THIS LICENSE AGREEMENT ("Agreement") made this 13th day of October, 2015, between the CITY OF NEW YORK ("City"), a municipal corporation of the State of New York, acting by and through, the New York City Department of Parks & Recreation ("Parks"), having an address at The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065, and NEW YORK UNIVERSITY ("NYU"), a New York education corporation organized pursuant to Section 216 of the New York State Education Law, having an address at 70 Washington Square South, New York, New York 10012.

WHEREAS:

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

B. NYU is the fee owner of certain real property, together with the improvements thereon, located in the Borough of Manhattan, County, City and State of New York, designated for real property tax purposes as Block 533 and Block 524 (the "NYU Property") on the Tax Map of the City of New York, which real property is more particularly described in Exhibit A annexed hereto and made a part hereof; and

C. On July 25, 2012, the New York City Council approved NYU’s applications under the City’s Uniform Land Use Review Procedure for a City Map Change, Zoning Map Amendment, Zoning Text Amendment and Special Permit (ULURP Nos. C 120124 ZSM; C 120077 MMM; C 120122 ZMM; and N 120123 ZRM) to allow, inter alia, construction by NYU of a "large-scale general development" (as such term is defined in Section 12-10 of the Zoning Resolution of the City of New York) on the NYU Property and other particular land parcels and to make certain changes to the City map (the "City Approval"); and

D. Pursuant to the City Approval, the City has made, prior to the Effective Date (as defined below) of this Agreement, certain changes to the City map, including (i) the demapping of that certain portion of LaGuardia Place adjoining the NYU Property, as more particularly described on Exhibit B-1, annexed hereto and made a part hereof, so that such portion of LaGuardia Place is no longer mapped as a street and (ii) the demapping of that certain portion of Mercer Street adjoining the NYU Property, as more particularly described on Exhibit B-2, annexed hereto and made a part hereof, so that such portion of Mercer Street is no longer mapped as a street (such demapped portions of LaGuardia Place and Mercer Street, collectively, the "Licensed Premises");
E. In reliance upon and consistent with the City Approval, and in order to implement such large-scale general development, NYU, as the “Declarant,” executed that certain Restrictive Declaration of Large-Scale General Development for NYU LSGD, dated as of July 24, 2012, and recorded on August 7, 2012 (CRFN 2012000311259) in the Office of the New York City Register (as the same may be amended from time to time, the “Declaration”), a copy of which dated as of July 24, 2012, is annexed hereto as Exhibit D and made a part hereof; and

F. The Declaration included, but was not limited to, the requirement that NYU shall construct and maintain certain open space improvements on the Licensed Premises (referred to in the Declaration as “New Landscape Improvements on City-owned property,” which shall be referred to as “New Landscape Improvements” and have the same meaning herein) in accordance with the phasing of construction as set forth in the Declaration; and

G. Pursuant to the City Approval, NYU is required to make certain landscape improvements to the southern portion of Bleecker Street in the area particularly described in Exhibit C; and

H. More particularly, as set forth in the Declaration, NYU is expected to make landscaping improvements to the southern portion of the mapped City street on Bleecker Street within the area described in Exhibit C in three phases, with the first phase being improvements in the central portion of this area (denoted as “Bleecker Street Seating” in Drawing Z-202 annexed to the Declaration, hereinafter the “Bleecker Street Phase 1 Area”), the second phase being improvements to the eastern portion of this area (denoted as “Bleecker Street Improvements” in Drawing Z-202 annexed to the Declaration, hereinafter the “Bleecker Street Phase 2 Area”) and the third phase being improvements to the western portion of this area (denoted as “Bleecker Street Improvements” in Drawing Z-204 annexed to the Declaration, hereinafter the “Bleecker Street Phase 3 Area”); and

I. To provide a convenient mechanism for the City’s oversight of NYU’s maintenance obligations under the Declaration, the improvements and maintenance of such improvements to Bleecker Street referenced in Paragraph H of this Agreement shall be undertaken by NYU with the permission of Parks in accordance with the Greenstreets Agreement between Parks and the New York City Department of Transportation, which shall be amended to include such improvements. The Bleecker Street Phase 1 Area shall be included in the Licensed Premises upon NYU’s completion of the New Landscape Improvements in the Bleecker Street Phase 1 Area. The Bleecker Street Phase 2 Area shall be included in the Licensed Premises upon NYU’s completion of the New Landscape Improvements in the Bleecker Street Phase 2 Area. The Bleecker Street Phase 3 Area shall be included in the Licensed Premises upon NYU’s completion of the New Landscape Improvements in the Bleecker Street Phase 3 Area; and
J. Upon “Substantial Completion” (as such term is defined in the Declaration, and which shall be referred to and have the same meaning herein) of each New Landscape Improvement, NYU will be responsible for the on-going maintenance of such New Landscape Improvement in accordance with this Agreement; and

K. The City and NYU executed that certain North Block Easement Agreement, dated September 2, 2015, and recorded on September 25, 2015 (CRFN 2015000343299) in the Office of the New York City Register (as the same may be amended from time to time, the “Easement”); and

L. The Licensed Premises are owned by the City and pursuant to the City Approval, the portion of the Licensed Premises described in Exhibit B-1 and Exhibit B-2 are to be mapped as parkland subject to the Easement; and

M. It is the intention of the parties to enter into this Agreement pursuant to the City Approval regarding NYU’s obligations to construct and to provide on-going maintenance of the New Landscape Improvements.

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

1. GRANT OF LICENSE

(a) Parks hereby grants to NYU and NYU hereby accepts from Parks, a non-exclusive license with respect to the Licensed Premises to operate and maintain the New Landscape Improvements, for the benefit and best interest of the public, in accordance with the terms and conditions set forth herein, and to the reasonable satisfaction of the Commissioner. For the purposes of this Agreement, “operate” and “operations” shall refer to the performance by NYU of its obligations under this Agreement with respect to the New Landscape Improvements. Furthermore, subject to the conditions set forth in Paragraph 4 herein, Parks grants NYU the authority to construct the New Landscape Improvements, including any temporary or interim improvements as may be required by the Declaration.

(b) NYU shall obtain any and all approvals, permits, and other licenses required by Federal, New York State (“State”) and City laws, rules, regulations, and orders which are or may become necessary to construct, operate and maintain the New Landscape Improvements in accordance with the terms of this Agreement and the Declaration and to exercise its rights under the Easement. Failure to fulfill any of the obligations set forth herein for any reason after notice to NYU and NYU’s failure to comply as provided in Paragraph 27 herein, may be deemed a
default as determined by the Commissioner. Whenever any act, consent, approval, or permission is required of the City, Parks, or the Commissioner under this Agreement, the same shall be valid only if it is, in each instance, in writing and signed by the Commissioner or the Commissioner’s duly authorized representative. No variance, alteration, amendment or modification of this Agreement shall be valid or binding upon NYU, the City, Parks, the Commissioner, or their agents, unless the same is, in each instance, in writing and duly signed by a duly authorized representative of NYU and the Commissioner or the Commissioner’s duly authorized representative.

(c) Upon Substantial Completion of each of the New Landscape Improvements, NYU shall operate and maintain such New Landscape Improvements in accordance with all applicable law and shall, at its sole cost and expense, obtain all licenses and permits that may be required to operate such New Landscaped Improvements in accordance with applicable law, including any necessary Certificate(s) of Occupancy. NYU shall at all times operate and maintain the New Landscaped Improvements in accordance with the provisions of any required licenses or permits.

(d) Nothing in this Agreement shall be construed so as to impair or diminish NYU’s rights under the Easement.

2. TERM

(a) The initial term of this Agreement shall be ten (10) years and shall commence on the date upon which NYU provides, pursuant to Section 4.9(a) of the Declaration, a “Permit Notice” of NYU’s intention to undertake “Construction Commencement” of the “Phase I Development” (as such terms are defined in the Declaration, and which shall be referred to and have the same meaning herein) (the “Effective Date”). NYU shall have no obligations under this Agreement prior to the Effective Date. Unless Parks notifies NYU upon not less than thirty (30) days notice prior to the end of the initial term, or any renewal term, of Parks’ election not to continue this Agreement, this Agreement shall be deemed to be automatically renewed for additional ten (10) year terms, each such renewal being subject to the same terms and conditions contained herein. Collectively the initial term and any renewal thereof shall be referred to as the “Term.”

(b) Notwithstanding any language contained herein, this Agreement is terminable at will by the Commissioner in whole or in part at any time. Such termination shall be effective after twenty-five (25) days written notice is sent to NYU. The Commissioner, the City, its employees and agents shall not be liable for damages to NYU in the event that this Agreement is terminated by the Commissioner as provided for herein. In the event this Agreement is terminated by the Commissioner, NYU shall have no further obligations to operate and maintain the New Landscape Improvements, except that in the event this Agreement has been terminated
for the reason that NYU has failed to perform its obligations under this Agreement and has not remedied such failure upon notice by the Commissioner as set forth in Section 27(a), then (i) Parks shall be permitted to draw down upon the “Letter of Credit” as defined and set forth in Section 5(d) and (e) herein below to provide such maintenance, and (ii) at such time when the funds of the Letter of Credit have been depleted, NYU shall continue to provide annual funding for the ongoing maintenance of the Licensed Premises as described in Section 5(e) herein.

3. NO LEASE

It is expressly understood that the City has title to the Licensed Premises and no land, building, space, improvement, or equipment is leased to NYU, but that during the Term of this Agreement, for the purposes provided for herein, subject to NYU’s rights under the Easement and obligations under the Declaration, NYU shall have the use of the Licensed Premises, which shall be open to the public for hours to be determined by the Commissioner, and shall continue to operate and maintain same in compliance with each and every provision and condition in this Agreement.

