

JUDGE BATTIS
UNITED STATES DISTRICT COURT

Southern

District of

New York

AYAKO MASADA, as the Executor of the Estate
of KEITH K. SHIRASAWA, Deceased

SUMMONS IN A CIVIL ACTION

V.
CYCLONE COASTERS, INC., et al.

08 CIV 9235
CASE NUMBER: 08 CV

TO: (Name and address of Defendant)

CYCLONE COASTERS, INC., 1000 Surf Avenue, Brooklyn, New York,
11224;
THE CITY OF NEW YORK, 1 Centre Street, New York, New York 10007;
THE NEW YORK CITY DEPARTMENT OF PARKS & RECREATION,
830 Fifth Avenue, New York, New York 10021.

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Marc A. Stadtmauer
Stadtmauer & Associates
230 Park Avenue, Suite 2525
New York, NY 10169
(212) 986-6200

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

CLERK

(By) DEPUTY CLERK

DATE

10/28/2008

Stadtmauer & Associates
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230 Park Avenue
New York, New York 10169
(212) 986-6200

08 CIV 9235

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

JUDGE BATT
Docket No. 08 Civ. _____

AYAKO MASADA, as the Executor of the Estate :
of KEITH K. SHIRASAWA, Deceased,

Plaintiff, :

- against - :

CYCLONE COASTERS, INC., :
THE CITY OF NEW YORK, and :
THE NEW YORK CITY DEPARTMENT :
OF PARKS & RECREATION, :

Defendants. :
-----X

COMPLAINT

JURY TRIAL DEMANDED 2008
U.S.D.C. S.D. N.Y.
CASHIERS

Plaintiff, AYAKO MASADA, as the Executor of the Estate of KEITH K. SHIRASAWA, Deceased, by her attorneys, Stadtmauer & Associates, complaining of the Defendants, alleges as follows:

THE PARTIES

1. Plaintiff, AYAKO MASADA ("Masada"), is a natural person and a resident, citizen, and domiciliary of the State of California and the United States of America, who resides, and at all relevant times resided, at 13128 Psomas Way, Los Angeles, California 90066.

2. Plaintiff's Decedent, KEITH K. SHIRASAWA ("Shirasawa"), was at all times relevant a resident, citizen, and domiciliary of the State of California and the United States of America, who resided at 2009 Madison Avenue, Redwood City, California 94061 until his death on August 4, 2007.

3. At all times hereinafter mentioned, defendant, CYCLONE COASTERS, INC.

("CCI"), was, and still is, a corporation incorporated under the laws of the State of New York, which, at all relevant times, has and had a principal place of business in the State of New York, at 1000 Surf Avenue, Brooklyn, New York, 11224.

4. At all times hereinafter mentioned, defendant, THE CITY OF NEW YORK ("City"), was and still is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York, and a resident, citizen, and domiciliary of the State of New York, with a principal office located at 1 Centre Street, New York, New York 10007.

5. At all times hereinafter mentioned, defendant, THE NEW YORK CITY DEPARTMENT OF PARKS & RECREATION ("Parks Department"), was and still is an Agency of the City and a resident, citizen, and domiciliary of the State of New York, with a principal office located at the Arsenal, 830 Fifth Avenue, New York, New York 10021.

6. At all times hereinafter mentioned, the City was, and still is, the owner of a wooden roller coaster, known as the "Cyclone", which is located on parkland at 834 Surf Avenue and West 10th Street in the Borough of Brooklyn, State of New York (the "Cyclone").

7. At all times hereinafter mentioned, the Parks Department was, and still is, the owner of a wooden roller coaster, known as the "Cyclone", which is located on parkland at 834 Surf Avenue and West 10th Street in the Borough of Brooklyn, State of New York.

8. The Parks Department, pursuant to §533 of the New York City Charter, has jurisdiction over parklands of the City of New York and facilities therein.

9. The property located at 834 Surf Avenue and West 10th Street in the Borough of Brooklyn and the Cyclone are property under the jurisdiction and control of the Parks Department.

10. On or about June 20, 2006, the Parks Department entered into an agreement with CCI granting CCI a license to renovate and operate the Cyclone for an initial period of ten years (the "License Agreement"). A copy of this License Agreement is attached hereto as Exhibit 1.

PLAINTIFF'S AUTHORITY TO BRING THIS ACTION

11. Shirasawa died on August 4, 2007 as a result of the injuries he sustained on July 31,

2007 in the incident complained of herein.

12. On or about October 12, 2007, Masada was appointed the Special Administrator of Shirasawa's Estate by Order of the Superior Court of California, County of San Mateo, specifically authorized to file:

"notices of claim with the City of New York . . . and related entities, notifying them of the incident of July 31, 2007 in which Decedent was injured and Decedent's subsequent death on August 4, 2007 as well as the Estate's potential claim for wrongful death and/or pain and suffering as a result of this incident"

A copy of this Order is attached hereto as Exhibit 2.

13. On or about November 27, 2007, Masada was appointed the Executor of Shirasawa's Estate by Order of the Superior Court of California, County of San Mateo, with full authority to bring this action. A copy of this Order is attached hereto as Exhibit 3.

STATUTORY PRECONDITIONS TO COMMENCEMENT OF ACTION

14. On October 29, 2007, prior to the commencement of this action, plaintiff duly served three copies of a Notice of Claim on the City and the Parks Department, by their counsel, The City of New York Law Department, Office of the Corporation Counsel of the City of New York, setting forth the time when and place where the accident which is the subject of this lawsuit occurred, the nature and extent of the injuries and damages sustained and the amount claimed.

15. Plaintiff then served another copy of this same Notice of Claim directly on the Parks Department on November 1, 2007. A copy of this Notice of Claim, stamped by Corporation Counsel and the Parks Department is attached hereto as Exhibit 4.

16. The claims were presented within ninety days of the appointment of representative of the decedent's estate, pursuant to General Municipal Law §50-e(1)(a).

17. On August 6, 2008 pursuant to General Municipal Law § 50-h, a hearing in this matter was conducted at the offices of the attorney for the City and the Parks Department.

18. More than thirty days have passed since the service of the Notice of this Claim and said claim has not been paid or adjusted prior to the commencement of this action.

19. The within action is instituted within two years of the date of occurrence and is

therefor timely pursuant to General Municipal Law §50-i(1).

20. Plaintiff complied with all the conditions precedent to bringing an action against the City and the Parks Department.

JURISDICTION AND VENUE

21. This Court has subject matter jurisdiction to entertain the instant matter by virtue of the provisions of Title 28, United States Code, Section 1332(a)(1) & (3), in that the plaintiff is a resident, citizen, and domiciliary of the State of California and all defendants are residents, citizens, and domiciliaries of the State of New York. The matter in controversy, exclusive of costs and interest, exceeds the sum or value of One Hundred Thousand Dollars (\$100,000.00).

22. Venue is proper in this District by virtue of the provisions of Title 28, United States Code, Section 1391(a)(1), in that the City's principal place of business is in the Southern District of New York.

23. Venue is proper in this District by virtue of the provisions of Title 28, United States Code, Section 1391(a)(1), in that the Park Department's principal place of business is in the Southern District of New York.

24. Venue is proper in this District by virtue of the provisions of Title 28, United States Code, Section 1391(a)(2) & (c), in that the License Agreement between the Parks Department and CCI provides that any lawsuit:

"arising under this License 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.**"

License Agreement at p. 37, ¶27.2 (emphasis added).

25. Venue is proper in this District by virtue of the provisions of Title 28, United States Code, Section 1391(c), in that CCI has contacts in this District which would be sufficient to subject it to personal jurisdiction if this district were a separate state.

**DEFENDANT CCI'S OBLIGATIONS AND DUTIES TO MAINTAIN THE CYCLONE
IN A REASONABLY SAFE CONDITION**

26. Pursuant to the License Agreement, CCI has, and at all relevant times had, an obligation to:

"repair and maintain in good working order the [Cyclone] Roller Coaster and . . . adhere to the maintenance schedules recommended by the manufacturers for all mechanical systems and equipment and the national safety guidelines"

See License Agreement at p. 25, ¶11.1.

27. Pursuant to the License Agreement, CCI also had an obligation to "replace the top hill trim brake" by June 2007. See License Agreement at Exhibit D (last page).

28. As the operator of the Cyclone, CCI also had and has a non-deligable duty to maintain the premises in a reasonably safe condition for use of the public, including Shirasawa.

**DEFENDANTS' FAILURE TO MAINTAIN THE CYCLONE
IN A REASONABLY SAFE CONDITION**

29. Notwithstanding their contractual, statutory and common-law obligations to properly repair, inspect and maintain the Cyclone in a reasonably safe condition, defendants failed to maintain the Cyclone in a reasonably safe condition and, on July 31, 200~~8~~⁷ the Cyclone was not in a reasonably safe condition for use by the public and Shirasawa, in that:

- a. the top hill trim brake had not been replaced and was not in good working order;
- b. the Cyclone was equipped only with an antiquated "single position lap bar" restraint system and did not have a proper modern restraint system in place or any head or neck restraint system whatsoever;
- c. the Cyclone roller coaster was moving at an excessive rate of speed, causing excessive g-forces to be exerted on the riders, including Shirasawa; and/or
- d. there was no person employed to keep watch on the riders on the Cyclone, including Shirasawa, and there was no manner or method to stop the ride in the event of an injury.

30. The existence of these defects were not visible or readily apparent to the public and Shirasawa and there was no warning to the public and Shirasawa of the existence of these defects or the fact that the Cyclone was not safe for use.

31. Defendants actually knew, or should reasonably have known, that the Cyclone was not in a reasonably safe condition on July 31, 2007 for use by the public and Shirasawa in that:

- a. there were numerous injuries on the Cyclone in the weeks preceding July 31, 2007, including:
 - (i) Virginia Daly, who injured her back July 3, 2007;
 - (ii) Michael Shapiro, who suffered a fractured vertebra on July 8, 2007; and
 - (iii) Michelle Uchin, who injured her back on July 24, 2007;
- b. pursuant to the License Agreement, the Parks Department was kept apprised by CCI of all repairs on the Cyclone and the Parks Department therefore knew or should have known that required repairs, including the replacement of the trim brake, had not been accomplished; and
- c. the City inspected the Cyclone at various times, including after each of the incidents listed above, and failed to note that required repairs, including the replacement of the trim brake, had not been accomplished.

32. The City and its Agencies, including the Parks Department, were on actual written notice of the need for repairs to the Cyclone, including the replacement of the trim brake, by virtue of the License Agreement and other documents, such as Permits issued to CCI by the Parks Department, that these repairs were necessary but had not been accomplished.

THE INCIDENT COMPLAINED OF AND PLAINTIFF'S DECEDENT'S DEATH

33. On July 31, 200~~7~~⁷ at approximately 12:00 noon, Shirasawa, was a paying customer on the Cyclone roller coaster.

34. At that time and place, as the Cyclone car that Shirasawa was riding in was descending the first hill, Shirasawa's neck "snapped," causing Shirasawa to suffer very serious, and ultimately fatal, personal injuries, including multiple neck fractures.

35. As a result of the failure to replace the top hill trim brake, the Cyclone roller coaster

was moving at an unsafe rate of speed, causing, contributing and/or exacerbating this injury.

36. As a result of the failure to upgrade the restraint devices in the Cyclone, Shirasawa was not properly restrained and there was no support behind his head, causing, contributing and/or exacerbating this injury.

37. The fact of Shirasawa's injury was known, or could have been perceived by the ride operator(s) had they been watching, but the ride operators failed to keep a watch on Shirasawa and failed to stop the ride, forcing Shirasawa to finish the ride with a broken neck, causing, contributing and/or exacerbating this injury.

38. Shirasawa's injuries was caused, created and/or exacerbated by virtues of the defects in the Cyclone which were known, or should have been known, to defendants, but which were hidden from Shirasawa.

39. As a result of this incident, Shirasawa was treated at Coney Island Hospital and SUNY Downstate Medical Center, where underwent a serious operation on his neck, but ultimately died on August 4, 2007.

40. This action falls within one or more of the exceptions set forth in CPLR §1602.

**AS AND FOR A FIRST CAUSE OF ACTION
AGAINST DEFENDANT CCI
NEGLIGENCE AND WRONGFUL DEATH**

41. Shirasawa's conscious pain and suffering and subsequent untimely and wrongful death, was caused by the culpable conduct and negligence of the defendants in their failure to repair, upgrade, maintain, supervise, operate and control the premises, including the Cyclone, in a condition that was reasonably safe for use by the public, including Shirasawa.

42. Defendants were otherwise negligent, careless, and reckless under the circumstances then and there prevailing, causing or exacerbating the injury and condition that caused Shirasawa's death.

43. As a result of this incident, Shirasawa was severely, permanently, and fatally injured, causing him to suffer great pain and agony, which required medical care and attention, including

surgery, at great cost and expense, all to his damage and the damage of his Estate.

44. By reason of the above, plaintiff was damaged in an amount to be determined by the jury at trial.

**AS AND FOR A SECOND CAUSE OF ACTION
AGAINST THE CITY AND THE PARKS DEPARTMENT
NEGLIGENCE and WRONGFUL DEATH**

45. As the owner of the Cyclone and the property upon which the Cyclone sits, the City had and has a non-deligable duty to maintain the premises in a reasonably safe condition for use of the public, including Shirasawa.

46. As the owner of the Cyclone and the property upon which the Cyclone sits, the Parks Department had and has a non-deligable duty to maintain the premises in a reasonably safe condition for use of the public, including Shirasawa.

47. The City and the Parks Department knew, or should have known, that unrepaired defects existed in the Cyclone which were not readily apparent to the riders and Shirasawa which rendered the Cyclone dangerous, including the fact that the trim brake had not been replaced and the restraint system was hopelessly out of date and inadequate.

48. Notwithstanding, defendants failed to take adequate steps to ensure the safety of the Cyclone and/or to warn the public and Shirasawa of the dangers of riding the Cyclone.

49. Shirasawa's conscious pain and suffering and subsequent untimely and wrongful death, was caused by the culpable conduct and negligence of the defendants in their failure to repair, upgrade, maintain, supervise, operate and control the premises, including the Cyclone, in a condition that was reasonably safe for use by the public, including Shirasawa.

50. Defendants were otherwise negligent, careless, and reckless under the circumstances then and there prevailing, causing or exacerbating the injury and condition that caused Shirasawa's death.

51. As a result of this incident, Shirasawa was severely, permanently, and fatally injured, causing him to suffer great pain and agony, which required medical care and attention, including

surgery, at great cost and expense, all to his damage and the damage of his Estate.

52. By reason of the above, plaintiff was damaged in an amount to be determined by the jury at trial.

WHEREFORE, Plaintiff, AYAKO MASADA, as the Executor of the Estate of KEITH K. SHIRASAWA, Deceased, hereby demands judgment against the Defendants, CYCLONE COASTERS, INC., THE CITY OF NEW YORK and THE NEW YORK CITY DEPARTMENT OF PARKS & RECREATION, in an amount to be determined by a jury at trial, but believed to be in excess of Three Million Dollars (\$3,000,000.00).

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), plaintiff demands a trial by jury of all issues so triable.

Dated: New York, New York
October 28, 2008

Yours, Etc.,
Stadtmauer & Associates

By: 
Marc A. Stadtmauer (MS 5863)
Attorneys for Plaintiff
230 Park Avenue, Suite 2525
New York, New York 10169
(212) 986-6200

LICENSE AGREEMENT

BETWEEN

CYCLONE COASTER, INC.

AND

CITY OF NEW YORK
PARKS & RECREATION

for

THE OPERATION AND MAINTENANCE OF THE CYCLONE ROLLER COASTER RIDE,
CONEY ISLAND

BOROUGH OF BROOKLYN, NEW YORK,

Date: June 20, 2004

B369-O

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Exhibit A - Site Plan of License Premises (to be provided)

Exhibit B - Fee Payment Schedule (to be provided)

Exhibit C - Staffing Plan and Hours of Operation (to be provided)

Exhibit D - Capital Improvements (to be provided)

LICENSE AGREEMENT ("License Agreement" or "License") made this ___ day of _____ 2005, between the City of New York (the "City") Department of Parks & Recreation ("Parks,"), whose address is the Arsenal, 830 Fifth Avenue, New York, New York 10021 and Cyclone Coaster, Inc. ("Licensee"), a corporation organized under the laws of the State of New York, whose address is 1000 Surf Avenue, Brooklyn, New York 12224.

WITNESSETH:

WHEREAS, the Department of Parks and Recreation, pursuant to §533 of the New York City Charter, has jurisdiction over parklands of the City of New York and facilities therein; and

WHEREAS, property located at 834 Surf Avenue and West 10th Street in the Borough of Brooklyn ("Licensed Premises"), is property under the jurisdiction and control of Parks; and

WHEREAS, within the Licensed Premises, there is a wooden roller coaster ("Roller Coaster"); and

WHEREAS, the Commissioner desires to provide for the renovation and operation of the Roller Coaster as a concession for the accommodation, convenience and enjoyment of the public; and

WHEREAS, Parks complied with the requirements of the Franchise and Concession Review Committee ("FCRC") for the selection of a concessionaire; and

WHEREAS, the Licensee desires to operate and maintain the Roller Coaster and the Licensed Premises in accordance with the terms set forth herein; and

WHEREAS, Parks and Licensee desire to enter into this License Agreement specifying rights and obligations with respect to the renovation and operation of the Licensed Premises including the Roller Coaster.

NOW THEREFORE, in consideration of the premises and covenants contained herein, the parties hereby do agree as follows:

GRANT OF LICENSE

1.1 Commissioner hereby grants to Licensee and Licensee hereby accepts from Commissioner this License to renovate and operate the Roller Coaster and the Licensed Premises in accordance with the terms herein.

1.2 Licensee shall obtain any and all approvals, permits, and other licenses required by federal, state and City laws, rules, regulations and orders which are or may become necessary to operate the Roller Coaster and any other improvements or services contemplated herein or in conjunction with said Roller Coaster, at the Licensed Premises, in accordance with the terms of this License. Licensee is solely responsible for obtaining all necessary Certificates of Occupancy and Permits of Assembly.

1.3 It is expressly understood that no land, building, space, improvement, or equipment is leased to Licensee, but that during the Term of this License, Licensee shall have the use of the Licensed Premises for the purpose herein provided. Except as herein provided, Licensee has the right to occupy and operate the Roller Coaster and the Licensed Premises only so long as each and every term and condition in this License is strictly and properly complied with and so long as this License is not terminated by the Commissioner in accordance with this License.

