



# City of Pittsburgh

510 City-County Building  
414 Grant Street  
Pittsburgh, PA 15219

## Text File

**Introduced:** 12/7/2010

**Bill No:** 2010-1190, **Version:** 1

**Committee:** Committee on Urban Recreation

**Status:** Passed Finally

Resolution approving the form of the Lease Agreement between the Pittsburgh Parks Conservancy and Eat 'N Park Hospitality Group, Inc. for the operation of a restaurant in Schenley Plaza.

**WHEREAS**, the City of Pittsburgh and the Pittsburgh Parks Conservancy ("PPC") entered into a Lease and Management Agreement dated November 24, 2004, for the restoration, operation, and maintenance of Schenley Plaza; and

**WHEREAS**, Section 3.06 of the Lease and Management Agreement contemplates that a future restaurant may be built in Schenley Plaza, with the operator to be selected by the PPC; and

**WHEREAS**, Section 3.06 further contemplates that the form of the lease between the PPC and said operator will be subject to the prior review and approval of City Council; and

**WHEREAS**, the PPC has selected Eat 'N Park Hospitality Group, Inc. ("Eat N'Park") to operate a restaurant in Schenley Plaza; and

**WHEREAS**, the Art Commission has provided final approval for the proposed restaurant in Schenley Plaza; and

**WHEREAS**, the PPC and Eat 'N Park's proposed Lease Agreement is now before City Council for final approval.

**Be it resolved by the Council of the City of Pittsburgh as follows:**

**Section 1.** The Council of the City Pittsburgh hereby approves the form of the Lease Agreement between the Pittsburgh Parks Conservancy and Eat 'N Park Hospitality Group, Inc. for the operation of a restaurant in Schenley Plaza, which is attached hereto as Exhibit A.

**SEE ATTACHMENT**

**EXHIBIT A**

GROUND LEASE AND  
FOOD SERVICE MANAGEMENT AGREEMENT

This Ground Lease and Food Service Management Agreement (the "Lease") is made and entered into by and between Pittsburgh Parks Conservancy ("Landlord"), and Eat'n Park Hospitality Group, Inc., a Pennsylvania corporation ("Tenant").

Premises and Term; Management of Food Services on the Plaza.

In consideration of the obligation of Tenant to pay rent as hereinafter provided and in consideration of the other terms, provisions and covenants hereof, Landlord hereby demises and leases to Tenant, and Tenant hereby takes from Landlord, that certain tract or parcel of land consisting of approximately 10,000 square feet, more or less, located in Pittsburgh, Allegheny County, Pennsylvania, the same being more particularly described on Exhibit A attached hereto and made a part hereof (the "Land"), together with any buildings and other improvements erected or to be erected thereon, and together with the non-exclusive use as may be necessary for the operation of Tenant's restaurant business of all rights, privileges, easements and appurtenances belonging or in any way pertaining to the Land (all of the foregoing hereinafter collectively referred to as the "Premises"), TO HAVE AND TO HOLD the same for an initial term (as the same may be extended, the "Term") commencing on the latest of the dates set forth next to the signatures of the parties hereto but subject to Tenant's contingencies and termination rights set forth in Section 6 below (the "Effective Date") and (unless earlier terminated as provided herein) continuing through, and including November 23, 2034 (the "Termination Date"), which is the last day of the remaining lease term of Landlord under the Lease and Management Agreement (the "City Lease") dated November 24, 2004 between the City of Pittsburgh, as lessor, and Landlord, as tenant, a copy of which is attached hereto as Exhibit B, the provisions of which are incorporated herein by this reference thereto). Upon expiration or termination of the existing lease for the "kiosk" located within the boundaries of the Premises as shown on the Site Plan and currently operated as the Asia Tea House (the "Premises Kiosk"), the Premises Kiosk will (at no additional cost or expense to Tenant except as otherwise provided herein) be added to and become part of the "Premises" hereunder.

The Land and the Premises are situated in an approximately 4.5 acre parcel (the "Plaza"), the same being more particularly described on Exhibit C attached hereto and made a part hereof, and also shown on the site plan attached hereto as Exhibit D (the "Site Plan") which constitute a part of a mixed use development locally known as Schenley Plaza. Tenant shall also have the exclusive right to utilize the area noted on Exhibit A as the "Patio Area" as a patio area to be utilized as an outside seating, dining and/or bar area. Tenant shall also have the exclusive right to utilize the area noted on Exhibit A as the "Service Yard Area" as a service yard for the operations of the restaurant. The Patio Area and the Service Yard Area shall be included within the meaning of the term Premises as utilized in this Lease for all purposes.

1. Management by Landlord of Plaza Kiosks.

2. Landlord shall be responsible, at its sole cost and expense, for the leasing, management, operation, maintenance, repair and replacement of the kiosks currently located on the Plaza outside the Premises (the "Plaza Kiosks"). Until the Premises Kiosk becomes part of the Premises as provided above, Landlord shall be responsible for the Premises Kiosk as if it was one of the "Plaza Kiosks" hereunder and until such time, Tenant shall have no obligations hereunder with respect to the Premises Kiosk.

3. The foregoing notwithstanding, Landlord and Tenant shall (at no cost to Tenant) cooperate to develop and update from time to time a plan for the leasing and operation of the Plaza Kiosks; the goal of such plan shall be to develop a suitable mix of complementary uses that enhance the overall character and enjoyment of the Plaza. Any leases, licenses or other concessions (and any amendments thereto entered into after the date hereof) shall be in Landlord's name but shall be subject to Tenant's prior approval if such Plaza Kiosk may be used in any respect for the sale of food or beverages of any kind and in any setting whatsoever, which approval shall not be unreasonably withheld; any use of a Plaza Kiosk must be a "Permitted Use" under and as defined in the City Lease.

4. This Lease shall not limit the rights or obligations of Landlord or any third party under any

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legally binding, written leases, licenses, agreements or other concessions in effect as of the date of this Lease with respect to any Plaza Kiosk, a correct and complete list of which is attached hereto as Exhibit I (the “Existing Plaza Kiosk Agreements”); provided, however, that Landlord hereby agrees that Landlord will not modify in any respect, extend, renew, waive or otherwise amend any Existing Plaza Kiosk Agreement without Tenant's prior written consent, which consent shall not be unreasonably withheld unless the Plaza Kiosk in question is used for, or is permitted by the Existing Plaza Kiosk Agreement to be used for, any Food Services, in which case Tenant's consent may be withheld in Tenant's sole and exclusive discretion. Tenant agrees that prior to the Exclusive Use Date (as defined in Section 7(c)), it will consent to requests from the Landlord to extend Existing Plaza Kiosk Agreements for periods of one year or less, provided, however, that Landlord may not (absent Tenant's prior written consent which Tenant shall not be required to grant and which may be withheld in Tenant's sole discretion) (a) grant or extend the term of any exclusivity provision in any Existing Plaza Kiosk Agreement with respect to Food Service (including but not limited to the preparation, sale or service of specific food or beverages) or (b) extend the term of any Existing Plaza Kiosk Agreement beyond the earlier of (i) March 31, 2016 or (ii) the latest expiration date of any other Existing Plaza Kiosk Agreement then in effect. For avoidance of doubt, no such extension may delay the triggering of the Exclusive Use Date hereunder.

5. Tenant's rights under this Lease shall not be subject to the terms of any modification, extension, renewal, waiver or amendment to any Existing Plaza Kiosk Agreement entered into without Tenant's prior written consent. Landlord represents and warrants (A) that it has delivered to Tenant true, correct and complete copies of the Existing Plaza Kiosk Agreements as reflected on Exhibit I, (B) that the excerpts from each such agreement set forth on Exhibit I are true, correct and complete statements of the only exclusive rights granted to third parties by Landlord with respect to the preparation, sale or service of food or beverages anywhere on the Plaza, and (C) that Exhibit I correctly states the current expiration dates of the Existing Plaza Kiosk Agreements and any renewal rights available to the tenants thereunder.

Landlord and Tenant agree that Tenant shall have no obligation to operate the Premises Kiosk or open a restaurant to the general public for business on the Premises (the “Restaurant Opening”) for a period of twelve (12) complete calendar months (as the same may be extended for force majeure delays) following Feasibility Period provided in Section 6. If by the first day of the thirteenth (13th) complete calendar month following the expiration of the Feasibility Period (as the same may be extended for force majeure delays) the Restaurant Opening has not occurred, then Landlord may provide Tenant with written notice of its intent to terminate this Lease, provided that such termination shall not be effective if either (x) the Restaurant Opening occurs within ninety (90) days following such written notice or (y) Tenant (i) continues, commences or resumes (as applicable) construction of the Improvements within ninety (90) days following such written notice and continues the same with reasonable diligence and (ii) the Restaurant Opening occurs within a reasonable time thereafter not to exceed in the aggregate thirty-two (32) complete calendar months following the expiration of the Feasibility Period. In the event that Landlord exercises such termination right and such termination becomes effective, Tenant shall remove its Removable Property (if any), vacate and surrender the Premises on the effective date of such termination date in its then-current condition, and shall be fully and forever released and discharged from any and all obligations, covenants or liabilities of whatsoever kind or nature in law or equity or otherwise arising out of or in connection with this Lease or any related agreements by and between Landlord and Tenant except any right, obligation or liability accrued before the termination date and title to any Improvements (as defined in Paragraph 3(b)) shall transfer to the City of Pittsburgh as provided in Paragraph 15(c).

Right to Cancel; Renewal Term.

Notwithstanding anything herein to the contrary, Tenant, in its sole discretion, shall have the right to cancel and terminate this Lease effective as of November 30, 2020 (the “Early Termination Date”) without further obligation, payment, fee or penalty. In order to exercise this early termination right, Tenant must give Landlord written notice on or prior to November 30, 2019. If Tenant timely exercises this early termination right, upon the Early Termination Date, Tenant may vacate and surrender the Premises and shall be fully and forever released and discharged from any and all obligations, covenants or liabilities of whatsoever kind or nature in law or equity or otherwise arising out of or in connection with this Lease or any related agreements by and between Landlord and Tenant except any right, obligation or liability accrued before the Early Termination Date. If Tenant exercises its right to terminate under this paragraph, title to any Improvements (as defined in Paragraph 3(b)) shall transfer to the City of Pittsburgh as provided in Paragraph 15(c).

If the City Lease is further renewed or extended, the parties agree to negotiate in good faith an additional extension or

renewal of this Lease.

Construction.

Site Information. Prior to the date hereof, Landlord, at Landlord's cost, has delivered to Tenant a copy of the Items set forth on Exhibit E.

Preparation and Approval of Preliminary Plans and Specifications. Tenant will assemble and retain an architect/design team (the "Design Team") to prepare the plans and specifications (the "Preliminary Plans") for the design of the restaurant and related landscaping (the building and other related improvements which Tenant intends to have constructed on the Land are collectively referred to herein as the "Improvements"). Tenant will pay all costs associated with the preparation of the Preliminary Plans and shall own the rights to the Preliminary Plans. Tenant will submit the Preliminary Plans to Landlord for its approval, which approval shall not be unreasonably withheld, conditioned or delayed. Landlord shall give its approval or shall notify Tenant of reasonable changes required in order to obtain Landlord's approval within ten (10) business days after receipt of such Preliminary Plans. If Landlord notifies Tenant that reasonable changes to the Preliminary Plans are required in order for Landlord to provide its approval, Tenant shall promptly revise the Preliminary Plans and resubmit to Landlord for approval. Subsequent responses from Landlord will be due within seven days after receipt of a submission from Tenant until the Preliminary Plans are approved by Landlord. Tenant shall have the option to extend the Feasibility Period in the event of unreasonable delays by Landlord in Landlord's consideration and approval of Tenant's Preliminary Plans.

