

**HUDSON RIVER PARK TRUST
BICYCLE RENTAL CONCESSION AGREEMENT**

PART I (Specific Terms and Conditions)

1. Concession Agreement Summary

HUDSON RIVER PARK TRUST (the “**Trust**”) and the 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**”).

2. Specific Terms and Conditions

1.1 **Grantor:** The Trust

1.2 **Concessionaire:** _____ located at _____

1.3 **Premises:** Hudson River Park at West 44th Street, as more specifically described in Exhibit A

1.4 **Date of Concession Agreement:** _____

1.5 **Term:** Commencing on _____ (“**Commencement Date**”) for a period of five (5) years, with up to two (2) two-year option terms (“**Extension Term(s)**”) exercisable by the Trust, as more specifically described in Part II, Section 5.

1.6 **Use:** Bicycle Rental Concession, as more specifically described in Exhibit B.

1.7 **Fees:** The Concessionaire shall pay the Trust fees 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 **Term 4:** For the period beginning November 1, 2022 and ending on October 31, 2023, a Minimum Annual Fee of _____ Dollars (\$_____) and, as applicable, a Percentage Fee equal to _____ calculated in accordance with Part II, Section 6 hereof.

1.7.5 **Term 5:** 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 _____.

1.7.6 **Extension Term 1:** For the period beginning November 1, 2024 and ending on October 31, 2025, a Minimum Annual Fee of _____ Dollars

- (\\$ _____) and, as applicable, a Percentage Fee equal to _____ calculated in accordance with Part II, Section 6 hereof.
- 1.7.7 **Extension Term 2:** For the period beginning November 1, 2025 and ending on October 31, 2026, a Minimum Annual Fee of _____ Dollars (\\$ _____) and, as applicable, a Percentage Fee equal to _____.
- 1.7.8 **Extension Term 3:** For the period beginning November 1, 2026 and ending on October 31, 2027, a Minimum Annual Fee of _____ Dollars (\\$ _____) and, as applicable, a Percentage Fee equal to _____ calculated in accordance with Part II, Section 6 hereof.
- 1.7.9 **Extension Term 4:** For the period beginning November 1, 2027 and ending on October 31, 2028, 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.
- 1.10 **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. At a minimum, beginning on the Commencement Date, the Concessionaire shall operate the Concession from April 1st through October 31st each year, seven days per week, from 9:00 am to 7:00 pm EST.
- 1.11 **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

If to Concessionaire:

Attn: _____

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 all applicable laws, rules, regulations, ordinances, codes and orders of all federal, state and local governmental authorities, agencies, departments or bureaus having jurisdiction over the Premises or applicable to the use, occupancy, alternations, repairs and/or maintenance of 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, “**Legal Requirements**”).

2. Authorizations, Approvals and License Requirements

The Trust does not grant authority for any operation or use that may require any permit or approval. Concessionaire must obtain any such authorization, permit, or approval, at its sole cost and expense as required.

3. Investigation

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

4. 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 Materials¹, 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.

¹ For purposes of this Permit, "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; along with (vii) any additional substances or materials which from time to time are classified or considered to be hazardous or toxic or a pollutant or contaminant under the laws of the City of New York, State of New York (including, without limitation, the New York State Navigation Law), and/or the United States of America.

- (c) 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.

5. Concession Term and Extension(s)

The term of the Concession Agreement (the "**Term**") shall begin on the Commencement Date indicated in Part I, Section 1.5 and shall automatically continue for a period of up to five (5) years (unless extended as describe below) subject to earlier termination by the Trust in accordance with the terms and conditions provided hereof (whichever date shall first occur shall be referred to as the "**Expiration Date**"). The Trust shall have the unconditional option to extend the Concession Agreement for up to two (2) additional two-year terms ("**Extension Term(s)**") provided: (1) Concessionaire provides Notice to the Trust by not later than October 31st of the 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.

6. 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, on or before the fifteenth (15th) day of each month. If at any time Concessionaire's Annual Percentage Fee for a particular year becomes applicable, Concessionaire shall thereafter for the remainder of such year pay the percentage fee on the fifteenth (15th) day of each succeeding month in such year.
- b. "**Gross Sales**" as used in the Concession Agreement shall mean the 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, barter or otherwise (without reserve or deduction for (aa) inability or failure to collect the same, and (bb) 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, telegraph, 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 (v) income from sub-rentals and license fees derived from 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.

