

**HUDSON RIVER PARK TRUST**

**PIER 62 CAROUSEL 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:** Hudson River Park at Pier 62, as more specifically described in Exhibit A
- 1.4 **Date of Concession Agreement:** \_\_\_\_\_, 2019 (the “**Execution Date**”)
- 1.5 **Term:** Commencing on \_\_\_\_\_ (the “**Commencement Date**”), and ending on October 31, 2022 (“**Term**”), with two (2) additional one-year renewal options (the “**Extension Term(s)**”) exercisable by the Concessionaire with the approval of the Trust, as more specifically described in Section 5.
- 1.6 **Use:** Carousel Concession, as more specifically described in Exhibit B (the “**Concession**”).
- 1.7 **Fees:** As provided for herein, Concessionaire shall pay the Trust for the Term and the Extension Term: (a) the “**Minimum Annual Fee,**” (b) the “**Percentage Fees**” on Gross Sales<sup>1</sup> for each Term or Extension Term as described below.
  - 1.7.1 **Term 1:** For the period beginning on the Commencement Date and ending on October 31, 2020, a Minimum Annual Fee of \_\_\_\_\_ (\$\_\_\_\_\_) and, as applicable, a Percentage Fee equal to \_\_\_\_\_ in accordance with Part II, Section 6 hereof.
  - 1.7.2 **Term 2:** For the period beginning on November 1, 2020 and ending on October 31, 2021, a Minimum Annual Fee of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) and, as applicable, a Percentage Fee equal to \_\_\_\_\_ calculated in accordance with Part II, Section 6 hereof.
  - 1.7.3 **Term 3:** For the period beginning on November 1, 2021 and ending on October 31, 2022, a Minimum Annual Fee of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) and, as applicable, a Percentage Fee equal to \_\_\_\_\_ calculated in accordance with Part II, Section 6 hereof.
  - 1.7.4 **Extension Term 1:** For the period beginning November 1, 2022 and ending on October 31, 2023, a Minimum Annual Fee of \_\_\_\_\_ Dollars

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

(\$ \_\_\_\_\_) and, as applicable, a Percentage Fee equal to \_\_\_\_\_ calculated in accordance with Part II, Section 6 hereof.

- 1.7.5 **Extension Term 2:** For the period beginning November 1, 2023 and ending on October 31, 2024, a Minimum Annual Fee of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) and, as applicable, a Percentage Fee equal to \_\_\_\_\_.
- 1.8 **Security Deposit:** Concessionaire shall provide the Trust a Security Deposit in an amount equal to \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) by \_\_\_\_\_, 2020 as more specifically described in Part II, Section 7 hereof.
- 1.9 **Insurance:** Concessionaire shall provide required insurance as more specifically described in Exhibit C.

**2. Hours of Operation:**

Concessionaire is authorized to operate the Concession year round, seven days per week from 6:30 am to 12:30 am EST. During Term I, at minimum, the Concessionaire shall operate the Concession beginning on the Commencement Date through October 31, 2020. For Terms 2-3 plus any exercised Extension Terms, the Concessionaire shall, at a minimum, operate the Concession from April 1st through October 31" each year, seven days per week. The hours of operation for all Terms and Extension Terms shall be, at a minimum, from 10:00 am until 9:00 pm EST from Memorial Day through the Labor Day weekend and from 11:00 am until 6:00 pm EST from April 1st through Memorial Day and from Labor Day through October 31st. If the Concessionaire intends to operate the Concession for any day(s) beginning November 1st through March 31<sup>st</sup> (the "Off-season"), the Concessionaire shall first provide the Trust with three (3) days' prior notice of the days and hours of intended operations. All Fees due for off-season operations shall be paid pursuant to Section 1.7 hereof.

3. **Improvements:** The Concessionaire shall make all ticket booth repairs and modifications as necessary for the efficient operation of the Carousel.
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:

XXXXXXXX

XXXXXX

Attn: XXXXXXXXXXXX

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](http://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 has determined that, as of the date hereof, no certificate of occupancy from the NYC Department of Buildings is required for the Premises. If, at any time, such certificate is determined to be required, the Trust shall use commercial reasonable efforts to obtain it. Concessionaire shall not be responsible for obtaining a certificate of occupancy from the NYC Department of Buildings.
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 of New York (“**City**” or “**New York City**”) or 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 Materials<sup>2</sup>, 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.
- 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 five (5) consecutive days, the Trust shall off-set that portion of the Minimum Annual Fee due and payable for that portion of the Term or the Extension Term in which such closure occurs in excess of such five (5) consecutive day period.
- d. Limitation on Damages from Use: Concessionaire hereby waives any claim for, any indirect, consequential or punitive damages including, without limitation, loss of profits or business opportunity, arising under or in connection with the Concessionaire's use or occupancy of the Premises.