4. DEVELOPMENT

Subject to a Parks construction permit and any other required City approvals, NYU will construct all New Landscape Improvements substantially in accordance with the sequencing and landscaping details set forth on the drawings attached as Exhibit C to the Declaration (defined as the “Development Plans” in the Declaration, and which shall be referred to and have the same meaning herein) and the drawings attached as Exhibit D to the Declaration (defined as the “Construction Phasing Plans” in the Declaration, and which shall be referred to and have the same meaning herein), as same may be modified in accordance with the provisions of the Declaration, and to Parks’ reasonable satisfaction.

5. MAINTENANCE

(a) Upon Substantial Completion of each New Landscape Improvement, NYU shall provide or cause to be provided at NYU’s sole expense, all services required for maintaining and repairing such New Landscape Improvement to the reasonable satisfaction of the Commissioner, consistent with the “Development Phases” (as such term is defined in the Declaration, and which shall be referred to and have the same meaning herein) as set forth in the Declaration. Such services shall include keeping and maintaining the New Landscape Improvement in good condition and good repair, and making replacements, if needed, all in accordance with the provisions of this Agreement. Prior to the Substantial Completion of a New Landscape Improvement in an area of the Licensed Premises, NYU shall have no obligation to maintain that
area of the Licensed Premises. Nothing in this paragraph shall relieve NYU of its obligations to comply with any requirements of a Parks’ construction permit.

(b) Not less than ninety (90) days prior to the date reasonably estimated by NYU for Substantial Completion of a New Landscape Improvement, NYU shall provide to Parks a proposed budget for one operational year (July 1 through June 30), setting forth the costs and expenses for maintenance and repair of such New Landscape Improvement (and all other New Landscape Improvements, if any, that have previously been Substantially Completed), together with a description of the maintenance work performed in respect to such New Landscape Improvement(s) to date, if any (the “Proposed Budget”).

(c) Within thirty (30) business days of receipt of the Proposed Budget by the Commissioner, the Commissioner, using reasonable judgment, shall approve or disapprove such Proposed Budget. Upon approval, the Proposed Budget shall become the budget (the “Budget”) for the subsequent operational year. If the Commissioner disapproves such Proposed Budget, the Commissioner shall state in writing the reasons for such disapproval. In the event a Proposed Budget is disapproved, NYU shall submit a revised Proposed Budget and the Commissioner, exercising reasonable judgment, shall within fifteen (15) business days of receipt of such revised Proposed Budget approve or disapprove said revised Proposed Budget. If the Commissioner disapproves such revised Proposed Budget, the Commissioner shall state the reasons in writing and modify the revised Proposed Budget accordingly. If NYU does not accept the revised Proposed Budget, the Budget from the previous operational year plus a 5% increase shall be used as the Budget until such time as a new Budget can be agreed upon.

(d) On or before the Effective Date, NYU shall provide a clean, unconditional and irrevocable letter of credit in an amount equal to $3,050,000 (such amount represents Parks’ estimated annual costs to maintain the New Landscape Improvements of $305,000 per year, multiplied by the Term of this Agreement (i.e. 10 years) (the “Letter of Credit”), to be utilized by Parks for maintenance and repair of the New Landscape Improvements in the event of a failure by NYU to perform its obligations under this Agreement or termination of this Agreement by the Commissioner pursuant to Paragraph 27 below. The Letter of Credit shall be renewed each year on the anniversary of the Effective Date, with the amount being reduced each year by $305,000. This requirement for the provision of a Letter of Credit shall expire no sooner than ten (10) years from the Effective Date. In the event of an automatic renewal of this Agreement pursuant to Paragraph 2(a) hereof, NYU shall deliver to Parks a renewal or new Letter of Credit subject to all of the conditions aforesaid, including without limitation that the amount of such renewal or new Letter of Credit shall be subject to escalation for inflation.

(e) In the event that NYU fails to perform its obligations under this Agreement or Parks terminates this Agreement pursuant to Paragraph 27 of this Agreement, after notice to
NYU and NYU’s failure to cure the breach, Parks may utilize the Letter of Credit to maintain and repair the New Landscape Improvements. In the event this Agreement has been terminated for the reason that NYU has failed to perform its obligations under this Agreement and has not remedied such failure upon notice by the Commissioner as set forth in Section 27(a), and at such time when the funds from the Letter of Credit have been depleted, NYU shall be required to continue to provide annual funding in the amount of $305,000 (subject to escalation for inflation) to Parks for the annual cost of maintaining the New Landscaped Improvements. This provision shall survive the termination of this Agreement.

(f) NYU shall be responsible for maintenance and repair of the New Landscape Improvements in accordance with the standards set forth in this Paragraph 5 and in the Parks Inspection Program Manual, 2007 edition, as updated by the Commissioner from time to time, which is attached hereto as Exhibit E. All such maintenance shall be performed by NYU in a good and worker-like manner.

(g) NYU’s maintenance obligations with respect to the New Landscape Improvements shall include, but shall not be limited to the following:

(i) Cleaning

(A) Dirt, litter and obstructions shall be removed as needed and trash and leaves collected and removed as needed so as to maintain the New Landscape Improvements in a clean, neat and good condition.

(B) All walkways, sidewalks and all other improvements and facilities installed in the New Landscape Improvements shall be routinely cleaned and maintained so as to keep such improvements and facilities in a clean, neat and good condition.

(C) Graffiti shall be painted over or removed as appropriate to the nature of the surface within twenty-four (24) hours.

(D) Drains, sewers and catch basins shall be cleaned regularly to prevent clogging.

(E) Branches and trees damaged or felled by winds, ice, vandalism, or by any other reasons whatsoever, shall be promptly removed.

(ii) Snow Removal. Snow and ice shall be removed from all walkways in accordance with New York City Administrative Code §16-123.
(iii) **Landscape Maintenance.** In addition to the obligations set forth in this Paragraph 5, the maintenance program for the planted portions of the New Landscape Improvements shall consist of a “Spring Start-up Period” program, a “Season Closing Period” program, and a continuing maintenance program through the “Growing Season.”

(iv) Subject to Subparagraph 10(b) below and a Parks’ Forestry Permit when applicable, prune and trim those trees that have overextended, dead or otherwise unsafe or unsightly branches to maintain natural form.

(v) **Spring Start-up Period:** The Spring Start-up Period shall commence on or about March 1st and terminate on or about the end of the second week of April of each calendar year. NYU shall complete the following work annually during the Spring Start-up Period:

(A) Remove any winter protections from trees, shrubs and other planting materials.

(B) Remove all landscape debris including leaves and dead branches.

(C) Remove or destroy any weeds growing between paving blocks, pavement, cobbled and concrete areas.

(D) Apply commercially available and appropriate fertilizer to trees, shrubs, plants and lawn areas, as appropriate.

(E) Remove any sand deposited as a result of winter sandings.

(F) Subject to Parks’ prior written approval, replace any plant material or trees that are dead, diseased and/or otherwise unhealthy with healthy specimens of substantially equal type and reasonable size.

(G) Reseed grassed areas as needed.

(vi) **Season Closing Period:** The Season Closing Period shall begin on or about October 15th and shall terminate on or about November 30th of each calendar year. NYU shall undertake and complete the following work annually during the Season Closing Period:

(A) Rake and collect leaves.

(B) Wrap trees, shrubs and other plant material as necessary to ensure adequate winter protection.
(C) Apply commercially available and appropriate fertilizer to all lawn areas.

(D) Reseed lawn areas as needed.

(vii) **Growing Season**: The Growing Season shall commence with the end of the Spring Start-up Period and shall terminate at the start of the Season Closing Period. NYU shall undertake and carry out the following work during the Growing Season:

(A) Inspect trees on a regular basis and spray when necessary.

(B) Water all trees, shrubs, plantings and lawn areas as necessary to maintain in a healthy condition. In extended periods of drought, *i.e.* little precipitation/high temperatures for more than one week, ground cover, trees, shrubs and other plantings shall be thoroughly watered, subject to any City or State regulations governing water usage.

(C) Mow lawn areas on a bi-weekly basis and re-seed as needed.

(D) Weed as needed, no less than on a bi-weekly basis.

(viii) **Repairs and Replacement**. Repair and replacement of all facilities within the New Landscape Improvements shall occur as needed to maintain such facilities in good order and working condition and where applicable, subject to the notice requirements contained in Paragraph 6 of this agreement. NYU shall exercise due diligence in commencing the repair or replacement of same as promptly as possible and shall complete the same within a reasonably expeditious time after commencement. All such repairs and replacements shall be performed so as to be in substantial conformance with the Landscape Plans identified in Section 6(a) of the Declaration and annexed thereto as part of Exhibit C, as same may be modified in accordance with the provisions of the Declaration. Repairs shall include, but not be limited to, the following, as applicable to the facilities in the New Landscape Improvements:

(A) **Benches or Other Seating**: Undertake all maintenance, including replacement of any broken or missing slats and painting, as necessary.

(B) **Walls, Barriers, Gates and/or Fencing**: Any broken or materially cracked walls, barriers, gates and/or fencing shall be repaired or removed and replaced with materials and designs matching the existing structures to the extent feasible.
(C) **Paving.** All paved surfaces shall be maintained so as to be safe and attractive. To the extent feasible, replacement materials shall match existing materials.

(D) **Signage and Artwork:** Any artwork and graphics shall be maintained in a first class condition and all vandalized or damaged signage shall be promptly cleaned or replaced with new signage to match other installed signs.

