

**84240**

DATE: April 13, 2021

TO: Honorable Members of the Board of Acquisition & Contract

FROM: George Latimer  
County Executive

John M. Nonna  
County Attorney

Kathleen M. O'Connor  
Commissioner, Department of Parks, Recreation and Conservation

RE: Resolution authorizing the County of Westchester ("County") to enter into a Second Restated and Amended Playland Management Agreement with Standard Amusements, LLC ("Standard Amusements").

---

As you will recall, on June 15, 2015, the County Board of Legislators ("BOL") adopted Act 2015-100, which authorized the County to enter into an agreement with Standard Amusements to manage and operate Playland Park ("2015 Agreement"). The 2015 Agreement was duly executed on or about August 10, 2015.

Thereafter, as you will recall, on May 2, 2016, the BOL adopted Act 2016-101, which authorized the County to enter into a Restated and Amended Playland Management Agreement with Standard Amusements ("2016 Restated Agreement"). The 2016 Restated Agreement was duly executed on or about May 3, 2016.

On April 12, 2021 the BOL adopted an Act authorizing the County to enter into a Second Restated and Amended Playland Management Agreement (the "Second Restated Agreement") with Standard Amusements. The Second Restated Agreement fully resolves the issues raised in the Chapter 11 case brought in the United States Bankruptcy Court for the Southern District of New York entitled: *In re Standard Amusements LLC, Debtor, Case No. 19-23061 (RDD)*, and the *Adversary Proceeding No. 19-08264 (RDD), Standard Amusements LLC, Plaintiff v. The County of Westchester, by and through George Latimer, in his official capacity as County Executive of Westchester, Kathleen O'Connor in her official capacity as the Commissioner of the Department of Parks, Recreation, and Conservation, and Hugh J. Greechan, in his official*

capacity as the Commissioner of the Department of Public Works and Transportation, Defendant (“Bankruptcy Litigation”). The Second Restated Agreement is the result of over ten (10) months of negotiations conducted at the urging of the bankruptcy court.

The Second Restated Agreement shall take effect when all of the following have occurred:

(a) Standard Amusements has delivered to the County evidence that it has \$15,000,000.00 in unrestricted funding in the form of cash or liquid assets held directly by Standard Amusements in its name and for its account, (b) the Second Restated Agreement has been approved by the BOL and by your Honorable Board, and (c) both Standard Amusements and the County have executed the Second Restated Agreement (“Effective Date”).

There will be a co-management period beginning on the Effective Date and ending on December 1, 2021, which is the date when Standard Amusements shall commence full, exclusive management and operation of Playland Park (“Management Commencement Date”). Standard Amusements shall not commence full management and operation of Playland Park on the Management Commencement Date unless and until Standard Amusements has provided reasonable evidence to the County that it has the remaining balance of the Manager’s Investment (as defined in Section 3(D) of Schedule “A”), in an amount equal to \$17,750,000.00 (the “Remaining Balance”), in the form of either (i) cash or liquid assets held directly by Standard Amusements in its name and for its account, (ii) an irrevocable, standby letter of credit, issued for the sole benefit of Standard Amusements by a commercial bank with a credit rating from a nationally recognized rating agency that is at least as good as a Standard & Poor’s long-term issuer credit rating of “A,” or (iii) a combination of (i) and (ii). The Remaining Balance does not include an additional amount earmarked for the demolition and reconstruction of Charley’s Pier Restaurant and Tiki Bar (“Tiki Bar”), as explained below.

Under this new agreement, the Manager’s Investment is limited to (i) “hard costs,” which are those costs payable for supplies, materials, and labor with respect to any project in the Manager’s Capital Plan, and (ii) “soft costs,” which are costs ordinarily and reasonably incurred in relation to construction, physical improvements, and development projects, provided that up to \$5,000,000.00 of the Manager’s Investment may also be spent on defined, permissible overhead and operating expenses. The prior agreements contained no limitations on how the Manager’s Investment could be spent and no definition of overhead and operating expenses. These new terms provide assurance to the County that the Manager’s Investment will go towards new rides, games and other tangible improvements to enhance the guest experience at Playland Park.

The term of the Second Restated Agreement shall commence on the Effective Date and continue for thirty (30) years from the first November 1<sup>st</sup> following the date on which the County reaches the 90% Threshold, which is when 90% of the Playland capital projects are substantially complete. The County is required to substantially complete 70% of its capital projects by 2024 and 90% of its capital projects by 2026. If either of these dates is not satisfied, Standard Amusements has the right to terminate the Second Restated Agreement, and the County may be subject to liquidated damages.

In addition to the Manager’s Investment as set forth above, some key terms of the Second Restated Agreement include:

- APPROVED BOARD OF COUNTY SUPERVISORS CONTRACT 00450001 - LEGAL COUNSEL SECRETARY
- (i) Standard Amusements is required to invest an additional \$2,250,000.00 for demolition and reconstruction of the Tiki Bar, unless the County does not agree to Standard Amusements' plans and specifications or Standard Amusements is unable to get required permits;
  - (ii) beginning on August 31, 2022, and each year thereafter, Standard Amusements will pay the County a management fee which in the first year equals \$300,000.00, in the second year equals \$400,000.00, and each year thereafter is adjusted by the change in the Consumer Price Index;
  - (iii) beginning with Playland's 2023 season, Standard Amusements will be obligated to pay the County annually an amount equal to 5% of gross revenue (net of sales tax) above an initial revenue target of \$12,000,000.00;
  - (iv) if the Manager fails to achieve the revenue target (without consideration of Tiki Bar revenue) for four consecutive years, such failure shall be considered an event of default, and the County may terminate the Second Restated Agreement;
  - (v) the County has a right to review material improvements undertaken by Standard Amusements based on identified criteria. In addition, Standard Amusements may remove, replace or relocate non-historic rides, whether fixed or removable, or install a new ride, subject to identified criteria, but historic rides may not be removed, replaced, or relocated without County approval; and
  - (vi) Standard Amusements is required to use union labor or pay the then-prevailing wage for certain identified major construction projects that exceed \$250,000.00 until April 30, 2026, and for demolition and reconstruction of the Tiki Bar regardless of when the work occurs.

Like the 2015 Agreement and the 2016 Restated Agreement, this proposed Second Restated Agreement highlights that Playland is a public park and must remain accessible to the public. In particular, and consistent with the prior agreements, the Second Restated Agreement provides that Standard Amusements must manage and operate Playland Park consistent with its current recreational uses and as a public park facility; keep all currently non-gated public spaces at Playland Park maintained and open to the public; guarantee free access to Edith G. Read Natural Wildlife Park and Sanctuary and to the boardwalk and pier, and ensure that work will be carried out in a manner that is consistent with the use of Playland as a public park. In addition, public access to the beach is also guaranteed.

Accordingly, attached is a proposed Resolution seeking authorization to enter into a Second Restated and Amended Playland Management Agreement between the County and Standard Amusements. A copy of the proposed Second Restated and Amended Playland Management Agreement is attached to the Resolution submitted herewith.

For the foregoing reasons, I respectfully request the approval of the annexed proposed Resolution.

GL/JMN/KMO/tsa

**RESOLUTION**

Upon a communication from the County Executive, the County Attorney and the Commissioner of Parks, Recreation and Conservation, be it hereby

**RESOLVED**, that the County of Westchester (the “County”) is hereby authorized to enter into a Second Restated and Amended Playland Management Agreement with Standard Amusements, LLC. The Second Restated and Amended Playland Management Agreement fully resolves the issues raised in the Chapter 11 case brought in the United States Bankruptcy Court for the Southern District of New York entitled: *In re Standard Amusements LLC, Debtor, Case No. 19-23061 (RDD)*, and the *Adversary Proceeding No. 19-08264 (RDD), Standard Amusements LLC, Plaintiff v. The County of Westchester, by and through George Latimer, in his official capacity as County Executive of Westchester, Kathleen O’Connor in her official capacity as the Commissioner of the Department of Parks, Recreation, and Conservation, and Hugh J. Greechan, in his official capacity as the Commissioner of the Department of Public Works and Transportation, Defendant* in substantially the form of agreement annexed hereto as Schedule “A”; and, be it further

**RESOLVED**, that the County Executive or his authorized designee is hereby empowered to execute any and all instruments and take such other actions as may be reasonably necessary to effectuate the purposes hereof.

Account to be Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub-Object	Trust Account	Dollars	Year
165	42	5520	9127		300,000	2022
165	42	5520	9127		400,000	2023

Notes:

Payable starting on the Management Commencement Date subject to increases as set forth in the annexed agreement.

Utilities and Police and park ranger staffing and services to be reimbursed and potential revenue share to be received as set forth in the annexed agreement.

Subsequent management fees are adjusted annually by the change in CPI for duration of agreement.

Annual County revenue share equal to 5% of gross revenue above initial target of \$12 million. Threshold is adjusted annually by the CPI.

Standard Amusements will invest \$35 million (of which \$2.25 million is for the Tiki Bar should that option be exercised) for equipment and physical improvements at Playland.

30 years from the first November 1<sup>st</sup> occurring after the date when the County reaches 90% Threshold.

Budget Funding Year(s): 2021- 2055      Start Date: Upon Execution      End Date: See above  
(must match resolution)

Funding Source      Tax Dollars \_\_\_\_\_  
                                  State Aid \_\_\_\_\_  
 \$ \_\_\_\_\_      Federal Aid \_\_\_\_\_  
 (must match resolution)      Other \_\_\_\_\_

**SECOND RESTATED AND AMENDED**

**PLAYLAND MANAGEMENT AGREEMENT**

**BETWEEN**

**THE COUNTY OF WESTCHESTER**

**AND**

**STANDARD AMUSEMENTS LLC**

**DATED: [●], 2021**

APPROVED BOARD OF ACQUISITION & CONTRACT - 04/15/2021 - LISA MRIJAJ, SECRETARY

## TABLE OF CONTENTS

	<b>Page</b>
SECTION 1: Term; Co-Management Period; Commencement of Full Management of Playland Park .....	2
SECTION 2: Management of Playland Park .....	6
SECTION 2-a: County’s Duties for Maintenance and Repairs and Improvements .....	14
SECTION 2-b: PMA MOU .....	14
SECTION 3: Compensation.....	16
SECTION 4: Operating Plan.....	21
SECTION 5: Plans, Rules and Regulations.....	21
SECTION 6: Improvements to be undertaken by the Manager .....	22
SECTION 6-a. Improvements undertaken by County.....	32
SECTION 7: Utilities .....	36
SECTION 8: Temporary Closing of Playland Park or Selected Areas .....	37
SECTION 9: Permits and Sponsorships .....	38
SECTION 10: Assignment and Subcontracting.....	39
SECTION 11: Employees.....	40
SECTION 12: Equipment and Amusement Park Rides .....	43
SECTION 13: Subject to Appropriations .....	47
SECTION 14: Inspection.....	48
SECTION 15: Eminent Domain .....	48
SECTION 16: Condition of Playland Park.....	49
SECTION 17: Bankruptcy.....	49
SECTION 18: Audit Provisions.....	49
SECTION 19: Property Insurance, Damage or Destruction.....	50
SECTION 20: Standard Insurance and Indemnity.....	51
SECTION 21: Events of Default.....	51
SECTION 22: Remedies for Default.....	53
SECTION 23: Termination.....	53
SECTION 23A: Termination Due to Unexpected Risk Event.....	54
SECTION 23B: Liquidated Damages Payment.....	55
SECTION 24: Non-Discrimination.....	59