Promptly after Landlord and Tenant have approved the Preliminary Plans, Landlord shall seek approval of the Preliminary Plans from all Governmental Entities or bodies whose consent is required, including the Historic Review Commission, the Arts Commission and the City Planning Commission (collectively, the "Governmental Entities"). Tenant agrees to collaborate in all approval and hearing processes.

Lease and Other Approvals. As a condition to Landlord entering into this Lease and the issuance of building permits by the City of Pittsburgh, Landlord and Tenant acknowledge that this Lease must be presented to and approved by Pittsburgh City Council. Landlord and Tenant agree to collaborate in the presentation and approval process.

Final Plans and Specifications. Tenant agrees to deliver the final plans and specifications for the Improvements (the "Final Plans") to Landlord and the Governmental Entities within 120 days of the later to occur of (i) approval of the Preliminary Plans by the Governmental Entities and (ii) approval of the Lease by Pittsburgh City Council (collectively, and together with the permits and approvals listed in Section 6(b), the "Required Approvals"). Within a reasonable time following completion of Tenant's construction of the Improvements, Tenant shall provide to Landlord two sets of "as built" plans (one of which Landlord shall forward to the City of Pittsburgh) for the Improvements.

Delivery of Premises. Landlord has completed all its work on the Premises. Tenant hereby accepts the same in its as-is, where-is condition subject to the conditions set forth in Section 6 hereof.

General Contractor. Tenant shall, in its sole discretion, select qualified contractors to bid for construction of the Improvements and Tenant shall, in its sole discretion, select the firm to serve as the general contractor for Tenant's Construction. Tenant's general contractor shall be subject to Landlord's written approval, which shall not be unreasonably withheld, conditioned or delayed; without limiting the foregoing, Landlord may not require that Tenant select (or offer the opportunity to bid) one or more specific general contractors. Landlord may choose to require a performance bond at Landlord's expense.

Commencement of Tenant's Construction. Tenant shall commence construction of the Improvements within 120 days of receipt by Tenant of all permits required for Tenant's Construction and shall thereafter construct, or cause to be constructed, the Improvements in accordance with the Final Plans and Required Approvals with all reasonable diligence and in a good and workmanlike manner.

Committee: Committee on Urban Recreation

Status: Passed Finally

Mechanic's Liens. In the event that a mechanic's lien, materialman's lien, or other similar construction lien is filed of record against the Premises or the Plaza in public records of Allegheny County, Pennsylvania by any contractor, subcontractor, and/or supplier providing labor and/or materials in connection with the construction of Tenant's Improvements, then Tenant shall cause such lien to be released or properly bonded within sixty (60) days after Tenant's receipt of written notice thereof. In the event that after the expiration of such sixty (60) day period, Tenant has not either (i) secured a release of such lien, (ii) posted an appropriate bond, insurance or other credit to release such lien, or (iii) commenced diligent negotiation or other pursuit of a resolution of such lien, then Landlord shall be entitled to post a bond to release such lien and the actual costs incurred by Landlord in connection therewith shall be payable by Tenant to Landlord upon ten (10) days written notice.

Timeline. The projected timeline for the approval and construction of the Improvements is attached hereto as Exhibit F.

Rent.Base Rent.

6. Beginning on the earlier of (A) the Restaurant Opening or (B) the date that is twelve (12) complete calendar months following the expiration of the Feasibility Period (defined below) (such date being the "Rent Commencement Date"), Tenant shall pay base rent to Landlord during the Term of this Lease as set forth below (the "Base Rent"):

Lease Years	Monthly Installment	Annual Rate
1-Exclusive Use Date	\$5,416.67	\$65,000.00

1) From and after the first day of the second calendar month following the Exclusive Use Date (defined below), Base Rent shall be as follows:

2)

Lease Years	Monthly Installment	Annual Rate
1-5	\$8,333.33	\$100,000.00
6-10	\$8,333.33	\$100,000.00
11-15	\$8,750.00	\$105,000.00
16-20	\$9,187.5	\$110,250.00
21-Termination Date	\$9,645.83	\$115,750.00

1) Base Rent for any fractional month at the beginning or the end of the term hereof shall be prorated. Each period of twelve (12) complete calendar months in the Term of this Lease beginning after the Rent Commencement Date shall be referred to herein as a "Lease Year".

Percentage Rent. In addition to the Base Rent as aforesaid, Tenant shall pay to Landlord as additional rent hereunder, for each calendar year (or portion thereof) beginning on and after the Restaurant Opening, an amount equal to the percentage set forth below of Tenant's annual Gross Sales (as hereinafter defined) in excess of the Percentage Break Point below:

Percentage of Tenant's Annual Gross SalesPercentage Break Point

4%

\$3,000,000

This additional rent based on Gross Sales is sometimes herein called "Percentage Rent". The Percentage Break Point shall be

prorated for any partial calendar years at the beginning or end of the Lease Term.

1. "Gross Sales" as used herein shall mean the actual sales revenue received by Tenant for all food, beverages and merchandise sold by Tenant or by any subtenant, licensee or concessionaire of Tenant in, at, or from the Premises, whether for cash or credit or otherwise.

2. The following shall not be included in Gross Sales for purposes of determining Tenant's Percentage Rent hereunder, and Tenant shall itemize separately all such exclusions in its reports of Gross Sales required hereunder: (1) any exchange of merchandise between stores of Tenant where such exchange is made solely for the convenient operation of Tenant's business and not for the purpose of consummating a sale made in, at or from the Premises, (2) cash or credit refunds to customers on transactions otherwise included in Gross Sales and bad debt or uncollectible accounts, (3) sales of fixtures, machinery and equipment after use thereof in the conduct of Tenant's business in the Premises, (4) amounts collected and paid out by Tenant for any sales tax imposed by any duly constituted governmental authority, provided such tax is both added to the selling price as a separate and distinct amount in addition to the regular price of Tenant's merchandise and paid to the taxing authority by Tenant (but not by any vendor of Tenant), (5) credit card fees, (6) sales of gift certificates (but redemptions shall be included in Gross Sales), (7) complimentary food and employee/manager discounts and comps, (8) any marketing or public relations give-aways including bartering of food or beverages for radio, television, internet or other marketing activities, (9) discounts from retail prices or value added give-aways for in-house promotions such as free appetizers or desserts, (10) valet or parking charges, and (11) fees and other receipts from pay phones and automated teller machines. No franchise or capital stock tax and no income, gross receipts or similar tax based upon income, profits or gross receipts as such shall be deducted from Gross Sales.

3. Percentage Rent shall be due and payable for each calendar year (or portion thereof) beginning on and after the Restaurant Opening within ninety (90) days following the last day of each such calendar year. Not later than ninety (90) days after the end of each such calendar year and after the termination of this Lease or any extension or renewal thereof, Tenant shall submit to Landlord a complete statement in reasonable detail: (1) stating Gross Sales as herein defined for the preceding calendar year and (2) setting forth the Percentage Rent due for such preceding calendar year. Simultaneously with the delivery of the statement as required above, Tenant shall pay to Landlord the Percentage Rent due and payable, if any, for the preceding calendar year. It is expressly understood and agreed that Tenant makes no covenant, representations or warranties, oral or written, as to the level of gross sales it may generate from the Premises.

Tenant covenants and agrees to keep at its general office, books and records in accordance with generally accepted accounting practice, in which shall be recorded Tenant's Gross Sales. Tenant's books and records that relate to Tenant's Gross Sales (and exclusions therefrom) from the Premises for a particular calendar year shall be open to the inspection of Landlord and Landlord's authorized agents (subject to prior execution of a reasonable and mutually acceptable confidentiality and nondisclosure agreement) at all reasonable times during business hours at any time during the following calendar year, and thereafter shall be deemed accepted and approved by Landlord for all purposes and not subject to audit. Landlord shall have the right to audit Tenant's books and records that relate to Tenant's Gross Sales (or exclusions therefrom) from the Premises using an independent certified accountant to determine the accuracy of any Gross Sales submitted by Tenant; to the extent that such books and records do not relate solely to the determination of Gross Sales, Tenant will have the right to make available appropriate excerpts or to redact unrelated portions. If Landlord shall make an audit of such books and records and such audit shows that the amount of Gross Sales on Tenant's statement is understated by more than four percent (4%), then Tenant (in addition to paying the Percentage Rent due for such understatement) shall pay to Landlord the reasonable cost of the audit.

Common Area Maintenance Charges. Tenant agrees to pay to Landlord as an additional charge for Landlord managing, operating, maintaining and repairing the Common Area (including, among other costs, those incurred for lighting, sewer services, painting, cleaning, policing, inspecting, landscaping, snow removing, replacing, insuring, guarding and protecting, and reasonable management expenses (collectively, the "CAM Charges")) the amount of Three Thousand Five Hundred Dollars (\$3,500) per year, payable in equal monthly installments of \$291.67, provided that from and after the first day of the second calendar month following the Exclusive Use Date (defined below), CAM Charges shall be Ten Thousand Dollars (\$10,000) per year, payable in equal monthly installments of \$833.33 each on the same date as the monthly installments of Base Rent are due pursuant to Section 4(a).

Place of Payment. All payments of Base Rent, Percentage Rent and CAM Charges shall be made to Landlord as the same

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shall become due in lawful money of the United States of America at the address specified in Section 27 of this Lease, or to such other party or at such other address as hereinafter may be designated by Landlord by written notice delivered to Tenant at least ten (10) days prior to the next ensuing monthly rental payment date.

Holding Over by Tenant.

Should Tenant or any assignee, sublessee or licensee of Tenant fail to vacate the Premises or any part thereof after the expiration of the term of this Lease, then unless otherwise agreed in writing, such failure to vacate shall constitute and be construed as a tenancy at sufferance from month-to-month at one hundred and fifty percent (150%) of the Base Rent and CAM Charges then applicable (prorated and paid on a monthly basis), subject to all other conditions, provisions and obligations as set forth in this Lease, and in such instance either Landlord or Tenant may terminate the Lease upon thirty (30) days notice to the other.

Conditions Precedent/Feasibility Period/Tenant's Right to Terminate.

Pittsburgh City Council Approval. Anything herein to the contrary notwithstanding, it is expressly understood and agreed that the parties shall not enter into this Lease, and this Lease shall not be effective until this Lease is approved by Pittsburgh City Council. If this Lease is signed prior to such approval, it shall not be considered effective, and either party shall have the right to terminate this Lease upon five (5) business days prior written notice to the other party if this Lease has not been approved by Pittsburgh City Council on or before the last day of the Feasibility Period.