(E) **Facilities:** All recreation facilities, equipment and lighting fixtures shall be maintained in good condition and good working order at all times.

(F) **Painting:** All items with painted surfaces shall be painted on an "as needed" basis. Surfaces shall be scraped free of rust or other extraneous matter and painted to match the existing color.

(G) **Plant Materials and Trees:** Subject to Subparagraph 10 (b) below, plant materials and trees that are dead, diseased and/or otherwise unhealthy shall be replaced with healthy specimens of substantially equal type and reasonable size as approved by Parks. In the event of the loss of more than ten (10) trees or of all trees of any species, NYU shall consult with Parks and provide appropriate replacements for such trees as reasonably determined by the Commissioner.

(H) **Lighting:** All lighting elements shall be maintained in a first class condition and will be maintained and/or replaced as necessary.

(I) **Water Features:** Any water features shall be maintained in a good clean condition and shall be operable beginning on or about May 15th to on or about September 15th.

(h) Upon Substantial Completion of each New Landscape Improvement, NYU, at its sole cost and expense, shall keep clean and free from ice, snow and rubbish, and otherwise maintain the sidewalks abutting the New Landscape Improvements and all other areas and spaces located in front of or adjacent to the New Landscape Improvements which NYU would be so responsible by law if it were the fee owner of the Premises.

(i) During each year of the Term of this Agreement, no later than ninety (90) days after the close of each operational year, NYU shall submit to the Commissioner an annual report detailing the actual cost of maintaining the New Landscape Improvements for the preceding operational year.
6. HAZARDOUS CONDITIONS

NYU shall periodically inspect the New Landscape Improvements, and shall promptly notify Parks of any known hazardous condition(s) and institute reasonable measures to protect the public from harm, including, but not limited to, promptly repairing or replacing any portion or feature of the New Landscape Improvements that exhibits such defects or hazardous conditions and promptly instituting any appropriate measures to protect the public from harm, including but not limited to, the erection of warning signs and temporary barriers during the period of repair or replacement work. Should the Commissioner decide that an unsafe or emergency condition exists on the Licensed Premises, NYU, after written notification, shall have twenty-four (24) hours to correct such unsafe or emergency condition. During this period, the Commissioner may require a partial or complete suspension of use of the affected area. If NYU believes that such unsafe or emergency condition cannot be remedied within twenty-four (24) hours, NYU shall notify the Commissioner in writing and indicate the amount of time needed to correct such condition. The Commissioner may extend such period of time in order to permit NYU to cure the unsafe or emergency condition, under such terms and conditions as appropriate, such consent not to be unreasonably withheld or delayed.

7. SERVICES IN THE LICENSED PREMISES

(a) NYU’s right to provide any additional services and/or revenue generating activities in the Licensed Premises shall be subject to Parks’ prior written approval and any additional City authorization and approvals which may be necessary, including without limitation, any necessary approval by Parks and/or the Franchise and Concession Review Committee. Such revenue-generating activities shall include, but not be limited to, sales of any goods or services.

(b) NYU shall pay or require any third party operator to pay for any and all fees or royalties to ASCAP, BMI or such entities as may be required for any music or music programming during events which it sponsors.

8. DESIGN APPROVALS

Subject to the provisions of Section 7.3(d) of the Declaration, NYU shall comply with all applicable laws, rules, regulations and procedures, as same may be amended from time to time during the Term, for review and approval by Parks and any other involved City agencies of the design, redesign, renovation and rehabilitation of the New Landscape Improvements.
9. CAPITAL IMPROVEMENTS

(a) The City has final authority over all capital projects and programs undertaken on the Licensed Premises. NYU and the City shall annually coordinate the preparation of operating, expense and capital budgets, including any amendments thereof, for the Licensed Premises after Substantial Completion of any New Landscape Improvements.

(b) Parks shall consult with NYU on all Parks capital projects on the Licensed Premises.

(c) In addition, subject to all legal requirements, including, but not limited to, compliance with all applicable prevailing wage requirements, and subject to Parks' approval, NYU may enter into contracts for approved Parks capital projects and may supplement Parks and/or other public capital funds with NYU funds for the development of such approved Parks projects. However, nothing in this Section 9 shall obligate NYU to incur any costs for Parks' capital projects on the Licensed Premises.

10. ALTERATIONS BY NYU

(a) Subject to and in accordance with the Declaration and the Easement, after Substantial Completion of any New Landscape Improvement, NYU, at its sole cost and expense, may make alterations to the New Landscape Improvements only in accordance with the requirements of this Paragraph 10 and such work shall not commence until NYU obtains written approval from the Commissioner and all appropriate approvals and/or permits required by any agency or entity with pertinent jurisdiction. Alterations shall become the City's property, at its option, upon their attachment, installation or affixing. “Alterations” shall have the following meaning:

(i) any restoration, rehabilitation, modification, renovation, or improvement to the New Landscape Improvements;

(ii) any work or construction on the Licensed Premises which would or might affect in any manner, or have any impact whatsoever upon the character, appearance, or design of any portion of the New Landscape Improvements;

(iii) any work, excluding ordinary maintenance and repair, affecting the plumbing, heating, electrical, mechanical, ventilating, or other systems of the New Landscape Improvements;

(iv) affixing or installing any equipment to any area of the New Landscape
Improvements; and,

(v) any major landscaping, planting, or removal of trees, flowers, or shrubbery on or within the New Landscape Improvements.

(b) No trees shall be cut down, or removed from the New Landscape Improvements without the prior written approval of Parks except in the event of an emergency with respect to trees that are dead, diseased or otherwise unhealthy and cause a risk to the public safety.

(c) Subject to and in accordance with the Declaration and the Easement, to alter the New Landscape Improvements, NYU must:

(i) Obtain the prior written approval of the Commissioner, or the Commissioner’s designee, which shall not be unreasonably withheld or delayed, for whatever designs, plans, specifications, cost estimates, agreements, and contractual understandings may pertain to contemplated purchases and/or work;

(ii) Obtain any other written approvals of the City Planning Commission or its Commissioner or his or her designee, if required, for whatever designs, plans, specifications that are otherwise necessary;

(iii) Insure that work performed and Alterations made by NYU on the Licensed Premises are undertaken and completed in accordance with submissions approved pursuant to Subparagraph (c)(i) above, in a good and workmanlike manner, and within a reasonable time; and,

(iv) Notify the Commissioner, or the Commissioner’s designee, of the completion of and the date of final payment for such Alteration(s) within ten (10) days after the occurrence of said completion or final payment.

To guarantee prompt payment of moneys due to a contractor or such contractor’s subcontractors and to all persons furnishing labor and materials to the contractor or such subcontractors in the prosecution of any Alteration Project, as defined below, with an estimated cost exceeding five hundred thousand dollars ($500,000), NYU will be required to post a payment bond or other form of undertaking approved by Parks, which approval shall not be unreasonably withheld, in the amount of one hundred percent (100%) of the cost of such Alteration Project before commencing such work. Such bond or other undertaking shall be in a form reasonably acceptable to Parks. For purposes of this provision, an “Alteration Project” shall mean a set of Alteration(s) that are reasonably related in time and purpose as determined by Parks in its sole discretion. Notwithstanding the above, to the extent that an
Alteration is funded in whole or in part through a separate contract with the State or City, NYU will comply with the terms of such contract regarding payment bonds for the work to be performed under such contract, including any requirement to obtain a payment bond pursuant to State Finance Law 137 or Section 5 of the Lien Law, as applicable, and such terms shall supersede any bonding or other requirements set forth elsewhere in this Agreement.

11. ALTERATIONS BY PARKS

(a) Subject to the Easement and the Declaration, Parks may, in its sole judgment and upon reasonable notice to NYU, make additions, Alterations, repairs, decorations or improvements to the New Landscape Improvements at the City’s expense, but nothing herein contained shall be deemed to obligate or require Parks to make any additions, Alterations, repairs, decorations or improvements, nor shall this provision in any way affect NYU’s obligations under this Agreement or the Declaration or impair NYU’s rights under the Easement. Parks will use all reasonable efforts to schedule any such additions, Alterations, repairs, decorations or improvements to be made by Parks at such times as will cause the least interference with NYU’s operations on the Licensed Premises or the NYU Property.

(b) Subject to the Easement and the Declaration, Parks reserves the right to perform construction or maintenance work deemed reasonably necessary by the Commissioner on the Licensed Premises at any time during the Term of this Agreement, and NYU agrees to cooperate with Parks to accommodate any such work by Parks and provide public and construction access through the Licensed Premises as reasonably deemed necessary by the Commissioner. Parks shall give NYU at least fourteen (14) days written notice of any such work whenever possible and shall use its best effort to not materially interfere with NYU’s operations or use of the Licensed Premises or the NYU Property. Subject to the Easement, Parks may temporarily close a part or all of the Licensed Premises for a Parks purpose as determined by the Commissioner.

12. FIXED AND EXPENDABLE EQUIPMENT

(a) NYU shall, at its sole cost and expense, and to the reasonable satisfaction of the Commissioner, provide and replace, if necessary, all equipment necessary for the performance of NYU’s obligations under this Agreement, and put, keep, repair, preserve, and maintain in good order all New Fixed Equipment and Expendable Equipment, each as defined below.