- c. **Late fees** shall be assessed on any payment that is overdue for more than five days. In the event that payment of the Minimum Annual Fee or Annual Percentage Fee or any other charges shall become overdue for five (5) days following the date on which such fees are due and payable as provided in the Concession Agreement, a late charge of 2% per month on the sums so overdue (computed on a thirty day month) from the date they were due and payable plus an administrative late charge of \$250.00 (the "**Late Fee**") shall become immediately due and payable to the Trust as damages for the administrative cost and expenses incurred by the Trust by reason of Concessionaire's failure to make prompt payment, and said Late Fee(s) shall be payable by Concessionaire without notice or demand. If such late fee(s) and all arrearages (including prior 2% charges) are not paid in full by the fifteenth (15th) day of the month following the month in which it shall be due, or is already past due, an additional charge of 2% of the total of such fee and arrears shall be added thereto and shall be payable and collectable with the next monthly Concession fee installment. Failure to abide by the terms of this Section 6 shall be presumed to be a failure to substantially comply with the terms, conditions and covenants of the Concession Agreement and shall be a material default hereunder. No failure by the Trust to bill the

Concessionaire for late charges shall constitute a waiver by the Trust of such late charges or of its right to enforce the provisions of this Section 6. If any State or Federal law or regulation which limits the rate of interest that can be charged pursuant to this Section 6 is enacted, the rate of interest set forth in this Section 6 shall not exceed the maximum rate permitted under such law or regulation.

- e. Concessionaire shall submit to the Trust on or before the fifteenth (15th) day following each calendar month during the Term (including the fifteenth (15th) day following the end of the Concession Agreement, as to which Concessionaire's obligation shall survive the expiration of the Term) a written statement (the "**Monthly Gross Sales Statement**"), in a form satisfactory to the Trust, signed and verified by an officer of Concessionaire as true and correct, showing (i) the amount of Gross Sales during the preceding calendar month, and an itemization of all Permissible Exclusions and Permissible Deductions therefrom, and (ii) all Gross Sales and Net Gross Sales for each of the preceding months of the then current Concession year.
- f. Concessionaire shall also submit to the Trust on or before the thirtieth (30th) day following the end of each Concession year or partial Concession year (including the last year of the Concession Agreement Term hereof, as to which Concessionaire's obligation shall survive the expiration of the Term) a written statement (the "**Annual Gross Sales Statement**") in a form satisfactory to the Trust, signed and verified by an officer of Concessionaire as true and correct, showing (i) the amount of such Gross Sales during the preceding Concession year or partial Concession year and an itemization of all Permissible Exclusions and Permissible Deductions therefrom. The Annual Gross Sales Statement shall also be examined in accordance with generally accepted auditing standards by an independent certified public accountant ("**CPA**") for the purpose of such CPA issuing a report on the aforesaid examination, which report shall accompany the Annual Gross Sales Statement and shall include the CPA's unqualified opinion that the Annual Gross Sales Statement presents fairly the information required pursuant to the Concession Agreement on the basis specified herein for such information. Such audited Annual Gross Sales Statement shall include all appropriate disclosures required under generally accepted accounting principles and such further information as the Trust may from time to time reasonably require. The acceptance by the Trust of annual fee payments or reports of Gross Sales shall be without prejudice and shall in no event constitute a waiver of the Trust's right to claim a deficiency in the payment of such fees or to audit Concessionaire's books and records. The Gross Sales for any portion of the calendar month prior to the commencement of the first full calendar month shall be included in the monthly report for said first full month.
- g. Upon the Trust's request, Concessionaire shall provide a reconciliation of any statement required hereunder with Concessionaire's audited financial statements for the applicable period.
- h. Notwithstanding anything to the contrary contained herein, if, to the extent and as may be specified by the Trust from time to time, Concessionaire shall provide a daily and/or weekly basis break down of the monthly reports required to be submitted herein and providing such reasonable detail as to categories of merchandise as may be reasonably required or approved by the Trust from time to time.
- i. Concessionaire shall provide photocopies of its federal, state or local sales tax or similar tax returns with respect to Concessionaire's operations at the Premises promptly after filing

the same with the appropriate governmental agency. In addition, if Concessionaire's Gross Sales as reported on any of said returns shall exceed the Gross Sales as reported by Concessionaire pursuant to the Concession Agreement, then the Gross Sales for purposes of the Concession Agreement shall be increased to the highest amount reported on such returns. If, as the result of an audit or for any other reason, any governmental authority shall increase the Gross Sales reported by Concessionaire on any such tax return for any Term year, Concessionaire shall, within twenty (20) days thereafter, notify the Trust of such increase and supply the Trust a true copy of any document evidencing such increase, in which event (i) the Gross Sales for purposes of the Concession Agreement shall be increased to the highest amount determined by any such governmental authority and (ii) Concessionaire shall pay to the Trust any additional Annual Fee due within ten (10) days of such notice or separate Trust demand therefore.