## **6. Concession Term and Extension(s):**

- a. The term of the Concession Agreement (the "**Term**") as defined in Part I, Section 1.5 shall automatically continue until October 31, 2022, 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 the option to extend the Concession Agreement for up to two (2) additional one-year terms ("**Extension Term(s)**") provided: (1) Concessionaire provides Notice to the Trust by not later than October 31st of the

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<sup>2</sup> 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.

calendar year immediately preceding the then effective Expiration Date of its election to extend; (2) Concessionaire is not in default with regard to any material term of the Concession Agreement; and (3) the Trust, in its sole and absolute discretion, grants its approval of the Extension Term by not later than November 30th of the calendar year immediately preceding the expiration of the Term.

7. **Fees:**

a) The Minimum Annual Fee for each year of the Term shall be paid to the Trust in equal monthly installments during the Term (except for the first month of the Term which will be payable on the Commencement Date), on or before the first day of each month. When and as cumulative Net Gross Sales on the last day of each respective month in Term exceeds \_\_\_\_\_, the Percentage Fee shall be paid monthly equal to \_\_\_\_\_ of all such excess Net Gross Sales for that month, and said payments shall be due and payable by no later than the due date for submission by Concessionaires to the Trust of the Monthly Gross Sales Statement for each such month as set forth below.

a. **Gross Sales.** The term “**Gross Sales**” wherever used herein shall be defined to mean the gross dollar aggregate of the following exclusive of "Permissible Exclusions" (as hereinafter defined below): (a) the entire amount of the prices charged for all goods, wares and merchandise sold, leased, licensed or delivered and all charges for all service sold or performed by Concessionaire from all business conducted at, upon or from the Premises by Concessionaire, whether made for cash, by check, on credit, charge accounts or otherwise (without reserve or deduction for (y) inability or failure to collect the same, and (z) trade-in or similar transactions), including, but not limited to, transactions (i) where the orders therefore originate from or are accepted by Concessionaire at the Premises, but delivery or performance thereof is made from or at any other place, it being agreed that all sales made and orders received in or at the Premises shall be deemed made and completed therein, even though the payment or account may be transferred to another office for collection, and all orders which result from solicitation outside of the Premises where such solicitation is conducted by personnel operating from or reporting to or under the control or supervision of Concessionaire shall be deemed part of Gross Sales; (ii) pursuant to mail, telephone, internet, mobile device, or other similar device whereby orders are received at, delivered or billed from the Premises; (iii) by means of mechanical, electronic or other vending devices including without limitation "video games" (it being agreed that this clause (iii) shall not be interpreted so as to permit the use of any such mechanical or vending devices unless otherwise expressly permitted pursuant to another provision of the Concession Agreement); (iv) originating from whatever source, and which Concessionaire in the normal and customary course of Concessionaire's operations would credit or attribute to Concessionaire's business conducted in the Premises; and (b) all monies and other things of value received by Concessionaire from Concessionaire's operations at, upon or from the Premises which are not otherwise included in Gross Sales by the other provisions of this definition, including, without limitation, finance charges, cost of gift or merchandise certificates, all deposits not refunded to customers and all amounts received by Concessionaire with respect to claims for loss of or damage to stock-in-trade in excess of Concessionaire's original

cost of same and all amounts received under insurance policies with respect of loss of business, sales or profits.

Each charge or sale upon installment or credit (including without limitation "lay-away" sales) shall be treated as a sale for the full price in the month during which such charge or sale is made, irrespective of the time when Concessionaire shall receive payment (whether full or partial) therefore. Each lease or rental of merchandise shall be treated as a sale in the month during which such lease or rental is made, for a price equal to the total fee payable. The following are excluded ("**Permissible Exclusions**") from Gross Sales: (1) the exchange of merchandise between stores of Concessionaire or its subsidiaries where such exchanges are made solely for the convenient operation of Concessionaire's business and not for the purpose of consummating a sale which has been made at, upon or from the Premises; (2) sales of trade fixtures (provided Concessionaire has the right to remove the same pursuant to the terms of the Concession Agreement hereof) after use thereof, which are not part of Concessionaire's stock-in-trade and not sold in the regular course of Concessionaire's business; and (3) the amount of any local, county, state or federal sales, luxury or excise tax on such sales provided, and to the extent that, such tax is both added to the selling price (or absorbed therein) and paid to the taxing authority by Concessionaire (but not by any vendor of Concessionaire); provided, however, no franchise or capital stock tax and no income or similar tax based upon income, profits or gross sales as such, shall be deducted from Gross Sales in any event whatsoever. Cash or credit refunds made upon transactions included in Gross Sales but not exceeding the selling price of the merchandise returned by the purchaser and accepted by the Concessionaire may be deducted ("**Permissible Deductions**") from Gross Sales. The phrase "**Net Gross Sales**" as used in this Agreement shall mean Gross Sales less Permissible Deductions. For the purposes of this Paragraph, the term "**Concessionaire**" shall be deemed to include any of Concessionaire's affiliates, permittees, concessionaires, licensees, franchisees or any other occupant of the Premises.

b. 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 May 2020, 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.

c. 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.