(b) The City has title to all property affixed in any way to the Licensed Premises as of the date of execution of this Agreement except as otherwise subject to easement or revocable consent with another entity (“Existing Fixed Equipment”). Title to any property affixed to the New Landscape Improvements subsequent to the date of execution of this Agreement (“New Fixed Equipment”), and to all construction, renovation, or improvements made to the New
Landscape Improvements, shall vest in and belong to the City at the City’s option, which option shall be exercised upon substantial completion of the affixing of said equipment or the substantial completion of such construction, renovation, or improvement. To the extent the City chooses not to exercise such option, NYU shall, at its sole cost and expense, and to the satisfaction of the Commissioner, be responsible for removing such New Fixed Equipment and repairing any damage to the New Landscape Improvements or specified location(s) therein resulting from such removal as directed and to the satisfaction of the Commissioner after the expiration, or earlier termination of this Agreement.

(c) NYU shall supply, at its own cost and expense, all personal equipment (“Expendable Equipment”) required for the proper maintenance and operation of the New Landscape Improvements, and repair or replace such Expendable Equipment at its own cost and expense when reasonably requested by Commissioner. Any Expendable Equipment which the Commissioner reasonably determines is necessary to the maintenance and operation of the New Landscape Improvements must be acquired by NYU and used for the purposes herein intended.

(d) NYU must, at its sole cost and expense, acquire, replace, repair, install, or affix any equipment, materials, and supplies required for the proper maintenance and operation of the New Landscape Improvements as described herein or as reasonably required by the Commissioner.

(e) Title to all Expendable Equipment obtained by NYU shall remain in NYU. NYU shall remove such equipment upon the expiration or earlier termination of this Agreement. In the event such equipment remains in the New Landscape Improvements following expiration or earlier termination, the Commissioner may treat such property as abandoned, and NYU shall be charged all costs and expenses incurred in the removal thereof.

(f) NYU acknowledges that it is accepting the license granted herein to construct and maintain the New Landscape Improvements and the New Fixed Equipment thereon solely in reliance on its own investigation, that no representations, warranties, or statements have been made by the City concerning the fitness of the Licensed Premises for such purposes, and NYU shall accept the Licensed Premises in its present condition “as is.”

(g) The New Fixed Equipment and/or Expendable Equipment to be removed by NYU following expiration or earlier termination of this Agreement as set forth in subparagraph (b) and (e) hereinabove shall be removed from the New Landscape Improvements in such a way as shall cause no damage to the New Landscape Improvements. Notwithstanding its vacating and surrender of the New Landscape Improvements, NYU shall remain liable to City for any damage it may have caused to the New Landscape Improvements.
13. UTILITIES

NYU shall pay all utility costs including, but not limited to, gas, water, and electricity incurred on or in connection with the construction, maintenance and operation of the New Landscape Improvements during the Term and maintain in good repair during the Term all meters which separately measure NYU’s consumption of such utilities.

14. PROHIBITIONS ON USE

(a) **Nuisance and Waste.** NYU shall not create or suffer to be created any nuisance or danger to the public safety or public property in, on or about the Licensed Premises and shall not commit or cause any waste, damage, disfigurement, or injury to the New Landscape Improvements.

(b) **No Combustibles.** NYU shall not use or store or permit the use or storage on the Licensed Premises of any illuminating oils, candles, oil lamps, turpentine, benzene, naphtha, poly or other similar substances, or explosives of any kind or any substance or thing prohibited in the standard policies of fire insurance companies in the State of New York.

(c) **Unlawful Purpose.** NYU shall not use the New Landscape Improvements for any unlawful purpose or in violation of any Certificate of Occupancy. NYU shall not use the Licensed Premises for any purpose except as set forth in this Agreement, the Declaration and the Easement.

15. INSURANCE

(a) **NYU’s Obligation to Insure.**

(i) From the Effective Date through the date of the expiration or termination of this Agreement, NYU shall ensure that the types of insurance indicated in this Paragraph 15 are obtained and remain in force, and that such insurance adheres to all requirements herein. The City may require higher liability limits if, in the reasonable opinion of the Commissioner, NYU’s operations warrant it.

(ii) NYU is authorized to undertake construction or maintenance or operation activities under this Agreement only during the effective period of all required coverage.

(b) **Commercial General Liability Insurance.**

(i) NYU shall maintain Commercial General Liability insurance in
the amount of at least five million dollars ($5,000,000.00) per occurrence with no aggregate limit. This insurance shall protect the insureds from claims for property damage and/or bodily injury, including death that may arise from any of the operations under this Agreement. Coverage shall be broad form coverage and contain no exclusions other than as required by law or as approved by the Commissioner, and shall be “occurrence” based rather than “claims-made.”

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

(c) Workers’ Compensation Insurance, Employers Liability, and Disability Benefits Insurance.

NYU shall maintain Workers’ Compensation Insurance, Employers Liability Insurance, and Disability Benefits Insurance on behalf of, or with regard to, all employees involved in NYU’s operations under this Agreement, and such insurance shall comply with the laws of the State of New York.

(d) Business Automobile Liability Insurance.

(i) With regard to all operations under this Agreement, NYU shall maintain or cause to be maintained Business Automobile Liability Insurance in the amount of at least one million dollars ($1,000,000.00) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned, or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA0001.

(ii) If vehicles are used for transporting hazardous materials, such Business Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

(e) Property Insurance. NYU shall maintain comprehensive “All Risk” or “Special Perils” form property insurance covering all buildings, structures, equipment and fixtures within the New Landscape Improvements (“License Structures”), whether existing at the beginning of this Agreement or built at any time before its expiration or termination. Such insurance shall provide full replacement cost coverage for the License Structures (without depreciation or obsolescence clause) and include, without limitation, coverage for loss or damage by acts of terrorism, water, flood, subsidence and earthquake. Such insurance shall be “occurrence” (rather than “claims-made”) based and shall designate NYU as the “Named Insured” and the City as “Loss Payee” as their interests may appear.
(i) The limit of such property insurance shall be no less than the full Replacement Cost of all License Structures, including, without limitation, the costs of post-casualty debris removal and soft costs, to the extent that such costs can be covered by an “All Risk” or “Special Perils” insurance policy. If such insurance contains an aggregate limit, it shall apply separately to the License Structures.

(ii) In the event of any loss to any of the License Structures, NYU shall provide the insurance company that issued such property insurance with prompt, complete and timely notice, and simultaneously provide the Commissioner with a copy of such notice. With regard to any License Structure that the City owns or in which the City has an interest, NYU shall also:

(A) take all appropriate actions in a timely manner to adjust such claim on terms that provide the City with the maximum possible payment for the loss; and,

(B) either provide the City with the opportunity to participate in any negotiations with the insurer regarding adjustments for claims or, at the Commissioner’s discretion, allow the City itself to adjust such claim.

(f) General Requirements for Insurance Coverage and Policies.

(i) Policies of insurance required under this Paragraph 15 shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A-/“VII” or a Standard and Poor’s rating of at least A, unless prior written approval is obtained from the Commissioner.

(ii) Policies of insurance required under this Paragraph 15 shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

(iii) There shall be no self-insurance program with regard to any insurance required under this Paragraph 15 unless approved in writing by the Commissioner. NYU shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Paragraph 15, including, but not limited to, the defense and indemnification obligations that insurers are required to undertake in liability policies.

(iv) The City’s limits of coverage for all types of insurance required under this Paragraph 15 shall be the greater of:
(A) the minimum limits set forth in this Paragraph 15; or,

(B) the limits provided to NYU under all primary, excess and umbrella policies covering operations under this Agreement.

(v) All required policies, except for Workers’ Compensation Insurance, Employers Liability Insurance, and Disability Benefits Insurance, shall contain an endorsement requiring that the issuing insurance company endeavor to provide the City with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both the Commissioner, New York City Department of Parks & Recreation, 830 Fifth Avenue, New York, NY 10065, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, NY 10007. Such notice is to be sent at least thirty (30) days before the expiration, cancellation, or termination date, except in cases of non-payment, where at least ten (10) days written notice would be provided.

(vi) All required policies, except Workers’ Compensation Insurance, Employers Liability Insurance, and Disability Benefits Insurance, shall include a waiver of the right of subrogation with respect to all insureds and loss payees named therein.

(g) Proof of Insurance.

(i) Certificates of Insurance for all insurance required in this Paragraph 15 must be submitted to and accepted by the Commissioner prior to or upon the Effective Date.

(ii) For Workers’ Compensation Insurance, Employers Liability Insurance, and Disability Benefits Insurance policies, NYU shall submit one of the following:

(A) C-105.2 Certificate of Worker’s Compensation Insurance;

(B) U-26.3 -- State Insurance Fund Certificate of Workers’ Compensation Insurance;

(C) Request for WC/DB Exemption (Form CE-200);

(D) Equivalent or successor forms used by the New York State Workers’ Compensation Board; or,

(E) Other proof of insurance in a form acceptable to the City. ACORD forms are not acceptable proof of Workers’ Compensation coverage.
(iii) For all insurance required under this Paragraph 15 other than Workers Compensation, Employers Liability, and Disability Benefits NYU shall submit one or more Certificates of Insurance in a form acceptable to the Commissioner. All such Certificates of Insurance shall:

(A) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and,

(B) be accompanied by the provision(s) or endorsement(s) in NYU’s policy/ies, including its general liability policy, by which the City has been made an Additional Insured or Loss Payee, as required herein. All such Certificates of Insurance shall be accompanied by either a duly executed “Certification by Broker” in the form required by the Commissioner or certified copies of all policies referenced in such Certificate of Insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

(iv) Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of all policies required under this Agreement. Such Certificates of Insurance shall comply with Subparagraphs (ii) and (iii) directly above.

(v) Acceptance or approval by the Commissioner of a Certificate of Insurance or any other matter does not waive NYU’s obligation to ensure that insurance fully consistent with the requirements of this Paragraph 15 is secured and maintained, nor does it waive NYU’s liability for its failure to do so.