j. Records. (i) Throughout the Term and any Extension Term of the Concession Agreement and for a period of at least six (6) years following the expiration or earlier termination of the Concession Agreement, Concessionaire shall maintain adequate systems of internal control and shall keep and preserve complete and accurate records, books of account and data, including daily sales and receipts records, which shall be electronic records, including electronic daily sales and receipts records, and which shall show in detail the total business transacted by Concessionaire, all expenses related thereto, and the gross receipts (as defined herein) therefrom. Specifically, sales information for the Concession must be recorded electronically, via a point-of-sale system, with details on, but not limited to, each sales transaction, the item(s) and/or bicycle rental or bicycle tour package(s) sold. Concessionaire's revenue control system ("POS") must be approved by the Trust in writing, such approval to be not unreasonably delayed, withheld or denied. Concessionaire shall provide the Trust with a link and log-in credentials to access the POS remotely via the Internet so that the Trust may access daily and/or weekly reports on Gross Sales. Such information shall, at the request of the Concessionaire, be treated as confidential business information.

(ii) Books and records maintained pursuant to the Concession Agreement shall be conveniently segregated from other business matters of Concessionaire, shall conform to generally accepted accounting principles consistently applied, and shall include, but not be limited to: originals of records of daily bank deposits of the entire receipts from transactions in, at, on or from the Premises; sales slips, daily dated cash register receipts, sales books; general ledgers, sales journals, purchase journals, cash disbursement journals, duplicate bank deposit slips and bank statements; inventory records and all other matters and information from which Gross Sales and Net Gross Sales can be determined. If Concessionaire fails to maintain such aforesaid books of account and records, the Trust shall have the right, but not the obligation, in addition to an not in lieu of any other rights or remedies available to the Trust, to hire an accountant at Concessionaire's sole cost and expense to maintain such books of account and records, which books of account and records shall be conclusive and binding upon the Concessionaire, and Concessionaire shall cooperate with such accountant with respect thereto. If any audit shall be commenced by the Trust or other Audit Entity (as defined below) or if there shall arise a dispute concerning Gross Sales or Net Gross Sales, then Concessionaire's books of account and records shall be retained by Concessionaire until such audit has been completed or a final resolution of such dispute has been reached. Concessionaire agrees to record all sales in a cash register or registers containing locked-in cumulative tapes with cumulating capacity, or, if Concessionaire does not utilize a cash register, in sales books with consecutively numbered

slips, and such other control features as may be reasonably required by the Trust.

(iii) The statements to be provided in accordance with the Concession Agreement and the books, records and accounts upon which said statements are based are subject to audit by the Trust, the Comptroller of the State of New York or the City of New York or other duly appointed authorized representatives of the State of City of New York (“**Audit Entities**”). Such Audit Entities shall have the right to examine, audit, or photocopy the records, books of account and data of the Concessionaire to verify Concessionaire’s gross receipts as reported by Concessionaire. Concessionaire shall also permit inspection by the Trust, the Comptroller of the State of New York or the City of New York or other duly authorized representatives of the State or City of New York of any equipment used by Concessionaire, including but not limited to cash registers and recording machines, and all reports or data generated from or by the equipment. Concessionaire shall cooperate fully and assist the Trust, the Comptroller of the State of New York or the City of New York or other duly authorized representatives of the State or City of New York in any examination or audit thereof. In the event that Concessionaire’s books and records, including supporting documentation, are situated 50 miles or more from the City of New York, the records must be brought to the City for examination and audit or else Concessionaire must pay the room, board and travel costs incidental to two auditors conducting such examination and audit at said distant location.