Feasibility Period. Tenant shall be entitled to terminate this Lease by written notice delivered to Landlord, in the event that, on or before [ \_\_\_\_\_, 2011[insert date that is 120 days from Lease execution] (such 120-day period being the "Feasibility Period"), any of the following conditions have not been satisfied or items have not been received in each case to Tenant's reasonable satisfaction and in Tenant's reasonable discretion:

4. the Land shall be zoned for use as a restaurant, with related bar and/or cocktail lounge, and any conditional or special use permits required under applicable zoning or land use ordinances, and all other Required Approvals shall have been obtained;

5. Tenant shall have obtained an engineering report establishing that (1) no surface or subsurface conditions or contamination exists on the Premises which would increase materially the cost of construction of a commercial structure to be used for a restaurant, or would subject Tenant to potential liability arising from any hazardous waste or hazardous substance, and (2) no drainage problems exist which would substantially interfere with the full use of the entire Premises by Tenant for a restaurant;

6. Tenant shall have obtained a commitment for leasehold title insurance for the Premises (the "Commitment") and a current survey of the Land (the "Survey"), and such, Commitment (including the property taxes and assessments affecting the Land which are described therein) and Survey shall be satisfactory to Tenant (and shall include, without limitation, an endorsement insuring that the Permitted Use shall not violate any claim, lien, encumbrance, easement, restriction or other charge or exception to title to the Premises);

7. All permits and licenses necessary for the construction of the Improvements and commercial identification signage with respect to Tenant shall have been obtained by Tenant or by Landlord (as contemplated by Section 3(b)); and

8. All permits and licenses necessary for the on-premises sale and consumption of wine, beer, cocktails and other alcoholic beverages on the Premises shall have been obtained (or evidence exists that such permits or licenses will be obtained) (Landlord agrees to cooperate with Tenant in obtaining such permits and licenses, including without limitation, providing the appropriate governmental authorities with required background information on Landlord and its principals, any such information to be held confidential by Tenant and used only for the purposes of obtaining such permits and licenses).

The parties acknowledge and agree that the process of obtaining the Required Approvals is not within the complete control of either party and can be subject to uncertainties both in timing and results. The parties agree to work together in good faith to consider the

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impact of the timing of obtaining the Required Approvals on the overall project timeline; without limiting the foregoing, no later than ten (10) days prior to the end of the Feasibility Period, the parties will convene a meeting to review the status of the Required Approvals and the impact on Tenant's timeline hereunder.

Uses.

Permitted Use. Subject to applicable Regulations and the Existing Plaza Kiosk Agreements, Tenant is permitted to use the Premises only for the operation of a table service restaurant where the principal business is the sale of food in a ready to consume state, where the design or principal methods of operation consist of a sit-down restaurant where customers are normally provided with an individual menu, are generally served food in non-disposal containers by a restaurant employee at the same table or counter at which the food and beverage items are consumed, and which also may include a take-out window or other carry-out service as well as a related bar and/or cocktail lounge (featuring the sale of alcoholic beverages) upon obtaining necessary permits/approvals and such other uses as are incidental to the operation thereof and in addition thereto, the Premises Kiosk may be used for any Food Service or any other legally permitted use (collectively, the “Permitted Use”).

Operating Covenant. Notwithstanding anything to the contrary contained herein, Tenant covenants to open for lunch and dinner service and operate in the Premises for twenty-four (24) consecutive months from the Restaurant Opening (subject to force majeure and Tenant's right to close on the holidays set forth below); provided, however, at any time thereafter, Tenant shall not be required to operate or continuously operate its business in the Premises or keep the same open to the public, provided that Tenant shall at all times continue to pay Base Rent and all other charges due and payable pursuant to the terms and provisions of this Lease and otherwise comply with the terms and provisions of this Lease. Except as provided in the preceding sentence, Tenant may operate its business on the Premises (including the restaurant and the Premises Kiosk) in such manner at such hours as Tenant considers proper in Tenant's reasonable business judgment and may close or otherwise cease operation for renovation, for holidays or for any other reason, including without limitation, for the following holidays: New Year's Day, Easter Sunday, July 4<sup>th</sup>, Thanksgiving Day, Christmas Day and any other holidays recognized by Tenant. Landlord acknowledges and agrees that the Premises Kiosk, when it becomes part of the Premises, may be operated by Tenant only on a seasonal basis and may have different operating days and hours from the restaurant.

9. Other than as expressly set forth in the preceding section, Tenant shall have no obligation to operate any business in the Premises, and shall have the right, at any time, to cease to conduct any business operations in the Premises, and Tenant shall incur no liability to Landlord by reason thereof, it being understood and agreed that all of Tenant's obligations under this Lease shall nevertheless continue. In the event that Tenant does not operate or cause to be operated by a permitted sublessee, licensee or assignee a restaurant in the Premises for more than twelve (12) months out of any twenty four (24) month period (excluding any Excused Period), Landlord shall have the option to terminate this Lease, which option shall be exercisable by giving sixty (60) days prior written notice thereof to Tenant (the “Recapture Notice”), whereupon this Lease shall terminate upon the date set in the Recapture Notice (the “Recapture Date”), as if the Recapture Date was originally set forth herein as the Expiration Date of the Term; provided, however, that if Tenant in good faith reopens for the conduct of business within thirty (30) days following Tenant's receipt of the first Recapture Notice sent by Landlord during the term of this Lease, such Recapture Notice automatically shall be rescinded and the Lease shall continue in full force and effect (for the avoidance of doubt, Tenant's right to cause a Recapture Notice to be rescinded shall be exercisable only once during the term of this Lease). Upon such termination, (1) Landlord and Tenant shall each be released from any and all liabilities thereafter accruing hereunder, except for those obligations which survive the expiration or other termination of this Lease pursuant to the express terms of this Lease, (2) all Base Rent and CAM Charges payable by Tenant hereunder shall be apportioned as of the Recapture Date and Tenant shall promptly pay to Landlord any amounts so determined to be due and owing by Tenant to Landlord, and conversely Landlord shall promptly reimburse Tenant for any amounts prepaid by Tenant for periods subsequent to the Recapture Date, and (3) title to the Improvements shall be transferred to the City of Pittsburgh as provided in Paragraph 15(c); provided that in the event that within eighteen (18) months following the Recapture Date the Premises (or any portion thereof) are leased by Landlord to a third party, Landlord shall pay to Tenant fifty percent (50%) of all sums received by Landlord (if any) during such eighteen (18) month period less Landlord's costs and expenses incurred in procuring such new tenant and preparing the Improvements for occupancy (but such payment to Tenant shall not exceed the unamortized cost of Tenant's cost of construction of the Improvements as of the Recapture Date). An “Excused Period” means any time period during which alterations, remodeling, renovation or improvements are being made to the Premises with diligence and continuity, or any time period that the Premises are not operated due to damage or destruction, eminent domain proceedings or actions, force majeure, or the acts or



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omissions of Landlord or its agents or employees. For avoidance of doubt, this subsection (i) shall not apply to the Premises Kiosk and Landlord shall have no rights under this subsection in the event that Tenant fails to operate the Premises Kiosk.

Exclusive Use. Landlord hereby grants to Tenant the exclusive right to provide Food Services on, within and from the Plaza subject to the rights of any third parties under Existing Plaza Kiosk Agreements as described on Exhibit I. For avoidance of doubt, this exclusivity is intended to apply during periods when Tenant is operating a restaurant on the Premises. Tenant's exclusive rights shall not prohibit persons from providing alternative Food Services at private or special events on the Plaza if (but only to the extent that) Tenant is unable, after reasonable prior notice, to accommodate any dietary restrictions (such as requirements for kosher meals) that are imposed by attendees or sponsors of such events.

10. In furtherance of and not in limitation of the foregoing, provided Tenant has not ceased operations of the restaurant other than to remodel, due to force majeure or for any holiday(s), Landlord shall not lease, license, grant or otherwise permit any other tenant, occupant or user of the Plaza (or any portion thereof), including any Plaza Kiosk, the right to provide Food Services, and Landlord shall require any other tenant, occupant or user of the Plaza to obtain Food Services, if at all, from Tenant. The foregoing notwithstanding, Tenant's exclusive rights under this Section shall be subject to the rights of any third parties under Existing Plaza Kiosk Agreements. Any rights granted by Landlord to provide Food Services in the Plaza while Tenant has ceased operations shall be granted on the condition that such rights terminate automatically when Tenant's operations resume.

11. "Food Services" shall mean sale of food or beverages in any setting whatsoever, including but not limited to catering of private events or special events, table-waited restaurant service, sale of food or beverages for off-site consumption, sale of food or beverages for on-site consumption, preparation of food or beverages, sale of pre-prepared food items, and operation of vending machines used to dispense food or beverages. For avoidance of doubt, "Food Services" shall not include the activities of street vendors or other persons (including persons holding a public event in the Plaza pursuant to a valid special event permit from the City of Pittsburgh) over whom Landlord has no control.

12. Without limiting Tenant's other rights hereunder or at law or in equity, Landlord understands that its breach of this provision will cause Tenant irreparable harm for which Tenant has no adequate legal remedy, and that in the event of a material and continuing breach of this provision, Tenant shall be entitled to immediately abate 50% of all Rent (including Base Rent, Percentage Rent and CAM Charges), and shall be entitled to injunctive relief as well as all other remedies available at law or equity. If the material and continuing breach of this provision by Landlord or its affiliates or successors or assigns is not cured within 180 days from the date of such breach, then Tenant shall have the right to terminate this Lease and recover from Landlord the costs of Tenant's Improvements as of the date of such breach, decreased by amortization, based on the straight line method of amortization, over a period equal to the length of the Term of the Lease (including any renewal options), but not to exceed twenty (20) years. The termination and cost-recovery rights described in this sub-paragraph shall not be applicable to any dispute related to the Existing Plaza Kiosk Agreements.

13. The date upon which all rights of third parties under Existing Plaza Kiosk Agreements expire or otherwise terminate irrevocably and unconditionally such that Tenant's exclusive rights under this Section shall be absolute (and not subordinate to the rights of any third parties other than the activities of street vendors or other persons over whom Landlord has no control) as the exclusive provider of Food Services on, within and from the Plaza, shall be the "Exclusive Use Date").

14. Tenant hereby agrees that Tenant shall not sell or serve specific food or beverage items for which exclusive rights have been granted by Landlord to other kiosk operators pursuant to any of the Existing Plaza Kiosk Agreements as described on Exhibit I (for so long as the applicable restriction(s) or exclusive rights set forth in the Existing Plaza Kiosk Agreements remain in effect). Tenant understands that its breach of this provision will cause Landlord irreparable harm for which Landlord has no adequate legal remedy. Tenant hereby agrees to indemnify, defend and hold Landlord and the City of Pittsburgh harmless from any damages, costs, attorneys fees, or expenses incurred by Landlord or the City of Pittsburgh as a result of the breach or alleged breach by Tenant of the covenant in this Section 7(c)(v).

Compliance with Regulations. During the term of this Lease, Tenant shall, at its sole cost and expense, comply with applicable laws, ordinances and regulations promulgated by any governmental agency retaining jurisdiction over the Premises which

**Committee:** Committee on Urban Recreation

**Status:** Passed Finally

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relate to Tenant's construction, occupancy and use of the Premises (collectively, "Regulations"). In the event Tenant receives a written notice of violation of any Regulation from any such governmental agency, then Tenant shall promptly cure any such violation unless Tenant has notified such agency of its objection to such violation and, in such event, Tenant shall diligently pursue such dispute to completion and, upon completion, Tenant shall comply with the requirements promulgated by such governmental agency upon the conclusion of such dispute.