(vi) NYU shall provide the City with a complete, certified copy of any liability insurance policy required under this Agreement upon the City’s request, at any time in the course of a dispute with its insurance carrier as to whether the City is entitled to coverage under such policy. Upon NYU’s receipt of the City’s request hereunder, NYU may delay the provision of such policy for up to forty-five (45) days after receipt thereof in order to facilitate the resolution of such dispute with its insurance carrier to the City’s satisfaction. The foregoing shall not affect a party’s rights under law or court order with respect to the disclosure of such policy during the course of litigation.

(h) Miscellaneous.
(i) NYU may satisfy its insurance obligations under this Paragraph 15 through primary policies or a combination of primary and excess/umbrella policies, so long as such policies, individually or in combination, provide the scope of coverage required herein.

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

(iii) Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Paragraph 15, NYU shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this Agreement, including notice to Commercial General Liability insurance carriers for events relating to NYU’s own employees, no later than twenty (20) days after such event. For any policy where the City is an Additional Insured, such notice shall expressly specify that “this notice is being given on behalf of the City of New York as Insured as well as the Named Insured.” Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. NYU shall simultaneously send a copy of such notice to:

City of New York Law Department

c/o Insurance Claims Specialist

Affirmative Litigation Division

100 Church Street

New York, NY 10007

(iv) NYU’s failure to secure and maintain insurance in complete conformity with this Paragraph 15, or to give the insurance carrier timely notice on behalf of the City, or to do anything else required by this Paragraph 15 shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

(v) Insurance coverage in the minimum amounts provided for in this Paragraph 15 shall not relieve NYU of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or the law.

(vi) In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Paragraph 15, NYU shall at all times fully cooperate with the City with regard to such potential or actual claim.
(vii) NYU waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Paragraph 15, whether or not such insurance is actually procured or claims are paid thereunder, or any other insurance applicable to the operations of NYU and/or its employees, agents, or servants of its contractors, or subcontractors.

(viii) In the event NYU requires any entity, by contract or otherwise, to procure insurance with regard to any operations under this Agreement and requires such entity to name NYU as an Additional Insured under such insurance, NYU shall ensure that such entity also name the City, including its officials and employees, as an additional insured with broad form coverage.

(ix) In the event NYU receives notice, from an insurance company or other person, that any insurance policy required under this Paragraph 15 shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, NYU shall immediately forward a copy of such notice to both the Commissioner, New York City Department of Parks & Recreation, 830 Fifth Avenue, New York, New York 10065 and the New York City Comptroller, attention: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Notwithstanding the foregoing, NYU shall ensure that there is no interruption in any of the insurance coverage required under this Paragraph 15.

16. RESPONSIBILITY FOR SAFETY, INJURIES OR DAMAGE, AND INDEMNIFICATION

(a) NYU’s Responsibility.

(i) NYU shall be solely responsible for the safety and protection of its employees, agents, servants, contractors, and subcontractors, and for the safety and protection of the employees, agents, or servants of its contractors or subcontractors in connection with the performance by NYU of its obligations under this Agreement.

(ii) NYU shall be solely responsible for taking all reasonable precautions to protect the persons and property of the City or others from damage, loss or injury resulting from the performance by NYU of its obligations under this Agreement.

(iii) NYU shall be solely responsible for injuries to any and all persons, including death, and damage to any and all property arising out of or related to the performance by NYU of its obligations under this Agreement, including, but not limited to, injuries or
damages resulting from the acts or omissions of any of its employees, agents, servants, contractors or subcontractors except to the extent that those injuries (including death) to any person or damage to any property arise out of the negligence of the City or Parks, its officials, employees, agents, servants, contractors or subcontractors related to the design of the New Landscape Improvements, the selection of equipment located in or on the New Landscape Improvements and/or Alterations, and construction or maintenance work undertaken by Parks to the New Landscape Improvements pursuant to this Agreement or otherwise.

(iv) NYU shall use the Licensed Premises in compliance with, and shall not cause or permit the Licensed Premises to be used in violation of, any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adapted in the future which are or become applicable to NYU or the Licensed Premises (collectively “Environmental Laws”). Except as may be agreed by the City as part of this Agreement, NYU shall not cause or permit, or allow any of NYU’s employees, agents, servants, contractors or subcontractors to cause or permit, any hazardous materials (“Hazardous Materials”) to be brought upon, stored, used, generated, treated or disposed of on the Licensed Premises in violation of Environmental Laws. As used herein, Hazardous Materials means any chemical, substance or material, which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Laws based upon, directly or indirectly, its properties or effects.

(b) Indemnification and Related Obligations.

(i) To the fullest extent permitted by law, NYU shall indemnify, defend and hold the City and its officials and employees harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature, including, without limitation, reasonable attorneys’ fees and disbursements, arising out of or related to the performance by NYU of its obligations under this Agreement (each a “Claim,” collectively, “Claims”), regardless of whether or not NYU itself had been negligent, and/or NYU’s failure to comply with the law or any of the requirements of this Agreement except that NYU will have no obligation to indemnify, defend and hold harmless the City and its officials and employees against any injury or damage arising from the gross negligence of the City, its officials, employees, agents, servants, contractors or subcontractors related to the design of the New Landscape Improvements, the selection of equipment located in or on the New Landscape Improvements and/or Alterations, and construction or maintenance work undertaken by Parks to the New Landscape Improvements pursuant to this Agreement or otherwise. Insofar as the facts or law relating to any of the foregoing paragraph would preclude the City or its officials and employees from being completely indemnified by NYU, the City and its officials and employees shall be partially indemnified by NYU to the fullest extent permitted by this Agreement and applicable law.
(ii) NYU’s obligation to defend, indemnify and hold the City and its officers and employees harmless shall not be:

(A) limited in any way by NYU’s obligations to obtain and maintain insurance under this Agreement; nor,

(B) adversely affected by any failure on the part of the City or its officers and employees to avail themselves of the benefits of such insurance.

(vi) The City shall promptly notify NYU, in writing, of any such Claim made against the City. Such notice shall be given as provided in Subparagraph 26(c) below.

17. ASSUMPTION OF RISK

NYU assumes all risk with respect to the actions taken by NYU or duties imposed on NYU by this Agreement.

18. INSPECTION OF RECORDS AND AUDITS

(a) The provisions of this Section 18 shall apply only to activities of NYU under this Agreement (“Activities Subject to Audit”).

(b) NYU will make available for consultation any of its officers and employees whose work relates to the Activities Subject to Audit. NYU also will make available, upon reasonable prior notice, at its principal place of business, for audit, inspection, or removal of copies by Parks, the New York City Comptroller (“Comptroller”), and/or by a Parks-authorized independent auditor, NYU’s books and records relating to the Activities Subject to Audit, including, but not limited to, the following:

(i) expenditures, annual budget, bi-weekly payroll recap, fringe benefits, books, accounts, canceled checks, and all other fiscal records;

(ii) staff and salary roster, including salary changes and adjustments;

(iii) internal and external audits completed within the last six (6) years;

(iv) programs, research, and other reports and publications in connection with NYU’s responsibilities at the Licensed Premises pursuant to this Agreement; and,
(v) registration and attendance records of NYU's sponsored programs on the Licensed Premises, and any other matters relating to the performance of and compliance with this Agreement, or with any laws or regulations governing the conduct of NYU under this Agreement.

(c) NYU will establish and maintain accurate records and accounts which sufficiently and properly reflect all revenue generated, if any, and direct and indirect costs of any nature expended in the Activities Subject to Audit.

(d) With respect to the Activities Subject to Audit, NYU shall use such accounting and internal control methods and procedures and keep such additional books and records as may be reasonably prescribed by Parks or the Comptroller, and Parks or the Comptroller shall have the right to examine the recordkeeping procedures of NYU prior to the commencement of the Term of this Agreement, and at any time thereafter, in order to assure that the procedures are adequate to reveal the true, correct, and entire business conducted by NYU with respect to the Activities Subject to Audit.

(e) The failure or refusal of NYU to furnish any of the statements required to be furnished under this Paragraph within thirty (30) days after its due date, the failure or refusal of NYU to maintain adequate internal controls or to keep any of the records as required by this Paragraph after written prior notice from Parks or the Comptroller or the existence of any unexplained discrepancy, as disclosed by audit conducted by Parks or the Comptroller, the results of which are provided by written notice to NYU in each instance shall be presumed to be a failure to substantially comply with the terms and conditions of this Agreement and a default hereunder, which shall entitle Parks, at its option, to terminate this Agreement.

(f) NYU shall make available to the office of the Comptroller, and/or Parks' auditor, upon request, all books, records, documents, and correspondence pertaining to the Activities Subject to Audit, for the purpose of examination, audit, review, or any purpose deemed necessary by the office of the Comptroller and/or Parks.

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

19. **NO REMOVAL OF RECORDS FROM THE PREMISES**

Where performance of this Agreement involves use by NYU of Parks' papers, files, data, or records at Parks' facilities or offices, NYU shall not remove any such papers, files, data, or records therefrom without the prior approval of Parks, which approval shall not be unreasonably
withheld or delayed. Such papers, files, data, or records at Parks’ facilities or offices are strictly confidential and shall not be divulged by NYU without the prior written approval of Parks.