SECTION 25:	Compliance with Laws .....	59
SECTION 26:	MBE/WBE.....	60
SECTION 27:	Records and Intellectual Property .....	60
SECTION 28:	Independent Contractors.....	61
SECTION 29:	Criminal Background Disclosure.....	61
SECTION 30:	MacBride .....	61
SECTION 31:	Required Disclosure .....	62
SECTION 32:	No Waiver.....	62
SECTION 33:	No Lease .....	62
SECTION 34:	Notices .....	62
SECTION 35:	Definition of Commissioner .....	64
SECTION 36:	Entire Agreement .....	64
SECTION 37:	No Third Party Rights .....	65
SECTION 38:	Conflict of Interest.....	65
SECTION 39:	Force Majeure .....	65
SECTION 40:	Authority.....	65
SECTION 41:	Enforceability.....	65
SECTION 42:	County Attorney Opinion .....	66
SECTION 43:	Alternative Dispute Resolution.....	66
SECTION 44:	Mutual Release.....	68
SECTION 45:	Non-Disparagement.....	69
SECTION 46:	Estoppel Letters.....	69

**SCHEDULES**

SCHEDULE A	-	DRAWING OF PLAYLAND PARK
SCHEDULE A-1	-	SURVEY OF PLAYLAND PARK
SCHEDULE B	-	COUNTY-OWNED PERSONAL PROPERTY AND EQUIPMENT
SCHEDULE C-1	-	MANAGER’S CAPITAL PLAN
SCHEDULE D	-	MUTUALLY AGREED DRAW CONDITIONS FOR IRREVOCABLE, STANDBY LETTER OF CREDIT
SCHEDULE E	-	INSURANCE PROVISIONS (Contractor)
SCHEDULE F	-	FORM OF MONTHLY REPORTS

- SCHEDULE G - QUESTIONNAIRE REGARDING BUSINESS ENTERPRISES OWNED AND CONTROLLED BY WOMEN OR PERSONS OF COLOR
- SCHEDULE H - CRIMINAL BACKGROUND DISCLOSURE INSTRUCTIONS
- SCHEDULE I - CERTIFICATION REGARDING BUSINESS DEALINGS WITH NORTHERN IRELAND
- SCHEDULE J - REQUIRED DISCLOSURE OF RELATIONSHIPS TO COUNTY
- SCHEDULE K - COUNTY CAPITAL PLAN
- SCHEDULE L - LIST OF HISTORIC AMUSEMENT PARK RIDES
- SCHEDULE M - INTRA-GOVERNMENTAL MEMORANDUM OF UNDERSTANDING
- SCHEDULE N - MUTUAL RELEASE
- SCHEDULE O - FORM OF ESTOPPEL LETTER

APPROVED BOARD OF ACQUISITION & CONTRACT - 04/15/2021

ESA NDJAS SECRETARY

**THIS SECOND RESTATED AND AMENDED PLAYLAND MANAGEMENT AGREEMENT** (“Agreement”) made the [●] day of [●], 2021, by and between

**THE COUNTY OF WESTCHESTER**, a municipal corporation of the State of New York, having an office and place of business in the Michaelian Office Building, 148 Martine Avenue, White Plains, New York 10601, acting by and through the Department of Parks, Recreation and Conservation, and/or the Department of Public Works and Transportation and/or the County Executive, as appropriate (hereinafter the “County”),

and

**STANDARD AMUSEMENTS, LLC**, a for profit Delaware limited liability company having an office for the transaction of business at PO Box 809, Rye, New York 10580 (hereinafter referred to as “Manager”).

The County and Manager are hereinafter referred to collectively as the “Parties.”

**WITNESSETH:**

**WHEREAS**, Playland Park is a public park located within the County of Westchester, in Rye, New York (hereinafter referred to as “Playland Park”, “Playland” or the “Park”); and

**WHEREAS**, since 1928, the focal point of the Playland Park property has been an amusement park, which today has 50 major rides and attractions (the “Playland Amusement Park”). Playland also includes long stretches of scenic vistas of Long Island Sound, a beach, Olympic-sized pool, waterfront boardwalk, fishing piers, boating, dining and picnic areas, and indoor ice skating rinks; and

**WHEREAS**, the Parties previously entered into that certain Playland Management Agreement (the “Original Agreement”), dated as of August 10, 2015 (the “Original Agreement Commencement Date”), as amended and restated by that certain Restated and Amended Playland Management Agreement (the “2016 Agreement”), dated as of May 3, 2016, which agreements set forth the terms by which the County engaged the Manager to manage and operate Playland Park; and

**WHEREAS**, the Parties now desire to restate and amend the 2016 Agreement in its entirety as more particularly set forth herein.

**NOW, THEREFORE**, the Parties hereto in consideration of the terms and conditions herein contained agree that the 2016 Agreement shall be restated and amended in its entirety as follows:

**SECTION 1: Term; Co-Management Period; Commencement of Full Management of Playland Park**

A. The Parties acknowledge and agree that all of the following conditions have been satisfied as of [●], 2021 (such date being referred to herein as the “Effective Date”): (a) the Manager has delivered to the County evidence that the Manager has Fifteen Million (\$15,000,000.00) Dollars in unrestricted funding in the form of cash or liquid assets held directly by the Manager in its name and for its account; (b) the Parties have caused this Agreement to be executed as first above written; and (c) this Agreement has been approved by the County Board of Legislators and the County Board of Acquisition and Contract.

There shall be a period of co-management of Playland Park by the Parties which shall begin on the Effective Date and shall end on the Management Commencement Date (the “Co-Management Period”). The respective duties and responsibilities of the Parties during the Co-Management Period are described below in this Section 1.

Playland Park and the areas of Playland Park described herein, including, but not limited to, the Playland Amusement Park, beach, pool, fountain plaza, boardwalk, and boathouse are delineated in the attached drawing incorporated herein as **Schedule “A”** and in the attached survey incorporated herein as **Schedule “A-1”**. Schedule A and Schedule A-1 also delineate certain areas that are adjacent to but not a part of Playland Park, including Manursing Lake (also known as Playland Lake), the tidal gate by the Isthmus, and Edith G. Read Natural Wildlife Park and Sanctuary; the County shall remain responsible for these areas. Notwithstanding anything to the contrary in this Agreement, the Manager acknowledges and agrees that the County shall have access to the areas for which the County remains responsible at all times and for any reason whatsoever.

If the County determines in its sole discretion to permit activities on Manursing Lake, the County will determine the nature, scope, duration, and extent of such activities, and will give the Manager the option to be the exclusive provider of such activities prior to offering a concession to provide such activities to any other party or commencing an RFP process. The Manager shall have ninety (90) days to elect to provide such activities on Manursing Lake. If the Manager so elects, the provision of such activities on Manursing Lake will become a part of the Manager’s rights and responsibilities under this Agreement and subject to the terms hereof, including the Revenue Share; provided, however, that the Parties recognize that Manursing Lake is a part of the Edith G. Read Natural Wildlife Park and Sanctuary and shall remain subject to the governance, authority, and rules and regulations of the Department of Parks, Recreation and Conservation, the Board of Parks, Recreation and Conservation, and the Board of Legislators, including with respect to any activities on Manursing Lake. If the Manager does not elect to provide such activities, the County (i) may enter into an agreement for the provision of such activities with another party on substantially the same terms offered to the Manager with respect to the nature, scope, duration, and extent of such activities permitted on Manursing Lake, and on economics terms equivalent to or more favorable to the County than the economic terms offered to the Manager, or (ii) may decide not to permit such activities on Manursing Lake. The right of first refusal granted to the Manager pursuant to this Section 1(A) shall become operative each time the County seeks to permit activities on Manursing Lake; provided, however, that such right of first refusal shall not become

operative if the County is renewing or extending its agreement with its then-current vendor on substantially the same terms as its original agreement with such vendor.

If the County issues an RFP for the Playland Ice Casino (the "Ice Casino") and the Manager submits a conforming bid in response to such RFP, the County shall consider the Manager's bid fairly and objectively based on the same criteria as the County applies to all other conforming bids. In the event no conforming bids are submitted, the County shall consider any proposal the Manager makes fairly and objectively based on the same criteria as the County applies to any other proposal.

B. During the Co-Management Period, the County shall be the sole decision maker and continue to manage, operate, repair, maintain, make improvements to and have financial responsibility for costs and liabilities for Playland. During the Co-Management Period, the Manager shall assign the requisite number of personnel and/or consultants hired by the Manager to monitor County personnel, study Playland's operations, and take all steps necessary to complete its due diligence to prepare to assume the management and operation of Playland Park with the Manager's personnel on the Management Commencement Date. The Parties agree to make commercially reasonable efforts to cooperate with each other during this Co-Management Period to ensure the continuity of operations at Playland.

During the Co-Management Period, the Manager and the County shall commence regularly scheduled meetings at mutually agreed times/intervals to determine, and then commence to take, the steps necessary to facilitate a smooth transition to the Manager's operation and management of Playland Park as of the Management Commencement Date. Such transition shall include, but not be limited to:

- (i) no later than thirty (30) days after the Effective Date, the Manager shall be given an exclusive, royalty-free license to use and occupy the Residence located at West Lake Boathouse as offices and workspace, on the condition that the Manager shall only use this residence for Playland purposes; and
- (ii) no later than September 15, 2021, the County shall permit the Manager, with and through E.W. Howell Co., LLC, or a similarly qualified consultant, to conduct an inventory of all maintenance, parts, and equipment at Playland (such inventory not to be conducted on any Playland operating days).

Prior to the Management Commencement Date, and once each calendar year during the Management Term until the fifth (5<sup>th</sup>) anniversary of the Management Commencement Date, the Parties shall meet to discuss the Manager's current marketing plan for Playland Park, which shall address, among other topics, accessibility, affordability, and attractiveness of Playland Park to all citizens of Westchester County, including, in particular, less economically advantaged segments of the population.

C. During the Co-Management Period, the Parties shall create a schedule of items to be completed in order to transition full management and operation of Playland Park to the Manager. The items shall include, but are not limited to:

- (i) examination of the existing infrastructure and equipment, including the County's Point of Sale system;

- (ii) the County shall prepare a list of all contracts, licenses and other agreements that it currently has, which are used in the operation of Playland Park and present same to the Manager within forty-five (45) days after the Effective Date for the Parties. With respect to agreements that apply only to Playland Park and not to other locations, the Parties shall determine which, if any, such contracts (including, but not limited to, software licenses), will, if possible, either be assigned to the Manager for the remaining term of such contract or terminated by the County upon its terms and conditions. With respect to agreements that apply to multiple County locations including Playland Park, the Parties shall determine which, if any, such contracts shall be terminated with respect to Playland Park, if possible, and continued with respect to other County locations, and which shall be continued, with the portion of any cost attributable to the operation of Playland Park reasonably allocated by the County in good faith to the Manager (for which allocated cost the Manager shall reimburse the County within thirty (30) days of receipt of an invoice from the County for such cost).

Where commercially reasonable, the County shall not enter into contracts with respect to Playland Park that extend more than one calendar year beyond the calendar year in which the Management Commencement Date occurs.