Landlord Catering Referrals. Tenant's exclusive rights to provide Food Services on, within and from the Plaza as it relates to special functions and catered events are subject to the catering rights set forth in the Existing Plaza Kiosk Agreements and also may be waived by Tenant at Tenant's sole discretion when business circumstances and service requirements dictate. Landlord agrees to refer Tenant to third-parties interested in obtaining a permit to host a private event at the Plaza.

15. Tenant agrees to provide reciprocal web-site links with Landlord. Tenant agrees to provide Tenant's available marketing materials to Landlord free of charge.

16. Tenant's exclusive rights with respect to special functions and catered events shall not apply to up to three events per calendar year in the aggregate that are held on the Plaza either (A) by a nonprofit, charitable organization for which food is donated or otherwise sponsored and not resold or (B) by Landlord for which food is provided and sold by one or more outside vendors (provided that Tenant shall be given the opportunity to be considered for each such event); for each such event, Landlord shall indemnify, defend and hold Tenant harmless from any loss, claim, damage, cost or expense suffered or incurred by Tenant arising from or relating to any such event (or food service provided at such event).

Permits. Tenant must obtain applicable permits from the Landlord and any appropriate City of Pittsburgh, Pennsylvania (the "City of Pittsburgh") authorities to conduct on-site catering.

Representations and Covenants of Landlord.

As of the Effective Date of this Lease, Landlord, to the best of its knowledge, represents, warrants and covenants to the Tenant as follows:

That Landlord has good and marketable leasehold title to the Premises and, subject to the receipt of the Required Approvals, possesses full power and authority to enter into this Lease, including without limitation, to permit Tenant to use the Premises for the Permitted Use and to provide Tenant with the exclusive rights granted hereunder;

That there are no pending or, to the knowledge of Landlord, threatened condemnation proceedings or actions affecting the Premises;

That there are no pending or, to the knowledge of Landlord, threatened actions or legal proceedings affecting the Premises or Landlord's interest therein;

That there are no unpaid special assessments for sewer, sidewalk, water, paving, electrical or power improvements or other capital expenditures or improvements, matured or unmatured;

That Landlord is not aware of any facts or circumstances which would materially adversely restrict, limit or otherwise affect the use of the Premises for the Permitted Use or the value of the Premises;

That this Lease and the consummation of the transactions contemplated hereby shall be valid and binding upon Landlord and shall not constitute a default (or an event which with notice or passage of time or both will constitute default) under any contract to which Landlord is a party or by which he is bound;

That Landlord has not received notice nor has Landlord any knowledge of any material violation of any law, regulation,

ordinance, order or other requirement of any governmental authority having jurisdiction over or affecting any part of the Premises;

That Landlord is not obligated pursuant to any contract, lease or other agreement, written or oral, with respect to the ownership, use, operation or maintenance of the Premises, other than contracts, leases and agreements which have been disclosed to Tenant in writing, including without limitation the City Lease;

That the use of the Premises in accordance with Section 7 hereof, subject to the Existing Plaza Kiosk Agreements, will not violate the terms and provisions of any other lease for space in the Plaza or any other restriction (whether legal, contractual, recorded or unrecorded) affecting the Plaza or the Premises; and

Except as set forth in the Site Information, to the Landlord's actual knowledge, the Premises (including the land, surface water, ground water, and any improvements) does not contain any Hazardous Materials (as hereinafter defined) in violation of any applicable laws.

17. The term "Hazardous Materials" as used herein shall be deemed to mean underground storage tanks, asbestos, polychlorinated biphenyls (PCBs), radon, urea formaldehyde, substantial amounts of waste or debris, or contamination, including without limitation: (x) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder; (y) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder; and (z) any substance, the presence of which on the Premises is prohibited or regulated in any manner, including, without limitation, special handling or notification of any governmental entity in its collection, storage, treatment or disposal, by any federal, state, or local law, ruling, code, rule, or regulation, similar or dissimilar to those set forth in this paragraph.

Utilities; Trash Removal. Tenant shall pay all charges incurred for the use of utility services at the Premises including, without limitation, gas, electricity, water, sanitary sewer, storm sewer, cable television, and telephone; provided, however, that Landlord, at its sole cost and expense, shall maintain all utility lines and connections installed by Landlord up to the boundary of the Land. Subject to Tenant's compliance with applicable law, Tenant shall be permitted to place a dumpster in a trash enclosure on the Premises. Such dumpster shall be sufficient in size for the disposal of Tenant's trash, garbage and refuse, which Tenant produces as a result of conducting its business at the Premises. Tenant shall also have the right to locate a grease receptacle within such trash enclosure. Tenant shall bear all costs associated with removal from the Premises of trash or grease generated from Food Services provided by Tenant. Landlord shall be responsible for all utility services on the Plaza outside the Premises and in the Common Areas including, without limitation, gas, electricity, water, sanitary sewer, storm sewer, cable television, telephone and trash removal. The foregoing notwithstanding, Tenant shall use reasonable efforts following the nightly closing of its business to pick up trash left by Tenant's guests on the Plaza.

Taxes, Assessments and other Governmental Impositions.

Tenant shall pay before they become delinquent all real estate taxes (both real and personal), assessments (both general and special) and other governmental impositions (collectively, "Taxes") lawfully created and assessed against the Premises or any part thereof during the term hereof. Any installment of any such Taxes payable prior to the Restaurant Opening or any Taxes applicable to a period of time prior to the Restaurant Opening shall be prorated to the Restaurant Opening. Tenant shall deliver to Landlord, if requested, receipts or other reasonably satisfactory evidence of payment of all such Taxes so paid by Tenant. In the event the Premises are not taxed or assessed as a parcel separate from the rest of the Plaza, Tenant will pay Landlord as additional rent, an amount equal to Tenant's proportionate share of any such Taxes. Tenant's proportionate share shall be determined by the sum of (i) the amount of Taxes assessed specifically against the Improvements and (ii) the product obtained by multiplying such Taxes assessed against the land comprising the Plaza by a fraction, the numerator of which is the total number of square feet of the Land and the denominator of which is the total number of square feet of the Plaza.

It is agreed, however, that Tenant, at its sole cost and expense, may dispute and contest the same (in its own name or in the name of Landlord, or in the name of both, as it may deem appropriate) provided that Tenant shall post such bonds as are required to dispute or contest Taxes. At the conclusion of such contest, Tenant shall pay the charge contested to the extent it is held valid, together with all court costs, interest, penalties and other expenses relating thereto. Nothing herein contained, however, shall be

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construed as to allow such items to remain unpaid for such length of time as shall permit the Premises (or any part thereof) to be sold by governmental, city or municipal authorities for the non-payment of the same.

If it shall become necessary to do so, Landlord, after written notice to Tenant, may, under protest if so requested by Tenant, pay such monies as may be required to prevent the sale of the Premises or any part thereof, or foreclosure of the lien created thereon by such item, and such amount shall become immediately due and payable by Tenant to Landlord and shall constitute additional rent hereunder, or at Tenant's option and at Tenant's sole cost and expense, in lieu thereof, Tenant shall obtain lien release bonds in amounts equal to the claims of any such liens or as otherwise required by applicable law (or shall provide Landlord with other security reasonably acceptable to Landlord).

In no event shall Tenant be liable hereunder for or required to pay any income, profit, gross receipts, business privilege, excise, inheritance, estate, gift or franchise taxes applicable to the Landlord, or upon the right of Landlord to receive rents hereunder or to do business, or any tax, assessment or governmental imposition in replacement or substitution of the foregoing or of a similar character.

Notwithstanding anything herein to the contrary, if at any time during the term of this Lease there shall be levied or assessed in substitution of real estate taxes, in whole or in part, a tax, assessment or governmental imposition on the rents received from the Premises or the rents reserved herein, and said tax, assessment or governmental imposition shall be imposed upon Landlord, Tenant shall pay same as hereinabove provided, but only to the extent that such new tax, assessment or governmental imposition is expressly described in the enabling legislation as a substitute for real estate taxes.

Landlord covenants and agrees to notify Tenant in writing within thirty (30) days of receipt of notice of (i) the assessment of the Premises, the Land, or the Improvements separately from the Plaza, or (ii) a change in the assessed value of the Plaza, the Premises, the Land or the Improvements.

Notwithstanding anything herein to the contrary, if at any time during the term of this Lease, any assessment (either general or special) is levied upon or assessed against the Premises or any part thereof, and such assessment may be paid in installments, Tenant's obligation under this paragraph to pay such assessment shall be limited to the amount of such installments (plus applicable interest thereon charged by the taxing authority, if any) which become due during the term hereof, calculated using the longest payment option made available to Landlord, regardless of whether Landlord pays the same in installments over the same or shorter period of time or pays the entire amount thereof.

At the expiration of the term of this Lease, taxes, impositions, assessments, or other similar expenses required to be paid by Tenant hereunder shall be apportioned in the same manner as such taxes were apportioned prior to the Restaurant Opening, and Landlord shall pay that portion thereof applicable to the period after the expiration of the term of this Lease.

Notwithstanding the foregoing or anything to the contrary herein contained, Landlord represents and warrants that Landlord is currently exempt from paying Taxes with respect to the Plaza. Landlord shall not enter into any agreement with any taxing authority to make a payment or payments in lieu of Taxes or to change the tax exempt status of the Plaza without Tenant's prior written consent.

Tenant shall pay, prior to delinquency, all taxes imposed upon Tenant's business operation, trade fixtures, leasehold improvements, merchandise, and Tenant's personal property on the Premises and all taxes on Tenant's income or similar taxes.

#### Insurance.

Tenant shall maintain so called "all risk" (special form - causes of loss) fire and extended coverage insurance (including vandalism and malicious mischief insurance) on the Improvements, with a limit of or in an amount not less than ninety percent (90%) of the replacement value thereof (excluding roads, foundations, parking areas, pads, sidewalks and similar improvements). Payments for losses shall be made solely to Tenant as its interests shall appear.

Tenant shall also insure against property damage and public liability arising by reason of occurrences on or about the Premises and the Common Area by maintaining a policy or policies of commercial general liability insurance including contractual liability coverage and liquor liability insurance insuring against the tort liabilities assumed under this Lease in the amount of not less than TWO MILLION DOLLARS (\$2,000,000) in respect of any one occurrence. Tenant will list the City of Pittsburgh and Landlord as additional insureds as their interests may appear.

Landlord shall maintain so called "all risk" (special form - causes of loss) replacement cost fire and extended coverage insurance (including vandalism and malicious mischief insurance, and earthquake insurance) on the Common Area and the Plaza Kiosks in such amounts as Landlord's mortgagees shall require, or if no mortgagee exists, then in such amounts as are commercially reasonable. Such insurance shall be maintained at the expense of Landlord. Payments for losses thereunder shall be made solely to Landlord or the mortgagees of Landlord as their interests shall appear.

Landlord shall maintain a policy or policies of commercial general liability insurance including contractual liability coverage insuring against the liabilities assumed under this Lease with respect to its activities at the Plaza, in the amount of not less than TWO MILLION DOLLARS (\$2,000,000) in respect of any one occurrence.