20. ACCESS AND INSPECTION AT THE LICENSED PREMISES

(a) NYU shall permit access to the Licensed Premises by the Commissioner and/or the Commissioner’s duly authorized representative(s), including Parks inspectors, at all times. Parks may conduct unannounced inspections of the New Landscape Improvements in order to ensure compliance with this Agreement. NYU will be obligated to rectify, in a timely manner, any deficiencies in the New Landscape Improvements observed by Parks during such inspection. Should NYU fail to rectify such deficiencies in a timely manner, Parks shall notify NYU in writing that such deficiencies must be corrected within the time frame specified by such notice. If, in NYU’s reasonable judgment, the deficiency cannot be rectified within the specified time frame, NYU may request and Parks shall not unreasonably deny an extension of time to rectify the deficiency. In the event that NYU fails to rectify the deficiencies within the specified or extended time frame, Parks will send NYU a second notice. If, after such second notice NYU fails to rectify the deficiencies, at its option, and in addition to any other remedies available to it, Parks may terminate this Agreement, subject to the provisions of Paragraph 27 below. All time periods shall be subject to force majeure.

(b) NYU shall also permit access to the Licensed Premises to the New York City Police Department and other City agency representatives for any lawful purpose at all times.

(c) Parks shall have the right to have representatives of Parks or of the City or of the State or Federal governments present at the Licensed Premises to observe NYU’s construction, maintenance and operation of the New Landscape Improvements.

21. SOUND AMPLIFICATION

NYU shall comply with all laws, rules and regulations of appropriate agencies, including the New York City Department of Environmental Protection, regarding noise levels. Any sound amplification and/or music equipment operated by NYU shall be operated in accordance with the Rules of the City of New York, Title 56 RCNY §1-05(d)(2), the Administrative Code of the City of New York, §24-244, and only at times and at a sound level acceptable to the Commissioner. NYU must make every reasonable effort to ensure that any and all amplified sound and/or music from NYU’s activities within the Licensed Premises is done in such a manner so as to avoid or minimize disturbance or discomfort to the surrounding community. Amplified sound and/or music must not exceed the decibel level allowed by City noise regulations.
22. RETENTION OF RECORDS

NYU agrees to retain all books, records, and other documents relevant to this Agreement for six (6) years after each ten (10) year term of the Agreement. City, State and Federal auditors shall have full access to and the right to examine any of said materials during this period, upon reasonable prior notice.

23. PERSONNEL

(a) All personnel employed by NYU are employees of NYU and not of Parks or the City, and NYU alone is responsible for their work, direction, compensation, and personal conduct while engaged in connection with this Agreement. Nothing in this Paragraph 23 or any other provision of this Agreement shall be construed to impose any liability or duty upon Parks or the City to persons, firms, or corporations employed or engaged by NYU as consultants, experts, or independent contractors, or in any other capacity whatsoever or as employees, servants, or agents of NYU, or to make Parks or the City liable to any person, firm, corporation, association, or to any government for the acts, omissions, liabilities, obligations, and taxes of whatsoever nature, including unemployment insurance of NYU or its consultants, experts, employees, servants, agents, or independent contractors.

(b) For purposes of this Subparagraph, the word “personnel” means each employee or volunteer hired, retained or engaged by NYU whose duties and responsibilities relate primarily to working with children or in close proximity to children within or upon the Licensed Premises. NYU will be responsible for the recruitment, screening, and verification of credentials, references, and suitability of all such personnel for working with children. NYU agrees to comply with all guidelines and procedures of Parks concerning the screening and employment of personnel provided in writing to NYU, including, but not limited to, the following:

(i) NYU will be responsible for screening of all personnel hired, retained or engaged by NYU, including:

(A) substantiating credentials; and,

(B) checking references.

(ii) NYU agrees not to hire, retain or engage any personnel who refuse to:

(A) provide the names of references;

(B) provide documentation of credentials;
(C) provide information on criminal conviction records; or,

(D) provide other requested information which may bear on the applicant's fitness to work with or in close proximity with children.

(iii) NYU agrees not to hire, retain or engage any personnel:

(A) who, to NYU's knowledge, have not completely and truthfully reported information concerning their criminal convictions;

(B) whose criminal convictions record, to the extent disclosed by a background check, directly bears on their fitness to work with or in close proximity with children, or whose employment would involve an unreasonable risk to the safety or welfare of children, subject to and consistent with Article 23-A of the New York State Correction Law; or

(C) who have been the subject of an indicated child abuse and maltreatment report on file with the State Central Registry, or are the subject of an ongoing investigation pursuant to a child abuse and maltreatment report on file with this Registry.

24. NO DISCRIMINATION

NYU shall not unlawfully discriminate against any employee, applicant for employment, or patrons, including but not limited to anyone desiring to attend or participate in activities or programs at the Licensed Premises, because of race, creed, color, national origin, age, sex, disability, marital status, or sexual orientation. NYU shall comply with the Americans with Disabilities Act ("ADA") and regulations pertaining thereto as applicable with respect to the construction and maintenance of the New Landscape Improvements. Any violation of this Paragraph 24 shall be a material breach of this Agreement.

25. INVESTIGATIONS

(a) The parties to this Agreement shall cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (hereinafter "State") or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.
(b) (i) If any person who has been advised that his or her statement, and any
information from such statement, will not be used against him or her in any subsequent criminal
proceeding refuses to testify before a grand jury or other governmental agency or authority
empowered directly or by designation to compel the attendance of witnesses and to examine
witnesses under oath concerning the award of or performance under any transaction, agreement,
lease, permit, contract, or license entered into with the City, the State, or any political
subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or
any local development corporation within the City, or any public benefit corporation organized
under the laws of the State of New York; or

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

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

(B) If any non-governmental party to the hearing requests an adjournment, the
Commissioner or agency head who convened the hearing may, upon granting the adjournment,
suspend any contract, lease, permit, or license pending the final determination pursuant to
Section 25(d) below without the City incurring any penalty or damages for delay or otherwise.

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

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

(ii) The cancellation or termination of any and all existing City contracts,
leases, permits, or licenses that the refusal to testify concerns and that have not been assigned as
permitted under this license, nor the proceeds of which pledged, to an unaffiliated and unrelated
institutional lender for fair value prior to the issuance of the notice scheduling the hearing,
without the City incurring any penalty or damages on account of such cancellation or
termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior
to the cancellation or termination shall be paid by the City.
(d) The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Section 25(d) (i) and (ii) herein below. He or she may also consider, if relevant and appropriate, the criteria established in Sections 25(d) (iii) and (iv) below in addition to any other information which may be relevant and appropriate.

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

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

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

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

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

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

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

(iv) The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.
(f) In addition to and notwithstanding any other provision of this Agreement the Commissioner or agency head may in his or her sole discretion terminate this Agreement upon not less than three days written notice in the event NYU fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money goods requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Agreement by NYU, or affecting the performance or this Agreement.

26. NOTICE

(a) NYU shall prepare and provide to Parks status reports with respect to the performance by NYU of its obligations under this Agreement as reasonably requested by the Commissioner. In addition, NYU shall, within twenty-four (24) hours of occurrence or notice thereof, report major and/or unusual incidents in a format reasonably acceptable to the Commissioner. NYU shall promptly notify Parks, in writing, of any claim for injury, death, property damage, or theft which may be asserted against NYU with respect to the Licensed Premises of which NYU has notice. Parks shall promptly notify NYU, in writing, of any claim for injury, death, property damage, or theft which may be asserted against the City with respect to the Licensed Premises of which the City has notice. NYU shall designate a person to handle all such claims, including all insured claims for loss or damage pertaining to the maintenance and repair of the New Landscape Improvements. The name and address of the designated person shall be provided to Parks in writing.

(b) To the extent NYU is aware of any unusual conditions that may develop in the course of the performance by NYU of its obligations under this Agreement, including, but not limited to, fire, flood, casualty, and substantial damage of any character, NYU shall promptly notify Parks of such unusual conditions.

(c) All notices demands, requests, consents, approvals, and other communications which may be or are permitted, desirable, or required to be given under this Agreement shall be in writing and shall be delivered by mailing a copy of such notice by registered or certified mail, return receipt requested, as follows:

(i) if to Parks:

City of New York Parks & Recreation
The Arsenal, Central Park
830 Fifth Avenue
New York, New York 10065
Attention: First Deputy Commissioner

with a copy to:

General Counsel of Parks at the same address

(ii) if to NYU:

New York University
70 Washington Square South
New York, New York 10012
Attention: General Counsel

with a copy to:

New York University
10 Astor Place
New York, New York 10003
Attention: Executive Vice President for Operations

and:

Bryan Cave LLP
1290 Avenue of the Americas
New York, New York 10104-3300
Attention: Philip E. Karmel, Esq.

The City and/or NYU may, by notice provided in accordance with this Paragraph 26, change any name or address for purposes of this Agreement.

27. TERMINATION OF AGREEMENT

(a) Should NYU breach or fail to comply with any of the provisions of this Agreement, any Federal, State, or local law, or any rule, regulation, or order of Parks affecting the license granted hereunder or the Licensed Premises in regard to any and all matters, the Commissioner may, in writing, order NYU to remedy such breach or comply with such provision, law, rule, regulation, or order. In the event that NYU fails to comply with such written notice by the Commissioner within thirty (30) days from the mailing thereof, subject to unavoidable delays beyond reasonable control of NYU and with written notice to the Commissioner within such thirty (30) day period, then the Commissioner, by notice in writing,
may revoke and terminate this Agreement. Such revocation and termination shall be effective twenty-five (25) days after receipt by NYU of such written notice. If said breach or failure to comply is corrected and a second or repeated violation of the same provision, law, rule, regulation, or order follows thereafter, the Commissioner, by notice in writing, may revoke and terminate this Agreement, such revocation and termination to be immediately effective on the mailing thereof.