(iv) Concessionaire’s failure or refusal to allow an Audit Entity or Entities to audit and examine Concessionaire’s complete set of records, books of account and data or the delay or interference in any way by Concessionaire in such an audit or examination; to furnish any of the statements required to be furnished under the Concession Agreement within thirty (30) days after its due date; to maintain adequate internal controls or to keep any of the records as required by the Concession Agreement after written notice from the Trust or other Audit Entity; or the existence of any unexplained discrepancy in the amount of fees required to be due and paid hereunder, as disclosed by audit conducted by an Audit Entity of more than five percent (5%) in any two (2) out of three (3) consecutive months or more than ten percent (10%) in one (1) month (the results of which are provided by written notice to Concessionaire in each instance), shall be presumed to be a failure to substantially comply with the terms and conditions of the Concession Agreement and a default hereunder, and which shall entitle the Trust, at its option, to immediately terminate the Concession Agreement.

7. Security Deposit

Upon execution of the Concession Agreement, Concessionaire shall deposit with the Trust the amount provided in Part I, Section 1.8 (“**Security Deposit**”) by certified check payable to “Hudson River Park Trust” or to the order of such other entity as The Trust may designate in writing. 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 interest, 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.

8. 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 fifty (50) feet around the Premises, clean at all times and for keeping and 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, litter, snow and ice. 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. Such responsibility shall include any needed maintenance to prevent damage to the plumbing system and Premises caused by lack of heat or water damage from leaks.
- 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, taken off the site promptly, or be stored in a designated storage container. As described above, the Trust must approve of 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 this space 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 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.

- h. 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.
- 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 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 is responsible for providing 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 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.

9. Termination of the Concession Agreement

- a. Termination for Convenience. The Trust may, at any time for the Trust's convenience and without cause, terminate the Contract without incurring any penalty or damages on account of such termination upon thirty (30) days' written notice to the Concessionaire. 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. 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. All provisions of the Concession Agreement relative to indemnification, audit and reporting shall survive the cancellation, expiration or 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.
- b. Termination for Cause. The Trust may terminate the Contract for cause, including: (i) a material breach of any covenant or agreement contained in the Concession Agreement; (ii) if the Concessionaire shall default in the timely performance of any of its obligations under the Concession Agreement and such default shall continue for a period of fifteen (15) days after written notice from the Trust specifying the occurrence, omission or failure giving rise to such default, or if in the opinion of the Trust, by reason of the nature of such default, such default cannot be cured within such fifteen (15) days period and the Concessionaire has not promptly prosecuted the curing of such default; (iii) the Concessionaire shall fail to diligently, timely and expeditiously perform its obligations set forth in the Concession Agreement; (iv) any 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; or (v) the 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/or to cancel or terminate the Concession Agreement upon serving 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.
- d. Upon expiration or sooner termination of the Concession Agreement, 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 or sooner termination of the Concession Agreement, Concessionaire shall immediately cease all operations pursuant to the Concession Agreement, remove all personal possessions, and shall vacate the Premises without any further notice by the Trust and without resort to any judicial proceedings. Any personal property remaining on the Premises after the expiration or sooner termination of the Concession Agreement is intended by Concessionaire and 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 should Concessionaire fail to remove all possessions on or before the expiration or sooner termination date. Upon the expiration or sooner termination of the Concession Agreement, the Trust reserves the right to take immediate possession of the Premises using such force for that purpose as may be necessary without being liable to indictment, prosecution or damages therefor and may dispossess Concessionaire by summary proceedings or otherwise, without court order or other judicial approval.
- f. Upon sooner termination in accordance with the terms hereof, the Trust may draw down on the Security Deposit as may be necessary to compensate the Trust toward the payment of Concession fees, late charges, liquidated damages or other sums due from the Concessionaire or towards any loss, damage or expense sustained by the Trust resulting from such default on the part of the Concessionaire.
- g. Any representation of warranty made or deemed to have been made by Concessionaire in its RFP response or under the Concession Agreement that shall prove to be untrue in any material respect shall constitute a default. 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 subcontractor in connection with the services identified herein shall provide for termination for 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.

10. 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. The provision contained in this Section that 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.