- d. 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.
- e. 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.
- f. 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 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 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, Repair, Maintenance and Improvements:

- a. Security at the Premises and for the equipment, furniture and personal property located therein is the sole responsibility of the Concessionaire.
- b. Concessionaire is responsible for keeping the Premises, and up to fifty (50) feet around the Premises, maintaining same in a safe and clean condition, including but not limited to utilizing reasonable and prudent security measures and equipment, and providing for regular and prompt removal of garbage, rubbish, and litter. Concessionaire shall keep all signs, structures and equipment free of graffiti. Concessionaire will be responsible for maintaining a regular cleaning schedule, which must be submitted to the Trust for its review and approval. Concessionaire shall be fully responsible for the cost of securing and maintaining the Premises structures, utilities and improvements therein.
- c. Concessionaire must have and maintain an appropriate number of garbage receptacles of an approved design with lids present at the Premises at all times of operation. Accumulated rubbish must either be stored within the interior Premises space or taken off the site promptly. As described above, the Trust must approve the container's type, design and location in advance, and the container must be stored during times when the Premises is not open. Concessionaire will be responsible for cleaning and maintaining the Premises in accordance with all Trust rules and operating standards.
- d. Concessionaire must make private arrangements for refuse removal which must be approved in advance by the Trust. Refuse may not be left anywhere else in the park or in other park disposal areas.
- e. Toxic cleaning agents are prohibited from use on the Premises, including the cleaning of fixtures and equipment located in and around the Concession. Concessionaire must ensure that equipment and cleaning of equipment and fixtures does not leak any type of fluid, including water, into/onto the ground or waterways. Concessionaire must utilize "green" cleaning items as approved by the Trust.
- f. Concessionaire shall comply with all City, State and Federal regulations regarding recycling and is responsible for removing and disposing of recyclable products. The Concessionaire is responsible for the proper removal of waste products that require special handling or disposals.
- g. Concessionaire is required to maintain the entire Premises in a safe and stable condition and repair, as needed, all components and systems related to the Premises. At the end of the Term of the Concession Agreement or the Extension Term, if exercised and approved, Concessionaire shall return the Premises in a condition that is as good or better than its condition at the Commencement Date.
- h. At the close of each Concession Term, Concessionaire shall perform a comprehensive mechanical inspection of all components and systems related to the Premises and provide a report of findings to the Trust (the "**Annual Mechanical Inspection**"). Concessionaire, at its sole cost and expense, shall perform all necessary mechanical

maintenance and repairs discovered through the Annual Mechanical Inspection between November 1st and March 15th during Terms 1-3 and Extension Term I.

- i. Concessionaire must provide for, at its sole cost and expense, regular extermination under a schedule and program to be submitted to and approved by the Trust in advance. Failure to maintain a clean and healthy environment may result in the Trust requiring the Concessionaire to provide additional extermination services or may result in a default and the termination of the Concession Agreement.
- j. Concessionaire may erect a business location sign of appropriate size, text and location, subject to prior Trust approval. Signage design must be consistent with surrounding Park design and conform to criteria established by the Trust.
- k. Concessionaire will be responsible, at its sole cost and expense, for the purchase, installation and maintenance of all equipment needed to operate the Concession. All designs, installation and construction are subject to the Trust's prior written approval.
- l. Concessionaire shall provide any proposed new hookups to all utility connections, as necessary, including but not limited to, electric, gas, water and sanitary sewer. All such proposed work must be clearly identified. Concessionaire will also purchase and maintain all equipment, including fire suppression and fire/smoke detection systems, as well as interior lighting. Installation of aforementioned utility services, equipment and materials must be performed by licensed and insured professionals, must be consistent with standards established by the Trust and may only occur following written approval by the Trust.
- m. Concessionaire may install limited additional appropriate heating, ventilation and air conditioning systems as allowed by local code. Any alterations to the structure resulting from the proposed systems installations must be reviewed and approved by the Trust and work must be performed by qualified and licensed contractors. Such work must be designed by a New York State Licensed Registered Architect or Professional Engineer and submitted to the Trust for prior approval. Any such approved work may only be performed after obtaining any and all appropriate permits and approvals for undertaking such work.
- n. Fire suppression systems/equipment may be installed and maintained as required by local code. Concessionaire is required to meet all applicable NYC Fire Department codes and to provide supplemental equipment for fire protection, such as alarms, extinguishers, hoses and hose reels.
- o. Concessionaire may, at its sole cost and expense, install and provide for telephone and/or Internet service at the Premises.
- p. Supplemental partitions and finishes, including installation and alternation of flooring, wall and ceiling treatments must be approved by the Trust; work must be performed by qualified contractors and meet all of the necessary local code requirements.
- q. Except as specifically authorized by the Trust, Concessionaire shall not undertake any

construction, improvements, alterations or structural changes, nor erect or install signage of any kind on, to or at the Premises, without the prior specific written consent and authorization of the Trust. Such requests shall be submitted to the Trust's Property Manager for review and consideration.