If the Manager and the County mutually agree to the assignment of a contract and such contract is assigned to the Manager, the Manager shall be responsible to carry out the terms of that contract until it terminates. Upon the expiration or termination of any County contract, the Manager shall perform such services or will be responsible to enter into agreements for the same or similar purposes at its cost and expense. The following are exceptions to this provision:

- a. The license with New York SMSA Limited Partnership d/b/a Verizon Wireless, its successors or assigns, for microcell, rerad, or other similar or comparable in-building radio-distribution devices will not be assigned or terminated and will continue as a County contract unless otherwise agreed to by the Parties in writing in an amendment to this Agreement;
- b. Subject to the proviso below, the Manager agrees that it shall be subject to the existing and future County Parks contract for soda/water pouring rights as in effect on the Effective Date, and that any of its subcontractors shall also remain subject to such agreement(s); provided, however, that when the pouring rights contract between the County and Pepsico that is in effect as of the Effective Date expires, the Parties shall work cooperatively and use best efforts to separate, if possible, the pouring rights agreement for Playland from any pouring rights contract for the rest of the County's properties. Once separated, the Manager shall have sole authority to negotiate and enter into a new pouring rights agreement for Playland. If the County and Pepsico cannot agree on terms for separation of the pouring rights agreement for Playland from any pouring rights contract for the rest of the County's properties, then in all future County Parks contracts for soda/water pouring rights that include Playland, the County shall include

the following language: "Pricing shall be uniform among all County park facilities." In addition, not less than fifteen (15) business days prior to the County's execution of any future pouring rights agreement, the County will deliver a copy of such proposed agreement to the Manager for review and the County will consider the Manager's comments to such agreement, but under no circumstance will the County be obligated to make any revisions;

- c. The Parties agree that the following County residences are for use by the County in its discretion, but on the condition that they are used for Playland purposes only, and any license fees collected by the County for these residences shall remain County revenue: (i) Residence at East Lake Boathouse; (ii) Residence at 45 Roosevelt Avenue; and (iii) following the Management Commencement Date, the Residence at West Lake Boathouse, provided that in the event the County vacates or fails to occupy any portion of the Residence located at West Lake Boathouse following the Management Commencement Date, such portion of the Residence located at West Lake Boathouse premises shall revert to the Manager for its use for Playland purposes only in its discretion.
- d. The Parties agree, except as noted above, that the County shall have the right to retain all fees paid to the County pursuant to any such contracts, and to maintain these contracts and any successor contracts for the Agreement Term, at no cost to Manager.

(iii) develop all plans, rules and regulations as required by Section 5 below; and

(iv) create a list of County-owned items of personal property and equipment located at Playland Park to be transferred to the Manager for its use solely for Playland Park operations, which shall be attached hereto as **Schedule "B"** on or before June 30, 2021, and if it is later determined by the Manager that any item is not required for its use, the Manager shall return same to the County.

D. The Co-Management Period shall end, and the Manager shall commence full, exclusive management and operation of Playland Park, on December 1, 2021 ("Management Commencement Date"); provided, that the Manager shall not commence full management and operation of Playland Park on the Management Commencement Date unless and until the Manager has provided reasonable evidence to the County on or before the Management Commencement Date that the Manager has the remaining balance of the Manager's Investment (as defined in Section 3(D) hereof), other than the amount earmarked for the demolition and reconstruction of Charley's Pier Restaurant and Tiki Bar (the "Tiki Bar"), in an amount equal to Seventeen Million Seven Hundred and Fifty Thousand (\$17,750,000.00) Dollars (the "Remaining Balance"), in the form of either (i) cash or liquid assets held directly by the Manager in its name and for its account, (ii) an irrevocable, standby letter of credit (containing draw conditions substantially in the form attached to this Agreement as **Schedule "D"**) issued for the sole benefit of the Manager by a commercial bank with a credit rating from a nationally recognized rating agency that is at least as good as a Standard & Poor's long-term issuer credit rating of "A-" or better or (iii) a combination of (i) and (ii).

The term of this Agreement (the "Agreement Term") shall commence on the Effective Date and continue for thirty (30) years from the first November 1<sup>st</sup> occurring after the date on which the County reaches the 90% Threshold (such November 1<sup>st</sup>, the "Expiration Date"), subject to further extensions as a result of any Non-Excused County Delays (as defined below), and unless terminated earlier as provided herein. The term of the Manager's exclusive right to manage Playland Park under this Agreement (the "Management Term") shall commence on the Management Commencement Date and continue through and including the Expiration Date, subject to further extensions as a result of any Non-Excused County Delays, and unless terminated earlier as provided herein.

## **SECTION 2: Management of Playland Park**

Starting on the Management Commencement Date:

A. In accordance with the terms and conditions of this Agreement, Manager, at its sole cost and expense, shall manage, operate, improve, maintain and repair Playland Park in accordance with standard industry practices and shall in due course of daily management make all repairs to the grounds, walkways, paved areas, facilities, buildings, structures, equipment, rides and other infrastructure at Playland Park, except for the County's responsibilities set forth in this Agreement; and to also make restorations, renovations and improvements to Playland Park as outlined in the Manager's Capital Plan attached hereto as **Schedule "C-1"** (the "Manager's Capital Plan"), and any other work for which the Manager is responsible as more particularly set forth in this Agreement (collectively, the "Work").

In addition, the Manager shall be responsible to obtain and/or acquire all supplies, materials, accessories and equipment necessary to operate Playland Park. Notwithstanding the above, the Manager shall not be responsible to manage and operate the Ice Casino, the Tiki Bar (except to the extent the Tiki Bar shall be deemed to be a part of Playland Park in accordance with Section 6(F) below), or the Westchester Children's Museum.

From and after the Management Commencement Date until completion of the Manager's Capital Plan, the County and the Manager, and their respective external engineers and consultants, shall conduct conference calls or meetings at mutually convenient times every other week, or such other interval as the Parties may mutually agree, to discuss progress on the Manager's Capital Plan. The Manager shall provide the County with reasonable and timely access to the Manager's external engineers, construction managers, and other consultants for questions or information requests relating to material components of the Manager's Capital Plan upon request. Although the Manager shall provide information to the County concerning the Manager's Capital Plan as provided herein, the design and construction of each item outlined in the Manager's Capital Plan shall be solely under the direction and control of the Manager, except to the extent of the review and notice requirements under Sections 6 and 12 of this Agreement.

The Manager shall have flexibility to make adjustments to each item outlined in the Manager's Capital Plan in order to effectuate the Work contemplated therein and also to provide flexibility to implement the terms of this Agreement; provided, however, (a) the Manager may not increase the Overhead Allocation without the consent of the County, and (b) the Manager may not reallocate (i) more than 50% of the amount allocated to Amusement Attractions (as defined in

Section 6(F)) in the Manager's Capital Plan to any other category of expense or (ii) more than 50% of the amount allocated to Guest Experience in the Manager's Capital Plan to another category of expense other than Amusement Attractions without the consent of the County, such consent not to be unreasonably withheld. For the avoidance of doubt, the Manager's implementation of the Manager's Capital Plan shall be subject to all requirements for the Work and rights of the County set forth in this Agreement.

The County covenants and agrees that it shall not, by itself or through a third party, take any action or permit any action to be taken which permits any portion of Playland Park not managed by the Manager under this Agreement to be utilized for activities that will compete or interfere with any of the activities undertaken by the Manager at Playland Park. The foregoing provision shall not limit the County's existing arrangements with the Tiki Bar (unless and until the Tiki Bar shall be deemed to be a part of Playland Park in accordance with Section 6(F) below), the Ice Casino or the Westchester County Children's Museum, nor shall this provision in any way limit the existing park activities at Edith G. Read Natural Wildlife Park and Sanctuary.

The County hereby grants to Manager the exclusive right and privilege to undertake the Work during the Management Term. The Manager recognizes and understands that it must manage and operate Playland Park consistent with its current recreational uses and as a public park facility.

B. The County, its employees, agents and independent contractors shall have access to all of Playland Park at all reasonable times during the Management Term to carry out the County's responsibilities under this Agreement without materially disturbing Manager's business operations, in accordance with agreed to protocols for ordinary day-to-day activities and with reasonable notice and cooperative planning for major repairs or capital improvements, except if an emergency situation requires immediate action by the County, whether during business hours or not, then the Manager shall be notified within a reasonable time after the emergency occurs, if the Manager did not notify the County of the emergency. Manager shall provide a set of keys or access codes for any locks to the County for these purposes.

C. The Manager, either by itself or through an approved subcontractor, shall use commercially reasonable efforts to ensure that Playland Park shall be operational during the period commencing after the Management Commencement Date and ending on the Expiration Date or Termination Date (as each of those terms is defined below). It is also recognized and understood by the Parties that the operation of Playland Amusement Park, the beach area and the pool areas are material elements of this Agreement.

In addition, subject to Sections 6(D) and 8, the Manager shall keep all currently non-gated public spaces at Playland Park maintained and open to the public as described below. For purposes of this Agreement, "in-season" is defined as the time period when the Playland Amusement Park is in operation (as determined by the Manager's operating schedules approved pursuant to the Manager's Operating Plan described in Section 4 below), and "off-season" is defined as the time period when the Playland Amusement Park is not in operation (as determined by the Manager's operating schedules approved pursuant to the Manager's Operating Plan described in Section 4 below):

All public areas beginning immediately east of Forest Avenue, including:

- (i) East of Forest Avenue through the top circle, inclusive of all property down to the entrance circle (year-round during any hours for Ice Casino and Children's Museum operations or dawn to dusk off-season; dawn to park closing in-season);
- (ii) Employee Parking Lot/Bus Depot (year-round during any hours for Ice Casino and Children's Museum operations or dawn to dusk off-season; dawn to park closing in-season);
- (iii) Main Parking Lot (year-round during any hours for Ice Casino and Children's Museum operation or dawn to dusk off-season; dawn to park closing in-season);
- (iv) Beach/Pool Parking Lot (year-round during any hours for Ice Casino and Children's Museum operations or dawn to dusk off-season; dawn to park closing in-season);
- (v) Fountain Plaza (year-round during any hours for Ice Casino and Children's Museum operations or dawn to dusk off-season; dawn to park closing in-season);
- (vi) Main Boardwalk from Rye Town Park to Tiki Bar area and Seaside Walk entrance (dawn to dusk off-season; dawn to park closing in-season);
- (vii) Beach (dawn to dusk off-season for dog walkers with off-leash dogs; beach operations 10 a.m./beach closing in-season);
- (viii) Pier (dawn to dusk off-season; dawn to park closing in-season);
- (ix) Tiki Bar/Restaurant (10 a.m. up to 2 a.m. April through October);
- (x) Seaside Walk from the back of the Ice Casino including the North Boardwalk (dawn to dusk off-season; dawn to park closing in-season);
- (xi) Public Picnic Area/Lake Perimeter/Boathouse (dawn to dusk off-season; dawn to park closing in-season); and
- (xii) Roadway/property and additional parking past the Music Tower leading to Edith G. Read Natural Wildlife Park and Sanctuary entrance (dawn to dusk off-season; dawn to park closing in-season).

The duty of the Manager to keep the public areas open shall be subject to Force Majeure as defined in Section 39 and other unavoidable circumstances beyond the Manager's control requiring the closure of public areas in the interest of public safety, repair, or maintenance, and closures pursuant to Section 6(D); provided, that if the Manager is unable to keep a material portion of the public areas open due to Force Majeure or other unavoidable circumstances requiring the closure of public areas in the interest of public safety, repair, or maintenance, the Manager shall notify the County in writing within forty-eight (48) hours of the occurrence of such Force Majeure event or other unavoidable circumstance, describing in reasonable detail the nature of such Force Majeure event or unavoidable

circumstance and how such Force Majeure event or unavoidable circumstance is beyond the Manager's control.

It is recognized and understood by the Manager that the public must be guaranteed free access to Edith G. Read Natural Wildlife Park and Sanctuary and to the boardwalk and pier. The Manager shall also guarantee public access to the beach, provided that the Manager may establish fees for public access to the beach, pool and/or parking lot consistent with the fees set pursuant to Section 4 herein and with the policies adopted pursuant to Section 5 herein.