1.4 Licensee shall provide, at all times, free access to the Roller Coaster and the Licensed Premises to the Commissioner or his representatives and to other City, State and Federal officials having jurisdiction, for inspection purposes, with reasonable prior notice, except in the event of an emergency or where such notice is not practical.

DEFINITIONS

2.1 As used throughout this License, the following terms shall have the meanings set forth below:

- (a) "City" shall mean the City of New York, its departments and political subdivisions.
- (b) "Commissioner" shall mean the Commissioner of the New York City Department of Parks & Recreation or his designee.
- (c) "Comptroller" shall mean the Comptroller of the City of New York.
- (d) "Expendable Equipment" or "Personal Equipment" shall mean all equipment, other than Fixed Equipment, provided by Licensee.
- (e) "Fixed Equipment" shall mean any property affixed in any way to Licensed Premises, whether or not removal of said equipment would damage Licensed Premises.
 - (i) "Additional Fixed Equipment" shall mean Fixed Equipment affixed to Licensed Premises subsequent to the date of execution of this License.
 - (ii) "Fixed and Additional Fixed Equipment" shall refer to Fixed Equipment and Additional Fixed Equipment jointly and severally.
- (f) "Parks" shall mean the New York City Department of Parks & Recreation.
- (g) "Substantial Completion" or "Substantially Complete" shall mean that the Commissioner certifies that an improvement to the Licensed Premises has been completed substantially in accordance with the plans, specifications, schematics, working and mechanical drawings approved by Parks, notwithstanding that minor work remains to be completed, and that the improvement may be utilized by the public.
- (h) "Final Completion" or "Finally Complete" shall mean that the construction of an improvement to the Licensed Premises has been completed to such an extent that the Commissioner certifies in a writing that it has been finally completed and no further work is required by Licensee pursuant to this Agreement in connection with the construction of said improvement. Notwithstanding the issuance of any such certification, Licensee shall be liable for any claims related to such construction and shall be responsible for any other obligations (including maintenance, repair and indemnity) set forth in this Agreement.
- (i) "Year" shall refer to the period between the Commencement Date in any calendar year and the day before the anniversary of the Commencement Date in the following calendar year. The period between Palm Sunday of Easter Week through Labor Day Operating Year shall be referred to as the Operating Season.
- (j) "Licensed Premises" shall mean the area so denoted in Exhibit A, attached hereto.

(k) "Capital Improvements" shall mean all in kind replacements and repair, construction, reconstruction or renovation of the Licensed Premises, including architectural, design and permit fees associated with such construction, reconstruction or renovation of the Roller Coaster or the Licensed Premises. Capital Improvements also include installation of all "Fixed Equipment," as that term is defined in this Section, which the Licensee installs or causes to be installed on the Licensed Premises. Capital Improvements shall not include routine maintenance required to be performed in the normal course of management and operation of the Licensed Premises. Licensee must secure written permission from Parks to perform any Capital Improvement on the Premises, including any individual in kind replacement or repair that exceeds \$100,000. Capital Improvements shall also include any demolition costs at the Licensed Premises.

(l) **(i)** "Gross Receipts" shall include without limitation all funds received by Licensee, without deduction or set-off of any kind, from the sale of food and beverages, wares, merchandise or services of any kind, provided that Gross Receipts shall exclude the amount of any federal, state or City taxes which may now or hereafter be imposed upon or be required to be collected and paid by Licensee as against its sales. Gross Receipts shall include all funds received for orders placed with Licensee or made at Licensed Premises, although delivery of merchandise or services may be made outside, or away from the premises, and shall include all receipts of Licensee for services to be rendered or orders taken at the Licensed Premises for services to be rendered by Licensee outside thereof. All sales made or services rendered by Licensee from the Licensed Premises shall be construed as made and completed therein even though payment therefor may be made at some other place, and although delivery of merchandise sold or services rendered from Licensed Premises may be made at a location other than at the Licensed Premises.

(ii) Gross Receipts shall include receipts from all sponsorships, whether in cash or as discounts against purchase price of materials, equipment or commodities.

(iii) Gross Receipts shall also include all sales made by any other operator or operators using the Licensed Premises under a properly authorized sublicense or subcontract agreement, as provided in Section 18 herein, provided that in the event that the use of vending machines on the Licensed Premises for the sale of food, drink, or other items is approved by Parks, only Licensee's net receipts from such vending machines shall be included in Gross Receipts, and provided further that Gross Receipts shall include Licensee's income from rental and sublicense or subcontracting fees and commissions ("Commissions") received by Licensee in connection with all services provided by Licensee's subcontractors or sublicensees, or instructors functioning as independent contractors at the Licensed Premises.

(iv) Gross Receipts shall include sales made for cash or credit (credit sales shall be included in gross receipts as of the date of the sale) regardless of whether the sales are paid or uncollected, it being the distinct intention and agreement of the parties that all sums due to be received by Licensee from all sources from the operation of this License shall be included in Gross Receipts.

(m) "Special Events" shall mean any private function (e.g. reservation of the Licensed Premises through Licensee by third parties) at the Licensed Premises, excluding "Special Events" as defined in Section 16 of this Agreement. Licensee shall submit to Commissioner for his prior approval, not to be unreasonably withheld or delayed, plans for any such Events at the Licensed Premises which are reasonably expected to attract more than thirty attendees, or which will result in the closing of the Licensed Premises to the public during regular hours of operation.

TERM OF LICENSE

3.1 This License shall become effective upon signing by the parties and shall be for the term beginning May 1, 2006 (“Commencement Date”) and ending April 30, 2016 (“Expiration Date”). The period between the Commencement Date and the Expiration Date shall be the License Term (the “Term”). Parks in its sole discretion may offer one (1) five (5) year option to renew this License under the same terms and conditions herein except as set forth in Section 4.

3.2 Notwithstanding any language contained herein, this License is terminable at will by the Commissioner in his sole discretion, at any time, however, such termination shall not be arbitrary and capricious. Such termination shall be effective twenty-five (25) days after written notice is sent to Licensee. In the event of such early termination, Licensee shall continue to make payments as set forth in Section 4 herein, up to and including but not beyond said early termination date. Upon early termination, Parks shall submit a final bill to Licensee. The Commissioner, the City, its employees and agents shall not be liable for damages to Licensee in the event that this License is terminated by Commissioner as provided for herein. In the event such notice is not given, this License shall terminate as described in Section 3.1 of this agreement.

3.3 (a) Should Licensee breach or fail to comply with any of the provisions of this License, any federal, state or local law, rule, regulation or order affecting the License or the Licensed Premises with regard to any and all matters, Commissioner may in writing order Licensee to remedy such breach or comply with such provision, law, rule, regulation or order, and in the event that Licensee fails to comply with such written notice within twenty (20) days from the mailing thereof, subject to unavoidable delays beyond reasonable control of Licensee, then this License shall immediately terminate. If said breach or failure to comply is corrected, and a repeated violation of the same provision, law, rule, regulation or order follows thereafter, Commissioner, by notice in writing, may revoke and terminate this License, such revocation and termination to be immediately effective on the mailing thereof.

(b) The following shall constitute events of default for which this License may be terminated on one day notice: the appointment of any receiver of Licensee's assets; the making of a general assignment for the benefit of creditors; the occurrence of any act which operates to deprive Licensee permanently of the rights, powers and privileges necessary for the proper conduct and operation of the License; the levy of any attachment or execution which substantially interferes with Licensee's operations under this License and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty days.

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

3.4 Upon expiration or sooner termination of this License by Commissioner, all rights of Licensee herein shall be forfeited without claim for loss, damages, refund of investment or any other payment whatsoever against Commissioner, Parks or City.

3.5 In the event Commissioner terminates this License for reasons related to Paragraphs 3.3 (a) or (b) above, any property of the Licensee on the Licensed Premises may be held and used by Commissioner in order to operate the License during the balance of the calendar year and may be held and used thereafter until all indebtedness of the Licensee hereunder, at the time of termination of this License, is paid in full.

3.6 Licensee agrees that upon the expiration or sooner termination of this License, Licensee shall immediately cease all operations pursuant to this License and shall vacate the Licensed Premises without any further notice by City and without resort to any judicial proceeding by the City. Upon the expiration or sooner termination of this License, City reserves the right to take immediate possession of the Premises.

3.7 Licensee shall, on or prior to the expiration or sooner termination of this License, remove all personal possessions from the Premises. Licensee acknowledges that, subject to Paragraph 3.5 above, any personal property remaining on the Premises after the expiration or sooner termination of this License and Licensee's vacation of the Licensed Premises, is intended by Licensee to be abandoned. Licensee shall remain liable to the City for any damages, including lost revenues and the cost of removal or disposal of property should Licensee fail to remove all possessions from the premises on or before the expiration or termination date.

3.8 If this License is terminated as provided in Section 3.3 hereof, Parks may, without notice, re-enter and repossess the Licensed Premises using such force for that purpose as may be necessary without being liable to indictment, prosecution or damages therefor and may dispossess Licensee by summary proceedings or otherwise, without court order or other judicial approval.

3.9 If this License is terminated as provided in Section 3.3 hereof:

(a) Parks may draw down on the Security Deposit in accordance with Section 4.4; and

(b) Licensee shall pay to Parks all fees payable under this License Agreement by Licensee to Parks to the termination date and Licensee shall remain liable for fees thereafter falling due on the respective dates when such fees would have been payable but for the termination of this License Agreement, provided the Licensed Premises are not re-licensed at an equal or higher license fee (if at a lesser licensee fee, then only the net difference shall be owed by Licensee); and

(c) Parks may complete all repair, maintenance and construction work required to be performed by Licensee hereunder and may repair and alter any portion(s) of the Licensed Premises in such manner as Parks may deem reasonably necessary or advisable without relieving Licensee of any liability under this License Agreement or otherwise affecting any such liability. In addition, Parks may re-license the Licensed Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer period, which re-licensing will mitigate Licensee's liability under this License Agreement. Parks shall in no way be responsible or liable for any failure to re-license any portion(s) of the Licensed Premises or for any failure to collect any rent due on any such re-licensing, and no such failure to re-license or to collect rent shall operate to relieve Licensee of any liability under this License Agreement or to otherwise affect any such liability.

3.10 No receipt of moneys by Parks from Licensee after the termination of this License Agreement, or after the giving of any notice of the termination of this License Agreement, shall reinstate, continue or extend the Term or affect any notice theretofore given to Licensee, or operate as a waiver of the right of Parks to enforce the payment of fees payable by Licensee hereunder or thereafter failing due, or operate as a waiver of the right of Parks to recover possession of the Licensed Premises by proper remedy. After the service of notice to terminate this License Agreement or the commencement of any suit or summary proceedings or after a final order or judgment for the possession of the Licensed Premises, Parks may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting the notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupation of the Licensed Premises or, at the election of Parks on account of Licensee's liability hereunder.

PAYMENT TO CITY

4.1 Licensee shall make the License Fee payments listed below to the City for each Operating Year, consisting of the higher of the guaranteed minimum annual fee or a percentage of Gross Receipts based on Gross Receipts derived from the operation of the Roller Coaster and the Licensed Premises (see Section 4.5 below), according to the following schedule:

<u>OPERATING</u>		
<u>YEAR</u>	<u>MINIMUM ANNUAL FEE</u>	Vs. <u>ANNUAL % OF GROSS RECEIPTS</u>
1	\$160,000	17%
2	\$168,000	17%
3	\$177,000	17%
4	\$186,000	18%
5	\$196,000	18%
6	\$206,000	18%
7	\$217,000	19%
8	\$228,000	19%
9	\$240,000	19%
10	\$252,000	20%
Option Year 1	\$277,000	20%
Option Year 2	\$291,000	20%

Option Year 3	\$305,000	20%
Option Year 4	\$320,000	20%
Option Year 5	\$336,000	20%

4.2 The minimum annual fee for each Operating Season shall be paid to the City in five (5) equal monthly installments on the tenth day of June, July, August, September and October following the Commencement Date and continuing on or before the tenth day of each month of June, July, August, September and October of each Operating Season in accordance with the Schedule of Minimum Annual Fee Payments attached as Exhibit B. Any applicable percentage fee for a current Operating Year is due on or before the first day of November of each Operating Year.

4.3 Late charges shall be assessed on any payment that is overdue for more than ten (10) days. In the event that payment of license fees, percentage fees or any other charges shall become overdue for ten (10) days following the date on which such fees are due and payable as provided in this License, a late charge of 2% per month on the sums so overdue (computed on a thirty (30) day month) from the date they were due and payable shall become immediately due and payable to Parks as liquidated damages for the administrative cost and expenses incurred by Parks by reason of Licensee's failure to make prompt payment, and said late charges shall be payable by Licensee without notice or demand. If such late fee(s) and all arrearages (including prior 2% charges) are not paid in full by the 10th day of the month following the month in which it shall be due, or is already past due, an additional charge of 2% of the total of such fee and arrears shall be added thereto and shall be payable and collectable with the next monthly license fee installment. Failure to abide by the terms of this Article shall be presumed to be a failure to substantially comply with the terms, conditions and covenants of this License Agreement and shall be a default hereunder. No failure by Commissioner to bill Licensee for late charges shall constitute a waiver by Commissioner of such late charges or his right to enforce the provisions of this Article. If any local, state or federal law or regulation which limits the rate of interest which can be charged pursuant to this Article is enacted, the rate of interest set forth in this Article shall not exceed the maximum rate permitted under such law or regulation.

4.4 (a) Licensee submitted a security deposit to Parks in the amount of \$17,500.00 for its previous license agreement. Upon affixing its signature to this License, Licensee shall provide the City with a certified check in the amount of \$66,500.00, payable to the City of New York, as a security deposit ("Security Deposit") so that the total amount of the security deposit is \$84,000.00. The Security Deposit shall be held by the City, without liability for the City to pay interest thereon, as security for the full, faithful and prompt performance of and compliance with each and every term and condition of this License to be observed and performed by the Licensee. The Security Deposit shall remain with the City throughout the Term of this License.

(b) Security Deposit shall consist of cash, a certified check payable to the City of New York, an irrevocable letter of credit naming the City of New York as beneficiary or other negotiable instrument payable to bearer or the City of New York which the Comptroller shall approve as being of equal market value with the sum so required. The Security Deposit shall be

held by the City without liability for interest thereon, as security for the full and faithful performance by the Licensee of each and every term and condition of this license on the part of the Licensee to be observed and performed, provided however, that Licensee may submit to the City an interest-bearing bond (with a minimum market value sufficient to cover the amount of the required Security Deposit) to serve as said Security Deposit. In that event the Licensee may collect or receive annually any interest or income earned on such bonds less any part thereof or amount which the City is or may hereafter be entitled or authorized by law to retain or to charge in connection therewith, whether as or in lieu of administrative expense or custodial charge, or otherwise. The City shall not be obligated to place or to keep cash deposited hereunder in interest-bearing bank accounts.

(c) If any fees or other charges or sums payable by Licensee to the City shall be overdue and unpaid or should the City make payments on behalf of the Licensee, or should the Licensee fail to perform any of the terms of this License, then Parks may, at its option, and without prejudice to any other remedy which the City may have on account thereof, after ten days' prior written notice, appropriate and apply the Security Deposit or as much thereof as may be necessary to compensate the City toward the payment of license fees, late charges, liquidated damages or other sums due from the Licensee or towards any loss, damage or expense sustained by the City resulting from such default on the part of Licensee. In such event, the Licensee shall restore the Security Deposit to the original sum deposited within ten days after written demand therefor. In the event Licensee shall fully and faithfully comply with all of the terms, covenants and conditions of this License and pay all License fees and other charges and sums, including utilities, payable by Licensee to the City, the Security Deposit shall be returned to Licensee following the surrender of the Licensed Premises by the Licensee in compliance with the provisions of this License.

4.5 (a) On or before the first day of November of each Operating Year, Licensee shall submit to Parks, in a form reasonably satisfactory to Parks, an annual statement of Gross Receipts, signed and verified by an officer of Licensee, reporting any Gross Receipts generated under this License Agreement broken down for each month of each Operating Season, along with any applicable percentage fee payment. Each of the reports referenced in the preceding two sentences shall report the Gross Receipts generated at the Licensed Premises in the following categories:

Ticket Sales

Receipts from charges made for tickets to rides and attractions at the Licensed Premises.

Merchandise Sales	Receipts from charges made at point of sale for souvenir and other merchandise products sold at the Licensed Premises, the prices for which must be submitted in advance to Parks for approval.
Miscellaneous	Any other sources of income from the Licensee's operation of the Licensed Premises, provided that Licensee shall not initiate any such activity without the prior written approval of the Commissioner or his designated representative.

(b) Licensee shall indicate on its statement of Gross Receipts whether or not these amounts are inclusive of sales tax collected.

4.6 On or before the first day of December of each Operating Year, Licensee shall submit to Parks an income and expense statement pertaining to operations under this License for the immediately prior operating year, signed and verified by an officer of Licensee.

4.7 (a) Licensee, during the term of this License, shall maintain adequate systems of internal control and shall keep complete and accurate records, books of account and data, including daily sales and receipts records, which shall show in detail the total business transacted by Licensee and the Gross Receipts therefrom. Such books and records maintained pursuant to this License shall be conveniently segregated from other business matters of Licensee and shall include, but not be limited to: all federal, state and local tax returns and schedules of the Licensee, records of daily bank deposits of the entire receipts from transactions in, at, on or from the Licensed Premises; daily dated cash register receipts; duplicate bank deposit slips and bank statements.

(b) Licensee shall use such accounting and internal control methods and procedures and keep such additional books and records as may be reasonably prescribed by Parks or the Comptroller, and Parks or the Comptroller shall have the right to examine the recordkeeping procedures of the Licensee prior to the commencement of the term of this License, and at any time thereafter, in order to assure that the procedures are adequate to reveal the true, correct and entire business conducted by the Licensee. Licensee shall maintain each year's records, books of account and data for a minimum of six (6) years.