- r. Concessionaire shall supply all equipment necessary to operate the Concession. All fixed equipment shall become the property of the Trust upon installation, at the Trust's option. Should the Trust choose not to exercise this option, it will be the responsibility of Concessionaire to remove the fixed equipment and return the Premises to the Trust in a condition as good as or better than that as of the Commencement Date.
- s. The Trust shall have no obligation to make structural alterations for the benefit of Concessionaire or for any purpose under the Concession Agreement.
- t. The Trust shall not have any responsibility whatsoever for the loss or destruction of any improvements made by Concessionaire or for furniture, fixtures, equipment or other property stored or used on the Premises.

#### **10. Termination of the Concession Agreement:**

##### a. Termination for Convenience.

- i. The Trust may, at any time for the Trust's convenience and without cause, terminate the Agreement without incurring any penalty or damages on account of such termination upon thirty (30) days' written notice to the Concessionaire.
- ii. In the event of such termination, Concessionaire shall continue to make Fee payments as provided for herein, up to and including but not beyond said early termination date.
- iii. The Trust, its directors, employees and/or agents shall not be by liable for damages to Concessionaire or have any other liability to Concessionaire in the event that the Concession Agreement is terminated as provided for herein, except for return of the Security Deposit in accordance with the provisions regarding same hereunder.
- iv. All provisions of the Concession Agreement relative to indemnification, audit and reporting shall survive the cancellation, expiration or termination of the Concession Agreement.
- v. 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.

- 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 [XXXXXXXXXXXX] 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 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.

**11. 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.
- b. 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.
- c. Concessionaire 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.

## 12. 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 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 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, 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 on the Premises, 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 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.

**13. 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.

**14. 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 as principals other than [REDACTED] and [REDACTED] 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 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.

15. **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.
16. **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.
17. **Non Discrimination:** In accordance with Article 15 of the New York State Executive Law (also known as the Human Rights Law), Title 8 of the New York City Administrative Code (also known as the NYC 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 actual or perceived age, race, creed, color, national origin, gender identity or expression, sexual orientation, predisposing genetic characteristics, military status, marital status, partnership status, domestic violence victim status, or alienage or citizenship status, and shall also follow the requirements of the NYS Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.. Neither shall the Concessionaire discriminate in the use of these Premises or any access to these Premises if such Premises are used as a public accommodation or in connection with a public service.
18. **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
19. **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.

20. **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.
21. **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.
22. **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.
23. **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.
24. **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.**
25. **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.
26. **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.