The Manager may utilize the parking lot between October 1 and April 30 (the "Parking Off-Season") for other temporary attractions, provided that it does not impede the parking arrangements with the Ice Casino, the Tiki Bar, and/or the Children's Museum, or the County's need to use the parking lot for emergency services or to support other temporary public needs (such as bus driver training, EVOC training, or charitable events) that are similar in kind and extent to such uses as of the Effective Date. Furthermore, notwithstanding anything to the contrary in this Agreement, during the Parking Off-Season the Manager shall ensure that at least 600 parking spaces (inclusive of parking spaces allotted to the Children's Museum, Ice Casino, and Tiki Bar) shall be made available to the general public free of charge at all times, provided, however, that if during the Management Term driving and parking practices change to such a degree that the provision of at least 600 parking spaces to the general public free of charge becomes no longer necessary to ensure the public's free access to Playland Park during the Parking Off-Season, the Manager may propose a change to this requirement that is consistent with continued free public access and the efficient use of the parking lot for consideration and approval by the Commissioner, such approval not to be unreasonably conditioned, withheld, or delayed. Furthermore, on days Playland Amusement Park is open during the Parking Off-Season, the Manager may charge for parking, but shall ensure that parking is made available to the general public free of charge until the later of (a) one (1) hour before the opening of Playland Amusement Park on those days and (b) 11:00 a.m.

D. All of the Work shall be carried out in conformity with all applicable federal, state and local laws, rules and regulations, orders and ordinances and other legal requirements, including, but not limited to, all applicable rules and regulations of the Department of Parks, Recreation and Conservation.

E. The Manager shall perform all the Work in a good and workmanlike manner in order to keep Playland Park in a clean, orderly, safe and operational condition. The Manager shall use commercially reasonable efforts to keep all grounds, sidewalks, streets, curbs, parking areas, access roads and roadways free of snow, ice, dirt, rubbish and other obstacles.

F. The Manager agrees that it shall be subject to the existing and future County Parks contract for solid waste removal at Playland Park and that any of its subcontractors shall also remain subject to such agreement. The Manager may, however, choose to provide solid waste removal services at Playland Park through its own contract for these services. This option may be exercised by the Manager in writing to the Commissioner of the Department of Parks, Recreation and Conservation (the "Commissioner") either thirty (30) days before the Management Commencement Date or thirty (30) days before the expiration of the County's current contract for solid waste removal services which is May 7, 2023. In the event the Manager provides solid waste

removal services, the Manager will be permitted to utilize the same transfer station or refuse disposal facility as that used by the County and will pay a tipping rate or disposal fee no greater than what the County pays for disposal. If the Manager does not provide such notice to the County, then the Manager shall continue to receive the solid waste removal services and shall reimburse the County for the portion of the solid waste removal fees attributable to solid waste removal from Playland Park. The Manager shall not be responsible to pay for solid waste removal services that are provided to the Ice Casino, the Tiki Bar (unless and until the Tiki Bar shall be deemed to be a part of Playland Park in accordance with Section 6(F) below) or the Westchester Children's Museum.

With respect to future contracts for solid waste removal at Playland Park, the County shall notify the Manager sixty (60) days before it issues a bid for these services and the Manager shall respond within thirty (30) days indicating whether or not the Manager wants to continue to receive solid waste removal services under the County's contract for said services.

In addition, the Manager shall provide for, or cause to be provided by its subcontractors, the following services: grease removal, fumigation, disinfecting and deodorizing services, and provide at least monthly professional extermination services. The Manager, at its sole cost and expense, shall comply with all County recycling policies.

G. In furtherance of the Operating Plan required by Section 4 below and the Rules and Regulations and Plans required by Section 5 below, the Manager shall expeditiously develop policies and procedures for the operation and management of Playland Park.

H. In order to carry out the Security and Emergency and Contingency Plan required by Section 5 below, the Manager shall ensure that there are appropriate safety, security, emergency and fire response systems, including equipment and personnel, necessary to protect both persons and property prior to the Management Commencement Date; provided, however, that the Manager shall not be responsible for any liability resulting from any pre-existing hazardous conditions known to the County.

In furtherance of the above, the Manager shall be responsible at its sole cost and expense to provide security guard services, which shall include, but are not limited to, all security functions, daily supervision, staffing, operation of security equipment and emergency procedures. In addition to the security guard services to be provided by Manager, the Manager agrees to pay the County as set forth below for police and park ranger staffing and services to be provided by the Westchester County Department of Public Safety Services at a staff and service level equivalent to the level of police and park ranger staffing and services that the County provided at Playland Park during 2019. Notwithstanding the foregoing, the County shall be responsible for security guard services at its construction sites during construction work in furtherance of the County's Capital Plan.

Payment by the Manager for police and park ranger staffing and services shall be made on a calendar year basis on August 31<sup>st</sup> of each year commencing with the August 31<sup>st</sup> immediately succeeding the Management Commencement Date. Until the date that the County meets the 70% Threshold, the annual fee payable by the Manager on each August 31<sup>st</sup> shall equal Four Hundred Thousand (\$400,000.00) Dollars. After the date that the County meets the 70% Threshold, the

annual fee payable by the Manager on each August 31<sup>st</sup> shall equal Six Hundred Thousand (\$600,000.00) Dollars. The amount due hereunder for the year in which the County meets the 70% Threshold shall be prorated based upon the date when the 70% Threshold was achieved by the County.

The amount to be paid for these police and park ranger staffing services shall increase each year after the second anniversary of the Management Commencement Date in an amount equal to the increase in percentage of salary provided for in the applicable collective bargaining agreement for these employees. If the Manager requests an increase in police and park ranger staffing services over the level of police and park ranger staffing services that the County provided prior to the Management Commencement Date, the County and Manager shall discuss the details of the requested additional police and park ranger staffing services and the Manager shall pay an additional fee for these police and park ranger staffing services over and above the stated fee, provided that such additional fee shall be proportionate to the additional services provided and in no event be ratably more than the cost of such additional police and park ranger staffing services.

I. The Manager shall not create, nor cause to be created, a public or private nuisance (as defined under New York law and determined by an order or judgment entered by a court of competent jurisdiction) in or around Playland. For the avoidance of doubt, it shall not be an Event of Default, and the County shall not have the right to terminate this Agreement, if the nuisance ceases or, if not, the Manager has taken reasonable steps to mitigate or eliminate any such nuisance.

J. The Manager shall provide such other facilities, services and activities as necessary to undertake the Work.

K. The County shall continue to provide bus service to Playland and the Manager shall not incur any expense in connection with the provision of this routine bus service. However, if the Manager requests an increase in services over the level of bus services that the County provided in 2019, the Parties shall discuss the details of the requested additional services and the Manager shall pay a reasonable fee for these additional services.

L. The County Executive, and the departments under the administrative jurisdiction of the County Executive, and the Manager agree that they shall use best efforts to cooperate with each other to allow the Manager to carry out the Work.

M. The Manager shall carry out the Work in a commercially reasonable manner (x) that, in the Manager's best judgment, is consistent with the use of Playland as a public park and (y) after the Manager has given due consideration to the expressed concerns of the surrounding community within one (1) mile of the entrance of Playland and the users of Playland Park.

N. The Manager shall have no liability for failure to perform its obligations under this Agreement to the extent, but only to the extent, that it is unable to perform by reason of either:

- (i) the failure of the County to provide any approval required under this Agreement and reasonably requested by the Manager as set forth in subparagraph W below, or the failure of any local, County, State or federal entity to provide any requisite permit or consent for any of the Work required under this Agreement, or

- (ii) the failure or refusal of the County to approve budgetary appropriations (or obtain funding from other sources) required by this Agreement, or
- (iii) the default by a third party not under the direction or control of the Manager, or
- (iv) Force Majeure as defined in Section 39.

O. The Manager or its designee shall attend quarterly meetings with County personnel at mutually agreeable times and locations.

P. The Manager shall cooperate and assist the County in dealing with all federal, state, and local agencies in all matters relating to the Work for which the County is responsible, and the County shall cooperate and assist the Manager in dealing with all federal, state, and local agencies relating to the Work for which the Manager is responsible.

Q. The Manager shall provide technical advice within the knowledge of Manager to the County on Playland Park operations, maintenance and marketing programs and projects. The prior sentence notwithstanding, the Manager shall have no obligation to seek such advice from outside experts or consultants when the advice requested by the County is outside the knowledge of Manager.

R. The Manager shall provide a written log of all accidents that take place at Playland Park where such accidents result in the occurrence of any of the following: (i) administration of first aid by the Manager; (ii) require a response by public safety services (Police/EMS/Fire); (iii) require a response by Manager's internal security service; or (iv) a report by a third party to the Manager of an accident that allegedly took place at Playland Park. Unless the Parties agree otherwise, the log shall reasonably describe the type of accident, the names of the individuals involved (if known), the circumstances surrounding the accident (if known), and what actions were taken in response to the accident (if known). The Manager shall notify the County's Director of Risk Management by the end of the business day following the date of such accident by providing the log in a format acceptable to the Director of Risk Management.

S. The County shall have the option to select and use appropriate space in the Administration Building and/or the Residence at West Lake Boathouse for use as office space, police facilities, information technology, filing and storage of documents, or other purposes deemed necessary by the County. Such space shall be in a location that is mutually acceptable to both Parties, as agreed to by the Parties in a separate writing. In addition, upon reasonable notice to the Manager, the Manager shall provide the County with reasonable access to any area of Playland Park required for the installation, upgrade, or maintenance of public safety systems, such as the County's public safety radio system.

T. The Manager may maintain its own designated website for Playland Park. If the Commissioner finds any website content to be clearly defamatory or offensive to the reasonable standards of the community, then the Commissioner shall request a modification to the website, which modification shall not be unreasonably withheld, conditioned or delayed by the Manager. The County's website, playlandpark.org, which promotes both those portions of Playland Park that are the subject of this Agreement and other portions that are not (e.g., the Ice Casino, the Edith G. Read Natural Wildlife Park and Sanctuary, and the Children's Museum), will continue to be

maintained by the County, provided, however, that the County's website shall include a prominent link on each page directing users to the website maintained by the Manager for all information concerning ticketing, hours of operation, attractions (i.e., rides, games, beach, pool, rentals), food and beverage, groups and events, parking, the sale of Playland Park merchandise, employment opportunities, entertainment, and other current information concerning visits to the portions of Playland Park operated by the Manager, and such information shall not be otherwise available on the County's website. The County shall not mimic or copy the design of the Manager's website in any way, nor use graphics, images, logos, or names that may be interpreted as the official Manager's website, without the Manager's written consent. The Manager's website shall similarly incorporate a link to the County's website for information concerning those portions of Playland Park that are not operated by the Manager. On or before the Management Commencement Date, the County shall transition the Facebook ("PlaylandPark-WestchesterCounty"), Twitter ("Playland-Park") and Instagram ("PlaylandParkOfficialPage") accounts for Playland Park to the Manager.

U. The Manager shall consider incorporating a water dependent boating component with docks and moorings (a "Marina") into the vision for the future of Playland in accordance with the resolution dated December 19, 2012 adopted by the City Council of the City of Rye, provided the operation of a Marina is determined to be reasonably feasible, financially viable and a net revenue generator on a continuing basis.

V. The Manager shall provide evidence to the County that the Amusement Park within Playland Park is in compliance with all ASTM F-24 standards that are applicable to owners and/or operators of amusement devices, including without limitation ASTM F-24 standards applicable to the maintenance of amusement devices.

W. The Manager, if necessary, shall comply with the provisions of Section 765.351 et seq. of the Laws of Westchester County ("the County Tree Law").

X. The Manager shall use its commercially reasonable efforts, in the Manager's sole judgment reasonably exercised, to attract qualified subcontractors consistent with the Manager's response to the County's RFP.