(c) The failure or refusal of the Licensee to furnish any of the statements required to be furnished under this Article within thirty (30) days after its due date, the failure or refusal of the Licensee to maintain adequate internal controls or to keep any of the records as required by this Article after written prior notice from Parks or the Comptroller or the existence of any unexplained discrepancy in the amount of fees required to be due and paid hereunder, as disclosed by audit conducted by Parks or the Comptroller, the results of which are provided by written notice to Licensee in each instance, of more than five percent in any two out of three consecutive months or more than ten percent in one month, shall be presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder, which shall entitle Parks, at its option, to terminate this License. In addition, the failure or refusal of Licensee to furnish the required statements, to keep the required records or to maintain

adequate internal controls shall authorize Parks or the Comptroller to make reasonable projections of the amount of Gross Receipts which would have been disclosed had the required statements been furnished or the required records maintained, based upon such extrinsic factors as the auditors reasonably deem appropriate in making such projections. Licensee shall pay any assessment based upon such reasonable projections within fifteen (15) days after receipt thereof, and the failure to do so shall constitute an additional substantial violation of this License and a default hereunder.

4.8 In the event Parks determines that Licensee or Licensee's employees, agents, sublicensees, or subcontractors have breached any of the provisions contained in Sections 4.1 through 4.7 hereinabove, except where provision is made for late fees, Licensee may be subject to a charge of \$500.00 with respect to each incident of breach as liquidated damages, provided that Licensee has been given reasonable written notice of such breach and has willfully failed to cure within thirty (30) days of such notice, or if the breach cannot be reasonably cured within thirty (30) days and Licensee has commenced to cure the breach, diligently pursues such cure and provides to Parks a written affirmation of attempts to cure and a request for additional time to cure.

4.9 License fees shall be made payable to the City of New York Department of Parks & Recreation and delivered or mailed in time to arrive by the due date at the following address:

City of New York Department of Parks & Recreation Revenue Division
The Arsenal - Room 407
830 Fifth Avenue
New York, NY 10021

4.10 Where provision is made herein for notice to be given in writing, the same shall be given by hand delivery or by mailing a copy of such notice by certified mail, return receipt requested, addressed to Commissioner or to the attention of Licensee at their respective addresses provided in this License, or to any other address that Licensee shall have filed with Commissioner.

4.11 In addition to any other remedy at law, Licensee is responsible for paying to Parks, without limitation, liquidated damages for committing any violation(s) enumerated below. Licensee will receive a written notice to cure the violation in writing. If Licensee fails to cure the violation within 24 hours of receipt of the initial written notice to cure, or if Licensee fails to commence in good faith and with due diligence, efforts to cure or comply with such order, *an inspector of the Parks Revenue Division* may issue a second written notice to cure and impose liquidated damages listed below. Parks does not warrant that Licensee will not receive tickets, summonses, or fines from Parks Enforcement Patrol or other City entities without notice. Licensee shall receive written notice from Parks each time Parks assesses Licensee for a violation.

Liquidated damages may be assessed per incident as set forth herein, in accordance with the following schedule:

<u>Violation</u>	<u>Each Offense</u>
Overcharging	\$250
Expanding	\$350
Damage to Parks Property	\$350
Failure to properly Clean and Maintain Licensed Premises	\$350
Failure to comply with the directives of Parks employees, enforcement, or representatives of the Parks revenue division consistent with the provisions of this License Agreement	\$350
Operation of rides, games and attractions in an unsafe manner	\$350
Operation of Roller Coaster without proper permits	\$350
Blocked exits	\$350
Improper disposal (noxious liquids, debris, etc.)	\$350
Unauthorized advertising	\$100
Improper storage in violation of Section 8.1 of this License Agreement	\$350

If Licensee fails to pay the assessed liquidated damages to Parks within ten (10) days of receipt of the second written notice to cure with assessed liquidated damages, this License may be suspended or terminated. In addition, Parks may seize Licensee's security deposit described in Section 4.4(a) to cover the amounts of any outstanding payments for liquidated damages.

If Licensee wishes to contest the warning pursuant to this Section 4.11, it may do so, in writing, within five business days of receipt thereof, c/o the Commissioner, The Arsenal, 830 Fifth Avenue, New York, New York, 10021. The Commissioner or his designee may reverse, affirm, or modify the original determination and shall provide a written explanation of his finding within twenty (20) days.

RIGHT TO AUDIT

5.1 Parks, the Comptroller and other duly authorized representatives of the City shall, with reasonable prior notice (except in the event of an emergency or where such notice is not practical), have the right, during business hours, to examine or audit the records, books of account and data of the Licensee to verify Gross Receipts as reported by the Licensee. Licensee shall also permit the inspection by Parks, Comptroller or other duly authorized representatives of the City of any equipment used by Licensee, including, but not limited to, cash registers and

recording machines, and all reports or data generated from or by the equipment. Licensee shall cooperate fully and assist Parks, the Comptroller or any other duly authorized representative of the City in any examination or audit thereof. In the event that the Licensee's books and records, including supporting documentation, are situated at a location 50 miles or more from the City, the records must be brought to the City for examination and audit or Licensee must pay the food, board and travel costs incidental to two auditors conducting such examination or audit at said location.

5.2 The failure or refusal of the Licensee to permit Parks, the Comptroller or any other duly authorized representative of the City to audit and examine the Licensee's records, books of account and data or the interference in any material way by the Licensee in such an audit or examination is presumed to be a failure to substantially comply with the terms and conditions of this License and, if not cured within thirty days after notice to Licensee, a default hereunder which shall entitle Parks to terminate this License.

ORDER OF APPLICATION OF PAYMENT, CREDITOR-DEBTOR PROCEEDINGS

6.1 In the event any bankruptcy, insolvency, reorganization or other creditor-debtor proceedings shall be instituted by or against the Licensee or its successors or assigns, or the guarantor, if any, the Security Deposit shall be deemed to be applied first to the payment of license fees and/or other charges due the City for all periods prior to the institution of such proceedings and the balance, if any, of the Security Deposit may be retained by the City in partial liquidation of the City's damages.

UTILITIES

7.1 Licensee, at its sole cost and expense, shall directly pay for all utility costs associated with Licensee's construction and operations at the Licensed Premises. Licensee, at its sole cost and expense, shall install or cause to be installed, and maintain, all utility lines, meters and supplies of power necessary for the proper operation of this license and pay all utility costs. Utilities, as described in this Agreement, may include, but shall not be limited to, electricity, gas, heat, coolant, telephone, water and sewer charges. Licensee shall not undertake the installation of any new utility lines without first having obtained all necessary permits and approvals from Parks and such other federal, state or City agencies or entities having jurisdiction over the construction and operation of the Premises. Parks does not make representation or warranty that existing cables, lines, meters, or supplies of power are adequate for Licensee's needs or that any entity can or will make such service available.

7.2 Licensee shall be responsible for payment of all utility costs incurred by Licensee during the term of its license, however Licensee shall have the right to provide separate metering for its sublicensees and upon notice to the City of such separate metering City shall accept separate payments for utilities from such sublicensees, provided that it is expressly understood that such payment arrangement is made solely as an accommodation to Licensee and in no way relieves Licensee of its obligation to ensure full payment of such costs.

INFLAMMABLES

8.1 Except for properly stored gasoline, Licensee shall not use or permit the storage of any illuminating oils, oil lamps, turpentine, benzine, naphtha, or similar substances or explosives of any kind or any substances or items prohibited in the standard policies of insurance companies in the State of New York.

OPERATIONS

9.1 Licensee, at its sole cost and expense, shall operate this License for the accommodation of the public and in such manner as the Commissioner shall reasonably prescribe and as permitted by the laws, rules, regulations and orders of government agencies having jurisdiction. Licensee accepts the Licensed Premises in their "as-is" condition and agrees to use its best efforts to obtain necessary permits and approvals related to all operations at the Licensed Premises. Licensee shall provide the necessary number of personnel having the requisite skills together with the necessary personal equipment and consumable supplies and shall perform the following services at the Licensed Premises:

- (a)** operate the Roller Coaster; and
- (b)** continuously perform such ongoing and preventive maintenance activities necessary to maintain the Licensed Premises and Roller Coaster in good order and repair and consistent with prevailing professional and industry or trade standards.

9.2 Licensee shall provide an adequate number of staff members possessing the requisite qualifications to conduct all its operations at the Licensed Premises seven (7) days a week for such hours as the Commissioner shall reasonably approve. Licensee's employees at the Licensed Premises shall be qualified for their respective functions and shall be made to wear appropriate uniforms, subject to approval of the Commissioner. The Parks-approved staffing plan and hours of operation for Licensee is detailed in Exhibit C.

9.3 Licensee shall notify the Commissioner within five business days whenever Licensee tentatively schedules any private use of the Licensed Premises (e.g., private parties) which would close the entire Licensed Premises to the general public. Such private use shall be limited to six times each operating year, subject to Parks' prior approval. In no event shall Licensee close the Licensed Premises to conduct private activities during public hours of use except when such activities are specifically approved or sponsored by Parks. Any closure of the Licensed Premises which Licensee seeks to schedule during public hours of use must be announced to the public at least two weeks in advance of such activities or events. In addition, Parks may make use of the Licensed Premises, as provided in Section 16 herein.

9.4 Licensee shall, at its sole cost and expense, obtain all licenses and permits that may be required to operate the Licensed Premises in accordance with applicable rules, laws and regulations. Licensee shall at all times operate the Licensed Premises in accordance with the provisions of any Certificates of Occupancy and Permits of Assembly, as issued.

9.5 Licensee shall submit to Commissioner for Commissioner's prior approval, not to be unreasonably withheld, not less than sixty (60) days before the first day of each Operating Year, schedules for the coming Operating Year concerning operating days and hours, and proposed schedule of fees and rates for the services and products to be provided under this License during the forthcoming Operating Year. Following approval of such schedules, Licensee shall, at its sole cost and expense, print, frame, and prominently display in a place and manner designated by Commissioner, the current approved schedule of operating days, hours, fees and rates. Any change in such approved hours and fees during the course of an Operating Year must receive prior approval from the Commissioner in writing. The Commissioner shall not unreasonably withhold or delay approval of Licensee's fees and rates, provided, such fees and rates are similar to those charged by comparable businesses in the City with operations of a level of quality similar to that of Licensee.

9.6 Licensee shall record all transactions involved in the operation of this License on cash registers and keep books and records as required by Section 4 and as deemed acceptable by the Commissioner.

9.7 Licensee warrants that all services provided pursuant to this License shall be of high grade and good quality.

9.8 Licensee shall not use any polystyrene foam products in connection with services or merchandise offered under this License.

9.9 An officer of the Licensee shall personally operate this License or employ an operations manager ("Manager") possessing appropriate qualifications to manage operations at the Licensed Premises in a manner that is satisfactory to Commissioner. The Manager must be available by telephone during all hours of operation, and Licensee shall continuously notify the Commissioner and the Parks Enforcement Patrol Communications Division of a 24-hour pager or cellular telephone number through which Parks may contact the Manager in event of an emergency. Licensee shall replace any Manager, employee, subcontractor or sublicensee whenever reasonably demanded by Commissioner, which demand shall not be arbitrary or capricious.

9.10 Licensee shall provide equipment, which will provide security for all monies received. Licensee shall provide for the transfer of all monies collected to Licensee's banking institution. Licensee shall bear the loss of any lost, stolen, misappropriated or counterfeit monies derived from operations under this License.

9.11 Licensee shall, at its sole cost and expense, use its best efforts to recruit personnel from the communities immediately surrounding the Licensed Premises, and provide, hire, train, supervise, and be responsible for the acts of all personnel necessary for the proper operation of this License, including but not limited to:

- (a) collect and safeguard all monies generated under this License;
- (b) maintain the Licensed Premises;

- (c) conduct and supervise all activities to be engaged in upon the Licensed Premises including but not limited to the operation a Roller Coaster, cashier(s) and vending personnel as well as the provision of security at the Licensed Premises; and
- (d) provide first-aid to all staff and visitors.

9.12 Licensee shall, at its sole cost and expense, provide any lighting, music, music programming and sound equipment which Licensee determines may be necessary for its operations under this License. Licensee shall operate and play such sound equipment and music only at a sound level acceptable to the Commissioner. Licensee shall be responsible for payment of any and all fees or royalties to ASCAP, BMI or such other entity as they may require for such music or music programming.

9.13 Installation of additional fixed lighting or fixed sound equipment by the Licensee on the premises shall require the prior written approval of the Commissioner (not to be unreasonably withheld or delayed).

9.14 In view of the unique nature of the Licensed Premises, Licensee shall provide such reasonable access to the Licensed Premises to disabled members of the public as required by the applicable provisions of law. This accessibility shall be clearly indicated by signs and included in all advertising by Licensee. Licensee shall furnish to Parks a plan which describes how Licensee intends to make the services provided at the Licensed Premises readily accessible and useable by individuals with disabilities, and include in its advertising and promotion program provided in Section 9.21 herein notice to the public regarding access by persons with disabilities. Such plan shall provide for compliance with the applicable provisions of the Americans with Disabilities Act and any other similarly applicable legislation.

9.15 Licensee shall, at its sole cost and expense, provide a twenty-four hour per day security system at the Licensed Premises and the area immediately surrounding the Licensed Premises, which shall be either an electronic security system, or a twenty-four hour unarmed guard, or both.

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

9.17 Licensee shall promptly notify Parks' personnel of any unusual conditions that may develop in the course of the operation of this License such as, but not limited to, fire, flood, casualty and substantial damage of any character.

9.18 Licensee shall cooperate with Parks in providing use of the Licensed Premises without charge for programs conducted by or arranged for by Parks pursuant to Section 16 herein. Parks

shall consult with Licensee in an effort to schedule such events at times mutually agreeable to Licensee and to Parks.

9.19 Licensee shall maintain close liaison with Parks' Enforcement Patrol, the New York Police Department, and other police officials, and cooperate with all efforts to remove illegal vendors from the Licensed Premises and adjacent areas. Licensee shall use its best efforts to prevent illegal activity on the Licensed Premises.

9.20 The Commissioner shall have the right to reasonably approve the days and times on which deliveries to Licensee may be made.

9.21 Licensee shall establish an advertising and promotion program. Licensee shall have the right to print or to arrange for the printing of programs for events containing any advertising matter except advertising matter which is indecent, in obvious bad taste, or which demonstrates a lack of respect for public morals or conduct. Licensee may release news items to the media as it sees fit. If the Commissioner in the Commissioner's discretion, however, finds any releases to be unacceptable, then Licensee shall cease or alter such releases as directed.

(a) Licensee may not print or arrange for the printing of advertising, signs, programs or brochures containing advertising matter, which in the sole discretion of the Commissioner is indecent, in obvious bad taste, demonstrates a lack of respect for public morals or conduct, or which adversely affects the reputation of the Licensed Premises, Parks or the City of New York. Parks agrees to use its reasonable efforts to assist Licensee with obtaining authorizations from other agencies having jurisdiction for posting non-proprietary directional signs designed to inform the public of the operation of the Licensed Premises conducted at the Licensed Premises. Any business or trade name which Licensee proposes to use in identifying the Licensed Premises or any other part of the Licensed Premises shall be subject to the reasonable prior written approval of the Commissioner.

(b) Parks reserves the right to place advertising at the Licensed Premises, at any time during the Term of this License, at locations determined through consultation and agreement with the Licensee, whose consent shall not be unreasonably withheld.

9.22 Any sign posted by Licensee at the Licensed Premises, or any advertisement used in connection with such facility, shall be subject to the prior written approval of the Commissioner, shall be appropriately located, and shall state that the Licensed Premises is a New York City municipal concession operated by Licensee. The Commissioner's approval shall not be unreasonably withheld.

9.23 Licensee shall at its sole cost and expense post throughout the Licensed Premises such signs as may be necessary to direct patrons to its services and facilities. It is expressly understood that if Licensee contemplates placing any signs off-site, such as on nearby highways or streets, it shall be Licensee's responsibility to obtain any necessary approvals or permits from any governmental agency having jurisdiction over such highways, streets or locations. The design and content of all such signs are subject to Commissioner's reasonable prior approval.

9.24 The sale or advertising of cigarettes, cigars or any other tobacco product is strictly prohibited.

9.25 The sale of alcoholic beverages is strictly prohibited.

9.26 Licensee should be aware that the City is developing "marketing partnership" agreements identifying specific brands as the "designated" products of the City of New York. As this occurs, the Licensee will be required to sell the specific products so identified if the Licensee sells goods in that product category. If directed by the City, the Licensee will be required to purchase the products from designated distributors, provided the said distributors provide the products at a competitive price. If the product is in the form of a service, the Licensee will be required to use the service identified. (For example, if the City enters into a marketing partnership with a financial institution that provides credit card service, the Licensee will be required to accept payment by means of that credit card). The Licensee, working with the City's marketing representative, may be required to give the City's marketing representative priority in the placement and scheduling of advertising. Marketing partners will be required to pay the market rate for any such advertising. In addition, the City reserves the right to place vending machines on and around the Licensed Premises and to preclude Licensee from selling products in those categories for which the City has entered into a "marketing partnership" with a marketing partner. Preclusion of any such product will not change the amount of payments to the City. The City's marketing partners may also be authorized to install, operate, maintain and repair vending machines within the Licensed Premises that compete with Licensee's products. Licensees should also be aware that the City has entered into a marketing partnership agreement with the Snapple Beverage Group, Inc., pursuant to which, Snapple has been granted the exclusive right to sell iced teas, bottled water and chocolate drink in vending machines on city owned or controlled property. Licensee may be precluded from selling those products if Snapple vending machines are placed on or around the Licensed Premises. Nothing in this Section 9.26 shall require Licensee to incur costs or expenses that Licensee otherwise would not be required to incur in the normal course of its operation of the Licensed Premises. For example, if the City enters into a marketing partnership with a financial institution that provides credit card service, and the Licensee does not typically accept credit cards in its course of business, Licensee shall not be required to incur expenses in order to accept payment by means of a credit card.

CAPITAL IMPROVEMENTS

10.1 Licensee shall complete certain Capital Improvements, as defined in Section 2.1(k) herein, at the Licensed Premises in accordance with the Schedule of Capital Improvements attached hereto and made a part hereof as Exhibit D. Such Capital Improvements shall cost at least \$2,000,000 during the first ten (10) years of the Term and, should the City in its sole discretion offer to Licensee the option pursuant to Section 3.1, Capital Improvements shall cost at least \$1,000,000 during the five (5) year option period. Such Capital Improvements shall include, but are not limited to the items listed in Exhibit D. Notwithstanding the foregoing, Licensee is permitted to make additional Capital Improvements provided, however, Licensee first obtains the express written permission of the Commissioner. The Commissioner's written permission is not necessary prior to the performance of ordinary repairs at the Licensed Premises, however any individual repair whose cost exceeds one hundred thousand dollars

(\$100,000.00) will require the Commissioner's prior approval. All Fixed Equipment and Expendable Equipment applied toward the Capital Improvements required in this Section 10, shall become the property of Parks upon installation, at Parks' option. To ensure faithful completion of the Capital Improvements described herein, Licensee shall post a construction security bond to Parks, in an amount and form acceptable to Parks, before any Capital work as described in this Section 10 is commenced.