### **PART III (Exhibits)**

**EXHIBIT A**  
**PREMISES**

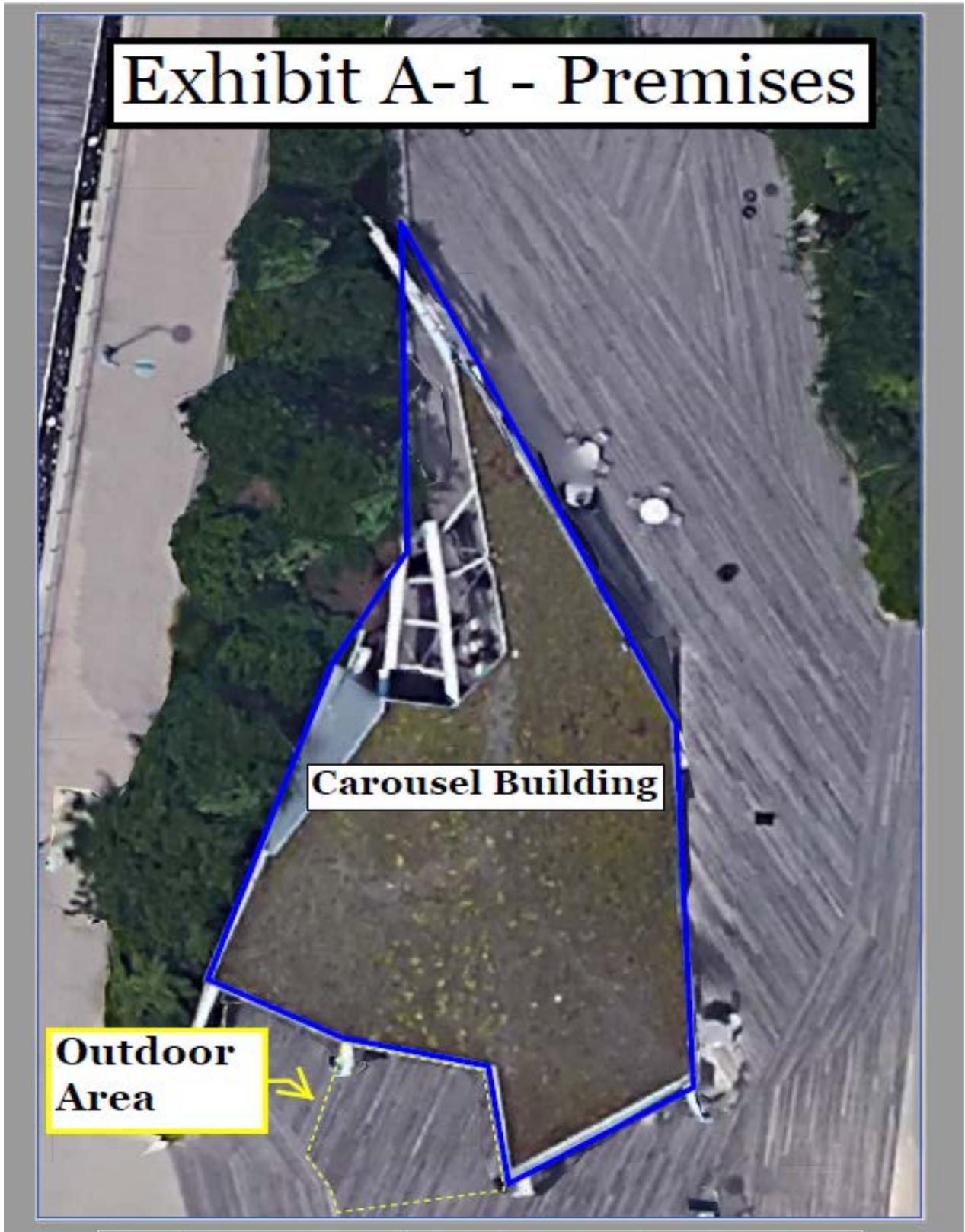
The Premises includes : (a) the Hudson River Park Pier 62 Carousel building located at Pier 62 (the “Carousel Building”), (b) approximately 440 square feet of outdoor space located immediately east of the Carousel building (the “Outdoor Area”), and (c) two (2) areas on Pier 62 designated for the operation of mobile concession units (the “MCU Areas”). The Carousel Building, Outdoor Area, and MCU Areas shall together be known as the Premises. See Exhibit A-1 attached hereto for a diagram of the Carousel Building and the Outdoor Area, Exhibit A-2 for a diagram of the MCU Areas and Exhibit A-3 for photos of the Premises.