Y. Each approval, pursuant to or necessitated by the terms of this Agreement, of the Commissioner, or any other County commissioner or department under the administrative jurisdiction of the County Executive, shall not be unreasonably withheld, conditioned, or delayed.

Z. [Reserved].

AA. The Manager shall use commercially reasonable efforts, consistent with the proper maintenance and operation of the Playland Park, availability of funds and the safety of the public, to conserve water and electricity and to implement commercially reasonable conservation programs and to otherwise follow commercially reasonable practices for energy conservation to the extent practicable.

BB. It is a material element of this Agreement that the Manager utilize professional management in operating Playland Park. The management team responsible for operating Playland Park on behalf of the Manager shall consist of one or more persons serving in one or

more of the roles of Chief Executive Officer (“CEO”), Chief Operating Officer (“COO”), or General Manager (“GM,” and together with the CEO and COO, collectively, the “Key Personnel”), who shall, among one or more of them, have at least five years’ relevant experience managing or operating an amusement park of similar size or revenue to the Playland Amusement Park. Prior to the Management Commencement Date, the Manager shall identify to the County the Manager’s Key Personnel as of the Management Commencement Date.

The Manager agrees to notify the County in the event any Key Personnel ceases to perform or becomes unable to perform his or her job responsibilities, by reason of a voluntary or involuntary termination, death, or disability, within ten (10) business days of the incumbent’s departure or the Manager’s knowledge of such death or disability.

If no remaining Key Personnel have at least five (5) years’ relevant experience managing or operating an amusement park of similar size or revenue to the Playland Amusement Park, the Manager also agrees to (i) fill Key Personnel role(s) with at least one (1) person on an interim basis within thirty (30) days (if a permanent successor is not immediately available), provided that such period of time may be extended for a reasonable period if the Manager is diligently seeking to hire an interim replacement, and (ii) appoint a qualified permanent successor within one hundred and eighty (180) days, provided that such period of time may be extended for a reasonable period if the Manager is diligently seeking to hire a successor and has a qualified interim appointment in place.

When the Manager identifies a permanent successor(s), it shall notify the County of the proposed candidate(s) and include the candidate’s c.v. The Parties agree that any candidate with no prior felony convictions or terminations for cause based upon theft, embezzlement, or a crime of moral turpitude and with at least five (5) years’ prior experience in a senior executive or senior management position at an amusement park of similar size to the Playland Amusement Park shall be deemed qualified. It is also agreed that Nicholas Singer (or his successor) shall be deemed qualified to be Key Personnel on an interim basis. For the avoidance of doubt, the same process shall apply with respect to the replacement of any successor Key Personnel.

**SECTION 2-a: County’s Duties for Maintenance and Repairs and Improvements**

The County as owner of Playland Park shall remain responsible for extraordinary maintenance, repairs and improvements, which are those that occur infrequently, are substantial and increase the economic life of the asset. For example: maintenance, repair, or replacement of sewer mains, electrical feeders, major structural components of buildings, re-pavement of parking lot when necessary and the remediation of any hazardous conditions relating to the same, as long as such hazardous conditions are not caused by the Manager; except for those restorations, renovations and improvements to Playland Park as outlined in **Schedule “C-1”** which the Manager shall be responsible for and also for any new restorations, renovations and improvements to Playland Park to be undertaken by the Manager in the future.

**SECTION 2-b: PMA MOU**

1. The Manager will not undertake development of sport fields in the parking lot.

2. The Manager will provide the Committee, as designated by the Chairman of the Board of Legislators, quarterly financial information relating to the Manager within sixty (60) days of the end of each fiscal quarter of the Manager. The Parties agree that the information submitted by the Manager may contain confidential financial information, trade secrets or other proprietary data or information (collectively the “Confidential Information”) which if disclosed to the public could cause substantial injury to the Manager. The Manager agrees to insert the following notice in its Confidential Information that the Manager reasonably believes is not subject to disclosure under the New York State Freedom of Information Law, as set forth in Public Officers Law, Article 6, Sections 84-90: “The Manager believes that this information is protected from disclosure under the State Freedom of Information Law. The data contained herein provides financial information constituting trade secrets or information the disclosure of which would result in substantial injury to the Manager.”
3. The Committee designated by the Chairman of Board of Legislators, agrees that any Confidential Information designated with the above statement will be kept confidential, except with the specific prior written consent of the Manager. Notwithstanding anything to the contrary contained herein, the Manager expressly acknowledges that the County is subject to public disclosure laws and that this Memorandum of Understanding and the information provided by the Manager to the County in connection herewith, may be subject to disclosure pursuant to Federal, State and/or Local public information laws or regulations (e.g., New York State Freedom of Information Law, as set forth in Public Officers Law, Article 6, Sections 84-90, which mandates public access to government records). To the extent consistent with its public records, laws, and statutorily required disclosure, the County shall use best efforts to maintain the confidentiality of all Confidential Information supplied by the Manager and identified by the Manager as Confidential Information. If a request is made to view the Manager’s Confidential Information and such request is statutorily permitted, the County will notify the Manager of the request and of the date that such Confidential Information will be released, and the County, in its discretion, may seek a Court Order enjoining that disclosure. The County will release the requested Confidential Information on the date previously specified absent receipt of any such order.
4. Commencing on the May 1st following the Management Commencement Date and ending September 30th of each year, the Manager will provide to the Committee designated by the Chairman of the Board of Legislators, monthly operating statistics relating to attendance levels and revenue at Playland Park within 30 days of the end of each such month.
5. The Parties acknowledge that the Manager will consult and meet with an Advisory Committee at a minimum on a quarterly basis. Committee members shall be appointed by the Manager and may be selected from, but not be limited to, the following: Westchester County Historical Society, Save the Sound, City of Rye, Edith G. Read Nature Sanctuary, Rye Historical Society, Children’s Museum, Rye Town Park Commission or similar groups.

6. The Manager acknowledges that there are issues of mutual concern between the Manager and the City of Rye. The Manager agrees to act in good faith in discussing and negotiating these issues with the City.

### **SECTION 3: Compensation**

A. **No Further Deposits or Initial Payments Required.** The Parties acknowledge and agree that the Manager shall not be required to make any further deposits or Initial Payments (as defined in the 2016 Agreement) to the County, and the County may retain all such deposits or Initial Payments paid by the Manager to the County prior to the Effective Date. Such deposits and Initial Payments shall not be considered part of the Manager's Investment, as defined in Section 3(D) below.

B. **Annual Management Fee:** Beginning August 31, 2022, and on each August 31<sup>st</sup> thereafter until the Expiration Date or Termination Date as applicable, the Manager shall pay to the County a management fee (the "Annual Management Fee"). The first year's Annual Management Fee shall be Three Hundred Thousand (\$300,000.00) Dollars. The second year's Annual Management Fee shall be Four Hundred Thousand (\$400,000.00) Dollars. Each year thereafter, the Annual Management Fee amount from the prior year shall be adjusted by the change in the Consumer Price Index for All Urban Consumers (CPI-U) for New York-Northeastern New Jersey during the preceding twelve (12) month period ending December 31st, as published by the Bureau of Labor Statistics of the United States Department of Labor. Verification of the calculation for the increase in the Annual Management Fee must be submitted to the Commissioner by June 30<sup>th</sup> of each year. If the Bureau of Labor Statistics ceases to publish the CPI-U or any comparable revised or successor index, then the Manager, in consultation with the County, will substitute a suitable index of the cost of living for the area in which Playland is located, as published by another federal government agency or a responsible financial periodical of recognized national authority. Notwithstanding the foregoing, the amounts payable under this paragraph shall be abated during a given calendar year pro rata for any period during which the County exercises its rights under Section 8, calculated based on the number of days during such calendar year the County exercises such rights *divided by* 365 days.

C. **Revenue Share and Revenue Target:** Playland shall, for each calendar year starting in the calendar year following the calendar year in which the 70% Threshold is satisfied, target Gross Revenue (as defined below) at least equal to the Revenue Target (as defined below), exclusive of Gross Revenue attributable to the Tiki Bar. The "Revenue Target" shall initially be Twelve Million (\$12,000,000.00) Dollars and shall be adjusted on each December 31 (starting on December 31, 2022), to increase by any amount equal to the corresponding increase in the CPI-U since the preceding December 31, as published by the Bureau of Labor Statistics of the United States Department of Labor. Verification of the calculation for the increase in the Revenue Target must be submitted to the Commissioner by June 30<sup>th</sup> of each year. If the Bureau of Labor Statistics ceases to publish the CPI-U or any comparable revised or successor index, then the Manager, in consultation with the County, will substitute a suitable index of the cost of living for the area in which Playland is located, as published by another federal government agency or a responsible financial periodical of recognized national authority.

Beginning with Playland's 2023 season, the Manager shall pay the County annually an amount equal to five (5%) percent of Gross Revenue generated from Playland Park above the Revenue Target (the "Revenue Share"); provided, that the County shall not be entitled to the Revenue Share in any year in which a Non-Excused County Delay is pending. "Gross Revenue" shall be calculated as (x) the gross revenues of the Manager generated from Playland Park, *minus* (y) any sales tax collections of the Manager generated from Playland Park. For purposes of calculating the Revenue Share, the Revenue Target shall include Gross Revenue attributable to the Tiki Bar, if any.

If and only to the extent the annual Revenue Share payment is payable in a given year, such annual Revenue Share payment shall be payable within thirty (30) days of the completion of the annual audited financial statements of the Manager for such year, but in no event later than one hundred and eighty (180) days after the end of the calendar year for which such Revenue Share payment is attributable. The Manager shall, at its sole cost and expense, maintain audited financial statements prepared by a nationally recognized independent Certified Public Accountant ("CPA"). Within ninety (90) days after the end of each calendar year, the Manager shall report to the County its Gross Revenues for the prior year and shall confirm, within one hundred and fifty (150) days after the end of the prior calendar year, that the Manager's independent CPA audited the Manager's Gross Revenues so that the County may make the necessary calculations in support of the Revenue Share. The County reserves the right to, at its own cost, have its own CPA conduct an independent financial review of the calculation of the Revenue Share. In the event the County's auditor disputes the Manager's calculation, the Parties shall submit the dispute to the Monitor (as defined below) in accordance with Section 43. The Parties shall equally share in the cost of this review. The Parties agree to accept the conclusions of the Monitor.

If the Manager's Gross Revenue (exclusive of Gross Revenue attributable to the Tiki Bar, if any) fails to achieve the Revenue Target for four (4) consecutive years, such failure shall be considered an Event of Default, and the County may terminate this Agreement in accordance with Section 23(A) (a "Revenue Performance Termination"); provided, however, that such failure shall not be considered an Event of Default, and the County may not exercise a Revenue Performance Termination, if (i) there is an uncured Event of Default on the part of the County under this Agreement or (ii) the Manager fails to achieve the Revenue Target as a result of a Force Majeure event or other unavoidable circumstances beyond the Manager's control, provided that the Manager has notified the County in writing within thirty (30) days of the occurrence of such Force Majeure event or other unavoidable circumstance, describing in reasonable detail the nature of such Force Majeure event or unavoidable circumstance and how such Force Majeure event or unavoidable circumstance is beyond the Manager's control (it being understood that changes in consumer preferences, variations in weather (such as an unusual number of rainy days or unusually hot or cold weather) that are not the result of Force Majeure events, routine macroeconomic changes (such as an ordinary business cycle contraction (i.e., not including a recession akin to the Great Recession of 2008-2009)), and similar ordinary-course, inherent risks of operating an amusement park shall not be considered "unavoidable circumstances beyond the Manager's control" for purposes of this provision). The Revenue Target shall be reduced during a given calendar year pro rata for any period during which the County exercises its rights under Section 8, calculated based on the Gross Revenue generated on the same days of the month of the prior year. For example, if the County exercises its rights under Section 8 from Thursday, July 24, 2025 through Sunday, July 27, 2025, the Revenue Target for 2025 would be reduced by the Gross Revenue generated from Thursday, July 25, 2024

through Sunday, July 28, 2024. In the event of a Revenue Performance Termination, the Manager shall be entitled to the Liquidated Damages Payment payable upon a “Termination Not Due to an Event of Default,” provided that the Manager shall not be entitled to any interest on such Liquidated Damages Payment.