10.2 One percent of the minimum guaranteed capital investment ("Total Cost") for all Capital Improvement activities will be charged to the Licensee for design review by Parks personnel (the "Design Review Fee"). Upon the execution of this Agreement, Licensee shall pay to the City a Design Review Fee in the amount of \$20,000. The Design Review Fee will be credited against the Licensee's Capital Improvement obligation for the initial ten (10) year period of the License Term.

10.3 The Total Cost of the Capital Improvements shall be determined by the Commissioner based upon construction documents, invoices, labor time sheets and such other supporting documents or other data as the Commissioner may require. Expenditures for ordinary repairs and maintenance shall not be considered Capital Improvements. In making the determination of the total cost of Capital Improvements, Commissioner may request any information he reasonably believes would be helpful to make such a determination. Licensee shall forward such information to the Commissioner upon his request. Licensee shall spend or cause to be expended the entire amount required to complete the Capital Improvements described in Section 10.1, including any amount needed above any estimated cost shown. In the event Licensee performs all Capital Improvements for less than the amount listed in Section 10.1 herein, any excess monies shall be remitted to the City as additional license fees within thirty days following the Commissioner's determination of Final Completion.

10.4 Licensee shall perform and complete all such Capital Improvements at its sole cost and expense and in accordance with designs and plans approved by Parks (not to be unreasonably withheld or delayed) and other government agencies having jurisdiction. The Licensee shall make no other Capital Improvements or alterations without the prior written consent of the Commissioner (not to be unreasonably withheld or delayed).

10.5 Parks will use its reasonable efforts to approve or disapprove Licensee's design plans within thirty (30) days of receipt thereof. Licensee shall obtain the services of a New York State licensed design consultant, a Registered Architect or a Professional Engineer to review all improvements and/or replacements required under this License and to supervise the construction and installation thereof.

10.6 All replacement work and improvements shall be made in accordance with the Schedule of Capital Improvements attached as Exhibit D. Any modifications to this schedule must be approved in writing by Parks, except that Parks' written permission is not necessary prior to the performance of repairs at the Licensed Premises that are not set forth on Exhibit D.

10.7 Licensee shall use its best efforts to minimize the extent to which the public use of the Licensed Premises is disrupted in connection with its construction, installation, operation and maintenance activities at the Licensed Premises.

10.8 Under no circumstances or condition shall Licensee remove, replant, move, prune, or cut-back any tree, living or dead, in conjunction with Licensee's capital improvements, or with any other of Licensee's rights or duties under this License, without the express written permission of Parks. Licensee acknowledges that Parks does not intend to authorize the removal of any living trees in conjunction with any of Licensee's rights or duties detailed herein. Licensee shall not attach anything, such as lights, to the trees on the Premises.

10.9 Licensee shall complete or cause to be completed all Capital Improvements so that the services to the public contemplated herein may commence, unless such work cannot be completed due to circumstances beyond the control of Licensee as determined by the Commissioner, including acts of God, war, or enemies, or hostile government actions, revolutions, insurrection, riots, civil commotion, strikes, fire or other casualty. In such situations, the Licensee shall propose for the Commissioner's approval (not to be unreasonably withheld) a revised completion schedule and if approved, Licensee shall complete such Capital Improvements in accordance with such approved revised schedule.

10.10 Licensee, within three (3) months of certification of Final Completion, shall furnish the Commissioner with a certified statement, issued by Licensee, detailing the actual costs of construction. Accompanying such statement shall be construction documents, bills, invoices, labor time books, accounts payable, daily reports, bank deposit books, bank statements, checkbooks and canceled checks. Licensee shall maintain accurate books and records of account of construction costs, which shall be segregated from other accounts, or shall itemize and specify those costs attributable to the Licensed Premises to permit audit by Parks or the New York City Comptroller upon request.

10.11 Pursuant to the Schedule of Capital Improvements, Licensee shall pay all applicable fees and shall submit to Parks and all other governmental agencies having jurisdiction (including but not limited to the Art Commission, Department of Buildings, and City Landmarks), for prior approval, all plans, specifications, schematics, working and mechanical drawings which shall be signed and sealed by a New York State Registered Architect or Licensed Professional Engineer. All plans, specifications, schematics, and working and mechanical drawings shall be in such detail as Parks shall require. All work shall be undertaken in accordance with the plans, specifications, schematics, and working and mechanical drawings approved in writing in advance by Parks. No Capital Improvement shall be deemed Finally Completed until the Commissioner certifies in writing that the Capital Improvement has been completed to its satisfaction.

10.12 [section intentionally omitted]

10.13 For any Capital Improvements commenced under this License, Licensee shall apply for applicable permits from the construction permit office located in the Olmsted Center, Flushing Meadows Corona Park prior to commencement of work, except that Parks' written permission is

not necessary prior to the performance of repairs at the Licensed Premises that are not set forth on Exhibit D. Licensee shall commence Capital Improvements only after the issuance of a construction permit from Parks and a building permit issued by the Department of Buildings as such permits are required. Licensee shall notify Commissioner of the specific date on which construction shall begin.

10.14 No temporary storage or other ancillary structures and staging areas may be erected and maintained without a permit obtained from Parks' Construction Division, Permit Office.

10.15 During performance of the Capital Improvements and up to the date of Final Completion, Licensee shall be responsible for the protection of the finished and unfinished Capital Improvements against any damage, loss or injury. In the event of such damage, loss or injury, Licensee shall promptly replace or repair such Capital Improvements at its sole cost and expense.

10.16 Licensee shall perform all Capital Improvements in accordance with all federal, state, and City laws, rules, regulations, orders, and industry standards, and with materials as set forth in the approved plans, specifications, schematics, working and mechanical drawings. All equipment and materials installed as part of the Capital Improvements shall be new, free of defects, of the best grade quality, suitable for the purpose intended and furnished in ample quantities to prevent delays. Licensee shall obtain all manufacturer's warranties and guarantees for all such equipment and materials, as applicable.

10.17 As required by Section 24-216 of the New York City Administrative Code, devices and activities which will be operated, conducted, constructed or manufactured pursuant to this License and which are subject to the provisions of the New York City Noise Control Code (the "Code") shall be operated, conducted, constructed or manufactured without causing a violation of such Code. Such devices and activities shall incorporate advances in the art of noise control developed for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued pursuant to federal, state, City laws, rules, regulations and orders.

10.18 Unless otherwise provided, Licensee shall choose the means and methods of completing the Capital Improvements unless Commissioner reasonably determines that such means and methods constitute or create a hazard to the Capital Improvements or to persons or property or will not produce finished Capital Improvements in accordance with the Schedule of Capital Improvements.

10.19 Licensee shall provide written notice to Commissioner when the Capital Improvements are Substantially Completed. After receiving such notice, Commissioner shall inspect such Capital Improvements. After such inspection Commissioner and Licensee shall jointly develop a single final "punch list" incorporating all findings from such inspection concerning all work not completed to the satisfaction of the Commissioner. Licensee shall proceed with diligence to complete all "punch list" items within a reasonable time as determined by the Commissioner.

10.20 In the event the Licensee fails to finally complete a particular improvement by the date specified for final completion, in accordance with Exhibit D, subject to the provisions of Section

10.9 herein, Licensees may be required to pay the City liquidated damages of \$250.00 per day until the outstanding improvement is completed. Licensees' failure to comply with any phase of the schedules for Capital Improvements for a period of thirty days following written notice shall constitute a default upon which Commissioner may terminate this License by giving ten days written notice.

10.21 Licensee shall provide Parks with discharges for any and all liens which may be levied against the Capital Improvements during construction of such improvements. Licensee shall use its best efforts to discharge such liens within thirty business days of receipt of lien by Licensee. Upon Final Completion, as defined in Section 2, of all Capital Improvements, Parks shall return to Licensee its remaining construction security bond on deposit with the City.

10.22 Licensee shall promptly repair, replace, restore, or rebuild as the Commissioner reasonably may determine, items of Capital Improvements in which defects of materials, workmanship or design may appear or to which damages may occur because of such defects, during the one year period subsequent to the date of the Final Completion of such Capital Improvements. Failure to comply with this Section 10.22 shall constitute a default and may result in the termination of this License.

10.23 Neither Parks, nor the City, its agencies, officers, agents, employees or assigns thereof, shall be bound, precluded or estopped by any determination, decision, approval, order, letter, payment or certificate made or given under or in connection with this License by the City, the Commissioner, or any other officer, agent or employee of the City, before the Final Completion and acceptance of the Capital Improvements, from showing that the Capital Improvements or any part thereof does not in fact conform to the requirements of this License and from demanding and recovering from the Licensee such damages as Parks or the City may sustain by reason of Licensee's failure to perform each and every part of this License in accordance with its terms, unless such determination, decision, approval order, letter, payment or certificate shall be made pursuant to a specific waiver of this Section 10.23 signed by the Commissioner or his authorized representative.

10.24 Upon installation, title to all construction, renovation, improvements, and fixtures made to the Licensed Premises shall vest in and thereafter belong to the City at the City's option, which may be exercised at any time after the Substantial Completion of the construction, renovation, improvement, affixing, placement or installation. To the extent the City chooses not to exercise its option with respect to any of the construction, renovation, improvements, equipment or fixtures made to the Licensed Premises, it shall be the responsibility of Licensee to remove such items and restore the Licensed Premises to the satisfaction of the Commissioner at the sole cost and expense of the Licensee. However, Licensee shall not under any circumstances be required to remove heating, plumbing, air conditioning, electrical wiring, elevators, windows and ventilation fixtures or any part of the Cyclone Roller Coaster ride.

MAINTENANCE, SANITATION AND REPAIRS

11.1 Licensee shall, at its sole cost and expense and to the satisfaction of Commissioner, put, keep, repair and preserve in good order the Licensed Premises and the Roller Coaster. Licensee

shall at all times keep the Licensed Premises clean, litter free and neat.. Licensee shall provide regular cleaning and maintenance services for the Licensed Premises (up to and including the area within fifty (50) feet of the Licensed Premises), and collect and remove all litter, debris, snow and garbage therefrom. Licensee shall repair and maintain in good working order the Roller Coaster and any and all equipment installed at the Licensed Premises necessary for the proper operation of this License. Licensee shall provide equipment maintenance contracts, or directly provide maintenance services deemed by Parks to be equivalent to service contracts, for the equipment on the Licensed Premises. Licensee shall adhere to the maintenance schedules recommended by the manufacturers for all mechanical systems and equipment and the national safety guidelines associated with the installation, operation, and maintenance of the proposed equipment.

11.2 Licensee shall maintain the Roller Coaster and Licensed Premises to the reasonable satisfaction of the Commissioner. All such maintenance shall be performed by Licensee in a good and worker-like manner.

11.3 No later than thirty (30) days before the end of each Operating Season, Licensee shall conduct a site inspection at the Licensed Premises with a representative of Parks. Such inspection shall assess the condition of the Licensed Premises and all fixed equipment therein, and determine the nature and extent of repairs to be performed by Licensee.

11.4 Licensee shall provide adequate waste receptacles at the Licensed Premises. All waste, garbage, refuse, rubbish and litter which collects upon the Licensed Premises and around the perimeter of the Licensed Premises, including the sidewalks, without regard for its source, shall be daily collected, recycled if possible, bagged, and removed from the Licensed Premises at a frequency reasonably satisfactory to the Commissioner, all at the Licensee's sole cost and expense. In performing its duties under this section, Licensee shall comply with all applicable ordinances and programs of the City, State, and Federal governments.

Licensee shall provide for its patrons' use appropriately sized and well-positioned blue plastic recycling bins or receptacles for bottles and cans, and green bins or receptacles for papers, catalogs and magazines. These containers shall be properly labeled with recycling logos and the containers, and the areas around them, shall be maintained in a clean, sanitary, and graffiti-free state.

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

11.5 At the expiration or sooner termination of this License, Licensee shall turn over the Licensed Premises to Parks in a well maintained state, in good repair, ordinary wear and tear excepted.

11.6 At its sole cost and expense, Licensee shall remove any and all graffiti that may appear on the buildings and structures on the Licensed Premises. Such graffiti removal shall be commenced within twenty-four hours from the appearance of any such graffiti and shall continue until such graffiti is removed.

11.7 Licensee shall, at its sole cost and expense, inspect or cause the Licensed Premises to be inspected for asbestos, and if necessary, remove or cause removal of any asbestos, subject to Parks' approval, from the Licensed Premises in accordance with City, state and federal regulations.

11.8 Licensee shall register any and all underground oil storage tanks with over a 1,100-gallon capacity with the Department of Environmental Protection ("DEP"). In the event that there are or will be underground oil storage tanks installed on the Licensed Premises, then Licensee shall conduct or cause to be conducted a tightness test on said underground oil storage tank on a regular basis in accordance with City, state and federal regulations.

IMPROVEMENT AND/OR CORRECTION IN OPERATIONS

12.1 Should the Commissioner reasonably decide that Licensee is not operating the Licensed Premises in a satisfactory manner, Commissioner may in writing order Licensee to improve operations or correct such conditions as Commissioner may deem unsatisfactory within a reasonable period of time. In the event that Licensee fails to comply with such written notice or respond in a manner satisfactory to Commissioner within twenty days from the mailing of said notice, notwithstanding any other provisions herein, then Commissioner may terminate this License.

12.2 Should Commissioner, in his sole judgment, decide that an unsafe or emergency condition exists on the Licensed Premises, after written notification, Licensee shall have 24 hours to correct such unsafe or emergency condition. If such unsafe or emergency condition cannot be corrected within said period of time, the Licensee shall notify the Commissioner in writing and indicate the period within such condition shall be corrected. Commissioner, in his sole discretion, may extend such period of time in order to permit Licensee to cure, under such terms and conditions as appropriate.

EQUIPMENT

13.1 Licensee shall, at its sole cost and expense and to the satisfaction of Commissioner, provide, and replace if necessary, all equipment necessary for the operation of this License, and put, keep, repair, preserve and maintain in good order all equipment found on, placed in, installed in or affixed to the Licensed Premises.

13.2 Commissioner represents that City has title to all Fixed Equipment. Licensee shall have the use of all Fixed Equipment located on the Licensed Premises.

13.3 Title to any Additional Fixed Equipment, and to all construction, renovation, or improvements made to the Licensed Premises shall vest in and belong to the City at the City's option, which option may be exercised at any time after the substantial completion of the affixing of said equipment or the substantial completion of such construction, renovation or improvement. To the extent City chooses not to exercise such option it shall be the responsibility of Licensee to remove such items at its sole cost and expense after the termination of this License, except that Licensee shall not be required to remove any part of the Cyclone Roller Coaster ride.

13.4 Licensee must acquire, replace, install or affix, at its sole cost and expense, any equipment, materials and supplies required for the proper operation of Licensed Premises as described herein or as reasonably required by Commissioner.

EXPENDABLE OR PERSONAL EQUIPMENT

14.1 Licensee shall supply at its own cost and expense all Expendable or Personal Equipment required for the proper operation of this License, and replace same at its own cost and expense when requested by Commissioner.

14.2 Title to all Expendable or Personal Equipment obtained by Licensee shall remain in Licensee and such equipment shall be removed by Licensee at the termination or expiration of this License. In the event such equipment remains in the Licensed Premises following such termination or expiration, Commissioner may treat such property as abandoned and charge all costs and expenses incurred in the removal thereof to Licensee.

14.3 The Equipment to be removed by Licensee pursuant to Section 14.2 above, shall be removed from the Licensed Premises in such a way as shall cause no damage to the Licensed Premises. Notwithstanding its vacating and surrender of the Licensed Premises, Licensee shall remain liable to City for any damage he may have caused to the Licensed Premises, reasonable wear and tear excepted..

EQUIPMENT AND CONDITION UPON SURRENDER

15.1 Notwithstanding the foregoing, at the expiration or sooner termination of this License, Licensee shall surrender the Licensed Premises, and the Fixed and Additional Fixed Equipment to which City holds title, in at least as good a condition as said Licensed Premises, and the Fixed and Additional Fixed Equipment were found by Licensee, reasonable wear and tear excepted.

15.2 Licensee acknowledges that Licensee is acquiring a license to use the Licensed Premises and Fixed Equipment thereon solely on reliance on its own investigation, that no representations, warranties or statements have been made by the City concerning the fitness thereof, and that by taking possession of the Licensed Premises and Fixed Equipment, Licensee accepts them in their present condition "as is."

RESERVATION FOR PARKS SPECIAL EVENTS

16.1 For the purposes of this Section 16.1 only, the term "Special Event(s)" shall mean any event for which Parks has issued a Special Event Permit. Parks agrees to use its reasonable efforts to notify Licensee at least thirty days in advance of any such Special Event. Parks shall use its best efforts to not interfere with or impede Licensee's income generating activities under the terms and conditions of this License. It is expressly understood that this Section 16.1 shall in no way limit Parks' right to itself sponsor or promote Special Events, as defined herein, at the Licensed Premises, or to enter into agreements with third parties to sponsor or promote such events, provided that Parks will use its reasonable efforts to ensure that such third parties will be responsible for maintenance and clean-up associated with any such Special Event. Parks shall require such third parties to purchase insurance for said Special Events, naming Licensee and Parks as additional insured parties (a copy of which certificate shall be provided to Licensee prior to said Special Event) and post a clean-up and restoration bond to ensure clean-up and restoration of the Licensed Premises. Parks shall be responsible for any damage it may cause to the Licensed Premises during any Special Event. Commissioner represents to Licensee that he has not granted to any other person or entity any license, permit, or right of possession or use which would prevent Licensee in any way from performing its obligations and realizing its rights under this License.

16.2 Parks agrees to notify any third party operator or sponsor of Special Events of Licensee's access rights to the Licensed Premises and to provide same with the name and telephone number of Licensee's manager.