11. Indemnification

- (a) Concessionaire shall defend, indemnify and save harmless the Trust, the People of the State of New York, the New York State Executive Department, the New York State Office of Parks, Recreation and Historic Preservation, the New York City Region of State Parks, Recreation and Historic Preservation Commission, the Department of Environmental Conservation, the City of New York, the City of New York Department of Parks and Recreation, and each of their respective commissioners, officers, agents, employees, successors and assigns (“**Indemnities**”) from and against any and all liabilities, claims, demands, penalties, fines, settlements, damages, costs, expenses and judgments which:
 - (i) arise from injury to any person, or persons, including death, or any damage to property of any nature, occasioned wholly or in part by any act(s) or omission(s) of Concessionaire or of the directors, officers, employees, guests, contractors, subcontractors, representatives or agents of Concessionaire, that occurs on or in proximity to the Premises or arise out of or as a result of the Concession Agreement, or
 - (ii) relate to or arise from any and all liens and encumbrances which may be filed or recorded against the Premises or any public improvement lien filed against any funds of the Trust, the State or the City of New York, as a result of actions taken by or on behalf of Concessionaire, its directors, officers, contractors, subcontractors, agents, representatives, employees, guest or invitees.
- (b) Further, Concessionaire agrees to defend, indemnify and hold harmless the Trust, the People of the State of New York, the New York State Executive Department, the New York State Office of Parks, Recreation and Historic Preservation, the New York City Region of State Parks, Recreation and Historic Preservation Commission, the Department of Environmental Conservation, the City of New York, the City of New York Department of Parks and Recreation, and each of their respective commissioners, officers, agents, employees, successors and assigns from and against any and all loss, damage or liability of whatever kind or nature, arising out of, or in any way related to the presence, storage,

transportation, disposal, release or threatened release of any Hazardous Materials over, under, in, on or from the Premises caused wholly or in part by Concessionaire's acts or omissions, during its occupancy or operation of the premises.

- (c) Anything in this Section to the contrary notwithstanding, nothing in the Concession Agreement shall be construed to relieve the Trust from responsibility to Concessionaire for any loss or damage caused Concessionaire wholly or in part by the negligent acts or omissions of the Trust; except, however, that the Trust shall not be responsible for such portion of such loss or damage which is recovered or recoverable by Concessionaire from any insurance covering such loss or damage or for such loss or damage against which the Concessionaire is indemnified or insured.
- (d) The provisions of this Section shall survive the termination or non-renewal of the Concession Agreement.

12. Alterations; Advertisements, Notice and Signs; Property of The Trust; Removal of Trade Fixtures

- (a) Alterations: Concessionaire shall not make any changes, improvements or alterations to the Premises without the prior written consent of the Trust.
 - (b) Advertisements, Notice and Signs: Concessionaire shall not affix any advertisement, notice or sign in, to, or on the Premises, other than those required by law, without first obtaining the written consent of the Trust.
 - (c) Property of The Trust: All improvements to the Premises become the property of the Trust.
 - (d) Removal of Trade Fixtures. Concessionaire shall remove its trade fixtures from the Premises, repair any damage caused by the removal and restore the Premises to its original condition at Concessionaire's sole cost and expense to the satisfaction of the Trust.
13. Access. Concessionaire shall, upon reasonable notice, permit inspection of the Premises by the Trust's agents, employees, consultants and representatives (including the City of New York and their agents, employees, consultants and representatives) and shall permit inspection thereof by or on behalf of prospective future occupants.

13. No Assignment or Subletting

- (a) Concessionaire shall not assign, grant use of, permit or license the whole or any part of the Premises, or the Concession, nor allow the same to be occupied and/or operated by any person or entity other than Concessionaire, whether by merger, consolidation, purchase of assets, transfer of stock in Concessionaire, transfer of joint venture or partnership interests in Concessionaire, operation of law or otherwise without the prior written consent of the Trust in each instance.
- (b) 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, or issue or grant any permit or license to use the Premises, or any part thereof without the prior written consent of the Trust.

- (c) If Concessionaire is a limited or general partnership, neither Concessionaire or any general partner shall sell, assign or transfer its interest in the partnership which is the Concessionaire under the Concession Agreement; nor shall a limited or general partnership (or a Concessionaire comprised of two (2) or more persons individually or a co-partners) change or convert Concessionaire to any of the following entities (“**Limited Liability Entity**”): (i) a limited liability company; (ii) a limited liability partnership; or (iii) any other entity which possesses the characteristics of limited liability company or partnership, without the prior written consent of the Trust.
- (d) In the event Concessionaire wishes to convert to a Limited Liability Entity, the Trust agrees not to unreasonably withhold or delay its consent provided that: (i) The Limited Liability Entity succeeds to all or substantially all of Concessionaire’s business and assets; and (ii) the Limited Liability Entity has a net worth (“**Net Worth**”) determined in accordance with generally accepted accounting principles of not less than the greater of Concessionaire’s Net Worth on (1) the date of execution of the Concession Agreement, or (2) the day immediately preceding the date of such conversion; and (iii) Concessionaire is not in default of any of the terms, covenants or conditions of the Concession Agreement on the date of such conversion; and (iv) each partner of Concessionaire shall execute and deliver to the Trust an agreement, in form and substance satisfactory to the Trust, under which each partner agrees to remain personally liable for all of the terms, covenants and conditions of the Concession Agreement.