D. **Manager’s Investment:** The Manager shall make an investment of Thirty-Five Million (\$35,000,000.00) Dollars in equipment and physical improvements to the physical infrastructure of Playland following the Effective Date (the “Manager’s Investment”), of which Two Million Two Hundred and Fifty Thousand (\$2,250,000.00) Dollars shall be earmarked for the demolition and reconstruction of the Tiki Bar under the circumstances provided in Section 6(F); provided, that if the Manager declines to proceed with demolishing and reconstructing the Tiki Bar under the circumstances provided in Section 6(F), the Manager’s Investment shall be Thirty-Two Million Seven Hundred and Fifty Thousand (\$32,750,000.00) Dollars. The Manager’s Investment shall include all the Hard Costs and Soft Costs (each as defined below) of all capital expenditures related to the physical improvements to, and purchase of equipment relating to, Playland following the Effective Date, including expenditures for design and engineering of those items, and shall not include the Manager’s operating expenses or overhead, provided, however, that the Manager may allocate up to Five Million (\$5,000,000.00) Dollars of the Manager’s Investment toward overhead and operating expenses (the “Overhead Allocation”). The Overhead Allocation may include all overhead and operating expenses of the Manager, including reimbursement of expenses by the Manager to third parties who are performing services involving the design, construction, development, maintenance and/or operation of Playland, but shall not include (i) any Hard Costs or Soft Costs, (ii) expenses the Manager incurs on behalf of third parties unrelated to the performance of such services, such as expenses on behalf of its investors and potential investors, and (iii) legal expenses incurred for (x) capital raising for the Manager or (y) any action, proceeding, dispute, or negotiation between the County and the Manager in relation to this Agreement in which the County and the Manager are adverse. For example, ordinary-course legal expenses incurred in relation to obtaining permits, licenses, other authorizations to allow performance of the Manager’s Work, or routine information sharing under this Agreement may be included in the Overhead Allocation, even if the County is technically the “adverse” party in relation to such an application, but legal expenses incurred in relation to a dispute between the County and the Manager about the Manager’s (or the County’s) obligations under this Agreement, or negotiating the resolution of such a disputed issue, may not be included in the Overhead Allocation.

The Manager shall invest the Manager’s Investment by no later than five (5) years after the Management Commencement Date. If the Manager fails to invest the Manager’s Investment by such deadline, the County may declare an Event of Default and terminate this Agreement in accordance with Sections 22 and 23(A), unless such failure shall have been caused by Force Majeure or other unavoidable circumstances beyond the control of the Manager, and the Manager has notified the County in writing within thirty (30) days of the occurrence of such Force Majeure event or other unavoidable circumstance, describing in reasonable detail the nature of such Force Majeure event or unavoidable circumstance and how such Force Majeure event or unavoidable circumstance is beyond the Manager’s control. It shall not be an Event of Default if and to the extent that the Manager shall have been prevented from making the Manager’s Investment in accordance with the foregoing schedule by an injunction or compliance with other applicable law.

Until the Manager's Investment is spent, the Manager shall provide monthly reports to the County substantially in the form attached to this Agreement as **Schedule "F"** delineating all funds spent by the Manager that the Manager claims as part of the Manager's Investment. Such monthly reports shall be provided to the Commissioner of Finance within forty-five (45) days after the last day of the month to which such reports relate. The Manager and the County shall meet or confer once a month to review all expenditures in the prior month's report. The County's right to audit the Manager's monthly reports shall be governed by Section 18, as set forth below.

In the event that the Manager completes its anticipated capital improvements for less than the Manager's Investment, the Manager shall pay the County the difference between the Manager's Investment and the amount actually expended by the Manager to complete its capital projects, as set forth in the Manager's monthly reports, in addition to any fees or other amounts payable to the County set forth herein. Any such difference shall be payable within thirty (30) days of the date that is five (5) years after the Management Commencement Date.

As used in this Section 3(D), "Hard Costs" shall mean all costs and expenses payable for supplies, materials, and labor with respect to any project in the Manager's Capital Plan.

As used in this Section 3(D), "Soft Costs" shall mean all costs other than Hard Costs that are ordinarily and reasonably incurred in relation to construction, physical improvement, and development projects of the kind set forth in the Manager's Capital Plan. For example, Soft Costs would include fees incurred for architecture, design, planning, engineering, permitting, inspection, attorneys, or insurance in relation to any project in the Manager's Capital Plan.

In the event that the County and the Manager are unable to agree on Plans and Specifications for the construction of the new Tiki Bar restaurant, or the Manager is unable to obtain the permits and approvals required by applicable law to proceed with such construction, the Manager may decline to proceed with the demolition and construction of the new restaurant, as provided in Section 6(F), in which event the required Manager's Investment shall be reduced to Thirty-Two Million Seven Hundred and Fifty Thousand (\$32,750,000.00) Dollars.

For the avoidance of doubt, no amounts expended by the Manager prior to the Effective Date, regardless of their nature, shall be considered part of the Manager's Investment.

E. **County Debt:** The Parties recognize that the County has significant debt with respect to Playland Park that the County is obligated to repay. The Manager shall not have any obligation of any kind with respect to the County's existing debt relating to Playland Park or any other County debt.

F. **Late Payments:** If any payment due from the Manager is not made within sixty (60) days after the date due and payable under this Agreement, such unpaid amount shall bear interest at the rate of interest which is three (3%) percent over the prime rate of interest as published daily in the Wall Street Journal or any successor publication thereto as the "prime rate" then in effect. Such interest rate shall be computed separately for each month, or any part thereof, during which any amount upon which interest is to be charged hereunder remains unpaid hereunder.

G. **Real Property Taxes:** It is the County's position that Playland Park and operations by the Manager at Playland are not subject to property taxes. If, however, all or part of Playland,

excluding the Tiki Bar and the Ice Casino, is subject to real property taxes, the Manager shall pay the first Fifty Thousand (\$50,000.00) Dollars of such taxes annually. The County shall be responsible to pay any such real property taxes on all or part of Playland, excluding the Tiki Bar and the Ice Casino, in excess of Fifty Thousand (\$50,000.00) Dollars per annum. However, should real property taxes be assessed on all or part of Playland, excluding the Tiki Bar and the Ice Casino, in excess of One Hundred Thousand (\$100,000.00) Dollars per annum, the Manager shall have the option, exercisable each year in which the real property taxes remain over One Hundred Thousand (\$100,000.00) Dollars, to either (x) challenge such real property taxes, in which case, the Manager shall commit to pay the taxes in excess of One Hundred Thousand (\$100,000.00) Dollars, if any, following such challenge, or (y) absent a challenge, pay any real property taxes in excess of One Hundred Thousand (\$100,000.00) Dollars.

- (i) If the tax is finally determined to be in excess of One Hundred Thousand (\$100,000.00) Dollars, and the Manager fails to timely pay such excess amount in any tax year, such failure shall be an Event of Default on the part of the Manager and the County shall have the right to terminate this Agreement immediately pursuant to Section 23(A), and the Manager shall be entitled to the applicable Liquidated Damages Payment payable upon a "Termination Due to an Event of Default on the Part of the Manager."
- (ii) If within thirty (30) days of the real property tax assessment the Manager does not notify the County of the Manager's election to challenge the real property taxes and pay any excess tax or to pay the taxes in excess of One Hundred Thousand (\$100,000.00) Dollars per annum, the County shall have the right to terminate this Agreement immediately and the Manager shall be entitled to the applicable Liquidated Damages Payment payable upon a "Termination Not Due to Event of Default."

If the Tiki Bar is deemed to be a part of Playland Park in accordance with Section 6(F) below, the Manager shall be responsible for any real property taxes attributable to the Tiki Bar from and after the date the Manager assumes management of the Tiki Bar and shall reimburse the County for any real property taxes charged to and paid by the County in respect of the Tiki Bar after such date. The Manager may challenge the assessment of such real property taxes at its own expense, but shall remain responsible for the timely payment of such real property taxes regardless of the initiation of any such challenge. In the event that such a challenge results in an abatement of real property taxes previously charged and a tax refund is paid to the County in respect of real property taxes paid by the Manager or for which the Manager reimbursed the County, the County shall pay such tax refund to the Manager.

H. **Unexpected Capital Expenditures.** Unexpected and unplanned capital expenditures including, but not limited to, damage to property, buildings or equipment due to Force Majeure as defined in Section 39 shall be paid for by the County only to the extent that the County obtains insurance proceeds and/or disaster recovery funding or similar sources of funds payable to the County. The County shall provide funding for such expenditures consistent with Section 13. However, nothing contained herein shall limit the Manager's rights consistent with Section 23A and 23B below.

#### **SECTION 4: Operating Plan**

The Manager shall, not less than sixty (60) days prior to the Management Commencement Date and by March 1<sup>st</sup> of each year thereafter, prepare and submit to the Commissioner for the Commissioner's review and approval, a written annual operating plan ("Manager's Operating Plan"). Notwithstanding any inconsistent provision of this Agreement, the Commissioner shall not deny a proposed operating plan unless he/she reasonably concludes that implementation of such plan will materially adversely impact the operation of Playland. If the Commissioner does not provide the Manager within thirty (30) days a detailed line item response enumerating the particular components of the proposed operating plan which in his or her reasonable view materially adversely impact the operation of Playland, then said plan shall be deemed approved. If the Commissioner does not approve the proposed operating plan in full, then the particular components of the Manager's Operating Plan not in dispute will go into effect and the components of the Manager's Operating Plan in dispute will revert to the prior year Manager's Operating Plan and shall continue in force and effect until the disputed components of the new plan are approved, provided, however, in the event that a disputed component relates to a capital improvement or investment to be undertaken by the Manager, no such capital improvement or investment will be required to be made until such disputed component is resolved. The foregoing proviso does not apply to disputed operating expenditures. In such event, it is understood that the Manager may adjust the dollar amounts contained in the disputed components of the prior year's plan by up to the greater of five (5%) percent or the prior year CPI up or down until a new plan takes effect.

The Manager's Operating Plan shall include, but not be limited to: the Manager's costs for payroll and employee benefits, in summary form; a maintenance and repair schedule; a schedule of proposed changes to Playland's fee structure; a schedule of material agreements for the provision of goods or services on site at Playland, including the termination date of such agreements and any new agreements or renewal agreements that the Manager plans to enter into during the year to which the Operating Plan relates (to the extent known to the Manager at the time of submission of such Operating Plan); recommendations, if any, for revisions to any of the Plans, Rules and Regulations required under Section 5 below; schedules, if any, for new substantial improvements of Playland facilities and acquisition of equipment; schedule of proposed material changes to staffing levels; proposed material changes to the advertising and promotional programs; and daily operating schedule including changes to the length of season, hours of operation, and any other relevant factors which may affect Playland's operations and management.

#### **SECTION 5: Plans, Rules and Regulations**

The Manager shall prepare, as part of Manager's Operating Plan, the below described plans, rules and regulations for Playland Park, and any amendments thereto, as follows:

- (i) Prepare in consultation with the Commissioner a set of written Rules and Regulations governing public use of and behavior in Playland Park, including, but not limited to, visitor conduct, public hours and rules to ensure the well-being and safety of the public, the enjoyment of Playland Park by the public for its intended purposes, and the safe and efficient conduct of activities in Playland Park. In addition, the Manager may from time to time propose modifications of the Rules and Regulations. The Commissioner's approval of such modifications shall not be

unreasonably withheld. All Rules and Regulations shall be promulgated in accordance with applicable law, and thereafter enforced by the Manager.