16.3 Parks agrees that it will require any third party operator or sponsor of any Special Events at the Licensed Premises to agree at minimum that it is responsible for acts, errors, or omissions of its own employees, agents, contractors, and servants in connection with or arising out of the activities/work performed under the Special Event agreement, and each party is responsible for its own liability, whether alleged to be based on negligence, recklessness, or intentional conduct, for claims for loss, damage, or injury (including death) to persons or property of whatever kind or nature. The parties to a Special Event Agreement will agree at minimum that neither party shall be vicariously liable for the acts, errors, or omissions of the other party's employees, agents, contractors, or servants. Licensee shall be made an additional insured on all insurance required by Parks in connection with any Special Events. A copy of the third party operator or sponsor's certificate of insurance shall be furnished to Licensee.

PROHIBITION AGAINST TRANSFER

17.1 Licensee shall not sell, transfer, assign, sublicense or encumber in any way this License hereby granted, a majority of the shares of Licensee, or any equipment furnished as provided herein, or any interest therein, or consent, allow or permit any other person or party to use any part of the Licensed Premises, building, space or facilities covered by this License, nor shall this License be transferred by operation of law, unless approved in advance in writing by Commissioner, it being the purpose of this License Agreement to grant this License solely to Licensee herein named.

ASSIGNMENTS AND SUBLICENSES

18.1 Licensee may assign or sublicense its interest in whole or in part in this License provided that Licensee obtains the Commissioner's prior written approval (not to be unreasonably withheld or delayed), as follows:

(a) No assignment or other transfer of any interest in this License Agreement shall be permitted which, alone or in combination with other prior or simultaneous transfers or assignments, would have the effect of changing the ownership or control, whether direct or indirect, of more than forty-nine percent of stock or voting control of Licensee in the Licensed Premises without the prior written consent of Commissioner. Licensee shall present to Commissioner the assignment or sublicense agreement for approval, together with any and all information as may be required by the City for such approval including a statement prepared by a certified public accountant indicating that the proposed assignee or sublicensee has a financial net worth acceptable to the Commissioner together with a certification that it shall provide management control acceptable to the Commissioner for the management and operation of the Licensed Premises.

(b) As used in this Section 18 the term "assignment" shall be deemed to include any direct or indirect assignment, sublet, sale, pledge, mortgage, transfer of or change in more than 49% in stock or voting control of the Licensee, including any transfer by operation of law. No sale or transfer of the stock owned by Licensee or its nominee may be made under any circumstance if such sale will result in a change of control violative of the intent of this Section.

18.2 Should Licensee choose to assign or sublicense the management and operation of any element of the Licensed Premises to another party, Licensee shall seek the approval of the Commissioner by submitting a written request including proposed assignment documents as provided above. The Commissioner may request any additional information he deems necessary and Licensee shall promptly comply with such requests.

18.3 No consent to or approval of any assignment or sublicense granted pursuant to this Section 18 shall constitute consent to or approval of any subsequent assignment or sublicense. Failure to comply with this provision shall cause the immediate termination of this License.

ALTERATIONS

19.1 (a) "Alteration" shall mean (excepting ordinary repair and maintenance):

(i) any restoration (to original premises or in the event of fire or other cause), rehabilitation, modification, addition or improvement to Licensed Premises; or

(ii) any work affecting the plumbing, heating, electrical, water, mechanical, ventilating or other systems of Licensed Premises.

(b) Licensee may alter Licensed Premises only in accordance with the requirements of subsection (c) of this Section. Alterations shall become property of City upon their attachment, installation or affixing.

(c) In order to alter Licensed Premises pursuant to subsection (b) of this Section, Licensee must:

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

(ii) insure that work performed and alterations made on Licensed Premises are undertaken and completed in accordance with submissions approved pursuant to section (i) of this Article, in a good and workmanlike manner, and within a reasonable time; and

(iii) notify Commissioner of completion of, and the making final payment for, any alteration within ten days after the occurrence of said completion or final payment.

(d) Commissioner may, in his discretion, make repairs, alterations, decorations, additions or improvements to Licensed Premises at the City's expense, but nothing herein shall be deemed to obligate or require Commissioner to make any repairs, alterations, decorations, additions, or improvements, nor shall this provision in any way affect or impair Licensee's obligation herein in any respect.

19.2 Parks reserves the right to perform construction or maintenance work in its discretion at the Licensed Premises at any time during the term of this License. Licensee agrees to cooperate with Parks, to accommodate any such work by Parks and provide public and construction access through the Licensed Premises as deemed necessary by the Commissioner. Parks shall use its best efforts to give Licensee at least fourteen days' written notice of any such work and not to interfere substantially with Licensee's operations or use of the Licensed Premises. Parks may temporarily close a part or all of the Licensed Premises for a Parks purpose as determined by the Commissioner. In the event that Licensee must close the Licensed Premises for the purposes provided for in this License because of such Parks' construction, then Licensee may propose and submit for the Commissioner's approval a plan to equitably address the impact of the closure. Licensee shall be responsible for security of all Licensee's property on the Licensed Premises at all times.

COMPLIANCE WITH LAWS

20.1 Licensee shall comply with and cause its employees and agents to comply with all laws, rules, regulations and orders now or hereafter prescribed by Commissioner, and to comply with all laws, rules, regulations and orders of any City, State or Federal agency or governmental entity having jurisdiction over operations of the License and the Licensed Premises and/or Licensee's use and occupation thereof. Licensee must collect and pay New York State and City Sales Tax and Pay all other applicable taxes, including New York City Commercial Rent or Occupancy taxes

20.2 Licensee shall not use or allow the Licensed Premises, or any portion thereof, to be used or occupied for any unlawful purpose or in any manner violative of a certificate pertaining to occupancy or use during the term of this License.

NON-DISCRIMINATION

21.1 Licensee shall not discriminate against any employee, applicant for employment or patron because of race, creed, color, national origin, age, sex, disability, marital status, or sexual orientation.

21.2 All advertising for employment shall indicate that Licensee is an Equal Opportunity Employer.

NO WAIVER OF RIGHTS

22.1 No acceptance by Commissioner of any compensation, fees, penalty sums, charges or other payments in whole or in part for any periods after a default of any terms and conditions herein shall be deemed a waiver of any right on the part of Commissioner to terminate this License. No waiver by Commissioner of any default on the part of Licensee in performance of any of the terms and conditions herein shall be construed to be a waiver of any other or subsequent default in the performance of any of the said terms and conditions.

INDEMNIFICATION

23.1 Licensee shall defend, indemnify and hold the City, its agents and employees harmless against any and all loss, liability, obligations, fines, damages, penalties, claims, costs, charges, or expenses, including reasonable attorneys' fees, for which they are or may be liable as a result of any personal injury, death or property damage arising, in whole or in part, from any negligent or intentional conduct on the part of Licensee, or others, in connection with Licensee's operations pursuant to this License (excluding, without limitation, any injury or death which occurred during, or is otherwise related to, the use of the public restrooms, except to the extent that Licensee's negligence or willful misconduct in its maintenance of the public restrooms caused such injury or death and excluding any damage, injury or death caused by the presence or operation of the Parks' offices located above the Licensed Premises).

23.2 The City, its agents and employees may arrange for their own defense by the Corporation Counsel in any action, claim, suit, or other proceeding, and, having done so, may at any time thereafter, tender their further defense to Licensee, without any prejudice to any rights to which they, or any of them, may be entitled to under this Section 23, including the right to be indemnified and held harmless, as therein provided.

23.3 Licensee's duty to defend, indemnify and hold the City, its agents and employees harmless, as provided in this Section 23, shall not be abrogated, diminished or otherwise affected by Licensee's further duty in their behalf to procure and maintain workers' compensation, employer's liability and comprehensive general liability insurance pursuant to the provisions of Section 24 hereof, nor by their failure to avail themselves of the benefits of such insurance by

due and timely demand upon the insurers therefor, and shall survive the expiration or sooner termination of this License.

23.4 Licensee assumes all risk in the operation of this License.

WORKERS' COMPENSATION AND INSURANCE

24.1 Licensee shall, at its own cost and expense, procure and maintain such insurance for the Term of this License as will:

- (a) protect Licensee from claims under the Workers' Compensation Act;
- (b) insure Licensee, its agents and sublicensees, and the City, its agents and employees against any and all loss, liability, obligations, fines, damages, penalties, claims, charges, costs, or expenses, including reasonable attorneys' fees, for which they, or any of them, are or may be liable as a result of any personal injuries, death, or property damage arising, in whole or in part, from any negligent or intentional conduct on the part of the Licensee, or others, in connection with Licensee's operations pursuant to this License, including but not limited to the design, construction, installation, operation, repair, maintenance replacement or removal of any capital improvements;
- (c) provide coverage against business interruption losses; and
- (d) insure the property and equipment of the City against any damage whatsoever.

24.2 The policies shall provide the amounts of insurance hereafter mentioned, and before delivery of the license, all certificates of insurance shall be submitted to Commissioner for his approval and retention. Each certificate shall be marked "Premium Paid" and shall have endorsed thereon: "No cancellation of or change in this policy shall become effective until after thirty days notice by Certified Mail to Commissioner, Department of Parks and Recreation, The Arsenal, 830 Fifth Avenue, New York, New York 10021." Each policy shall also provide that the insurer is obligated to provide a legal defense in the event any claim is made against the City. If, at any time, any of said policies shall terminate or become unsatisfactory to Commissioner as to form or substance, or if a company issuing any such policies shall become unsatisfactory to Commissioner, Licensee shall promptly obtain a new policy, and submit the same to Commissioner for written approval, which shall not be unreasonably withheld, and for retention thereof as hereinabove provided. Upon failure of Licensee to maintain, furnish and deliver such insurance as above provided, this License may, with 10 days notice to Licensee and opportunity for Licensee to cure, at the election of Commissioner, be suspended, discontinued or terminated and any and all payments made by Licensee on account of this License shall thereupon be retained by Commissioner as additional liquidated damages along with the Security Deposit. Failure of Licensee to take out and/or maintain or the taking out or maintenance of any required insurance shall not relieve Licensee from any liability under this License, nor shall the insurance requirements be construed to conflict with or limit the obligations of Licensee concerning indemnification.

24.3 If the Licensed Premises and/or Fixed Equipment shall be damaged or destroyed by fire, or other covered cause, such damage shall be promptly repaired or replaced so that the Licensed Premises and/or Fixed Equipment are in the same condition as prior to such damage. At

Licensee's request, the City shall advance insurance proceeds received by Commissioner to cover such costs except that such payments shall in no event exceed the amount actually collected and received by Commissioner under the insurance policies. Licensee shall immediately commence and diligently prosecute to completion any restoration or repair within six months (or such longer period as is reasonably necessary to complete such restoration and repairs) after Licensee is notified by Commissioner that insurance proceeds have been received and are available for such work. Any extension of time for the completion of Restoration shall be granted at the reasonable discretion of Commissioner.

24.4 All insurance proceeds paid to the City on account of such damage or destruction, less the reasonable costs of the City with the recovery or adjustment of the losses, shall be applied by the City to the payment of the cost of the restoration, repairs, replacements, rebuilding or alterations, including the costs of temporary repairs, provided the same has been approved by Commissioner in writing, for the protection of property pending the completion of permanent restoration, repairs, replacements, rebuilding or alterations (collectively referred to as the "Restoration"), and shall be paid out from time to time as such restoration progresses upon the written request of the Licensee which shall be accompanied by a certificate signed by an executive officer of Licensee and signed by the architect or engineer in charge of Restoration (who shall be satisfactory to the Commissioner) dated not more than 30 days prior to such request, setting forth the following:

(a) that the sum then requested either has been paid by Licensee, or if in the event the Licensee is unable to pay for the Restoration, and funds are to be advanced by the City pursuant to Section 24.3, that said sum is justly due or shall become due to contractors, subcontractors, suppliers, engineers, architects or other persons who shall or have rendered services or furnished materials for said Restoration, and giving a brief description of such services and materials and the several amounts so paid and/or due or to become due to each of said persons in respect thereof and the sum then requested does not exceed the value of the services and materials described in the certificate;

(b) that except for the amount, if any, stated in said certificate pursuant to the foregoing Section 24.4, i.e., to be due for services or materials, there is no outstanding indebtedness known to Licensee, after due inquiry, which is then due for labor, wages, materials, supplies or services in connection with Restoration;

(c) that the cost, as estimated by such architect or engineer, of the Restoration required to be done subsequent to the date of such certificate in order to complete the same does not exceed the insurance money remaining in the hands of the City after payment of the sum requested in such certificate.

(d) a Title Company search or other evidence satisfactory to the Commissioner showing that there has not been filed with respect to the Licensed Premises any mechanic's or other lien which has not been discharged of record.

(e) upon compliance with the foregoing provisions of Section 24.4, the City, shall, on behalf of the Licensee out of such insurance money, pay or cause to be paid to the persons named in the certificate, pursuant to Section 24.4(a), the respective amounts stated in said certificate to be due to them and/or shall pay or cause to be paid to Licensee the amount stated in said Certificate to have been paid by Licensee. Notwithstanding the foregoing in the event that Licensee fails to undertake the Restoration of Licensed Premises as a result of damage or

destruction by fire or other casualty in accordance with Section 24.3 the Commissioner may but shall not be obligated to proceed with such Restoration using insurance proceeds received for such purpose and may terminate this License upon written notice to Licensee. However, if this License is terminated as provided in this paragraph, Licensee shall be responsible for the payment for any fees or other sums then due and owing to the City and the City reserves any and all rights it may have against the Licensee in law or in equity as a result of the termination of this License Agreement.

24.5 Should Licensee fail, after notice from the City of the need thereof, to perform its obligations required hereunder, City in addition to all other available remedies may, but shall not be so obligated to enter upon the Licensed Premises and perform Licensee's said failed obligations using any equipment or materials on the premises suitable for such purposes. Licensee shall forthwith on demand reimburse City for all costs and expenses so incurred.

24.6 All required insurance must be issued by companies which are rated "X-10" and are licensed to do business in the State of New York and must be in effect and continue so during the life of the License in not less than the following amounts:

Workmen's Compensation Insurance	Per Statute
Commercial General Liability Insurance (with Broad Form Property Damage, Products/Completed Operations Liability, Contractual Liability, Independent Contractors, Fire/ Legal Liability, Liquor Liability, Property Insurance Endorsements) for any one occurrence not less than	\$10,000,000
Property Damage Liability Insurance for any one occurrence not less than	\$1,000,000
Employers Liability Insurance not less than	\$1,000,000
Fire and Casualty Insurance for any one occurrence	not less than the replacement value of the Roller Coaster and fixed equipment, which shall be reassessed every year or at Parks' discretion

24.7 In the event that claims in excess of these amounts are filed against the City, the amount of excess of such claims, or any portion thereof, may be withheld from any payment due or to become due to Licensee until such time as Licensee shall furnish such additional security covering such claims as may be reasonably determined by Commissioner. The fire and extended coverage policy shall name the City of New York as the sole insured. All other policies excluding Workmen's Compensation shall name the City of New York as an insured party.

WAIVER OF COMPENSATION

25.1 Licensee hereby expressly waives any and all claims for compensation for any and all loss or damage sustained by reason of any defects, including, but not limited to, deficiency or impairment of the water supply system, gas mains, electrical apparatus or wires furnished for the 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 Licensee hereby expressly releases and discharges Commissioner, his agents, and City from any and all demands, claims, actions, and causes of action arising from any of the causes aforesaid except for any damage or liability caused by the operation of, or negligence regarding the Parks offices above the Licensed Premises.

25.2 Licensee further expressly waives any and all claims for compensation, loss of profit, or refund of its investment, if any, or any other payment whatsoever, in the event this License is terminated by Commissioner.

INVESTIGATIONS

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

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

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

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

(ii) If any non-governmental party to the hearing requests an adjournment, the Commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Section 26(e) below without the City incurring any penalty or damages for delay or otherwise.

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

(i) The disqualification for a period not to exceed five 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.

(e) 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 26(e)(i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in Sections 26(e) (iii) and (iv) below in addition to any other information that 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 (d) above, provided that the party or entity has given actual notice to the Commissioner or agency head upon the acquisition of the interest, or at the hearing called for in (c)(i) above gives notice and 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.

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

(ii) The term "person" as used herein shall be defined as 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.

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

CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

27.1 This License shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Licensee, and shall be governed by and construed in accordance with the laws of the State of New York.

27.2 Any and all claims asserted by or against the City arising under this License or related thereto shall be heard and determined either in the courts of the United States 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 License Agreement and intent, Licensee agrees:

(a) If the City initiates any action against the Licensee in Federal Court or in New York State Court, service of process may be made on the Licensee either in person, wherever such Licensee may be found, or by registered mail addressed to the Licensee at its address set

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

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

27.3 With respect to any action between the City and the Licensee in Federal Court located in New York City, the Licensee expressly waives and relinquishes any right he might otherwise have to move to transfer the action to a United States Court outside the City of New York.

27.4 If the Licensee 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, the Licensee 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, the Licensee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

WAIVER OF TRIAL BY JURY

28.1 Licensee hereby waives trial by jury in any action, proceeding, or counterclaim brought by the City against Licensee in any matter related to this License. Any action taken by Commissioner relating to this License may only be challenged in a proceeding instituted in New York County pursuant to CPLR Article 78.

EMPLOYEES OF LICENSEE

29.1 All experts, consultants and employees of Licensee who are employed by Licensee to perform work under this License are neither employees of the City nor under contract to the City and Licensee alone is responsible for their work, direction, compensation and personal conduct while engaged under this License. Nothing in this License shall impose any liability or duty on the City for acts, omissions, liabilities or obligations of Licensee or any person, firm, company, agency, association, corporation or organization engaged by Licensee as expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent or for taxes of any nature including but not limited to unemployment insurance, workers' compensation, disability benefits and social security.

INDEPENDENT STATUS OF LICENSEE

30.1 Licensee is not an employee of Parks or the City and in accordance with such independent status neither Licensee nor its employees or agents will hold themselves out as, nor claim to be officers or employees of the City, or of any department, agency, or unit thereof, they will not make any claim, demand, or application to or for, any right or privilege applicable to an officer of, or employee of, the City, including but not limited to, workers' compensation

coverage, unemployment insurance benefits, social security coverage or employee retirement membership or credit.