Tenant shall subscribe to the workers' compensation law in the state in which the Premises are located and shall maintain (at its sole cost and expense) workers' compensation and employers' liability insurance covering all of its employees as required of a subscriber to the relevant statutes in the state in which the Premises are located, and in such amounts as are required by law. Tenant may fulfill its obligations under this section by obtaining and maintaining approval to self-insure for statutorily required workers' compensation coverage.

It is agreed that the insurance coverages provided for herein may be maintained pursuant to master policies of insurance covering other restaurant locations of Tenant and/or its corporate affiliates or other properties of Landlord and/or its corporate affiliates. All insurance policies required to be maintained by Tenant and Landlord hereunder shall be with responsible insurance companies, authorized to do business in the state in which the Premises are located if required by law, and except for property insurance policies and workers' compensation policies, shall name Landlord or Tenant as well as the City of Pittsburgh as an additional insureds, as their interests may appear, and shall provide for cancellation only upon ten (10) days prior written notice to Landlord, Tenant and the City of Pittsburgh. Each party shall evidence such insurance coverage by delivering to the other party certificates issued by the insurance companies underwriting such risks.

#### Common Area.

Defined. The "Common Area" is the part of the Plaza constructed for the common use of all tenants as more specifically shown on Exhibit A, including sidewalks and walkways, landscaping and gardens (excluding the landscape areas associated with the Premises), curbs, lighting, restrooms, the oval, the tent, the carousel, and the plaza maintenance building and adjoining maintenance yard area, which will be provided by Landlord at its sole expense (except as otherwise provided herein) for the common use of all tenants, all of which shall be subject to Landlord's sole management and control and shall be operated and maintained in a commercially reasonable manner and condition and in compliance with all laws, rules, Regulations and ordinances.

Use of Common Area. Tenant and its employees, representatives, customers, invitees, subtenants, licensees and concessionaires shall have the non-exclusive right and license to use the Common Area as constituted from time to time, such use to be in common with Landlord, other tenants of the Plaza and other persons permitted by Landlord to use the same, and subject to such reasonable rules and regulations governing use as Landlord may from time to time prescribe in writing. Landlord shall consult with Tenant before developing or implementing any rules or regulations relating to food service or other concessions on the Plaza. In the event of a conflict between the terms of this Lease and such rules and regulations, the terms of this Lease shall prevail (except in the case of rules and regulations required in order to comply with applicable law).

Common Area Maintenance. Landlord will be solely responsible, at Landlord's sole cost and expense, for maintaining and repairing the Common Area (including, among other things, lighting, sewer services, painting, cleaning, policing, inspecting, landscaping, snow and ice removal, trash removal, repair, replacement, insurance, security and protection).

18. All Common Area management, operation, maintenance and repair shall be performed by Landlord in accordance with all applicable laws and regulations and in a manner which will not cause material and detrimental interference with the use of the remainder of the Common Area and the Premises. Landlord shall use all reasonable efforts and due diligence to repair the Common Area in a manner consistent with prudent practices and to perform maintenance and repair of the Common Area hereunder as expeditiously as possible so that the same may be available for use as part of the Plaza without material and detrimental disruption to the remainder of the Common Area and the Premises as circumstances will permit.

19. Landlord's failure to fulfill its obligations set forth in this Section 12 shall constitute a Landlord Event of Default after the passage of time set forth in Section 27(d)(ii) hereof.

Maintenance and Repairs to the Premises. Tenant shall maintain, repair and replace, as necessary, all portions of the Premises and the Improvements during the term of this Lease in a commercially reasonable manner and condition and shall maintain the same, in compliance with all applicable laws, rules, regulations, ordinances and restrictions of record, including repairs to the interior, exterior and structure, it being understood that Landlord shall not be required to make any repairs to the Improvements during the term hereof. Tenant shall also maintain and repair all grounds and landscape areas located on the Premises and associated with the design of the Improvements in a high quality manner. Notwithstanding the foregoing, Tenant, at its sole discretion (but subject to the approval of the City of Pittsburgh Department of Public Works), may provide, but shall have no obligation to do so, Landlord written notice prior to the Rent Commencement Date that Tenant elects to maintain certain portions of the Common Area immediately adjacent to the Improvements, which notice shall specify in detail those areas and responsibilities which Tenant assumes. The Improvements shall not be maintained as, nor shall Tenant permit the Improvements to become, a public or private nuisance, and Tenant shall not maintain any nuisance in the Improvements. At the end or other termination of this Lease, Tenant shall deliver up the Land with the Improvements thereon in good repair and condition, loss by fire or other casualty, act of God, ordinary wear and tear excepted.

Tenant's failure to fulfill its obligations set forth in this Section 13 shall constitute a Tenant Event of Default after the passage of time set forth in Section 28(a)(ii) hereof.

Alterations. Tenant shall have the right to make any alterations, additions or improvements to the Premises deemed necessary or appropriate in connection with the requirements of its business without the payment of any additional rent provided, however, that (a) Tenant shall provide Landlord with prior written notice thereof, (b) any such alterations, additions or improvements shall not reduce or impair the value of the Premises and shall comply with all applicable laws, rules, regulations, ordinances and matters of public record and (c) Tenant shall have obtained, at Tenant's sole cost and expense, the prior written approval of (i) any applicable governmental entity or public body and (ii) Landlord, which approval shall not be unreasonably withheld, conditioned or delayed.

Ownership of Improvements, Equipment, Fixtures and Signs.

Subject to approval of any applicable governmental entity or public body, the ownership of all Improvements made to the Premises for the construction and operation of Tenant's restaurant shall be vested in Tenant.

Tenant shall have the right to erect, install, maintain and operate on the Premises a restaurant and own the Improvements including, but not limited to the building, utility lines, equipment, signage, trade and business fixtures, furnishings and other real and personal property as Tenant may deem necessary or appropriate, and such shall not be deemed to be part of the Premises, but shall remain the property of Tenant. Any such installations shall not materially injure or deface the Improvements. At any time during the term of this Lease, Tenant shall have the right to remove its equipment, signs and other personal property installed by Tenant at the Premises that can be removed from the Premises (the "Removable Property") so long as (i) Tenant is not then in default under this Lease and (ii) Tenant shall repair any damage caused thereby.

Upon the termination, the expiration of the term of this Lease, or, if this Lease is renewed or extended, upon the expiration of any renewal or extension of this Lease, the Tenant will, as additional consideration for entering into this Lease and, if this Lease is renewed or extended, for entering into any such renewal or extension, surrender possession and transfer title to any and all

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Improvements of the Premises and any and all rights and interest it may have in the Improvements to the City of Pittsburgh, at no cost to the City. Prior to the effective date of the termination, Tenant shall prepare a list of proposed transferred Improvements to the City for written approval prior to any title transfer. Notwithstanding the foregoing, in conjunction with such termination, the Tenant may, provided the Tenant is not then in default under this Lease, remove from the Premises Removable Property (excluding trade and business fixtures, if desired to be retained at such time by City as part of the transferred Improvements) owned by Tenant and located on the Premises. The parties further agree that the Landlord and/or the City reserve the right to request the removal of any Removable Property otherwise left or intended to be left at the Premises by Tenant and further reserve the right to alternatively request Tenant to expeditiously remove any trade and business fixtures (not transferred to the City) that do not affect the structural integrity of the Improvements. All removal costs contemplated in this subsection (including any damage caused thereby) shall be borne by Tenant. Upon transfer of ownership of the Improvements, the transferee shall not have and Tenant does not grant a right to operate a business at the Premises using Tenant's business name or trademarks. The Tenant expressly waives to the Landlord the benefit of any provision of law requiring notice to vacate the Premises and any other law now in force or hereafter adopted requiring any such notice. Tenant hereby covenants and agrees to give up quiet and peaceful possession and surrender the Premises and ownership of the Improvements upon the later of the expiration of the term of this Lease or, if this Lease is renewed or extended, upon expiration of any renewal or extension of this Lease without further notice from the Landlord.

#### Damage by Fire or Other Casualty.

If the Improvements, or any material part thereof, should be destroyed or damaged by fire or other casualty, then Tenant shall immediately deliver written notice thereof to Landlord. All fire, casualty and other insurance proceeds payable as a result of such casualty shall be paid directly by to Tenant and Tenant shall have the sole authority to negotiate, settle and adjust all such insurance claims.

If the Improvements should be damaged by fire or other casualty at any time before the expiration of the term of this Lease, then Tenant may elect either to (i) restore the Improvements to their prior condition or (ii) discontinue operations at the Premises, but at all times continue to pay Base Rent and other charges due and payable pursuant to the terms and provisions of this Lease. In the event Tenant elects to discontinue operations, then Tenant must raze any remaining portion of the Improvements, remove all debris, and grade and landscape the Land to Landlord's reasonable satisfaction. If Tenant does not commence rebuilding the Premises within one (1) year after the casualty event and reopen the Restaurant within 18 months thereafter, Landlord may terminate this Lease by providing written notice to Tenant of such termination. If Tenant has submitted for building permits within six (6) months after the casualty and is proceeding with such rebuilding with due diligence and in good faith, Tenant shall be deemed to have commenced construction for purposes of this Section of the Lease. If Tenant elects to restore the Improvements to their prior condition, then Tenant shall proceed with all reasonable diligence to rebuild and repair the Improvements to substantially the condition in which they existed prior to such damage. CAM Charges (but not Base Rent) shall be abated during any period of restoration until Tenant reopens for business to the general public.

#### Condemnation.

If all of the Premises or the Plaza (or if less than all, but Tenant reasonably determines that the remaining portion will not permit Tenant to operate its business on the Premises) shall be acquired by the right of condemnation or eminent domain for any public or quasi-public use or purpose, or sold to a condemning authority under threat of condemnation or in lieu thereof, then the term of this Lease shall cease and terminate as of the date of title vesting in such proceeding (or sale) and all rent and other charges due and payable hereunder shall be paid up to that date.

In the event of a partial taking or condemnation which takes less than a substantial portion of the Premises or the Plaza and Tenant reasonably determines that the remaining portion will permit Tenant to operate its business on the Premises, then Tenant, at Tenant's sole cost and expense, shall proceed with reasonable diligence to restore the Premises to a condition comparable to its condition at the time of such condemnation less the portion lost in the taking, and this Lease shall continue in full force and effect but with a pro rata reduction of Base Rent and CAM Charges based on the reduction in the square footage of the Improvements.

In the event of any condemnation, taking or sale as aforesaid, whether whole or partial, Landlord and Tenant shall each be

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entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceedings, or as may be otherwise agreed. Termination of this Lease shall not affect the right of the respective parties to such awards.

Liability and Indemnification.

Landlord and the City of Pittsburgh shall not be liable to Tenant or Tenant's employees, agents, patrons or invitees, or any person whomsoever, for any injury to person or damage to property (1) arising from occurrences in, on or about the Premises or (2) caused by the acts or omissions of Tenant, its employees or agents, or of any other person (other than Landlord or Landlord's employees or agents, and the City of Pittsburgh or City of Pittsburgh's employees or agents) entering upon the Premises under express or implied invitation of Tenant, and Tenant agrees to indemnify Landlord and the City of Pittsburgh and hold it harmless from any loss, claim, damage, cost or expense suffered or incurred by Landlord and the City of Pittsburgh by reason of any such damage or injury.