- (ii) Prepare in consultation with the Commissioner and the Commissioner-Sheriff of the County Department of Public Safety, and the Commissioner of the Department of Emergency Services, a written Security and Emergency Contingency Plan, in conformity with applicable federal, state and local laws, rules and regulations. Such Security and Emergency Contingency Plan shall be designed to protect the safety and security of the general public and the Parties' personnel and property on a daily basis.

**SECTION 6: Improvements to be undertaken by the Manager.**

A. **Material Improvements.** "Material Improvement" shall mean any renovations, construction or demolition at Playland Park of any of the following:

- (i) a permanent building with a foundation or any of the following structures:
  - a. the Colonnades;
  - b. the Towers;
  - c. the North, South, and Kiddyland Boardwalks;
  - d. the North and South Picnic Pavilions;
  - e. the parking lots;
  - f. the pool;
  - g. the boat pier on the Long Island Sound;
  - h. the plaza fountain; and
  - i. the bus depot, including the canopies;

where the renovations, construction or demolition would materially change the size, location, or (with respect to items other than the parking lots, the pool, and the bus depot) exterior structure of such permanent building or structure, or otherwise change such permanent building or structure in a manner that is materially incompatible with and materially detracts from the historic character and range of architectural styles then or previously existing at Playland Park (it being understood that a style (e.g., a contemporary style) that is different from the historic range of styles existing at Playland Park shall not be deemed *per se* incompatible, provided that it does not materially detract from the historic character and range of architectural styles of Playland Park as a whole);

- (ii) utilities infrastructure attached to the land, where the renovations, construction or demolition would materially increase the load of or demand upon the subject utilities; or

- (iii) any capital project financed by the County through the issuance and sale of general obligation bonds of the County prior to (i) five (5) years since substantial completion for capital projects for which the probable period of usefulness is ten (10) years or more, or (ii) two-and-a-half (2.5) years since substantial completion for capital projects for which the probable period of usefulness is less than ten (10) years, where the renovations, construction or demolition would materially alter or physically impair the capital project in a manner that cannot be reasonably restored and remediated, or that the Manager has not, if the County has so requested, agreed to restore and remediate at the Manager's sole expense upon termination or expiration of this Agreement.

The following shall not constitute Material Improvements and therefore shall not be subject to the procedures set forth in Section 6(B):

1. the addition, removal, renovation, construction, demolition or modification of (x) games and concessions, and (y) portable or prefabricated kiosks or other modular structures that do not have a permanent foundation, and (z) the decorative or non-structural exteriors or interiors of buildings, including but not limited to restaurants, retail shops and arcades, provided that the work does not result in a material change to the exterior style of the building;
2. seasonal, holiday or temporary displays, decorations or experiential features and activities;
3. removal, installation and relocation of rides (and related utilities, fixtures, appurtenances, control and other ancillary structures related to the operation of the ride (with or without foundations), and improvements), if such rides are subject to Section 12 (and such utilities shall likewise not be subject to Section 6(B) but rather to Section 12); and
4. landscaping (including "softscape" improvements such as plantings and "hardscape" improvements such as benches, borders or walkways), provided that such landscaping does not materially adversely affect (x) utilities infrastructure attached to the land, (y) one of the structures listed in clause (1) above, or (z) a bonded County capital project that is still within its period of probable usefulness.

For the avoidance of doubt, the County review provided for herein is in addition to, and not in lieu of, any review, permitting, inspection, certification, or other approval process that may apply to an improvement under applicable law, and shall not operate as an estoppel with respect to any such permitting, inspection, certification, or other approval process.

**B. County Review of Plans and Specifications.** The review process set forth in this Section 6(B) shall apply to Material Improvements only, as defined above. The Manager shall deliver all materials to be submitted or provided to the County hereunder to the Commissioner and the Commissioner of the Department of Public Works and Transportation ("DPW&T Commissioner") or such Commissioners' designees, who shall involve other County Departments or personnel in the review process as necessary or appropriate, provided that such involvement

shall not expand the scope of the review set forth in this Section 6(B). It is the intention of the Parties that they work together in good faith to ensure compliance with the matters identified in clauses (i) through and including (v) below through this review process as quickly, efficiently and collaboratively as possible, subject to the Parties' respective rights to seek resolution of any disputes through the dispute resolution procedures provided in Section 43 of this Agreement.

Prior to submitting any Plans and Specifications (as defined below) for review in accordance with this Section 6(B), the Manager may submit a concept drawing to the County, in which event the County shall, within ten (10) business days, meet and confer with the Manager to provide preliminary substantive feedback on such drawing with respect to the matters in clauses (i) through and including (v) below, to the extent that the submission contains sufficient information for the County to provide such feedback.

The Manager shall provide the County for its review and comment in accordance with this Section 6(B), with record copies of plans and specifications at each of the fifty (50%) percent stage and the ninety (90%) percent stage of design and construction for any Material Improvements that require the preparation of plans and specifications under applicable codes, rules and regulations ("Plans and Specifications"), prior to proceeding with any such Material Improvement. If a Material Improvement does not require Plans and Specifications under applicable codes, rules and regulations, then the Manager may proceed without County review under this Section 6(B).

Within ten (10) business days of each submission of Plans and Specifications by the Manager, the County shall provide written notice to the Manager whether it intends to review such Plans and Specifications in accordance with this Section 6(B). If such notice is timely received and states that the County does not intend to review such Plans and Specifications, or if no such notice is timely received from the County, then the Manager may proceed without further review by the County pursuant to this Section 6(B), unless the Material Improvement is at the fifty (50%) percent design stage, in which case the Manager may proceed to submit Plans and Specifications at the ninety (90%) percent design stage. If such notice is timely received and states that the County intends to review the Plans and Specifications, then the Manager may (x) if at the fifty (50%) percent design stage, proceed to the ninety (90%) percent design stage, or (y) if at the ninety (90%) percent design stage, proceed to commence the physical work entailed in such Material Improvement (subject to obtaining all required permits and approvals) without further review under this Section 6(B), unless in each case the County has delivered a written report to the Manager on or before the applicable Section 6 Response Date (as defined below), and describing in detail its findings limited to one or more of the following:

- (i) the Material Improvement described in the Plans and Specifications (a) violates any applicable codes, rules and regulations in effect at the time of construction, and citing the specific violations, (b) in the case of buildings or structures and capital projects, represents an architectural style that is materially incompatible with and materially detracts from the historic character and range of architectural styles then or previously existing at Playland Park (it being understood that a style (e.g., a contemporary style) that is different from the historic range of styles existing at Playland shall not be deemed *per se* incompatible, provided that it does not materially detract from the historic character and range of architectural styles of

Playland Park as a whole), or (c) does not show reasonable access to the Material Improvement for emergencies and maintenance servicing;

- (ii) the Manager has not submitted (currently or with a prior submission) one or more engineering or other report(s) from one or more New York State-licensed professional(s) stating that the Material Improvement will comply, as designed, with all applicable federal, state and County environmental laws;
- (iii) the Manager will be unable to complete such Material Improvement in compliance with Section 2(M), or the Plans and Specifications omitted one or more of the following: (a) a closure plan pursuant to Section 6(D); (b) listing of performance bonds to be obtained pursuant to Section 6(E); (c) listing of insurance coverage to be obtained pursuant to Section 6(J); or (d) the information required under Section 6(O) relating to SEQRA, in each case, to the extent required and applicable;
- (iv) the Material Improvement may result in losing the historic designation of Playland Park, provided that if the parties are unable to agree on this clause (iv), the Parties shall jointly seek guidance from the New York State Historic Preservation Office or such other regulatory body that may have oversight over such designation (“SHPO”), and the Manager shall proceed in accordance with any direction or guidance received from SHPO if the Manager proceeds with the Material Improvement; provided, however, that neither Party shall have any substantive *ex parte* communication with SHPO concerning the subject Material Improvement; or
- (v) the Material Improvement will materially adversely affect the County’s obligation to maintain the Park for the public’s use and enjoyment.

If a report making one or more such findings has been timely delivered, then the County and the Manager shall work together cooperatively and in good faith to resolve the findings cited in the report addressing clauses (i) through and including (v) above. If the Parties are unable to agree as contemplated under this Section 6(B), any Party may at any time submit the disputed finding(s) to the Monitor for resolution. If the Manager submits revised Plans and Specifications to address the findings, the County shall issue a revised report within ten (10) business days after receipt of such re-submission (including each successive re-submission, if there are more than one) by the Manager. If the County fails to issue a timely revised report in response to the Manager’s submission of revised Plans and Specifications as provided herein, the Manager may proceed as if the County had failed to issue a timely report in response to the Manager’s initial submission of Plans and Specifications for that Material Improvement.

Once either the Manager and the County mutually agree in writing, or the Monitor has determined, that the findings cited in the report addressing clauses (i) through and including (v) above are not substantiated or have been satisfactorily resolved, then the Manager may proceed to the ninety (90%) percent design stage or to commence the physical work entailed in such Material Improvement (subject to obtaining all required permits and approvals), as applicable.

If the County declines to review the Plans and Specifications submitted at the fifty (50%) percent design stage or fails to submit a timely report with respect to those Plans and

Specifications, it may review the Plans and Specifications submitted at the ninety (90%) percent design stage, provided, however, that it may not make for the first time at the ninety (90%) percent design stage any findings addressing clauses (i) through and including (v) above that were reasonably evident from and could reasonably have been identified based upon the Plans and Specifications submitted at the fifty (50%) percent design stage. Notwithstanding anything in this Section 6(B) to the contrary, if the Parties are unable to resolve any findings at the fifty (50%) percent design stage, the Manager may nevertheless proceed to the ninety (90%) percent design stage, so long as those findings are resolved either by mutual agreement or by the Monitor at the ninety (90%) percent design stage.

A “Section 6 Response Date” means, with respect to Plans and Specifications submitted under this Section 6(B), the twentieth (20th) business day after the Manager’s submission thereof (inclusive of the initial ten (10) business days during which the County may notify the Manager of its decision to review such Plans and Specifications), unless the County is then reviewing Plans and Specifications with respect to three (3) or more Material Improvements submitted by the Manager pursuant to this Section 6(B), and for which the applicable Section 6 Response Date has not expired, in which case, the twenty-fifth (25th) business day after such submission, provided that the County is diligently conducting all such reviews.

C. **Approvals for Improvements.** The Manager will procure all required permits and approvals for any improvement by any and all governmental authorities having jurisdiction thereof for any improvement to be undertaken by the Manager at Manager’s cost and expense, and, if necessary, the County shall cooperate with Manager to procure same.

At the request of the Manager, the Commissioner will use commercially reasonable efforts to cooperate with the Manager to obtain all non-County approvals, and the Manager is hereby authorized to submit applications in the name and stead of the Commissioner to obtain such approvals to the extent permissible under applicable law, but without expense to the County in procuring any such permits and approvals, and subject to the provisions of Section 6(B)(iv) above and Section 12(B)(iv) below respecting seeking joint guidance from SHPO.

To the extent that any County approvals can only legally be issued during implementation or upon completion of the improvements, any approval of the Commissioner or any other County commissioner or department under the administrative jurisdiction of the County Executive shall be subject to the provisions of Section 2(Y) above.