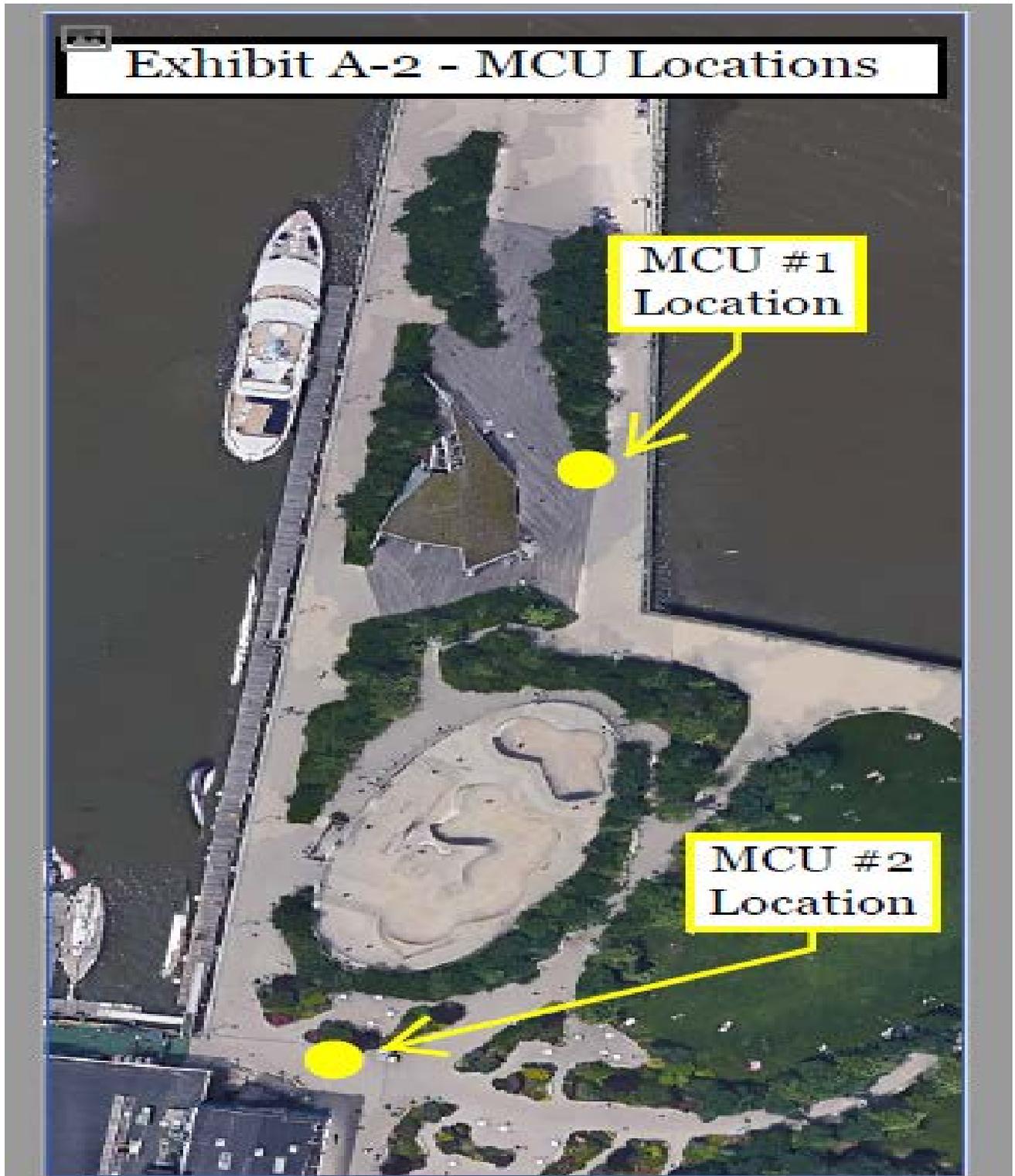
*Location within Hudson River Park*

EXHIBIT A-1

DIAGRAM OF THE CAROUSEL BUILDING AND THE OUTDOOR AREA



**EXHIBIT A2**  
**DIAGRAM OF THE MCU AREAS**



**EXHIBIT A-3**

**PHOTOS**



*Above, Carousel Building and Outdoor Area and below, detail of the Carousel*



**EXHIBIT B**  
**PERMITTED USE & MANNER OF OPERATIONS**  
**TRUST'S USE OF THE PREMISES**

1. **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, at its sole cost and expense, may enter upon, occupy and use the Premises for the purpose of operating the Concession for the accommodation of the public and in such manner as the Trust shall proscribe and as permitted by the laws, rules, regulations, and orders of governmental entities having jurisdiction thereof. Concessionaire shall provide the necessary number of personnel having the requisite skills together with the necessary personal equipment and consumable supplies to operate and maintain the Concession in good order and repair consistent with prevailing professional and industry or trade standards. Concessionaire's use, occupancy and operations at the Premises shall be solely for the specific purposes set forth herein and for no other purpose whatsoever.
- d. Concessionaire shall operate the Premises as a first-class, high quality carousel concession, offering Carousel rides, children's entertainment (i.e., magic shows, clown shows, etc.), and non-exclusive parties, including, but not limited to, catered children's parties, baby showers, baptisms, bridal showers, communions, graduation parties, and wedding/engagement photo shoots.
- e. Concessionaire may operate the Premises for private events (i.e., film shoots, photo shoots, non-party celebrations, etc.) once per month ("**Private Event(s)**") upon fifteen (15) days prior written notice to the Trust. The Concessionaire and the Trust shall each post all scheduled Private Events on their respective websites at least ten (10) days prior to the date of any Private Event. In addition, the Concessionaire shall place Trust-approved notices by the Carousel at least three (3) days in advance of any Private Event. Private Event opportunities and the Private Event Fees shall be advertised on the Concessionaire's website and awarded on a first-come first-served basis. The Concessionaire may request, in writing, that the Trust approve additional monthly Private Event(s). The Trust shall evaluate such request, taking into account the time and week day of the requested Private Event(s), and thereafter notify the Concessionaire of its approval or disapproval of the additional monthly Private Event(s).
- f. The Trust-approved Private Events fees are detailed in Table 1 below ("**Private Event Fees**"). The Concessionaire shall pay the Trust fifty percent (50%) of all Private Event Fees ("**Private Event Fee Share**") no later than thirty (30) days following the date of the Private Event. All Private Event Fees shall be excluded from Gross Sales but shall be reported by the Concessionaire in Monthly Gross Sales Statements and the Annual Gross Sales Statements.