CONFLICT OF INTEREST

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

PROCUREMENT OF AGREEMENT

32.1 Licensee represents and warrants that no person or selling agency has been employed or retained to solicit or secure this License upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. Licensee further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. Licensee makes such representations and warranties to induce the City to enter into this License and the City relies upon such representations and warranties in the execution hereof.

32.2 For a breach of violation of such representations or warranties, the Commissioner shall have the right to annul this License without liability, entitling the City to recover all monies paid hereunder, if any and the Licensee shall not make any claim for, or be entitled to recover, any sum or sums due under this License. This remedy, if effected, shall not constitute the sole remedy afforded the City for the falsity or breach, nor shall it constitute a waiver of the City's right to claim damages or refuse payment or to take any other action provided by law or pursuant to this License.

ALL LEGAL PROVISIONS DEEMED INCLUDED

33.1 Each and every provision of law required to be inserted in this License shall be and is inserted herein. Every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this License shall, forthwith upon the application of either party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

SEVERABILITY: INVALIDITY OF PARTICULAR PROVISIONS

34.1 If any term or provision of this License or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this License shall be valid and enforceable to the fullest extent permitted by law.

JUDICIAL INTERPRETATION

35.1 Should any provision of this License require judicial interpretation, it is agreed that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of the rule of conclusion 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 Permit and that legal counsel was consulted by each responsible party before the execution of this Permit.

MODIFICATION OF AGREEMENT

36.1 This License constitutes the whole of the agreement between the parties hereto, and no other representation made heretofore shall be binding upon the parties hereto. This License may be modified from time to time by agreement in writing, but no modification of this License shall be in effect until such modification has been agreed to in writing and duly executed by the party or parties affected by said modification.

[Signature page to follow]

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

CITY OF NEW YORK
PARKS & RECREATION

CYCLONE COASTER, INC.

By: Joanne Imohiosen
Joanne Imohiosen,
Assistant Commissioner for Revenue

By: Carol Hill Albert
Carol Hill Albert,
President

Dated: 5/4/06

Dated: June 20 '06

APPROVED AS TO FORM
AND CERTIFIED AS TO LEGAL AUTHORITY

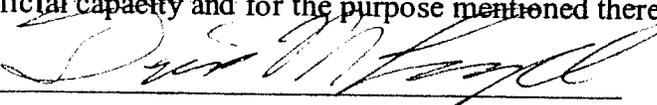
Steve Stern
Acting Corporation Counsel
PW
MAY 01 2006

STATE OF NEW YORK)

) ss:

COUNTY OF NEW YORK)

On this 4TH day of MAY, 2006 before me personally came Joanne Imohiosen, to me known, and known to be Assistant Commissioner for Revenue of the Department of Parks and Recreation of the City of New York, and the said person described in and who executed the forgoing instrument and he acknowledged that he executed the same in his official capacity and for the purpose mentioned therein.



Notary Public

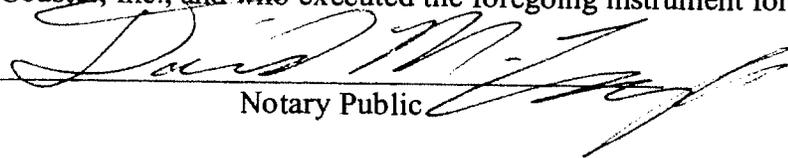
DAVID M. LANGLIEB
Notary Public, State of New York
No. 01LA6141062
Qualified in Kings County
Commission Expires Feb. 13, 2010

STATE OF NEW YORK)

) ss:

COUNTY OF NY)

On this 20TH day of JUNE, 2006 before me personally came Carol Hill Albert, who, being duly sworn by me did depose and say that he is the President of Cyclone Coaster, Inc., and who executed the foregoing instrument for the purposes mentioned herein.



Notary Public

DAVID M. LANGLIEB
Notary Public, State of New York
No. 01LA6141062
Qualified in Kings County
Commission Expires Feb. 13, 2010



THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, N.Y. 10007-2601

MICHAEL A. CARDOZO
Corporation Counsel

MEMORANDUM

TO: Krissa Spence, Esq.
Department of Parks and Recreation

FROM: Pia Wood 
Assistant Corporation Counsel

DATE: May 1, 2006

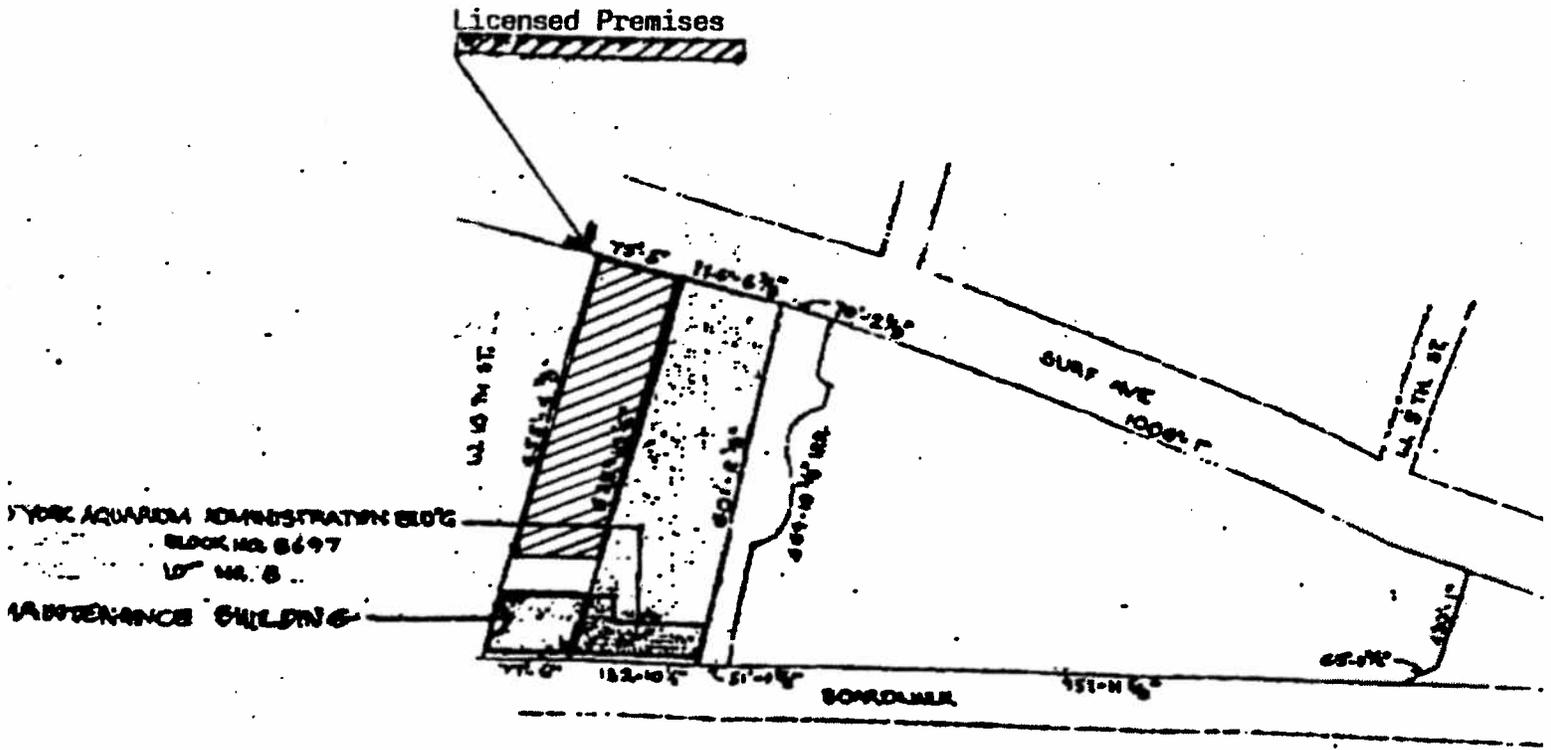
RE: License Agreement for Cyclone Coaster, Inc.

Please find enclosed the above referenced document which has been reviewed and approved as to form.

Thank you for your cooperation in this matter.

c: File

EXHIBIT A
MAP OF LICENSED PREMISES



SITE PLAN
NO. 1440E



EXHIBIT B

**SCHEDULE OF MINIMUM ANNUAL FEE PAYMENTS
CYCLONE COASTERS, INC.
CONEY ISLAND CYCLONE ROLLER COASTER RIDE
B369-O**

OPERATING YEAR	DUE DATE	MINIMUM FEE	PERCENTAGE FEE
	06/10/06	32,000.00	VS 17% OF GROSS
1	07/10/06	32,000.00	
2006-2007	08/10/06	32,000.00	
	09/10/06	32,000.00	
	10/10/06	32,000.00	
TOTAL ANNUAL FEE		\$160,000.00	
2	06/10/07	\$33,600.00	VS 17% OF GROSS
2007-2008	07/10/07	33,600.00	
	08/10/07	33,600.00	
	09/10/07	33,600.00	
	10/10/07	33,600.00	
TOTAL ANNUAL FEE		\$168,000.00	
3	06/10/08	\$35,400.00	VS 17% OF GROSS
2008-2009	07/10/08	35,400.00	
	08/10/08	35,400.00	
	09/10/08	35,400.00	
	10/10/08	35,400.00	
TOTAL ANNUAL FEE		\$177,000.00	
4	06/10/09	\$37,200.00	VS 18% OF GROSS
2009-2010	07/10/09	37,200.00	
	08/10/09	37,200.00	
	09/10/09	37,200.00	
	10/10/09	37,200.00	
TOTAL ANNUAL FEE		\$186,000.00	

EXHIBIT B

**SCHEDULE OF MINIMUM ANNUAL FEE PAYMENTS
CYCLONE COASTERS, INC.
CONEY ISLAND CYCLONE ROLLER COASTER RIDE
B369-O**

OPERATING YEAR	DUE DATE	MINIMUM FEE	PERCENTAGE FEE
5	06/10/10	\$39,200.00	VS 18% OF GROSS
2010-2011	07/10/10	39,200.00	
	08/10/10	39,200.00	
	09/10/10	39,200.00	
	10/10/10	39,200.00	
TOTAL ANNUAL FEE		\$196,000.00	
6	06/10/11	\$41,200.00	VS 18% OF GROSS
2011-2012	07/10/11	41,200.00	
	08/10/11	41,200.00	
	09/10/11	41,200.00	
	10/10/11	41,200.00	
TOTAL ANNUAL FEE		\$206,000.00	
7	06/10/12	\$43,400.00	VS 19% OF GROSS
2012-2013	07/10/12	43,400.00	
	08/10/12	43,400.00	
	09/10/12	43,400.00	
	10/10/12	43,400.00	
TOTAL ANNUAL FEE		\$217,000.00	
8	06/10/13	\$45,600.00	VS 19% OF GROSS
2013-2014	07/10/13	45,600.00	
	08/10/13	45,600.00	
	09/10/13	45,600.00	
	10/10/13	45,600.00	

TOTAL ANNUAL FEE		\$228,000.00	
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EXHIBIT B
SCHEDULE OF MINIMUM ANNUAL FEE PAYMENTS
CYCLONE COASTERS, INC.
CONEY ISLAND CYCLONE ROLLER COASTER RIDE
B369-O

OPERATING YEAR	DUE DATE	MINIMUM FEE	PERCENTAGE FEE
9	06/10/14	\$48,000.00	VS 19% OF GROSS
2014-2015	07/10/14	48,000.00	
	08/10/14	48,000.00	
	09/10/14	48,000.00	
	10/10/14	48,000.00	
TOTAL ANNUAL FEE		\$240,000.00	
10	06/10/15	\$50,400.00	VS 20% OF GROSS
2015-2016	07/10/15	50,400.00	
	08/10/15	50,400.00	
	09/10/15	50,400.00	
	10/10/15	50,400.00	
TOTAL ANNUAL FEE		\$252,000.00	

EXHIBIT B
SCHEDULE OF MINIMUM ANNUAL FEE PAYMENTS
CYCLONE COASTERS, INC.
CONEY ISLAND CYCLONE ROLLER COASTER RIDE
B369-O

OPERATING YEAR	DUE DATE	MINIMUM FEE	PERCENTAGE FEE
OPTION YEAR 1	06/10/16	\$55,400.00	VS 20% OF GROSS
2016-2017	07/10/16	55,400.00	
	08/10/16	55,400.00	
	09/10/16	55,400.00	
	10/10/16	55,400.00	
TOTAL ANNUAL FEE		\$277,000.00	
OPTION YEAR 2	06/10/17	\$58,200.00	VS 20% OF GROSS
2017-2018	07/10/17	58,200.00	
	08/10/17	58,200.00	
	09/10/17	58,200.00	
	10/10/17	58,200.00	
TOTAL ANNUAL FEE		\$291,000.00	

OPTION YEAR 3	06/10/18	\$61,000.00	VS 20% OF GROSS
2018-2019	07/10/18	61,000.00	
	08/10/18	61,000.00	
	09/10/18	61,000.00	
	10/10/18	61,000.00	
TOTAL ANNUAL FEE		\$305,000.00	
OPTION YEAR 4	06/10/19	\$64,000.00	VS 20% OF GROSS
2019-2020	07/10/19	64,000.00	
	08/10/19	64,000.00	
	09/10/19	64,000.00	
	10/10/19	64,000.00	
TOTAL ANNUAL FEE		\$320,000.00	

OPTION YEAR 5	06/10/20	\$67,200.00	VS 20% OF GROSS
2020-2021	07/10/20	67,200.00	
	08/10/20	67,200.00	
	09/10/20	67,200.00	

	10/10/20	67,200.00	
TOTAL ANNUAL FEE		\$336,000.00	

EXHIBIT C – Staffing Plan and Hours of Operation

Days and Hours of Operation:

- Palm Sunday and Easter Week – Cyclone Coaster is open weather permitting
- May 31 to June 21 Cyclone Coaster is open, weather and maintenance schedules permitting
- June 21 through Labor Day – Cyclone Coaster is open daily, from Noon to Midnight (weather permitting)

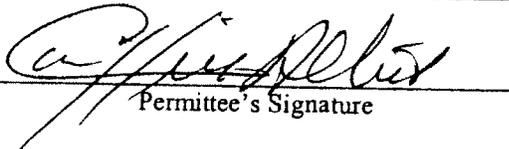
Staffing Plan:

- 14-16 full-time employees during the Winter
- 20-24 full-time employees during the Operating Season

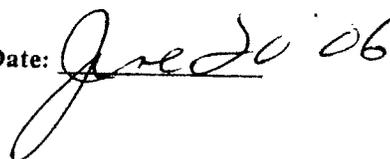
Exhibit D
Schedule of Capital Improvements

Item	Schedule	Estimated Cost
Replace the structural elements to rebuild the second drop	Year 1	\$35,000
Rebuild, repair, replace all structural members as needed, including up-posts and bracing	Ongoing	\$100,000
Rebuild the side moving platform table in station	Year 1	\$125,000
Bring the entire track into "round," including the removal of track ledgers, smoothing out all bumps and resetting	Ongoing	\$120,000
Scrape and apply two coats of paint to the entire structure with paint color and quality matching historic specifications	Year 1	\$125,000
Repaint or replace signage to historic specifications	Year 2	\$5,000
Perform new steel work to replace structural ties and plates as needed	Year 3	\$75,000
Replace entire catwalk	Year 1	\$500
Install 16 cameras at base of 6 dips to monitor track and wheel conditions	Year 1	\$6,000
Restore the two ticket booths	Year 2	\$15,000
Restore and repair lighting to historic specifications	Year 3	\$20,000
Rebuild the station roof	Year 1	\$35,000
Replace footings	Year 1	\$35,000
Install new coaster car brake system	Year 2	\$12,000
Replace the top hill trim brake	Year 1	\$5,000
Refurbish 3 coaster trains	Year 3	\$45,000
Repair, replace or rebuild the motor room and all fixed equipment as needed	Year 2	\$15,000
Install a new main chain and sprocket for the coaster lift	Year 3	\$20,000
Supply and install one track bending machine	Year 4	\$3,000
Install new awning on souvenir booth on Surf Ave.	Year 3	\$3,000
Build new photo booth and photo machine with awning on 10 th Street	Year 3	\$60,000
Refurbish and paint new concrete maze	Year 1	\$2,000
New Cyclone sign over booth	Year 4	\$75,000
Refurbish current vertical sign	Year 1	\$2,000
Miscellaneous unscheduled repairs	Ongoing	\$100,000

Agreed To:


Permittee's Signature

Date:



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address)
 Allan B. Cutrow, Esq. (SBN 50353)
 Mitchell Silberberg & Knupp LLP
 11377 W. Olympic Boulevard
 Los Angeles, CA 90064

TELEPHONE AND FAX NOS.:
 (310) 312-3744
 (310) 312-3789 fax

ATTORNEY FOR (Name): Ayako Masada

FOR COURT USE ONLY

FILED
 SAN MATEO COUNTY

OCT 12 2007

Clerk of the Superior Court
 By *[Signature]*
 DEPUTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Mateo

STREET ADDRESS: 400 County Center
 MAILING ADDRESS: 400 County Center
 CITY AND ZIP CODE: Redwood City 94063-1655
 BRANCH NAME: Southern

ESTATE OF (Name): KEITH K. SHIRASAWA

DECEDENT

LETTERS

TESTAMENTARY OF ADMINISTRATION
 OF ADMINISTRATION WITH WILL ANNEXED SPECIAL ADMINISTRATION

CASE NUMBER:
116942

LETTERS

1. The last will of the decedent named above having been proved, the court appoints (name):

a. executor.
 b. administrator with will annexed.

2. The court appoints (name):
 AYAKO MASADA

a. administrator of the decedent's estate.
 b. special administrator of decedent's estate

(1) with the special powers specified in the Order for Probate.
 (2) with the powers of a general administrator.
 (3) letters will expire on (date):
 11-09-07

3. The personal representative is authorized to administer the estate under the Independent Administration of Estates Act with full authority with limited authority (no authority, without court supervision, to (1) sell or exchange real property or (2) grant an option to purchase real property or (3) borrow money with the loan secured by an encumbrance upon real property).

4. The personal representative is not authorized to take possession of money or any other property without a specific court order.