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

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

(d) In the event the Commissioner terminates this Agreement, NYU shall be given twenty-five (25) days subsequent to written notice of termination to remove from the Licensed Premises any personal property installed or placed on the Licensed Premises pursuant to this Agreement. NYU acknowledges that any such personal property remaining on the Licensed Premises after the expiration or earlier termination of this Agreement is intended to be abandoned. NYU shall remain liable to the City for any damages, including the cost of removal or disposal of property, should all such personal property fail to be removed from the Licensed Premises within twenty-five (25) days following such notice of the earlier expiration or upon the date of termination of this Agreement. All obligations of NYU under this Subparagraph (d) will remain in effect until the Licensed Premises are fully vacated and all such personal property has been removed.

(e) Should Parks breach or fail to comply with any of the provisions of this Agreement, any Federal, state, or local law, or any rule, regulation, or order affecting the Agreement or the Licensed Premises in regard to any and all matters, NYU may, in writing, request that Parks remedy such breach or comply with such provision, law, rule, regulation, or order. In the event that Parks fails to comply with such written notice by NYU within twenty-five (25) days from the mailing thereof, subject to unavoidable delays beyond reasonable control of Parks and, after reasonable negotiations of the parties, Parks cannot remedy the breach or comply with the provisions of this Agreement, then NYU may terminate this Agreement upon ninety (90) days written notice.

28. RESPONSIBILITY FOR PROPERTY AFTER TERMINATION
NYU shall be held responsible for the condition of all property in or upon the New Landscape Improvements belonging to the City as of the expiration or earlier termination of this Agreement, ordinary wear and tear excepted. Upon such earlier termination or expiration, NYU shall quit the Licensed Premises, surrender all City property therein in good, clean, and orderly condition, ordinary wear and tear excepted, and have no further responsibility for any such City property, except that in the event this Agreement has been terminated for the reason that NYU has failed to perform its obligations under this Agreement and has not remedied such failure upon notice by the Commissioner as set forth in Section 27(a), then (i) Parks shall be permitted to draw down upon the “Letter of Credit” as defined and set forth in Section 5(d) and (e) herein below to provide such maintenance, and (ii) at such time when the funds of the Letter of Credit have been depleted, NYU shall continue to provide annual funding for the ongoing maintenance of the Licensed Premises as described in Section 5(e) herein.

29.  PROHIBITION AGAINST ASSIGNMENTS AND SUBLICENSES

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

30.  COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS

NYU shall faithfully perform and carry out the provisions of this Agreement and cause its agents, employees, and invitees to conform to all rules, regulations, and orders prescribed as of the date hereof or which may hereafter be reasonably prescribed by the Commissioner, provided Commissioner shall use reasonable efforts to give NYU notice of any rules, regulations, or orders hereafter prescribed by Parks, and comply with all laws, regulations, rules, and orders of any kind whatsoever and of any agency or entity of government whatsoever applicable to the Licensed Premises and NYU's use and occupation thereof. This provision includes, but is not limited to, the Parks' Rules and Regulations as set forth in 56 RCNY §1-01 et seq., the New York State Non-for-Profit Corporation Law, applicable tax and labor laws relating to nondiscrimination in employment, and laws protecting youths from child abuse and maltreatment. To the extent NYU applies pesticides to the Licensed Premises, NYU or any subcontractor hired by NYU, shall comply with Chapter 12 of Title 17 of the New York City Administrative Code.

31.  REPRESENTATIONS, WARRANTIES, AND COVENANTS

(a) NYU makes the following representations and warranties:
(i) NYU is a not-for-profit education corporation duly organized, validly existing and in good standing under the laws of State of New York and has all requisite power and authority to execute, deliver and perform this Agreement.

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

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

(iv) In procuring this Agreement, NYU has neither been asked to pay, offered to pay nor paid any illegal consideration, whether monetary or otherwise.

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

(vi) NYU is not in arrears to the City upon any debt, contract, or taxes and is not a defaulter as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of NYU to receive public contracts.

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

32. CONFLICT OF INTEREST

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

33. PARKS’ RESERVATION OF RIGHTS AND INTERESTS

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

(b) Public Communications. In any statement or release made to the public relating to the subject of this Agreement, NYU will conspicuously acknowledge the involvement of Parks. If the Commissioner finds that any release, advertisement, or statement made to the public relating to the programs and activities offered in the Licensed Premises is incorrect or unacceptable, NYU and the Commissioner agree in good faith to make such release, advertisement, or statement accurate and acceptable to both parties.

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

(d) Special Events. Any special event (an event held by NYU involving more than twenty (20) people) that occurs within the Licensed Premises is subject to Parks’ prior approval. In addition, Parks reserves the right to use the Licensed Premises for events or programs sponsored or permitted by Parks. Such uses of the Licensed Premises shall be arranged by Parks. Parks agrees to use its reasonable efforts to notify NYU at least thirty (30) days in advance of any such event or program. It is expressly understood that this Paragraph 33 shall in no way limit Parks’ right to sponsor or promote events at the Licensed Premises, or to enter into agreements with third parties to sponsor or promote such events. No such event or program sponsored or permitted by Parks shall unreasonably interfere with NYU’s obligations under this Agreement or the Declaration or materially diminish NYU’s rights under the Easement.
34. **WAIVER OF COMPENSATION**

(a) NYU hereby expressly waives any and all claims against the City for compensation for any and all loss or damage to any Fixed or Expendable Equipment owned by NYU, sustained by reason of any defects, including, but not limited to, deficiency or impairment of the water supply system, gas mains, electrical apparatus or wires furnished for the Licensed Premises, or by reason of any loss of any gas supply, water supply, heat or current which may occur from time to time, or for any loss resulting from fire, water, windstorm, tornado, explosion, civil commotion, strike or riot, and NYU hereby expressly releases and discharge the Commissioner, the Commissioner’s agents, and the City from any and all demands, claims, actions, and causes of action arising from any of the aforementioned causes.

(b) NYU further expressly waives any and all claims for compensation, loss of profit, or refund of its investment, or any other payment whatsoever, in the event this Agreement is terminated by the Commissioner in accordance with the provisions of Paragraph 27 above.

35. **WAIVER OF JURY TRIAL**

NYU hereby expressly waives all rights to trial by jury in any summary proceeding hereafter instituted by the City against NYU or any counterclaim or cause of action directly or indirectly arising out of the terms, covenants, or conditions of this Agreement or the use and occupation of the Licensed Premises or any matter whatsoever in any way connected with this Agreement, including, but not limited to, the relationship between the City and NYU. The provisions of this Paragraph 35 shall survive the expiration or earlier termination of this Agreement.

36. **USE OF NAME**

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

37. **CHOICE OF LAW/CONSENT TO JURISDICTION AND VENUE**

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

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

(ii) With respect to any action between the City and NYU in New York State Court, NYU hereby expressly waives and relinquishes any rights it might otherwise have (A) to move to dismiss on grounds of forum non conveniens, (B) to remove to Federal Court; and (C) to move for a change of venue to a New York State Court outside New York County.

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

(d) If NYU commences any action against the City in a court located other than in the City and State of New York, upon request of the City, NYU shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, NYU shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

(e) Notwithstanding anything to the contrary herein, the parties shall consent to the dismissal and/or transfer of any claims asserted in any other venue or forum to the proper venue or forum. If NYU initiates any action in breach of this Paragraph 37, NYU shall be responsible for and shall promptly reimburse the City for any attorneys’ fees incurred by the City in removing the action to a proper court consistent with this Paragraph 37.

38. CLAIMS AND ACTIONS THEREON

(a) No action at law or proceeding in equity against the City shall lie or be maintained upon any claim based upon this Agreement or arising out of this Agreement or in any way connected with this Agreement unless NYU shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.
(b) No action shall lie or be maintained against the City by NYU upon any claims based upon this Agreement unless such action shall be commenced within six (6) months of the termination or conclusion of this Agreement, or within six (6) months after NYU has actual knowledge of the accrual of the cause of action, whichever first occurs.

(c) In the event any claim is made or any action brought in any way relating to the Agreement herein other than an action or proceeding in which NYU and the City are adverse parties, NYU shall diligently render to the City of New York without additional compensation any and all assistance which the City of New York may reasonably require of NYU.

39. CLAIMS AGAINST OFFICERS OR EMPLOYEES

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

40. NO THIRD PARTY BENEFICIARIES

This Agreement shall be binding upon and for the benefit of the parties hereto and each of their respective successors and permitted assigns. The provisions of this Agreement shall be for the sole benefit of the parties hereto and no other person or entity shall be a third party beneficiary hereof.

41. ALL LEGAL PROVISIONS DEEMED INCLUDED

It is the intent and understanding of the parties to this Agreement that each and every provision of law required to be inserted in the Agreement shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Agreement shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

42. INFRINGEMENTS

NYU shall be solely responsible for and shall defend, indemnify, and hold the City harmless from any and all claims (even if the allegations of the lawsuit are without merit) and judgments for damages and from costs and expenses to which the City may be subject to or which it may suffer or incur allegedly arising out of or in connection with any infringement by
NYU of any copyright, trade secrets, trademark or patent rights or any other similar intellectual property or personal right of any third party by NYU and/or its agents in the performance or completion of this Agreement. Insofar as the facts or law relating to any claim would preclude the City from being completely indemnified by NYU, the City shall be partially indemnified by the NYU to the fullest extent permitted by Law.

43. SEVERABILITY

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

44. JUDICIAL INTERPRETATION

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

45. HEADINGS

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

46. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to the license granted herein and cannot be changed, modified or terminated orally, but only by an instrument in writing executed by Commissioner and NYU.

47. MODIFICATION

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

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and sealed on the day and year first above written.