14. 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.

15. 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.

16. 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 upon twenty-four (24) hours' notice to Concessionaire and to rescind this transaction in all respects.

17. 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.

18. 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.

19. 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 which can remain in effect without the invalid provisions, and therefore, the provisions of the Concession Agreement are severable.

20. 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.

21. 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.

22. 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. The Trust will have thirty (30) calendar days after service hereunder is complete in which to respond.

23. 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.

24. 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.

GRANTOR:

CONCESSIONAIRE:

HUDSON RIVER PARK TRUST

By: _____
Name: Madelyn Wills
Title: President

By: _____
Name: _____
Title: _____

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

On this _____ day of _____, 20____, before me personally came _____ to me known, who being duly sworn, did depose and say that s/he is the _____ of _____, and the said person described in and who executed the foregoing instrument, and s/he acknowledged that s/he executed same in her/his official capacity and for the purpose mention therein.

Notary Public

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

On this _____ day of _____, 20____, before me personally came _____ to me known, who being duly sworn, did depose and say that s/he is the _____ of _____, and the said person described in and who executed the foregoing instrument, and s/he acknowledged that s/he executed same in her/his official capacity and for the purpose mention therein.

Notary Public

EXHIBIT A

PREMISES

The Premises includes the Hudson River Park Pier 84 kiosk building located at the foot of West 44th Street on the Hudson River waterfront consisting of: (a) approximately 575 square feet of interior space of the southern section of the Property (the “Retail Space”), and (b) approximately 1,000 square feet of outdoor space immediately south of the Property (the “Outdoor Area”). The Retail Space and Outdoor Area shall together be known as the Premises.

EXHIBIT B

PERMITTED USE AND OPERATIONS

1. Permitted Use.

- (a) 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.
- (b) Concessionaire shall operate the Bicycle Rental Concession as a first-class, high quality bicycle rental concession, offering rentals of bicycles, light bicycle repair services, and the sale of water, non-carbonated energy drinks, energy bars, and other items incidental to such business (locks, helmets, pads, tubes, reflectors/lights, bells/horns, etc.), and no other purpose whatsoever. The area devoted to such incidental sales and repair services shall not exceed 20% of the permitted area. Such selection and prices must be comparable to those charged for similar goods at other similar locations within the region.
- (c) Product brand or sponsorship advertising within the interior of the Bicycle Rental 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 the market rate for any such advertising.
- (d) Upon written request from the Trust, Concessionaire shall sell merchandise to the Trust at Concessionaire's cost therefore plus fifteen (15%) percent (without any further profit or markup). The Trust shall not re-sell any such purchased merchandise.
- (e) Concessionaire may provide a discount to its Bicycle Rental Concession employees in the price of any Bicycle Rental Concession merchandise purchased by such employees provided, however, that such discounted price shall not be more than Thirty (30%) percent off of the retail price for such Bicycle Rental Concession merchandise and further provided that the total

value of such discounted merchandise purchased by any individual employee of the Concessionaire shall not exceed One Thousand (\$1,000.00) Dollars per year.

- (f) 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 of office, clerical or non-selling purposes only such space in the Premises as is from time to time reasonably required for the conduct of Concessionaire's business at the Premises; and (iii) refrain from conducting or suffering the conduct of any auction, fire or bankruptcy sale upon the Premises.
- (g) The selling and/or advertising of cigarettes, cigars, or any other tobacco products, is strictly prohibited.
- (h) The Trust reserves the right to require the Concessionaire to sell products created by the Trust and/or provided by designated Trust marketing partners.
- (i) 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.
- (j) Concessionaire shall permit access, inspection and examination of the Premises by the Trust or 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.
- (k) Concessionaire must comply with all City, State and Federal laws relating to access for people with disabilities.
- (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 bicycle rental 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, (vi) impair the appearance, character or reputation of the Premises or the Park, or (vii) impair or interfere with any of the building services or the proper and economic heating, cleaning, air conditioning or other servicing of the building or the Premises or impair or interfere with the use of any other areas of the building.