AFFIRMATION

1. PUBLIC ADMINISTRATOR: No affirmation required (Prob. Code, § 7621 (c)).

2. INDIVIDUAL: I solemnly affirm that I will perform the duties of personal representative according to law.

3. INSTITUTIONAL FIDUCIARY (name):

I solemnly affirm that the institution will perform the duties of personal representative according to law I make this affirmation for myself as an individual and on behalf of the institution as an officer.
 (Name and title):

4. Executed on (date): 10/3/07
 at (place): Los Angeles, California.

[Signature]
 Ayako Masada
 (SIGNATURE)

CERTIFICATION

I certify that this document is a correct copy of the original on file in my office and the letters issued by the personal representative appointed above have not been revoked, annulled, or set aside, and are still in full force and effect.

WITNESS, clerk of the court, with seal of the court affixed.

(SEAL)  Date: **OCT 12 2007**
 Clerk, by *[Signature]*
 (DEPUTY)

LETTERS (Probate)

(SEAL)  Date: **OCT 12 2007**
 Clerk, by *[Signature]*
 (DEPUTY)

Probate Code, §§ 1001, 8403, 8405, 8544, 8545; Code of Civil Procedure, § 2015.6

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state, number, and address):
Allan B. Cutrow, Esq. (SBN 50353)
Mitchell Silberberg & Knupp LLP
11377 W. Olympic Boulevard
Los Angeles, CA 90064

TELEPHONE AND FAX NOS.:
(310) 312-3744
(310) 312-3789 fax

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FILED
SAN MATEO COUNTY

OCT 12 2007

Clerk of the Superior Court
By *[Signature]*
DEPUTY CLERK

ATTORNEY FOR (Name): Ayako Masada
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Mateo
STREET ADDRESS: 400 County Center
MAILING ADDRESS: 400 County Center
CITY AND ZIP CODE: Redwood City 94063-1655
BRANCH NAME: Southern

ESTATE OF (Name): KEITH K. SHIRASAWA
DECEDENT

ORDER FOR PROBATE
ORDER APPOINTING Executor
 Administrator with Will Annexed
 Administrator Special Administrator
 Order Authorizing Independent Administration of Estate
 with full authority with limited authority

CASE NUMBER:
116942

WARNING: THIS APPOINTMENT IS NOT EFFECTIVE UNTIL LETTERS HAVE ISSUED.

1. Date of hearing: _____ Time: _____ Dept./Room: _____ Judge: _____

THE COURT FINDS

- 2. a. All notices required by law have been given.
- b. Decedent died on (date): 8/4/07
 - (1) a resident of the California county named above.
 - (2) a nonresident of California and left an estate in the county named above,
- c. Decedent died
 - (1) intestate
 - (2) testateand decedent's will dated: _____ and each codicil dated: _____
was admitted to probate by Minute Order on (date): _____

THE COURT ORDERS

- 3. (Name): Ayako Masada is appointed **personal representative**:
 - a. executor of the decedent's will
 - b. administrator with will annexed
 - c. administrator
 - d. special administrator
 - (1) with general powers
 - (2) with special powers as specified in Attachment 3d(2)
 - (3) without notice of hearing
 - (4) letters will expire on (date): _____and letters shall issue on qualification.
- 4. a. Full authority is granted to administer the estate under the Independent Administration of Estates Act.
b. Limited authority is granted to administer the estate under the Independent Administration of Estates Act (there is no authority, without court supervision, to (1) sell or exchange real property or (2) grant an option to purchase real property or (3) borrow money with the loan secured by an encumbrance upon real property).
- 5. a. Bond is not required.
b. Bond is fixed at: \$ _____ to be furnished by an authorized surety company or as otherwise provided by law.
c. Deposits of: \$ _____ are ordered to be placed in a blocked account at (specify institution and location): _____ and receipts shall be filed. No withdrawals shall be made without a court order. Additional orders in Attachment 5c.
d. The personal representative is not authorized to take possession of money or any other property without a specific court order.
- 6. (Name): _____ is appointed probate referee.

Date: *10/12/07*

7. Number of pages attached: _____

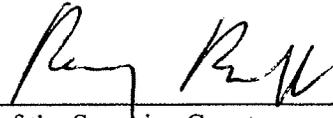
JUDGE OF THE SUPERIOR COURT
 SIGNATURE FOLLOWS LAST ATTACHMENT

Estate of Keith K. Shirasawa
Attachment 3d(2) to Order Appointing Special Administrator

The Special Administrator is authorized to file required notices of claim with the City of New York, the State of New York and related entities, notifying them of the incident of July 31, 2007 in which Decedent was injured and Decedent's subsequent death on August 4, 2007, as well as the Estate's potential claim for wrongful death and/or pain and suffering as a result of this incident and the possible negligent medical treatment that Decedent received prior to his death.

Date:

10/12/07



Judge of the Superior Court

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address) Allan B. Cutrow (SBN 50353) Mitchell Silberberg & Knupp LLP 11377 W. Olympic Blvd. Los Angeles, CA 90064 ATTORNEY FOR (Name): Ayako Masada	TELEPHONE AND FAX NOS.: (310)312-3744 (310)312-3789 fax	FOR COURT USE ONLY <h2 style="margin: 0;">FILED</h2> <h3 style="margin: 0;">SAN MATEO COUNTY</h3> <p style="margin: 5px 0 0 0;">NOV 27 2007</p> <p style="margin: 0 0 0 0;"><i>Clerk of the Superior Court</i> By DEPUTY CLERK</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Mateo STREET ADDRESS: 400 County Center MAILING ADDRESS: 400 County Center CITY AND ZIP CODE: Redwood City 94063 BRANCH NAME: Southern		
ESTATE OF (Name): KEITH K. SHIRASAWA <p style="text-align: right;">DECEDENT</p>		
<p style="text-align: center;">LETTERS</p> <input checked="" type="checkbox"/> TESTAMENTARY <input type="checkbox"/> OF ADMINISTRATION <input type="checkbox"/> OF ADMINISTRATION WITH WILL ANNEXED <input type="checkbox"/> SPECIAL ADMINISTRATION		CASE NUMBER: 116942

LETTERS

1. The last will of the decedent named above having been proved, the court appoints (name):
 AYAKO MASADA
 - a. executor.
 - b. administrator with will annexed.
2. The court appoints (name):
 - a. administrator of the decedent's estate.
 - b. special administrator of decedent's estate
 - (1) with the special powers specified in the *Order for Probate*.
 - (2) with the powers of a general administrator.
 - (3) letters will expire on (date):
3. The personal representative is authorized to administer the estate under the Independent Administration of Estates Act with full authority with limited authority (no authority, without court supervision, to (1) sell or exchange real property or (2) grant an option to purchase real property or (3) borrow money with the loan secured by an encumbrance upon real property).
4. The personal representative is not authorized to take possession of money or any other property without a specific court order.

AFFIRMATION

1. PUBLIC ADMINISTRATOR: No affirmation required (Prob. Code, § 7621 (c)).
2. INDIVIDUAL: I solemnly affirm that I will perform the duties of personal representative according to law.
3. INSTITUTIONAL FIDUCIARY (name):

 I solemnly affirm that the institution will perform the duties of personal representative according to law I make this affirmation for myself as an individual and on behalf of the institution as an officer.
 (Name and title):

4. Executed on (date): November 2, 2007
 at (place): Los Angeles, California.

AYAKO MASADA (SIGNATURE)

CERTIFICATION

I certify that this document is a correct copy of the original on file in my office and the letters issued by the personal representative appointed above have not been revoked, annulled, or set aside, and are still in full force and effect.

WITNESS, clerk of the court, with seal of the court affixed.

(SEAL)

Date: 11-27-07

Clerk, by
 (DEPUTY)

(SEAL)

Date: 11-27-07

Clerk, by
 (DEPUTY)

-----X
 In the Matter of the Claim of :
 AYAKO MASADA, as the Special Administrator of :
 the Estate of KEITH SHIRASAWA, Deceased, :
 -against- : **NOTICE OF CLAIM**
 THE CITY OF NEW YORK, :
 THE NEW YORK CITY DEPARTMENT :
 OF PARKS & RECREATION, :
 THE NEW YORK CITY DEPARTMENT :
 OF BUILDINGS, and THE NEW YORK CITY :
 DEPARTMENT OF CONSUMER AFFAIRS, :
 -----X

2009 OCT 29 11:31

TO: COMPTROLLER OF THE CITY OF NEW YORK:

PLEASE TAKE NOTICE that the undersigned Claimant hereby makes claim
 demand against THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF
 PARKS & RECREATION, THE NEW YORK CITY DEPARTMENT OF BUILDINGS and
 THE NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS, as follows:

RECEIVED
 DEPT. OF CONSUMER AFFAIRS
 07 OCT 29 PM 12:28

1. *The name and post-office address of each claimant and claimants' attorney is:*

Claimant: AYAKO MASADA, as the Special Administrator of
 the Estate of KEITH SHIRASAWA, Deceased
 Address: 13128 Psonas Way
 City State Zip: Los Angeles, CA 90066
 Claimant's Attorneys: Stadtmayer & Associates
 Marc A. Stadtmayer, Esq.
 230 Park Avenue, Suite 2525
 New York, NY 10169
 (212) 986-6200

-----X

In the Matter of the Claim of :
AYAKO MASADA, as the Special Administrator of :
the Estate of KEITH SHIRASAWA, Deceased. :

-against- : **NOTICE OF CLAIM**

THE CITY OF NEW YORK, :
THE NEW YORK CITY DEPARTMENT :
OF PARKS & RECREATION, :
THE NEW YORK CITY DEPARTMENT :
OF BUILDINGS, and THE NEW YORK CITY :
DEPARTMENT OF CONSUMER AFFAIRS. :

-----X

TO: COMPTROLLER OF THE CITY OF NEW YORK:

PLEASE TAKE NOTICE that the undersigned Claimant hereby makes claim and demand against THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF PARKS & RECREATION, THE NEW YORK CITY DEPARTMENT OF BUILDINGS and THE NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS, as follows:

RECEIVED
DEPT. OF CONSUMER AFFAIRS
07 OCT 29 PM 12 25

1. *The name and post-office address of each claimant and claimants' attorney is:*

Claimant: AYAKO MASADA, as the Special Administrator of
the Estate of KEITH SHIRASAWA, Deceased
Address: 13128 Psomas Way
City State Zip: Los Angeles, CA 90066

Claimant's Attorneys: Stadtmuer & Associates
Marc A. Stadtmuer, Esq.
230 Park Avenue, Suite 2525
New York, NY 10169
(212) 986-6200

1
LOU...
...

2. *The nature of the claim:*

To recover damages for wrongful death, personal injuries, pain, suffering, and medical expenses due to the negligence, whether direct, vicarious, or statutory, of Respondents, THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF PARKS & RECREATION, THE NEW YORK CITY DEPARTMENT OF BUILDINGS, and THE NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS, *inter alia*, in the supervision, ownership, maintenance, operation, inspection, upgrade and control of a roller coaster amusement ride known as the "Cyclone" located at 834 Surf Avenue, Brooklyn, NY 11224 on the Cyclone Site park on Surf Avenue at West 10th Street, near the Public Beach.

On July 31, 2007 at approximately 12:00 noon, Claimant's Decedent, KEITH SHIRASAWA, was a paying customer on the Cyclone roller coaster when he suffered very serious, and ultimately fatal, personal injuries, including multiple neck fractures. See photos attached. Keith Shirasawa was initially injured on the first "drop" of the Cyclone, but Respondents, their representatives, agents, or employees, failed to properly restrain Keith Shirasawa in his seat in the Cyclone and further failed to keep a proper watch on Keith as he was riding the Cyclone, and failed to stop the ride after Keith Shirasawa's initial injury, thereby causing Keith Shirasawa to suffer additional injury. Keith Shirasawa was thereafter treated at Coney Island Hospital, and operated on at SUNY Downstate Medical Center, but died on August 4, 2007, as a result of the injuries he sustained on, or which were exacerbated by, the Cyclone on July 31, 2007.

Respondents, THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF PARKS & RECREATION, THE NEW YORK CITY DEPARTMENT OF

BUILDINGS, and THE NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS, failed to properly maintain, inspect and monitor the Cyclone for safety as required, *inter alia*, by NY Labor Law §870-e and, despite this fact, advertised on their website that the Cyclone was safe for use since:

"specially trained inspectors from the Department of Buildings check the condition and operation of amusement rides in New York City. . . . Through proper maintenance, routine monitoring and regular inspections, amusement rides can offer endless excitement for the summer season"

See Press Release, dated March 31, 2006, copy attached. Further, Respondents knew, or should have known, that the Cyclone was not reasonably safe for use by the public and Keith Shirasawa because it was equipped only with an antiquated "single position lap bar" restraint system and did not have a proper modern restraint system in place or any head or neck restraint system whatsoever, creating an unreasonable but foreseeable risk of injury to the public and Keith Shirasawa, for which they failed to warn the public and Keith Shirasawa.

3. *The time when, the place where and the manner in which the claim arose:*

On July 31, 2007 at approximately 12:00 noon. Claimant's Decedent, KEITH SHIRASAWA, was a paying customer on the Cyclone roller coaster when he suffered very serious personal injuries, including multiple neck fractures as a result, *inter alia*, of (a) a defect in the design, maintenance or operation of the Cyclone, (b) not being properly restrained in his seat, (c) Respondents' failure to install, or require the installation of, a modern restraint system in the Cyclone cars, and/or (d) the ride operator's failure to properly observe Keith Shirasawa and stop the ride after his initial injury.

4. *Items of Damage:* Claimant anticipates asserting claims for wrongful death, conscious pain, and the suffering it caused, in an amount to be determined by a jury at trial, but believed to be in excess of Three Million Dollars (\$3,000,000.00).

**TOTAL AMOUNT CLAIMED: IN EXCESS OF THREE MILLION
DOLLARS (\$3,000,000.00).**

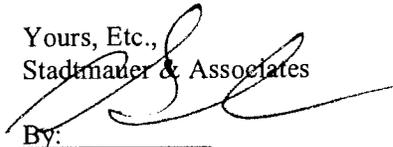
The undersigned Claimant therefore presents this claim for adjustment and payment. You are hereby notified that unless it is adjusted and paid within the time provided by law from the date of presentation to you, the claimant intends to commence an action on this claim.

Dated: New York, New York
October 22, 2007



AYAKO MASADA, as the Special Administrator of
the Estate of KEITH SHIRASAWA, Deceased

Yours, Etc.,
Stadtmauer & Associates



By: _____
Marc A. Stadtmauer
Attorney for Claimant
230 Park Avenue, Suite 2525
New York, NY 10169
(212) 986-6200

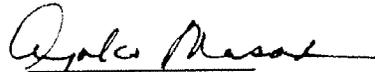
INDIVIDUAL VERIFICATION

STATE OF CALIFORNIA)

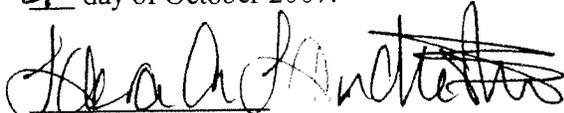
: ss:

COUNTY OF Los Angeles)

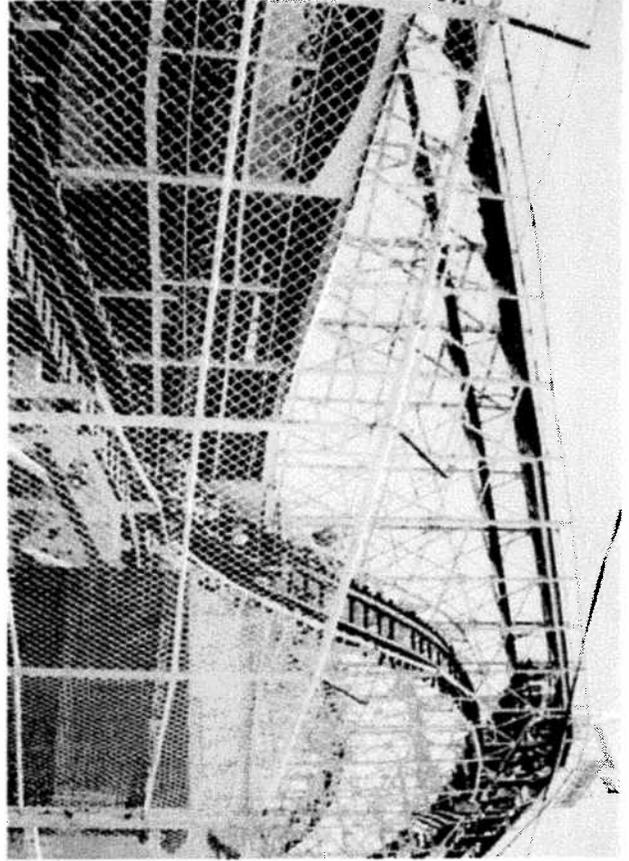
AYAKO MASADA, deposes and says that deponent is the Special Administrator of the Estate of KEITH SHIRASAWA, Deceased and is the Claimant in the within action; that she has read the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.


AYAKO MASADA

Sworn to before me this
24th day of October 2007.


NOTARY PUBLIC







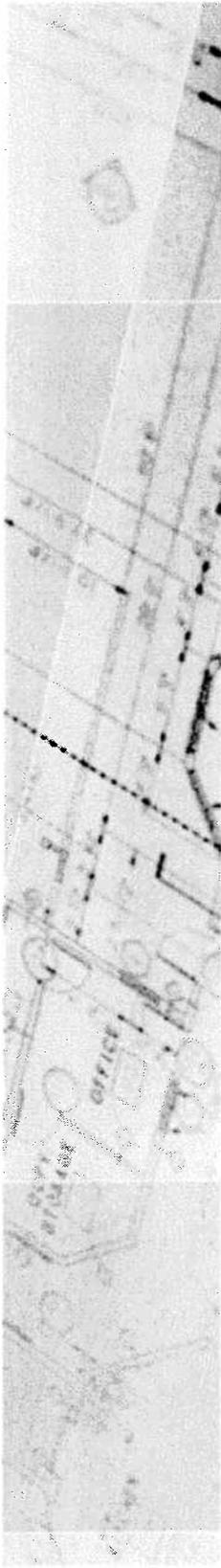
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BOROUGH

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HOUSE #

STREET NAME:

SUBMIT CLEAR

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MY COMMUNITY

For Immediate Release

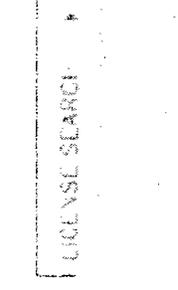
March 31, 2006

Buildings Department and Consumer Affairs Conclude Safety Inspections on the World Famous Wonder

Wheel and Cyclone Roller Coaster

Buildings Commissioner Patricia J. Lancaster, FAIA and Consumer Affairs Commissioner Jonathan Mintz today announced the final safety inspections for two amusement ride icons in Coney Island. After days of thorough examination by Buildings Department inspectors, both rides were issued final safety inspections cards signifying the beginning of the amusement ride season in New York City.