Tenant shall not be liable to Landlord or Landlord's employees, agents, patrons, invitees, or mortgagees, or any person whomsoever, for any injury to person or damage to property caused by the negligence or misconduct of Landlord, its employees or agents, and Landlord agrees to indemnify Tenant and hold it harmless from any loss, claim, damage, cost or expense suffered or incurred by Tenant by reason of any such damage or injury.

Tenant shall not introduce or allow to be introduced onto, in, on, over or under the Premises any Hazardous Materials in violation of any applicable laws. Notwithstanding any other provision of this Lease, Tenant shall, and hereby does agree to, indemnify, protect, defend, and hold harmless Landlord, the City of Pittsburgh and their respective members, partners, directors, officers, employees, shareholders, agents, contractors, and each of their respective successors and assigns, from and against any and all claims, judgments, damages, penalties, fines, taxes, costs, liabilities, losses, and expenses arising at any time after the Effective Date as a result of, or in connection with, the presence of Hazardous Materials on, under, or about the Premises or the Plaza which are introduced to the Premises or the Plaza by Tenant or Tenant's agents, employees or contractors or otherwise caused by Tenant or Tenant agents, employees, or contractors.

Right of Inspection.

Landlord and its agents and representatives shall be entitled to enter upon and inspect the Premises at any time during normal business hours upon prior reasonable notice, provided only that such inspection shall not unreasonably interfere with Tenant's business. Landlord may enter the Premises without notice to Tenant in the case of an emergency.

Warranty of Title and Quiet Enjoyment; Non-Disturbance Agreement.

Landlord represents and warrants that it has a leasehold interest in the Land, and that, subject to the receipt of the Required Approvals, it has the right to lease the Premises for the term and for the Permitted Use set out herein. Landlord further represents and warrants that Tenant, on paying the rent and performing its obligations hereunder, shall, subject to the terms of this Lease and all matters of public record, peaceably and quietly hold and enjoy the Premises for the term of this Lease, without any hindrance, molestation or ejection.

Landlord covenants, warrants and represents that it shall not exercise its control, take any action, or allow any action to be taken, whether temporary or permanent, which shall restrict access to, or visibility of, the Premises or Tenant's signs, materially impair the operation of Tenant's business or materially affect the ingress or egress including any driveways or walkways which are adjacent to or in the proximity of the Premises.

Landlord represents and warrants that it has not granted nor created and covenants that it will not grant, create or suffer any claim, lien, encumbrance, easement, restriction or other charge or exception to title to the Premises; provided, however, that it is expressly agreed that Landlord may subject its interest in the Premises to a mortgage loan, deed of trust or other financing or sale/leaseback vehicle if its lender shall agree for itself, its successors and assigns (by written instrument in recordable form



reasonably acceptable to Tenant): (i) to be bound by the terms of this Lease; (ii) not to disturb Tenant's use or possession of the Premises in the event of a foreclosure of such lien or encumbrance so long as Tenant is not in default hereunder; (iii) not to join Tenant as a party defendant in any foreclosure proceeding relating to the Plaza or any part thereof; and (iv) to permit application of all insurance proceeds to the restoration and repair of the Premises pursuant to Section 16 of this Lease.

Within thirty (30) days following the date of this Lease, Landlord shall procure for the Tenant a fully executed recognition and nondisturbance agreement reasonably acceptable to Tenant and otherwise in a commercially reasonable form from the City of Pittsburgh (available to Landlord under the City Lease), as well as from any other person or entity which has superior rights, title and interest to that of Landlord in the Land and/or the Premises. If Landlord does not procure for Tenant the foregoing agreements within thirty (30) days following the date of this Lease, the Feasibility Period (and all related dates and deadlines) shall be extended for each day of delay thereafter, and Tenant shall have the continuing right to terminate this Lease until such agreements are obtained.

Waiver of Subrogation. Landlord and Tenant severally waive any and every claim which arises or may arise in its favor and against the other during the term of this Lease for any and all loss of, or damage to, any of its property located within or upon, or constituting a part of, the Premises, which loss or damage is covered by valid and collectible fire and extended (special form - causes of loss) coverage, general liability, liquor liability or worker's compensation insurance policies, to the extent that such loss or damage is recoverable thereunder. Inasmuch as the above mutual waivers will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), Landlord and Tenant severally agree immediately to give to each insurance company which has issued to it policies of insurance, written notice of the terms of said mutual waivers, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverages by reason of said waivers.

Force Majeure. Except for the payment of rent and other charges due and payable under this Lease, the time for performance by Landlord or Tenant of any term, provision or covenant of this Lease shall be deemed extended by time lost due to delays resulting from acts of God, strikes, civil riots, floods, material or labor restrictions by governmental authority, enforcement of governmental regulations or requirements, and any other similar cause not within the reasonable control of Landlord or Tenant, as the case may be; provided, however, in order for Landlord or Tenant to avail itself of this Section 22, Landlord or Tenant must provide written notice to the other party within thirty (30) days of the fact or circumstance giving rise to the force majeure and the duration thereof which shall in no event exceed ninety (90) days.

Landlord-Tenant Relationship. It is further understood and agreed that the Landlord shall in no event be construed or held to be a partner, joint venturer or associate of the Tenant in the conduct of the Tenant's business, nor shall Landlord be liable for any debts incurred by the Tenant in the Tenant's business; but it is understood and agreed that the relationship is and at all times shall remain that of landlord and tenant.

Assignment and Subletting.

Tenant shall not assign this Lease or sublet the whole or any part of the Premises without the prior written consent of Landlord, which consent Landlord shall not unreasonably withhold, condition, or delay, provided (i) no Tenant Event of Default (hereinafter defined) has occurred and is continuing at the time of the request for consent to the assignment or sublease, (ii) the use to be made of the Premises by the assignee or subtenant shall be permitted by Section 7 hereof, (iii) the assignee or subtenant shall assume in writing the performance of all of the terms, provisions and covenants of this Lease on the part of Tenant to be kept and performed, (iv) Tenant shall deliver to Landlord within fifteen (15) days (or as soon thereafter as is reasonably practicable) after the assignment or subletting an executed duplicate of such agreement, together with a duly executed assumption agreement and (v) such assignee or sublessee shall have a reputation and experience in the restaurant business reasonably satisfactory to Landlord. Upon receipt of a request for consent to an assignment or sublease, Landlord shall provide notice thereof to the City of Pittsburgh and Landlord shall consult with the City of Pittsburgh prior to advising Tenant of Landlord's decision regarding the request for consent. Notwithstanding anything herein to the contrary, Tenant, without Landlord's prior written consent but otherwise subject to the conditions set forth in this paragraph 24, (i) may assign this Lease or sublet the whole of the Premises to a legal entity which (x) is the successor, by merger, acquisition or otherwise, to all or substantially all of Tenant's stock, assets and/or liabilities, (y) controls or is controlled by or is under common control with Tenant, directly or indirectly, or (z) is a franchisee of an entity that controls, is controlled by or is under common control with Tenant, directly or indirectly, and (ii) may sublet a portion of the Premises to a legal

**Committee:** Committee on Urban Recreation**Status:** Passed Finally

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entity, whose management is controlled by the Tenant, or any entity a majority of whose voting equity is owned by the Tenant, solely for the purpose of such entity obtaining a liquor license for the Premises. Any such assignment or subletting shall be otherwise subject to and upon all of the terms, provisions and covenants of this Lease. Landlord agrees to enter into a non-disturbance agreement and give an estoppel letter to any assignee or sublessee to which Landlord consents or for which Landlord's consent is not required, upon written request from such assignee or sublessee, the form of which shall be similar in nature to the form of agreement required of lenders under Section 20 hereof and shall otherwise be reasonably acceptable to such assignee or sublessee. Without limiting the generality of the foregoing, Landlord shall have no right to share in or otherwise receive any rents, sums or other economic consideration realized by Tenant from an assignment or sublease, regardless of whether Landlord's consent is required for such assignment or sublease.

No assignment or subletting or collection of rent from the assignee or sub-tenant shall be deemed to constitute a novation or in any way release Tenant from further performance of its obligations under this Lease, and Tenant shall continue to be liable under this Lease for the balance of the term of this Lease with the same force and effect as if no such assignment or sublease had been made ; provided however, that Landlord shall be deemed to have released Tenant from all obligations under this Lease if Tenant's assignee has a net worth as of the date of the assignment greater than or equal to Five Million Dollars (\$5,000,000).

Memorandum of Lease; Commencement and Termination Date Agreement. A short-form memorandum of this Lease, in the form attached hereto as Exhibit G, shall be executed by Landlord and Tenant contemporaneously with the execution of this Lease and shall be filed of record. Landlord and Tenant agree that promptly after the Rent Commencement Date of this Lease, a Commencement and Termination Date Agreement, substantially in the form attached hereto as Exhibit H, shall be executed by each party in order to establish the Rent Commencement Date and the date of termination of the Term of this Lease.

Notices and Payments. Any notice, document or payment required or permitted to be delivered or remitted hereunder or by law shall be deemed to be delivered or remitted, whether actually received or not, (a) when delivered in person, or (b) one (1) business day after such item is deposited with Federal Express or other generally recognized overnight courier, shipping charges prepaid, addressed to the appropriate party hereto at its address set out below or at such other address as it shall have theretofore specified by written notice delivered in accordance herewith:

**LANDLORD:**

Pittsburgh Parks Conservancy 200 Technology  
Drive Suite 300 Pittsburgh, PA 15219 Attention:  
Deborah Beck, CFO Phone: 412-682-7275, ext. 2056000  
Fax: 412-622-0160 Email:  
dbeck@pittsburghparks.org

**TENANT:**

Eat'n Park Hospitality Group, Inc. 285 East Waterfront Drive  
Homestead, PA 15120 Phone: (412) 461-2000 Fax: (412) 461-  
6000 Attention: Vice President of Real Estate with a required  
copy to: Chief Financial Officer (at the above address)

Default.

Each of the following events shall be a "Tenant Event of Default" under this Lease:

Tenant shall fail to pay any installment of Base Rent or CAM Charges or Percentage Rent or any other amounts payable by Tenant under the Lease as and when the same shall become due and shall not cure such default within ten (10) days after written notice thereof is given by Landlord to Tenant;

Tenant shall fail to comply with any term, provision or covenant of this Lease, other than as set forth in clause (i) above, and, to the extent such default is reasonably susceptible of cure, shall not cure such failure within thirty (30) days after written notice thereof is given by Landlord to Tenant (provided that if such default cannot reasonably be cured within thirty (30) days, then Tenant shall have an additional reasonable period of time not to exceed 120 days within which to cure such default, so long as Tenant is diligently attempting to cure);

Tenant shall be adjudged insolvent, make a transfer in fraud of creditors or make an assignment for the benefit of

creditors;

Tenant shall file a petition under any section or chapter of the Bankruptcy Reform Act of 1978, as amended, or under any similar law or statute of the United States or any state thereof, or Tenant shall be adjudged bankrupt or insolvent in proceedings filed against Tenant thereunder; or

A receiver or trustee shall be appointed for all or substantially all of the assets of Tenant and Tenant shall not have had such appointment discharged within thirty (30) days after Tenant receives written notice of such appointment.