*Table 1 -Private Event Fees*

Up to one (1) hour	
Up to four (4) hours	
Up to seven (7) hours	
Per additional hour in excess of the seventh (7 <sup>th</sup> ) hour	

- g. Concessionaire shall operate two (2) mobile concession units to sell food/snacks, water and assorted soft drinks, and other items consistent with the price list and menu (the "Menu") annexed hereto as Exhibit D. Such selection and prices must be comparable to those charged for similar goods at other similar locations within the region.
- h. Product brand or sponsorship advertising within the interior of the Carousel Concession is prohibited without specific Trust approval. Product brand or sponsorship advertising on the exterior of the Premises is strictly prohibited. Concessionaire is advised that the Trust may develop "marketing partnership" agreements identifying specific brands as the "designated" products of the Trust. If this occurs, the Trust will require Concessionaire to sell the specific products so identified if the Concessionaire sells goods in that product category. If directed by the Trust, the Concessionaire will be required to purchase the products from designated distributors, provided the said distributors provide the products at a competitive price. If the product is in the form of a service, the Concessionaire will be required to use the service identified. (For example, if the Trust enters into a marketing partnership with a financial institution that provides credit card service, the Concessionaire will be required to accept payment by means of that credit card). The Concessionaire, working with the Trust's marketing representative, may be required to give the Trust's marketing representative priority in the placement and scheduling of advertising. Marketing partners will be required to pay Concessionaire the market rate for any such advertising.
- i. The Premises shall not be used for telemarketing, internet, catalog, mail order sales, or other manner of sales of products not kept for sale at the Premises. Concessionaire shall (i) warehouse, stock or store within the Premises only such merchandise as Concessionaire intends to offer for rental or sale at retail; (ii) use only such space in the Premises for office, clerical or non-selling purposes as is from time to time reasonably required for the conduct of Concessionaire's business at the Premises; and (ii) refrain from conducting or suffering the conduct of any auction, fire or bankruptcy sale upon the Premises.
- j. The selling and/or advertising of cigarettes, cigars, or any other tobacco products, is strictly prohibited.
- k. Unless specifically directed to the contrary by the Trust, Concessionaire will identify its location as being within Hudson River Park in all literature, brochures, handouts, advertising, and dissemination of information of any kind respecting its operations permitted hereunder.
- l. 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, which would in any way (i) result in the Premises not being operated in a manner consistent with a park carousel concession or which would be inconsistent with the nature and the operation of Hudson River Park as a world-class 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 building or the Premises, (v) constitute a public or private nuisance, or (vi) impair the appearance, character or reputation of the Premises or the Park.
- m. 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.
  - n. 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 including not selling, serving or distributing single-use plastic water or soft drink bottles, plastic straws, and plastic cups, (ii) maximizing the use of recycled paper items, and (iii) 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.
  - o. Concessionaire shall partner and subscribe to the Hudson River Park Trust Green Partnership Agreement and be a steward of the Park's Green Initiative, as described in more detail and in form shown in Exhibit F.
  - p. Concessionaire shall not include breakable glass, and shall not allow glass to be taken from the Premises by any customer.
  - q. 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.
  - r. 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.
  - s. 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 a 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.
- t. 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.
  - u. Concessionaire acknowledges that the portion of Pier 62 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.
  - v. 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 Carousel business at the Premises in accordance with and pursuant to the terms and conditions of this Concession Agreement.
  - w. Concessionaire shall not place or have any claim or interest in any vending machines at the Premises.
  - x. 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.
  - y. Vehicle parking is prohibited at the Premises or elsewhere on Pier 62. Deliveries and/or garbage removal are prohibited between the hours of 7:00 am and 10:00 pm EST daily unless otherwise approved by the Trust. Garbage must be regularly removed from the Premises pursuant to a reasonable pickup schedule. Under no circumstances will vehicles, other than delivery vehicles and/or garbage removal vehicles, be allowed in Hudson River Park. The approved access route for any and all delivery and garbage trucks is annexed hereto in Exhibit E. The Trust reserves the right, in its sole and absolute discretion, to change and/or modify the approved vehicular access route for Concessionaire’s deliveries and private garbage removal contractor(s).

## 2. **Mobile Concession Units.**

Concessionaire may operate a maximum of two pushcarts (herein referred to as “Mobile Concession Units”) on Pier 62 in accordance with the following guidelines:

- a) Pushcarts shall be manually propelled carts or barrows which are only for the sale of pre-packaged foods or foods which require limited preparation. Pushcarts may not 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.

- b) Mobile Concession Units are permissible at the following two (2) locations, each depicted in Exhibit A-2. Locations of Mobile Concession Units on Pier 62 shall be proposed by Concessionaire and reasonably approved by 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 Department of Health Certificate; and (ii) 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 DOH.
- g) Each Mobile Concession Unit must be securely stored at the Premises or taken off-site at the end of each day. A Mobile Concession Unit may, with the Trust’s approval, remain overnight on the Premises, with appropriate security procedures at the Concessionaire’s sole risk. Mobile Concession Units may be stored outdoors or within the Building. No cleaning of Mobile Concession Units may take place within the Building.