Buildings Commissioner Patricia J. Lancaster, FAIA said, "Each year, specially trained inspectors from the Department of Buildings check the condition and operation of amusement rides in New York City. We are thrilled to be able work with the Department of Consumer Affairs to issue the final inspection certificates for the Wonder Wheel and Cyclone Roller Coaster. Through proper maintenance, routine monitoring and regular inspections,



amusement rides can offer endless excitement for the summer season ahead. We are committed to doing our part to make this a safe amusement ride season.*

The Buildings Department requires all permanent rides to pass an initial inspection. A "Green Card" is issued to rides that pass initial inspections, and a second inspection is required within a 90 to 120 day window after the first inspection. Annually, the Department of Buildings inspects more than 175 permanent amusement rides throughout the five boroughs.

"New Yorkers and visitors come to Coney Island from all over to enjoy world famous amusement rides. To keep all rides in the City as safe as they are fun, we work closely with the Department of Buildings to ensure they are inspected, licensed and insured," said Jonathan Mintz, Commissioner of the NYC Department of Consumer Affairs.

"With warm weather right around the corner, now is the time for ride operators to call 311 or go online for license applications and requirements. Parents and thrill-seekers are also urged to heed common sense safety tips and check if a ride is licensed before getting on."

All operators of amusement rides in New York City are required to have a one-year license from the DCA and carry appropriate insurance. Before operating, all permanent and portable rides must pass inspection by the Department of Buildings. Unlicensed rides will be disabled immediately and operators could face fines.

License applications to operate permanent, portable, or temporary amusement rides are available by calling 311 (or 212-NEW-YORK outside NYC) the City's 24 hour Citizen Service Hotline, or by visiting the DCA website at www.nyc.gov/consumers. Fostering a marketplace where consumers are protected and businesses thrive, the DCA licenses more than 60,000 businesses in 55 different categories in New York City.

[View pictures from event.](#)

Contact: Jennifer Givner (DOB) (212) 566-3473
Dina Improta Roskin (DCA) (212) 487-4283

The New York City Department of Buildings ensures the safe and lawful use of buildings and properties by enforcing the Building Code and Zoning Resolution. We facilitate development with integrity, efficiency and professionalism.

- VIOLATIONS
- FORMS
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- GUIDES & PUBLICATIONS
- NEWS & SERVICES**
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- Newsletters
- Press Releases
- Service Notices
- Strategic Plan

CONTACT THE BUILDINGS DEPT.

Adobe Acrobat Reader
(required to view PDFs)

Green Building and
U.S. Green Building Council

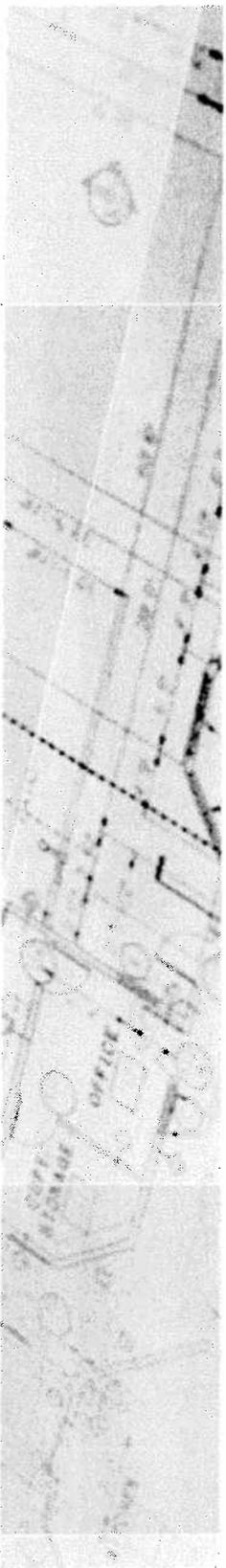
Winter Tips on Keeping Your Building
Warm & Safe.



- Conserve Energy
- Conserve Water
- Energy Code
- Green Building
- PlaNYC 2030

NEW YORK CITY DEPARTMENT OF BUILDINGS

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- CERTIFICATES OF OCCUPANCY
- CONSTRUCTION SAFETY

Safety Inspections on the World Famous Wonder Wheel and Cyclone Roller Coaster Concluded

Buildings Commissioner Patricia Lancaster and Consumer Affairs Commissioner Jonathan Mintz conclude safety inspections at the world famous Cyclone roller coaster and Wonder Wheel in Coney Island on Friday, March 31. To learn more about this event, read the press release. For more information about amusement ride safety, read the Amusement Ride Safety Tips.

BOROUGH

Pick a Borough

HOUSE #

STREET NAME:

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Deno's Wonder Wheel in Coney Island.

LICENSE SEARCH

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- ▶ [MMR Reports](#)
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- ▶ [Monthly Reports](#)
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DID YOU KNOW?

Learn more from:
Green Building and
U.S. Green Building Council

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**Winter Tips on Keeping Your Building
Warm & Safe.**

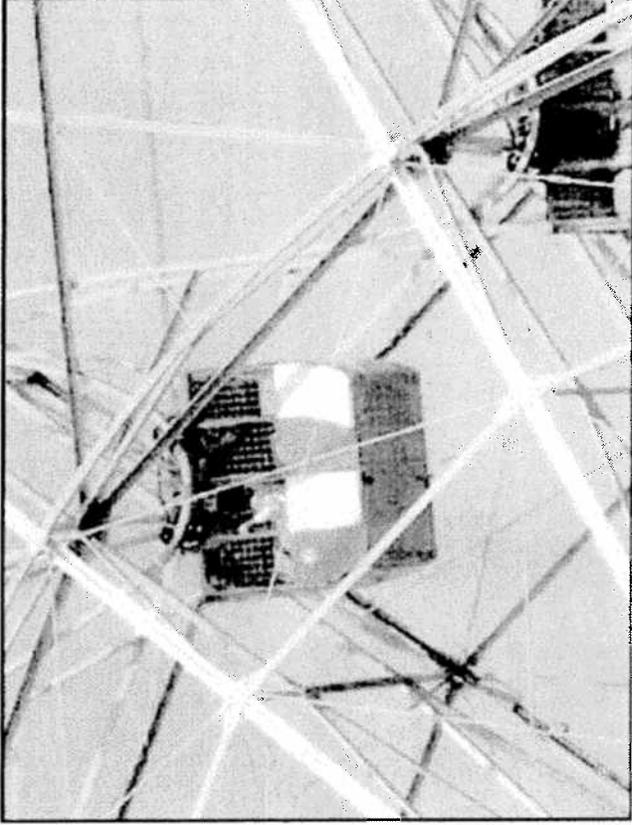
STOP 1 of 9

PRACTICE GREEN

- ▶ [Conserve Energy!](#)
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- ▶ [Energy Code](#)
- ▶ [Green Building](#)
- ▶ [PlanNYC 2030](#)



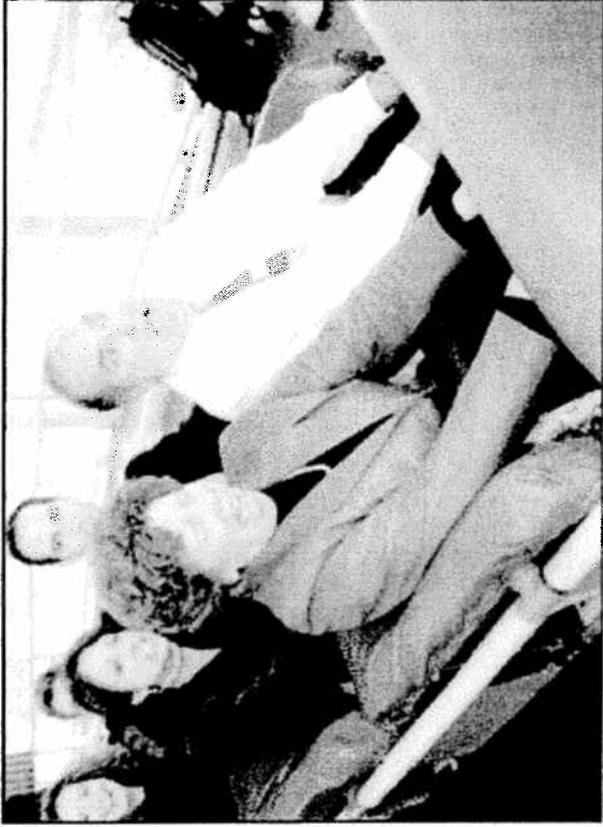
Buildings Commissioner Patricia Lancaster and Consumer Affairs Commissioner Jonathan Mintz speak to a group of reporters as they issue the final inspection certificate for the Wonder Wheel to Dennis Vourders, the owner of Deno's Wonder Wheel Amusement Park.

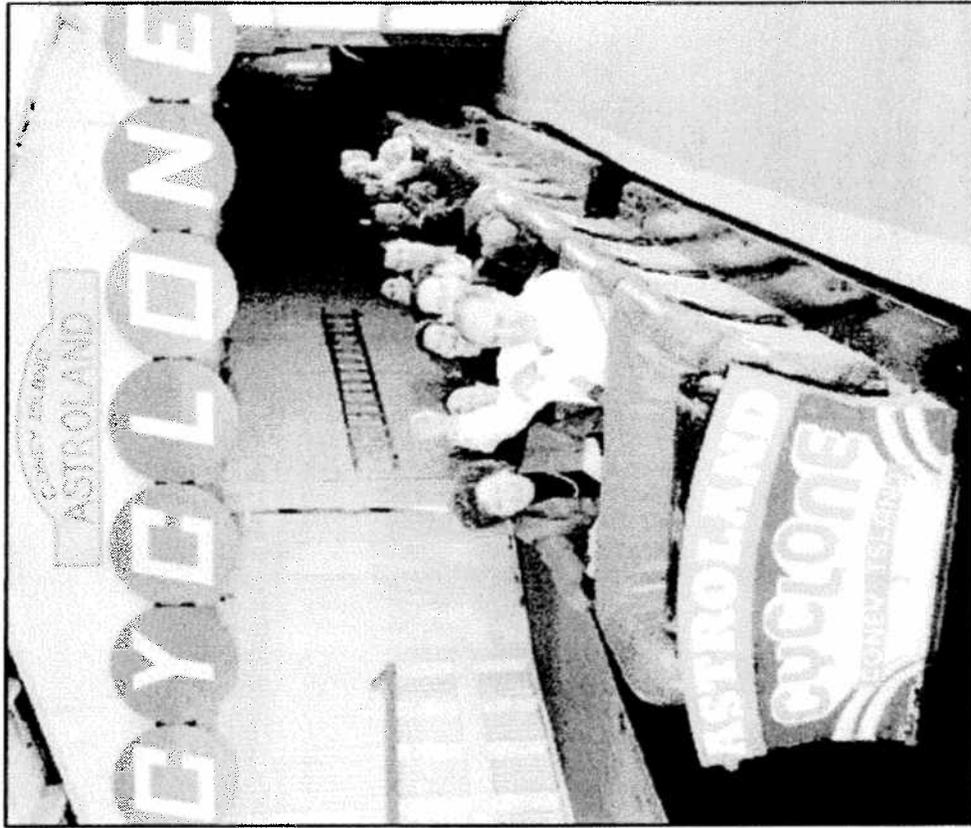


The Commissioner's aboard a swinging car on the Wonder Wheel after it received its final safety inspection certificate for the 2006 season.



Buildings Commissioner Patricia Lancaster and Consumer Affairs Commissioner Jonathan Mintz prepare for take off on the Cyclone at Astroland Amusement Park in Coney Island. The Commissioners previously presented Park owner Carol Albert with the final safety certificate for the Cyclone for the 2006 season.





The Commissioners return from their ride on the Cyclone Roller Coaster.



Buildings Inspector, James Bedics, examined the drive wheel belt of the Cyclone.

Other Resources:

- ▶ [Press release](#)
- ▶ [Amusement ride safety tips](#)



[VIEW SITE MAP](#)

THE CITY OF NEW YORK VITAL RECORDS CERTIFICATE

DEATH TRANSCRIPT

DATE FILED THE CITY OF NEW YORK - DEPARTMENT OF HEALTH AND MENTAL HYGIENE

**NEW YORK CITY
DEPARTMENT OF HEALTH
AND MENTAL HYGIENE
AUG-09-2007 08:15 PM**

CERTIFICATE OF DEATH

Certificate No. **156-07-032468**

**1. DECEDENT'S
LEGAL NAME**

KEITH

SHIRASAWA

(First Name) (Middle Name) (Last Name)

Place of Death	3a. New York City 2b. Borough Brooklyn	2c. Type of Place 1 <input checked="" type="checkbox"/> Hospital Inpatient 2 <input type="checkbox"/> Emergency Dept./Outpatient 3 <input type="checkbox"/> Dead on Arrival	4 <input type="checkbox"/> Nursing Home/Long Term Care Facility 5 <input type="checkbox"/> Hospice Facility 6 <input type="checkbox"/> Decedent's Residence 7 <input type="checkbox"/> Other Specify	2d. Name of hospital or other facility (if not facility, street address) SUNY DOWNSTATE MEDICAL CENTER
----------------	---	--	---	--

Date and Time of Death or Found Dead	1a. (Month) August	1b. (Day) 4	1c. (Year-yyyy) 2007	3b. Time 11:28	4. Sex Male	5. OCME Case No. K-07-03642
--------------------------------------	------------------------------	-----------------------	--------------------------------	--------------------------	-----------------------	---------------------------------------

P A R T I	a. Immediate cause Pending Further Studies	b. Due to or as a consequence of	c. Due to or as a consequence of	OTHER SIGNIFICANT CAUSES OF DEATH
PART II	Other significant conditions contributing to death but not resulting in the underlying cause given in Part I. Include operation information.			

7a. Injury Date (mm dd yyyy)	7b. Time <input type="checkbox"/> AM <input type="checkbox"/> PM	7c. At Work 1 <input type="checkbox"/> Yes 2 <input type="checkbox"/> No	7d. Place of Injury - At home, factory, street etc. 7e. Location
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8. Manner of Death <input checked="" type="checkbox"/> Pending further study <input type="checkbox"/> Natural <input type="checkbox"/> Homicide <input type="checkbox"/> Accident <input type="checkbox"/> Suicide <input type="checkbox"/> Undetermined	9. Autopsy <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Autopsy Pursuant to Law <input type="checkbox"/> No Autopsy	10. On the basis of examination and/or investigation, in my opinion, death occurred due to the causes and manner as stated: Certifier Signature <u><i>Melissa Pasquale-Style</i></u> M.D. Date Aug 5th, 2007 Certifier Name (Print) Melissa Pasquale-Style Medical Examiner
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11a. Usual Residence State California	11b. County San Mateo	11c. City or Town Redwood City	11d. Street and Number 269 Madison Avenue	Apt. No.	ZIP Code 94061	11e. Inside City Limits? 1 <input type="checkbox"/> Yes 2 <input type="checkbox"/> No
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12. Date of Birth (Month) (Day) (Year-yyyy) July 28, 1954	13. Age at last birthday (years) 53	14. Social Security No. 569-06-9017
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15a. Usual Occupation (Type of work done during most of working life) Salesman	15b. Kind of business or industry Music Industry	18. Education (Check the box that best describes the highest degree or level of school completed at the time of death) 1 <input type="checkbox"/> 8th grade or less; none 2 <input type="checkbox"/> 9th-10th grade, no diploma 3 <input type="checkbox"/> High school graduate or GED 4 <input type="checkbox"/> Some college credit, but no degree 5 <input type="checkbox"/> Associate degree (e.g., AA, AS) 6 <input type="checkbox"/> Bachelor's degree (e.g., BA, AB, BS) 7 <input checked="" type="checkbox"/> Master's degree (e.g., MA, MS, MEng, MEd, MSW, MBA) 8 <input type="checkbox"/> Doctorate (e.g., PhD, EdD) or Professional degree (e.g., MD, DDS, DVM, LLB, JUI)
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19. Ever in U.S. Armed Forces? 1 <input type="checkbox"/> Yes 2 <input checked="" type="checkbox"/> No	20. Marital Status at Time of Death 1 <input type="checkbox"/> Married 2 <input checked="" type="checkbox"/> Divorced 3 <input type="checkbox"/> Married, but separated 4 <input type="checkbox"/> Never married 5 <input type="checkbox"/> Widowed 6 <input type="checkbox"/> Unknown	21. Surviving Spouse's Name (If wife, name prior to first marriage) (First, Middle, Last)
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22. Father's Name (First, Middle, Last) Katsusuke Shirasawa	23. Mother's Maiden Name (Prior to first marriage) (First, Middle, Last) Mituko Hirano
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24a. Informant's Name Ayako Masuda	24b. Relationship to Decedent Sister	24c. Address (Street and Number) (City & State) (ZIP Code) 13128 Francis Way Los Angeles, CA 90066
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25a. Method of Disposition 1 <input type="checkbox"/> Burial 2 <input checked="" type="checkbox"/> Cremation 3 <input type="checkbox"/> Entombment 4 <input type="checkbox"/> City Cemetery 5 <input type="checkbox"/> Other Specify	25b. Place of Disposition (Name of cemetery, crematory, other place) Oxford Hills Crematory
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25c. Location of Disposition (City & State or Foreign Country) Chester, New York	25d. Date of Disposition mm dd yyyy 08-04-2007
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26a. Funeral Establishment Frank J. Barone Funeral Home	26b. Address (Street and Number) (City & State) (ZIP Code) 4502 Avenue D Brooklyn, New York 11203
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VR 16 (Rev. 11/01)

This is to certify that the foregoing is a true copy of a record on file in the Department of Health and Mental Hygiene. The Department of Health and Mental Hygiene does not certify to the truth of the statements made therein, as required by the State Health Code.

Steven P. Edwards
Steven P. Edwards, Ph.D., City Registrar

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DATE ISSUED **Aug 09, 2007** DOCUMENT No. **156032468**



ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