NEW YORK CITY DEPARTMENT OF PARKS & RECREATION

By: ___________________________ Dated: 10/14, 2015
MITCHELL J. SILVER
Commissioner

NEW YORK UNIVERSITY

By: ___________________________ Dated: __________, 2015

Approved as to Form:

__________________________________
Acting Corporation Counsel
ACKNOWLEDGEMENTS

STATE OF NEW YORK )
ss
COUNTY OF NEW YORK )

On this 16th day of OCT, 2015 before me personally came Mitchell J. Silver to me known, and known to be the Commissioner of the New York City Department of Parks & Recreation, and the said person described herein and who executed the foregoing instrument and she acknowledged that she executed the same in her official capacity and for the purpose mentioned therein.

[Signature]
Notary Public

Sharmila Rampersaud, Esq.
Notary Public: New York State
No. NIRA063174
Qualified in Queens County
Commission Expires: 9-30-2017

STATE OF NEW YORK )
ss
COUNTY OF NEW YORK )

On this ___ day of __________, 2015 before me personally came __________, who, being duly sworn by me did depose and say that he/she is __________ of New York University, the company described herein and who executed the foregoing instrument and he/she acknowledged that he/she executed the same in his/her official capacity and for the purposes mentioned therein.

[Signature]
Notary Public
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and sealed on the day and year first above written.

NEW YORK CITY DEPARTMENT OF
PARKS & RECREATION

By: ____________________________
   MITCHELL J. SILVER
   Commissioner

Dated: ________, 2015

NEW YORK UNIVERSITY

By: ________________
   Martin S. Dorph
   Executive Vice President,
   Finance and Information Technology

Dated: October 13, 2015

Approved as to Form:

______________________________
Acting Corporation Counsel
STATE OF NEW YORK  

COUNTY OF NEW YORK  

On this ___ day of _______, 2015 before me personally came Mitchell J. Silver to me known, and known to be the Commissioner of the New York City Department of Parks & Recreation, and the said person described herein and who executed the foregoing instrument and she acknowledged that she executed the same in her official capacity and for the purpose mentioned therein.

__________________________
Notary Public

STATE OF NEW YORK  

COUNTY OF NEW YORK  

On this __ day of October, 2015 before me personally came Martin S. Dorph, who, being duly sworn by me did depose and say that he is the Executive Vice President, Finance and Information Technology of New York University, the company described herein and who executed the foregoing instrument and he/she acknowledged that he/she executed the same in his/her official capacity and for the purposes mentioned therein.

__________________________
Notary Public

Paul M Bryant
Notary Public, State of New York
No. 01BR5082236
Qualified in New York County
Commission Expires July 21, 2017
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and sealed on the day and year first above written.

NEW YORK CITY DEPARTMENT OF
PARKS & RECREATION

By: ___________________________ Dated: ________, 2015
MITCHELL J. SILVER
Commissioner

NEW YORK UNIVERSITY

By: ___________________________ Dated: ________, 2015

Approved as to Form:

[Signature]
Acting Corporation Counsel
EXHIBIT A

Legal Description of NYU Property

Block 533

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at the intersection of the northerly line of Bleecker Street, 80 feet wide, and the easterly line of LaGuardia Place, width varies;

RUNNING THENCE north 32°25'50" east, along said easterly line of LaGuardia Place, a distance of 474.28 feet to a point at the intersection of the said easterly line of LaGuardia Place and the southerly line of West 3rd Street, 70 feet wide;

THENCE south 57°28'19" east, along said southerly line of West 3rd Street, a distance of 605.80 feet to a point at the intersection of said southerly line of West 3rd Street and the westerly line of Mercer Street, width varies;

THENCE south 32°25'18" west, along said westerly line of Mercer Street, a distance of 476.70 feet to the intersection of said westerly line of Mercer Street and the aforementioned northerly line of Bleecker Street;

THENCE north 57°14'35" west, along said northerly line of Bleecker Street, a distance of 605.88 feet to the point or place of BEGINNING.

Block 524, Lots 1, 9 and 66

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at the intersection of the northerly line of West Houston Street, 125 feet wide, and the easterly line of LaGuardia Place, width varies;

RUNNING THENCE north 32°25'50" east, along said easterly line of LaGuardia Place, a distance of 378.44 feet to a point at the intersection of the said easterly line of LaGuardia Place and the southerly line of Bleecker Street, 80 feet wide;

THENCE south 57°14'35" east, along said southerly line of Bleecker Street, a distance of 605.89 feet to a point at the intersection of said southerly line of Bleecker Street and the westerly line of Mercer Street, width varies;
THENCE south 32°25'18" west, along said westerly line of Mercer Street, a distance of 377.17 feet to the intersection of said westerly line of Mercer Street and the aforementioned northerly line of West Houston Street;

THENCE north 57°21'50" west, along said northerly line of West Houston Street, a distance of 605.95 feet to the point or place of BEGINNING.

NYCDOT Strip Adjoining Block 524 on Mercer Street Acquired by NYU

ALL that certain plot, piece or parcel of land, situate, lying and being in the City, County and State of New York lying in the bed of Mercer Street between West Houston Street and Bleecker Street being more particularly bounded and described as follows:

BEGINNING at a point on the northerly line of West Houston Street, said point being distant 605.95 feet easterly from the corner formed by the intersection of the northerly line of West Houston Street and the easterly line of Laguardia Place, as said streets are shown on alteration map no. 30238;

1. RUNNING THENCE easterly 39.00 feet, along the northerly line of West Houston Street, to a point;

2. THENCE northerly 377.10 feet, forming an interior angle of 89° 47' 08" with the last mentioned course, to a point;

3. THENCE westerly 39.00 feet, forming an interior angle of 90° 20' 07" with the last mentioned course, to a point;

4. THENCE southerly 377.17 feet, forming an interior angle of 89° 39' 53" with the last mentioned course, to the point or place of BEGINNING.
EXHIBIT B-1

Legal Description of LaGuardia Place Portion of the Licensed Premises

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

Beginning at a point on the northerly line of Bleecker Street, said point being distant 605.88 feet from the corner formed by the intersection of the northerly line of Bleecker Street and the westerly line of Mercer Street, as said streets are shown on Map No. 30232;

1. Running thence northerly 474.28 feet along the former easterly line of LaGuardia Place, to a point;

2. Thence westerly 50.00 feet, forming an interior angle of 90 degrees 05 minutes 51 seconds with the last mentioned course, to a point;

3. Thence southerly 474.08 feet, forming an interior angle of 89 degrees 54 minutes 09 seconds with the last mentioned course, to a point; and

4. Thence easterly 50.00 feet along the northerly line of Bleecker Street, forming an interior angle of 90 degrees 19 minutes 35 seconds with the last mentioned course, to the point or place of beginning.

The area described above contains 23,709 square feet (0.544 acres).
EXHIBIT B-2

Legal Description of Mercer Street Portion of the Licensed Premises

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

Beginning at a point on the northerly line of Bleecker Street, said point being distant 605.88 feet from the corner formed by the intersection of the northerly line of Bleecker Street and the easterly line of LaGuardia Place, as said streets are shown on Map No. 30233;

1. Running thence easterly 39.00 feet along the northerly line of Bleecker Street, to a point;

2. Thence northerly 476.86 feet, forming an interior angle of 89 degrees 39 minutes 53 seconds with the last mentioned course, to a point;

3. Thence westerly 39.00 feet, forming an interior angle of 90 degrees 06 minutes 23 seconds with the last mentioned course, to a point; and

4. Thence southerly 476.70 feet, forming an interior angle of 89 degrees 53 minutes 37 seconds with the last mentioned course, to the point or place of beginning.

The area described above contains 18,594 square feet (0.427 acres).
EXHIBIT C

Legal Description of Bleecker Street Portion of the Licensed Premises

Bleecker Street Phase 3 Area

Beginning at the intersection of the easterly line of LaGuardia Place (120 feet wide), and the southerly line of Bleecker Street (80 feet wide), and running; thence

1. Along the said easterly line of LaGuardia Place, if produced northerly, North 32°25'50" East, a distance of 25.00 feet to a point; thence

2. Parallel to said southerly line of Bleecker Street, South 57°14'35" East, a distance of 167.53 feet to a point; thence

3. South 32°47'29" West, a distance of 25.00 feet to a point on said southerly line of Bleecker Street; thence

4. Along said southerly line of Bleecker Street, North 57°14'35" West, a distance of 167.38 feet to the Point of Beginning.

Encompassing an area of 4,187 square feet or 0.096 acres, more or less.

Bleecker Street Phase 1 Area and Bleecker Street Phase 2 Area

Commencing at the intersection of the easterly line of LaGuardia Place (120 feet wide), and the southerly line of Bleecker Street (80 feet wide), and running the following course and distance to the Point of Beginning, and running; thence

A. Along said southerly line of Bleecker Street, South 57°14'35" East, a distance of 190.22 feet to the Point of Beginning, and running; thence

1. North 32°35'32" East, a distance of 25.00 feet to a point; thence

2. Parallel to said southerly line of Bleecker Street, South 57°14'35" East, a distance of 454.61 feet to a point; thence

3. Parallel with the westerly line of Mercer Street (61' feet wide), South 32°25'18" West, a distance of 25.00 feet to a point on said southerly line of Bleecker Street; thence

4. Along said southerly line of Bleecker Street, North 57°14'35" West, a distance of 454.68 feet to the Point of Beginning.

Encompassing an area of 11,366 square feet or 0.261 acres, more or less.
EXHIBIT D

Declaration of Large-Scale General Development for NYU LSGD
EXHIBIT E