- (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.

2. Vehicle Access at Premises

Vehicle parking is prohibited at the Premises or elsewhere on Pier 84. Deliveries and/or garbage removal are prohibited between the hours of 7:00 am and 10:00 pm EST daily. 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).

3. Utilities, Maintenance and 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 building for a separately metered source of electric power. The space is provided with 700 amps of power distributed via one (1) 400 amp service (380 avail); and one (1) 300 amp service (155 avail.). Both services are 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 authorization.

Concessionaire will 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 beverage storage , HVAC systems, water heaters, lighting, security system, POS, computers, electronic displays and/or signage, etc.

- (b) Water: Potable water is available. The building is provided with a 2” diameter capped domestic water line. All work to tie into and distribute the water supply must be done from this point and be performed by a qualified and licensed plumbing contractor and is subject to prior Trust authorization.
- (c) Gas: Gas service is available for the building. The building is provided with a 2” diameter valued and capped domestic gas connection (500 CFH max) which is metered separately from the building. Concessionaire will pay for gas service and establish and hold an account directly with Consolidated Edison (or its successor). All gas service work to occur within the building must be performed by a licensed plumbing contractor in accordance with all Consolidated Edison rules and regulations and is subject to prior Trust authorization.
- (d) Sanitary: Connections to the building’s sanitary system have been provided. The building is provided with a 4” diameter capped connection to the building’s sanitary system. All work to tie into the sanitary system and vent must be completed and installed by a New York State licensed plumber and is subject to prior Trust approval and authorization. Modification or other alteration of such system is subject to prior Trust authorization.

- (e) Telephone: The space is provided with an empty 1½” diameter conduit with drag line to the

building's communications closet. Concessionaire is responsible for establishing and holding an account directly with Verizon for any telecommunications needs. Concessionaire shall be responsible for any voice and/or data needs within the space and shall connect the respective system to the building's communications closet via the provided conduit. Concessionaire will be responsible for coordinating access to the building's communication closet between the Trust and Verizon. Concessionaire shall not make any connections in the communications closet without prior Trust approval and authorization.

(f) Mechanical – Heat: The building is provided four (4) convectors off the buildings Hot Water system, each rated for an output of 10,400 btu/hour. Four (4) 1” diameter copper (2 supply and 2 return) lines are provided and capped for future radiant floor heating system.

(g) Mechanical – HVAC: The building is provided with a 1/3 HP exhaust fan with a capacity to move 1,500 CFM and is interlocked with the A/C unit. The building is also provided with an AC unit with a total cooling capacity of 140,000 MBH. All ducts are capped on the supply side for future connection by Concessionaire. All work is subject to prior Trust approval and authorization.

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 **Two Million Dollars (\$2,000,000)** per occurrence. Such insurance shall be written on ISO Form CG 00 01 12 07 or substitute form providing equivalent coverage and shall cover liability arising from premises operations, independent contractors, products-completed operations, personal and advertising injury, cross liability coverage, blanket contractual liability (including tort liability of another assumed in a contract), extended bodily injury coverage, and damage to rented premises. If such insurance includes an aggregate limit, it shall apply separately on a per project or per location basis. If the Concessionaire's work includes construction activities of any kind, then the Concessionaire must include a completed Acord 855 NY form when providing evidence of insurance.

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

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

- a. The NY State Workers Compensation Board guideline regarding these requirements is available at:
<http://www.wcb.ny.gov/content/main/forms/AllForms.jsp>
- b. If Exempt from Worker Compensation please refer to the following link and provide proof on the CE200 form issues by the NY State Workers Compensation Board:

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

- c. If the Concessionaire is not a NY State based business, then the Concessionaire must provide a copy of its Workers' Compensation policy's Declarations Page to show that New York is listed in Part 3A and to confirm the policy provides statutory Employer's Liability coverage applicable in NYS.

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 of Services

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, 2nd Floor, New York, NY 10014 and XX having an address of XX (“**Concessionaire**” and together with the Trust, the “**Parties**”) and is dated as of XX.

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 by not using single use plastics, use of green products and advancing public education as set forth below.

1. Concessionaire shall:

- A. Not distribute and sell 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 2020. By January 30th 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: _____