If a Tenant Event of Default occurs, Landlord and Tenant agree to cooperate in good faith and to use commercially reasonable efforts, to find a replacement tenant for the remaining term of this Lease. Any replacement tenant must have a reputation and experience in the restaurant business reasonably satisfactory to Landlord; if a replacement tenant is identified, upon receipt of a request for consent to an assignment or sublease, Landlord shall provide notice thereof to the City of Pittsburgh and Landlord shall consult with the City of Pittsburgh prior to advising Tenant of Landlord's decision regarding the request for consent. The replacement tenant shall assume the existing lease or enter into a new lease on such terms as are approved by Landlord which approval shall not be unreasonably withheld, conditioned or delayed. Alternatively, the replacement tenant can enter into a sublease with Tenant. If a sublease is entered into, Tenant must continue to pay Base Rent and CAM Charges and Percentage Rent (based on the gross sales of the replacement tenant) to Landlord. Tenant will not be able to remove any furniture, fixture or equipment from the Premises during a Tenant Event of Default. Tenant will pay for all reasonable expenses required to find a replacement tenant (including the payment of attorneys' fees and broker fees). If an acceptable replacement tenant has not assumed the lease or signed a sublease within six months of the Tenant Event of Default, the Landlord may elect to cancel the remaining term of this Lease, and title to the Improvements shall be transferred to the City of Pittsburgh pursuant to Section 15(c) as if the Lease had expired.

Pursuit of any remedy herein provided does not constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damage accruing to Landlord by reason of the violation of any of the terms, provisions and covenants herein contained. Forbearance by Landlord to enforce one or more of the remedies herein provided upon the occurrence of a Tenant Event of Default shall not be deemed or construed to constitute a waiver of such default.

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN CONTAINED, NOTHING IN THIS LEASE SHALL BE CONSTRUED OR INTERPRETED TO AFFIRMATIVELY OBLIGATE LANDLORD TO PURCHASE THE IMPROVEMENTS, FURNITURE, FIXTURES AND EQUIPMENT OF TENANT.

Each of the following events shall be a "Landlord Event of Default" under this Lease:

Landlord shall fail or refuse to pay any sum of money payable hereunder when due, and the failure or refusal continues for ten (10) days after written notice thereof is given by Tenant to Landlord; or

Landlord shall fail or refuse to comply with any term, provision, or covenant of this Lease, other than provisions for the payment of money, and does not cure the failure or refusal within thirty (30) days after written notice thereof is given by Tenant to Landlord (provided that if such default cannot reasonably be cured within thirty (30) days, then Landlord shall have an additional reasonable period of time within which to cure such default).

Upon the occurrence of any Landlord Event of Default, Tenant shall have the option to cure the Landlord Event of Default and in connection therewith pay or incur reasonable expenses. Notwithstanding the foregoing, Tenant shall not have such right to cure a Landlord Event of Default set forth in Section 28(d) (ii) in the event Landlord or its mortgagee takes action to cure such default within the cure period therein provided, but is unable, by reason of the nature of the work involved, to cure the same within such period, provided Landlord or its mortgagee (whoever commences such work) continues such work thereafter diligently and without unnecessary delays. Additionally, Tenant shall have the right to remedy any default of an emergency nature, in the event Landlord or its mortgagee fails to commence to cure any default creating an emergency situation promptly upon being given notice which is reasonable under the circumstances, and Tenant shall have the right to remedy such a default without notice (if the giving of notice is not reasonably practicable) in the event of an emergency. All sums so expended or obligations incurred by Tenant in connection with the foregoing shall be paid by Landlord to Tenant upon demand; any amounts that remain unpaid for a period of more than thirty (30)

days following Tenant's demand may, at Tenant's option, be offset against payments of Base Rent and CAM Charges and Percentage Rent and any other sum payable by Tenant to Landlord hereunder.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any damage accruing to Tenant by reason of the violation of any of the terms, provisions, and covenants herein contained. Forbearance by Tenant to enforce one or more of the remedies herein provided upon the occurrence of a Landlord Event of Default shall not be deemed or construed to constitute a waiver of such default.

**Brokers.** Landlord and Tenant each represent to the other that they have not dealt, directly or indirectly, in connection with the leasing of the Premises, with any broker or person entitled to claim a commission or leasing fees. Landlord and Tenant each shall indemnify and hold each other harmless from any loss, liability, damage, or expense (including without limitation reasonable attorneys' fees) arising from any claim for a commission or leasing fee arising out of this transaction made by any unidentified broker or other person with whom such party has dealt.

**Reasonable Cooperation.** During the term of this Lease, Landlord agrees to reasonably cooperate in a timely manner with Tenant in connection with the obtaining and renewal of all licenses and permits which Tenant may need to operate its intended business on the Premises. Such cooperation may include the disclosure of information with respect to Landlord and its members, officers and directors. Tenant agrees to hold any such information confidential and to use the same only for the purposes of obtaining or renewing the license or permit for which such information is required. All costs associated with obtaining or renewal shall be borne by Tenant.

31. **Late Charge.** Tenant hereby acknowledges that late payment by Tenant to Landlord in rent or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by terms of any mortgage or deed of trust covering the Premises and the Plaza. Accordingly, if any installment of rent or any sum due from Tenant shall not be received by Landlord or Landlord's designee on or before the date such sum is due as set forth herein (the tenth (10<sup>th</sup>) day of every month with regard to Base Rent and other monthly charges and 100 days after year end with regard to Percentage Rent), then Tenant shall pay automatically to Landlord a late charge equal to five percent (5%) of the amount past due, but in no event more than the legal maximum on such past due amount, plus attorneys' fees incurred by Landlord by reason of Tenant's failure to pay rent and/or other charges when due hereunder. Any such late charge shall be added to the next installment of rent due under the Lease. For the purposes hereof the term "past due" shall mean rents or other sums which are due but not received on or before the tenth (10<sup>th</sup>) day of the month or with respect to Percentage Rent within 100 days after year end. The parties hereby agree that such late charge represents a fair and reasonable estimate of the cost that Landlord will incur by reason of the late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

32. **Leasehold Mortgages.** Tenant shall have the right to mortgage this Lease and the leasehold estate created hereby. The execution and delivery of any such mortgage shall not be deemed to constitute an assignment or transfer of this Lease or of any interest herein nor shall any beneficiary of such leasehold mortgage (a "Leasehold Mortgagee"), as such, be deemed to be an assignee or transferee of this Lease or of any interest herein so as to require such Leasehold Mortgagee to assume the performance or observance of any of the terms, covenants or conditions on the part of Tenant to be performed or observed hereunder. Each such mortgage shall be subject and subordinate to all of the terms, covenants, conditions and restrictions set forth in this Lease, but shall have the benefits granted to Leasehold Mortgagees hereunder. Tenant shall not have the right to, in any way, encumber the City of Pittsburgh's fee simple title to the Premises or Landlord's leasehold interest in the Premises. A mortgage of the Improvements and/or Tenant's interest under this Lease is herein referred to as a "Leasehold Mortgage." Landlord agrees to make such reasonable modifications of this Lease which do not materially and adversely affect Landlord as any Leasehold Mortgagee shall reasonably require for the purpose of financing, subject to Landlord approval. Tenant agrees to provide notice of any encumbrances to Landlord and City of Pittsburgh.

33. **Miscellaneous.**

In the event this Lease is terminated pursuant to a right to do so herein contained, neither Landlord nor Tenant hereto shall

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thereafter have any further obligation or liability one to the other (except for indemnification obligations which shall survive any Lease termination), and this Lease shall be of no further force or effect.

The captions used in this Lease are for convenience only and shall not be deemed to amplify, modify or limit the provisions hereof.

Words of any gender used in this Lease shall be construed to include any other gender, and words in the singular shall include the plural and vice versa, unless the context otherwise requires.

This Lease shall be binding upon and shall inure to the benefit of Landlord and Tenant and their respective heirs, legal representatives, successors and assigns.

The Exhibits annexed to this Lease are hereby incorporated by reference in their entirety with the same force and effect as if they were set forth in this Lease in their entirety. This Lease contains the entire agreement of Landlord and Tenant with respect to the subject matter hereof and can be altered, amended or modified only by written instrument executed by both of such parties.

IT IS EXPRESSLY AGREED BY LANDLORD AND TENANT THAT TIME IS OF THE ESSENCE WITH RESPECT TO THIS LEASE. In the event the date for performance of an obligation or delivery of any notice hereunder falls on a day other than a business day, then the date for such performance or delivery of such notice shall be postponed until the next ensuing business day. Any references to "business days" contained herein are references to normal working business days (i.e., Monday through Friday of each calendar week, exclusive of Federal holidays).

If any term or provision, or any portion thereof, of this Lease, or application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, 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 Lease shall be valid and be enforced to the fullest extent permitted by law.

This Lease may be signed in counterparts with the same force and effect as if all required signatures were contained in a single, original instrument.

This Lease shall be construed, interpreted, and enforced pursuant to the applicable laws of the state in which the Premises are located.

Notwithstanding anything herein to the contrary, neither Landlord nor Tenant shall be obligated to contribute any sums to promotional or advertising programs of the other, or to join any merchant's association and pay any dues or fees relating to any such association.

Warranty of Authority. Each of Landlord and Tenant represent and warrant to the other that (i) each individual executing this Lease on its behalf is duly authorized to execute and deliver this Lease on its behalf, (ii) this Lease is legal, valid and binding upon it and enforceable against it in accordance with its terms, (iii) it is a duly qualified business entity and all steps have been taken prior to the Effective Date to qualify it to do business in the state in which the Premises are located, and (iv) all franchise and corporate taxes have been paid to date; and all future forms, reports, fees and other documents necessary to comply with applicable laws will be filed when due.

Estoppel Certificates. Within ten (10) days after a request from time to time, either Tenant or Landlord shall execute and deliver estoppel certificates as may be reasonably requested by Tenant, Landlord or their respective mortgagees.

Patriot Act Provisions. Tenant (which for this purpose includes its partners, members, principal stockholders and any other constituent entities) (i) has not been designated as a "specifically designated national and blocked person" on the most current list published by the U.S. Treasury Department, "Office of Foreign Assets Control" at its official website, <<http://www.treas.gov/ofac/tl1sdn.pdf>> or at any replacement website or other replacement official publication of such list; (ii) is

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**Introduced:** 12/7/2010

**Bill No:** 2010-1190, **Version:** 1

**Committee:** Committee on Urban Recreation

**Status:** Passed Finally

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currently in compliance with and will at all times during the term of this Lease (including any extension thereof) remain in compliance with the regulations of the Office of Foreign Asset Control of the Department of the Treasury and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action relating thereto; and (iii) has not used and will not use funds from illegal activities for any payment made under this Lease.

Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than any payment of Base Rent or Percentage Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Base Rent or Percentage Rent then due and payable, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in this Lease, at law or in equity.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Lease to be effective as of the Effective Date.

LANDLORD:

PITTSBURGH PARKS CONSERVANCY

By:

Printed Name:

Title:

Date:

TENANT:

EAT'N PARK HOSPITALITY GROUP, INC.