### 3. **Utilities, Maintenance & Services.**

Concessionaire shall pay all utility costs in connection with the operation of the Concession and provide the hookups to all such utilities. The Trust has installed the following:

- a. Electric: A provision has been made within the Carousel Building for a separately metered source of electric power. The Premises is provided with 200 amps of power distributed via one (1) 200 amp service (100 amps available); 120/208V, 3 phase, 4 wire+ ground (U.O.N.). All electric services are installed for the building and shall not be modified or otherwise altered without specific Trust written authorization.  
Concessionaire shall pay for the electrical service and establish and hold an account directly with Consolidated Edison (or its successor). All work to tie into and distribute the power supply must be performed by a qualified and licensed contractor, including power

and fixtures for any beverage storage, HV AC systems, water heaters, lighting, security system, POS, computers, electronic displays and/or signage, etc.

- b. Water: Not available.
- c. Gas: Not available.
- d. Sanitary: Not available.
- e. Telephone: Not available.
- f. Internet: Not available. Concessionaire shall, at its sole cost and expense, install a wireless Internet system (i.e., portable Wi-Fi hotspot) to support the POS system.
- g. Mechanical -Heat: Not available.
- h. Mechanical -HV AC: Not available.

4. **Trust Use of Premises.**

Concessionaire agrees to keep the Carousel open after the currently scheduled closing time of 6:00 PM to 8:00 PM in order to accommodate the Friends of Hudson River Park and the Trust's guests and staff for scheduled special events ("Trust Use"). Concessionaire further agrees that there shall be no charge for Carousel rides provided by the Concessionaire between the hours of 6:00 PM to 8:00 PM on **October \_\_\_\_\_, \_\_\_\_\_** and any future special event dates.

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. Concessionaire shall thereafter cooperate with the Trust to confirm or reschedule such proposed date for the Trust Use.

The exercise of any such right of use 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 62 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 62.

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"). 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. Concessionaire shall obtain all permits and licenses for the installation, maintenance and operation of Concessionaire's Signage.

## 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 Three **Million Dollars (\$3,000,000)** 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](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) Products Liability and Completed Operations Insurance/Caterers, Food Service Liability, or Food Service Liability Endorsement** under CGL, with a limit not less than \$2,000,000.00 per occurrence. Covering loss due to liability from food services, negligent handling, food poisoning or transmission of disease; coverage must not exclude food contamination or food allergies.

**(5) Commercial Property Insurance** on Capital Installations protecting the Concessionaire and the Trust against loss of, or damage to, 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 Capital Installations (without depreciation or obsolescence clause). Such insurance shall designate the Trust as a loss payee and Concessionaire as named insured.

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**

**MENU**

**EXHIBIT E**

**Vehicular Access, Delivery and Rubbish Removal Plan**

**EXHIBIT F**

**Hudson River Park Trust Green Partnership Agreement**

This Green Partnership Agreement (“**Agreement**”) is made by and between The Hudson River Park Trust (the “**Trust**”) having an office a Pier 40, 353 West Street, 2<sup>nd</sup> Floor, New York, NY 10014 and \_\_\_\_\_-having an address at \_\_\_\_\_ (“**Concessionaire**” and together with the Trust, the “**Parties**”) and is dated as of\_\_\_\_\_.

**WHEREAS**, State Legislation designated the 400 acres of in-water area within the Hudson River Park an Estuarine Sanctuary. These protected waters are a vital ecological resource for the millions of visitors and patrons of the Park each year; and

**WHEREAS**, the Trust is a leader in environmental stewardship and through its Green Initiative, encourages occupants of the Park to join its stewardship efforts; and

**WHEREAS**, Concessionaire desires to partner with Trust and become an environmental steward promoting green practices in its daily operations within the Park and to patrons served;

**NOW, THEREFORE**, the Parties agree to advance the efforts of the Hudson River Park’s Green Initiative through discontinuation of single use plastics, use of green products and advancing public education as set forth below.

1. Concessionaire shall:
  - A. Discontinue the distribution and selling of single use plastic bottle(s), straw(s), and stirrer(s).
  - B. Use green products within Hudson River Park. Suggested products include, but are not limited to:
    - Paper Straws
    - Paper cups
    - Paper Plates
    - Paper Bags
    - Paperboard Food Containers
    - Boxed water
    - Glassware
    - Recyclable Glass
    - Metal Straws
    - Biodegradable Trash Liners
    - Biodegradable Cutlery
  - C. Reduce the use of plastic packaging.
  - D. Use commercially reasonable efforts to use biodegradable products.

2. Concessionaire will partner with the Trust in advocating and educating the public on Hudson River Park's Green Initiative through signage, displays, and other partnering opportunities as brought forth by the Trust.
3. Concessionaire will in good faith participate in a plastic audit as conducted by the Trust or its consultant in calendar year 2019. By January 30<sup>th</sup> of every succeeding calendar year Concessionaire will report to the Trust for the preceding calendar year its reduction in the use of single use plastic in a format as provided by the Trust.
4. Concessionaire agrees that the Trust will update this agreement from time to time as plastic reduction initiatives become more defined in practice.

**GRANTOR:  
HUDSON RIVER PARK TRUST**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CONCESSIONAIRE:**



By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_