterior Common Area, and (b) leak or result in the dispersal of trash due to wind or any other condition. All pick-ups for disposal of Concessionaire's waste shall be made from the Trash Room and must be made between the hours of 1:00 a.m. and 5:30 a.m. Concessionaire shall provide, at its sole cost and expense, sufficient waste receptacles at the Premises with lids present at all times. The type, location and number of waste receptacles are subject to the Trust's approval. Large commercial trash cans may only be used in the Trash Room. Weather permitting, Concessionaire shall, at its sole cost and expense, clean the Exterior Common Area prior to opening each morning and after closing each evening, pursuant to a written cleaning plan approved by the Trust.

(j) Concessionaire shall, at its sole cost and expense, perform the following maintenance for the Exterior Common Area: (i) sweep and remove all litter and debris not less frequently than daily, or more often as necessary; (ii) power wash the pavers as necessary or within five (5) business days of receipt of a written directive reasonably requesting same from the Trust; (iii) remove snow and ice from the Exterior Common Area; (iv) promptly clean and remove any spill or obstruction; (v) clean and repair damage or staining to pavers; and (vi) remove litter from any adjacent planters.

(k) Concessionaire shall bundle and/or separate, as required, for pickup pursuant to Legal Requirements, all corrugated cardboard, magazines and catalogs, newspapers, high grade office paper and envelopes, computer paper, phone books, paper bags, cardboard boxes, pizza boxes, non-styrofoam egg cartons, milk and juice cartons, aluminum products (including foil and trays), metal cans, plastic and glass bottles, detergent bottles, glass jars, milk jugs, metals (pans, irons), aerosol cans, wire hangers, and paint cans. Recyclables must be rinsed and/or rid of all food products, as necessary.

(l) Concessionaire shall keep the Premises, all fixtures and Signage, and the Exterior Common Area free of graffiti, stickers, and unauthorized signage at all times. Such removal shall be commenced within twenty-four (24) hours following discovery of the same.

(m) Concessionaire shall submit a "Green Cleaning Program" to the Trust for its review and approval. Toxic cleaning agents are prohibited from use on the Premises, including products utilized in the cleaning of Concessionaire's equipment, Trade Fixtures and Personal Property located in and around the Premises. Concessionaire must ensure that toxic fluids do not leak into/onto the ground, the Premises, the Park or into the Hudson River. Concessionaire shall indemnify and hold the Trust harmless from and against any loss, liability, damages and costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) that the Trust may at any time suffer by reason of any type of toxic fluid, including contaminated water,

that leaks into/onto the ground, the Building, the Park or into the Hudson River caused by Concessionaire.

(n) Concessionaire shall, at the request of the Trust, provide a copy of any and all maintenance contracts and the appropriate insurance certificates associated with each such contract to the Trust.

(o) The Trust shall, upon reasonable notice to Concessionaire, inspect the Premises, including for the purpose of inspecting repair and maintenance work being performed by Concessionaire, and that if the Trust, in its reasonable judgment determines that repair and maintenance work is not being or has not been properly performed, the Trust shall notify Concessionaire, and Concessionaire shall promptly perform additional required work to fulfill its repair and maintenance obligations hereunder. The Trust agrees that during any such inspection, the Trust shall use commercially reasonable efforts to minimize interference with the operation of Concessionaire's business.

(p) Concessionaire shall keep all equipment contained within the Premises in good order and repair and shall replace the same when necessary with items of similar utility and value. Concessionaire shall not have the right, power or authority to, and will not, remove any equipment, including without limitation HVAC equipment, from the Premises, except for repairs, cleaning or other servicing, without the prior written consent of the Trust, which consent shall not be unreasonably withheld, conditioned or delayed, unless the same is promptly replaced by equipment of like kind and quality.

4. Trust Repair and Maintenance Obligations

(a) Throughout the Term, the Trust shall be solely responsible to make all structural repairs to Building Core and Shell elements, which elements the Trust represents and warrants are, to its knowledge, in good repair and working order as of the Commencement Date. The "Building Core and Shell" elements shall mean the following structural elements of the Building: (a) the pile foundation, and structural components, (b) the Building roof, (c) the structural steel frame, and (d) the exterior walls (but excluding all window and doors)

(b) . The Trust's obligation to make Building Core and Shell structural repairs shall not include ordinary repairs and maintenance, such as cleaning, painting, and removing graffiti. Notwithstanding anything to the contrary herein, the Trust shall not be responsible, and Concessionaire shall assume the obligation to repair, any damage caused to the Building Core and Shell as a result of the negligence or willful misconduct of Concessionaire or any of Concessionaire's agents, invitees, or contractors.

(b) The Trust shall maintain the Restrooms during Restaurant Hours as set forth herein subject further to the provision of Exhibit B, Section 9.

EXHIBIT F

Concessionaire's Trade Fixtures and Personal Property

EXHIBIT G
FORM OF ACCESS AGREEMENT

EXHIBIT H

GOOD GUY GUARANTY