By:

Printed Name:

Title:

Date:

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EXHIBIT A

The Land

[TO BE ATTACHED]

EXHIBIT B

Schenley Plaza Lease and Management Agreement

[TO BE ATTACHED]

EXHIBIT C

The Plaza

[TO BE ATTACHED]

EXHIBIT D

The Site Plan

[TO BE ATTACHED]

EXHIBIT E

Site Information

I. Schenley Plaza Construction Documents

- Signed architecturally confirmed As Built Drawings (67 Total Pages)
- August 2006 (including Utility Plans)
- Sasaki Interdisciplinary Design, Architects
- Branston Partnership, Inc. Lighting Design Consultants
- Quad Three Group, Mechanical, Electrical, Plumbing
- The Gateway Engineers Inc., Surveyors
- Environmental Planning & Design, Local Consultant
- Lemessuria Consultants Inc., Structural Engineering

II. Schenley Plaza Project manual - Specifications (including soil boring reports)

- Author: Sasaki Interdisciplinary Design, Architects
- November 10, 2004

III. Phase I Report Environmental Site Assessment

- Author: University of Pittsburgh
- March 2, 2004

IV. Schenley Plaza - Grade Level Site Survey (October 2006)

- Author: Gateway Engineers, Inc.
- March 2, 2004

EXHIBIT F

Timeline

EXHIBIT G

Memorandum Of Lease

COMMONWEALTH OF PENNSYLVANIA        §  
   §        SS.  
COUNTY OF ALLEGHENY     §

THIS MEMORANDUM OF LEASE is made and entered into by and between PITTSBURGH PARKS CONSERVANCY, a Pennsylvania non-profit corporation with an address of 200 Technology Drive, Suite 300, Pittsburgh, PA 15219, ("Landlord"), and EAT'N PARK HOSPITALITY GROUP, INC., a Pennsylvania corporation with an address of 285 East Waterfront Drive, Homestead, PA 15120 ("Tenant").

WITNESSETH:

Landlord hereby demises and leases to Tenant, and Tenant hereby takes from Landlord, that certain tract or parcel of land located in the City of Pittsburgh, County of Allegheny, State of Pennsylvania, the same being more particularly described by metes and bounds on Exhibit G-1 attached hereto and made a part hereof (the "Land"), together with the non-exclusive use of all rights, privileges, easements, and appurtenances belonging or in any way pertaining thereto, and together with any building or other



**Committee:** Committee on Urban Recreation

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improvements erected and/or to be erected thereon (the "Improvements") and, together with the Land, the "Premises"), TO HAVE AND TO HOLD the same for a term of twenty (20) years (commencing as provided in the Lease described hereafter), not to extend beyond the lease term of Landlord under the Lease and Management Agreement dated November 24, 2004 between the City of Pittsburgh, as lessor, and Landlord, as tenant, all pursuant and subject to the terms, conditions, and stipulations contained in that certain Ground Lease and Food Service Management Agreement dated \_\_\_\_\_, 2010 (the "Lease") by and between Landlord and Tenant, to which reference is made for all purposes of which it is intended hereby to give notice. The land is situated in and constitutes a part of a Plaza (the "Plaza") which is a part of a mixed use development known as Schenley Plaza. A metes and bounds description of the Plaza is attached hereto as Exhibit G-2.

For so long as Tenant is operating as a restaurant, and provided Tenant has not ceased operations other than to remodel, due to force majeure or for any holiday(s), but subject to certain existing third party agreements in effect on the date hereof and subject to other exceptions stated in the Lease with respect to the activities of persons (including persons holding a public event in the Plaza pursuant to a valid special event permit from the City of Pittsburgh) over whom Landlord has no control, Landlord agrees not to lease or otherwise permit any space in the Plaza to be used for any food service whatsoever.

This Memorandum of Lease is not intended to alter or supersede the Lease, and in the event of any conflict between this Memorandum of Lease and the Lease, the provisions of the Lease shall control.

[signature page follows]

IN WITNESS WHEREOF, the Landlord and Tenant have executed this Memorandum of Lease to be effective as of the latest of the dates set forth below.

LANDLORD:

PITTSBURGH PARKS CONSERVANCY

By:

Printed Name:

Title:

Date:

TENANT:

EAT'N PARK HOSPITALITY GROUP, INC.

By:

**Introduced:** 12/7/2010

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**Status:** Passed Finally

Printed Name:

Title:

Date:

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA      §  
   §      SS.  
COUNTY OF ALLEGHENY      §

This instrument was executed and acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_, the \_\_\_\_\_ of Eat'n Park Hospitality Group, Inc., a Pennsylvania corporation, on behalf of said corporation.

NOTARY PUBLIC, COMMONWEALTH OF PENNSYLVANIA

My Commission Expires:

\_\_\_\_\_

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA      §  
   §      SS.  
COUNTY OF ALLEGHENY      §

This instrument was executed and acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_, the \_\_\_\_\_ of Pittsburgh Parks Conservancy, a Pennsylvania non-profit corporation, on behalf of said non-profit corporation.

NOTARY PUBLIC, COMMONWEALTH OF PENNSYLVANIA

My Commission Expires:

\_\_\_\_\_

LANDLORD'S ADDRESS: 2000 Technology Drive,      TENANT'S ADDRESS: 285 East Waterfront Drive  
Suite 300 Pittsburgh, PA 15219      Homestead, PA 15120

AFTER RECORDING, RETURN TO:

EXHIBIT G-1

Premises

EXHIBIT G-2

Plaza

EXHIBIT H

Commencement and Termination Date Agreement

THIS AGREEMENT (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between PITTSBURGH PARKS CONSERVANCY, a Pennsylvania non-profit corporation ("Landlord"), and EAT'N PARK HOSPITALITY GROUP, INC., a Pennsylvania corporation ("Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant entered into a Ground Lease and Food Service Management Agreement dated \_\_\_\_\_, 2010, for certain real property (the "Premises") located in the City of Pittsburgh, County of Allegheny, State of Pennsylvania (together with any amendments thereto, the "Lease"); and

WHEREAS, it is the desire and intent of Landlord and Tenant to clearly define the terms of said Lease.

NOW, THEREFORE, it is agreed by and between Landlord and Tenant that:

1. The Rent Commencement Date of the Lease is \_\_\_\_\_, 20\_\_.
2. The term of the Lease commenced on \_\_\_\_\_, 20\_\_, and shall terminate at 11:59 p.m., \_\_\_\_\_, \_\_\_\_\_ time, on \_\_\_\_\_, 20\_\_.
3. The Lease is now in full force and effect and all terms and conditions of the Lease are hereby ratified and confirmed.

Landlord and Tenant agree that this document will not be recorded in any public records including the real estate records of the county where the Premises are located.

[signature page follows]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Commencement and Termination Date Agreement as of the day and year first above written.

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**Introduced:** 12/7/2010

**Bill No:** 2010-1190, **Version:** 1

**Committee:** Committee on Urban Recreation

**Status:** Passed Finally

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LANDLORD:

PITTSBURGH PARKS CONSERVANCY

By:

Printed Name:

Title:

Date:

TENANT:

EAT'N PARK HOSPITALITY GROUP, INC.

By:

Printed Name:

Title:

Date:

EXHIBIT I

Existing Plaza Kiosk Agreements

1. Lease Agreement made and entered into as of the 15th day of September 2009, by and between The Pittsburgh Parks Conservancy and Milky Way Dairy and Vegetarian Restaurant (no amendments or modifications)

Expiration Date:	March 31, 2011
Renewal Term(s):	April 1, 2011 through March 31, 2013; and April 1, 2013 through March 31, 2015 (in each case subject to Tenant's notice by November 30 of the year preceding the renewal term and subject to Landlord's right to reject the renewal by February 1 of the year in which the renewal term otherwise would begin)
Exclusive rights:	exclusive right to sell kosher items, including: pizza, calzone, stromboli and Italian style hot sandwiches, pasta soups, wraps, twists and hand-scooped ice cream or gelati

Sale of soft drink beverages, tea, fruit smoothies, green salads, coffee, smoothies, candy, individual-serving size chip type snacks, and/or desserts are non-exclusive permitted uses

Catering rights: nonexclusive right to offer catering on the Plaza

2. Lease Agreement made and entered into as of the 17th day of October 2007 by and between The Pittsburgh Parks Conservancy and Ikaros Gourmet Company, as amended by that certain Amendment to Lease Agreement dated February 5, 2009 and that certain Second Amendment to Lease Agreement dated February 5, 2009

Expiration Date: March 31, 2009 (renewed through March 31, 2011)

Renewal Term(s): April 1, 2009 through March 31, 2011; and April 1, 2011 through March 31, 2016 (in each case subject to Tenant's notice by November 30 of the year preceding the renewal term and subject to Landlord's right to reject the renewal by February 1 of the year in which the renewal term otherwise would begin)

Exclusive rights: exclusive right to sell chicken or beef gyros, green & Greek salads, Greek specialty foods and hot dogs with toppings

exclusive rights to sell soft-serve ice cream in a cone or cup, snow cones and hot pretzels

Sales of soft drink beverages, coffee, smoothies, candy, individual serving size chip type snacks, and/or desserts are non-exclusive permitted uses

Catering rights: nonexclusive right to offer catering on the Plaza

3. Lease Agreement made and entered into as of the 11<sup>th</sup> day of November 2005 by and between the Pittsburgh Parks Conservancy and Shuelin Hammerstein (d/b/a Asia Tea House), as amended by that certain First Amendment to Lease made as of the 1<sup>st</sup> day of March 2007 and that certain Second Amendment to Lease made as of the 15<sup>th</sup> day of February 2009

Expiration Date: March 31, 2016

Renewal Term(s): none

Exclusive rights: Tenant shall use the Premises for the operation of an Asian restaurant specializing in the sale of Asian food, non-alcoholic drinks and related Asian items including but not limited to Sushi, General Tso Chicken, Chicken and Beef Shish Ka Bob, Grilled Bourbon Chicken, Fried Rice, Kon Pao Chicken, Lo Mein, Egg rolls, Chinese Teas, bottled drinks, Fortune cookies, and Chinese Pastry. Tenant may also sell funnel cake. Landlord will not enter into any lease for another portion of the Plaza permitting any other Tenant to sell Asian food as a material part of its menu items

Catering rights: nonexclusive right to offer catering on the Plaza

4. Lease Agreement made and entered into as of the 4<sup>th</sup> day of November 2005 by and between the Pittsburgh Parks Conservancy and The Pittsburgh Bagel Factory, as amended by that certain Lease Amendment 1 made as of the 1<sup>st</sup> day of April, 2007, the Second Amendment and Release made as of the 25<sup>th</sup> day of September, 2007, and the Third Amendment to Lease made as of the 3<sup>rd</sup> day of February, 2009

Expiration Date: March 31, 2016

Renewal Term(s): none

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**Introduced:** 12/7/2010

**Bill No:** 2010-1190, **Version:** 1

**Committee:** Committee on Urban Recreation

**Status:** Passed Finally

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Exclusive rights:

Tenant shall have the exclusive right during the Term of this Lease Agreement to use the Premises solely for the following: Bagels and Cream Cheese, Crolls, Scones, Danish, Muffins, Knishes, Donuts, Pancakes, Omelets, Bacon/Ham, Egg & Cheese Bagels, Variety of 23 Bagel Sandwiches, and Yogurt & Granola

Tenant shall have the right during the Term of this Lease Agreement to use the Premises solely for the following: Seasonal Soups, Salads, Homeade Potato Chips, Large Brownies, Large Cookies, Hot Caramel Popcorn, Large Cupcakes, Rice Krispie Treats, Soda, Non-Branded Coffee, Tea, 'Water, Seasonal Fruits & Juices

Catering rights:

none