D. **Closures.** During the implementation of any improvement or Work to be undertaken by the Manager at Manager’s cost and expense, portions of Playland Park may be closed and the Manager shall not be required to provide any services to the public with respect to the closed area during such periods of demolition, construction, renovation, repairs and equipping until such portion of Playland Park is reopened to the public.

E. **Performance Bonds.** No capital improvements, material or otherwise, or changes, alterations or non-recurring maintenance to existing or future improvements, which are undertaken by the Manager at Manager’s cost and expense and which are estimated to cost more than Two Hundred and Fifty Thousand (\$250,000.00) Dollars, shall be commenced unless at the time thereof the Manager shall have obtained a performance and payment bond, for or from each prime

contractor performing construction work, guaranteeing the full and faithful performance and completion of construction and the payment of the entire cost thereof, and having as a surety thereon a surety company of recognized responsibility and duly authorized to do business in the State of New York in a penal sum equal to one hundred (100%) percent of the estimated cost of construction.

F. **Unions.** The Parties hereto anticipate, pursuant to Chapter 635 of the Laws of Westchester County, the use of union labor under Project Labor Agreements between the County's contractors and the Building and Construction Trades Council of Westchester and Putnam Counties, New York AFL-CIO, and its affiliated Local Unions (individually or collectively, the "Unions") for all construction work entailed in the County's Capital Projects ("County Construction Work"), to the extent consistent with applicable law.

(i) **Playland Construction Work:** The Manager agrees that whenever it undertakes a construction project at Playland, other than Construction Work of or directly relating to Amusement Attractions (as defined below), for which the total estimated contract value of the manual, on-site construction work performed by masons, electricians, plumbers, carpenters, ironworkers, plasterers, tapers, and other unionized building and construction trades ("Construction Work"), independently of the other components of the project or contract (e.g., engineering, design, supervision, testing, off-site work), exceeds Two Hundred Fifty Thousand (\$250,000.00) Dollars (any construction project that exceeds such threshold, a "Major Construction Project"), the Manager will use union labor, if available, and require any contractor to use union labor, if available, for the Construction Work components of the Major Construction Project, to the extent consistent with applicable law, and in all events shall pay the then-prevailing wage for the Construction Work components of such Major Construction Project, whether union or non-union labor is used. For example, if the project or contract has a total value of Four Hundred Thousand (\$400,000.00) Dollars, but Construction Work represents Two Hundred Thousand (\$200,000.00) Dollars of that value, the use of union labor for the Construction Work will not be required, but if the Construction Work represents Three Hundred Thousand (\$300,000.00) Dollars of the project or contract value, the use of union labor for the Construction Work will be required, subject to the conditions set forth in subparagraph (iii) below.

(ii) **Amusement Attraction Construction Work:** For purposes of this provision, an "Amusement Attraction" shall mean any (x) ride, (y) attraction, such as motion simulators, exhibits within museums, non-mechanical or non-motion-based exhibits (such as halls of mirrors and fun houses), shows and games, or (z) experiential or interactive offering. For the avoidance of doubt, restaurants, food stands, and other food and beverage service offerings are not Amusement Attractions. The Manager agrees that, for a Major Construction Project for an Amusement Attraction, it will use union labor, if available, and require any contractor to use union labor, if available, for foundation excavation, forming of foundation structures, and pouring of foundations for Amusement Attractions. The following structures are considered a part of the Amusement Attraction: (a) structures that are ancillary to but directly related to the operation of Amusement

Attractions, such as operator panels and booths, queues, mechanical and machine houses, and designing and theming elements, (b) structures that are designed or manufactured by the Amusement Attraction manufacturer or other third-party vendor, and (c) structures that require customized artistic work, such as hand-painted signage or scenery, or specialized skills.

- (iii) **Conditions for Use of Union Labor:** The Manager's obligation to use union labor or pay prevailing wages to the extent set forth herein and consistent with applicable law only applies to Major Construction Projects where the Construction Work will occur at a time when (w) the County is operating under a Project Labor Agreement between its contractor(s) and the Unions with respect to one or more components of the County's Capital Plan; (x) the County Construction Work under the Project Labor Agreement will also be taking place at Playland; (y) the Project Labor Agreement contains appropriate provisions to avoid labor disruption; and (z) the Project Labor Agreement is in furtherance of the purposes of Chapter 635 of the Laws of Westchester County, including promoting the objective of completing the project at the lowest reasonable cost. The parties agree that the form of Project Labor Agreement used for Contract No. 19-505 (Fire Suppression System Upgrades at Playland) meets the requirements of this paragraph. The Manager shall not be required to be a party to any collective bargaining agreement. The Manager shall not be required to pay more than the then-prevailing wage for the relevant trades in accordance with the Prevailing Wage Schedule for Westchester County published by the Bureau of Public Works for the New York State Department of Labor. Other than with respect to the initial demolition and construction of the Tiki Bar as set forth below, the Manager's obligation to use union labor as set forth herein shall terminate on April 30, 2026.

The County and the Manager shall at all times use reasonable efforts to maintain harmony between the Unions and other personnel employed by the County or its contractors in connection with the County Construction Work and the Unions and other personnel employed by the Manager or its contractors in connection with the Manager's Work. The County and its contractors shall act in a reasonable, professional and courteous manner towards the Manager's separate contractors, and the Manager and its contractors shall act in a reasonable, professional and courteous manner towards the County's separate contractors. The County and the Manager shall at all times use reasonable efforts and judgment to avoid strikes, boycotts, picketing, work-stoppages, slowdowns, complaints, disputes, controversies or any other type of labor trouble, regardless of the employer of the person involved or their employment status, if any.

If any strike or labor activity is directed against the Manager at Playland or against any of its contractors or operations pursuant to this Agreement resulting in picketing, boycott, work stoppage, slowdowns or other labor disputes, which, in the reasonable opinion of the Manager, adversely affects or is likely to adversely affect the operation of Playland or the operations of other permittees, lessees or licensees thereat, whether or not the same is due to the fault of the County, and whether caused by the employees of the County or by others, the Manager and its contractors

shall have the right to take all legal remedies available to them to end or arrange for the cessation of any such labor activity. For the avoidance of doubt, violation(s) of this paragraph and the preceding paragraph does not give rise to a right by either Party to terminate this Agreement; rather, either Party may take steps to end or arrange for a cessation of labor activity or, upon written notice to the other Party, take steps the Party deems appropriate to complete work on any Major Construction Project.

(iv) **Manager Consideration for Use of Union Labor:** In consideration of the Manager's anticipated use of union labor for Construction Work on Major Construction Projects to the extent set forth above, the Parties agree as follows:

- a. The Tiki Bar shall be deemed to be a part of Playland Park (as such term is used in this Agreement), and such concession will become a part of the Manager's rights and responsibilities under this Agreement and subject to the terms hereof (including, without limitation, the Revenue Share), when the current concession for the Tiki Bar expires, and, in any event, no later than December 31, 2022.
- b. The Manager will invest a minimum of Two Million Two Hundred and Fifty Thousand (\$2,250,000.00) Dollars for the demolition of the Tiki Bar and the construction of a new restaurant in the first five (5) years from when the Manager assumes management of the Tiki Bar. The County may condition its approval of the Manager's Plans and Specifications for the Tiki Bar construction on the Manager providing the County with evidence of its Two Million Two Hundred and Fifty Thousand (\$2,250,000.00) Dollar investment in the same form as permitted for the Remaining Balance under Section 1(E) (i.e., either cash or liquid assets or letter of credit with like tenor). Until such time as the Tiki Bar is demolished, the Manager shall be responsible for operating a restaurant in the existing Tiki Bar facility. If the County and the Manager are unable to agree on Plans and Specifications for the construction of the new restaurant, or the Manager is unable to obtain the permits and approvals required by applicable law to proceed with such construction, the Manager may decline to proceed with the demolition and construction of the new restaurant, in which event (a) the Manager shall promptly notify the County of its decision not to proceed and shall have no obligation to invest the additional Two Million Two Hundred and Fifty Thousand (\$2,250,000.00) Dollars earmarked for such purpose, and the total required Manager's Investment shall be Thirty Two Million Seven Hundred and Fifty Thousand (\$32,750,000.00) Dollars, and (b) the Manager may at its election either (i) continue to operate a restaurant in the existing Tiki Bar facility in accordance with its obligations as the Manager under this Agreement, or (ii) relinquish to the County all rights to operate a restaurant at the site of the Tiki Bar and the associated revenues, and, solely with respect to clause (ii), the Tiki Bar shall cease to be deemed a part of Playland Park for purposes of this Agreement, and the Manager shall have

no further rights or responsibilities with respect to management or operation of the Tiki Bar.

- c. Notwithstanding any other provisions of this Agreement, the Manager will be solely responsible for the costs of the initial demolition of the Tiki Bar and the construction of a new restaurant, including all necessary infrastructure, and for any extraordinary maintenance, repairs and improvements relating to the Tiki Bar. The Manager agrees that it will use union labor for the Construction Work components of all Major Construction Projects relating to the initial demolition and construction of the Tiki Bar (i.e., future renovations of the Tiki Bar shall not be subject to this requirement) on the same conditions for the use of union labor set forth above.
- d. Plans and Specifications for the restaurant replacing the Tiki Bar shall be subject to review under Section 6(B) of this Agreement; provided, however, that, because of the scope and complexity of such project, the otherwise applicable period for review of the Plans and Specifications at each design stage under Section 6(B) shall be extended by an additional ten (10) business days. The new restaurant may not impede public access to the Boardwalk or the Ice Casino. Any material increase in the size and/or change in the location of the new restaurant relative to the existing facility shall be subject to the County's consent in the exercise of its reasonable discretion (such discretion not to be unreasonably withheld or delayed).

G. **Reasonable Diligence.** The Manager shall implement any improvements to be undertaken by the Manager at Manager's cost and expense with commercially reasonable diligence.

H. **Standards and Criteria.** In the event Manager determines to renovate or build one or more improvements at Manager's cost and expense, each such improvement shall, except as otherwise agreed to in writing, meet the following:

- (i) Be reasonably consistent with industry standard design.
- (ii) In the case of substantial improvements (including without limitation Material Improvements) to buildings or structures not including rides, represent an architectural style that is compatible with and does not materially detract from the historic character and range of architectural styles then or previously existing at Playland Park (it being understood that a style (e.g., a contemporary style) that is different from the historic range of styles existing at Playland shall not be deemed *per se* incompatible, provided that it does not materially detract from the historic character and range of architectural styles of Playland Park as a whole).
- (iii) Be constructed in accordance with all applicable laws, ordinances, regulations or orders of any federal, state, municipal or other public authority affecting the same, including but not limited to, the New York State Uniform Fire Prevention and

Building Code Act. In addition, all improvements shall be constructed in accordance with all requirements of the New York Board of Fire Underwriters or other similar body having jurisdiction thereof and the National Electrical Code.

- (iv) Be free of liens and encumbrances for labor and materials supplied in connection with such work.
- (v) Will not materially adversely affect the County's obligation to maintain the Park for the public's use and enjoyment.

I. **Final Plans and As Built Drawings.** Copies of all final plans, "as built" drawings (which shall be deemed to include final plans with field notations thereon) and equipment and building system operating and maintenance manuals, for any improvement to be undertaken by the Manager at Manager's cost and expense, shall be delivered by the Manager to the Commissioner and the DPW&T Commissioner to complete the County's files.

J. **Improvement Insurance.** No improvements to be undertaken by the Manager at Manager's cost and expense shall be commenced unless the Manager or an approved subcontractor shall first have procured, at its own cost and expense, and delivered to the Commissioner proof of insurance coverages as required by **Schedule "E"** which is attached hereto and made a part hereof, including copies of policies if requested by the County Director of Risk Management. In particular, the insurance certificate shall identify the specific improvement and the policy shall be endorsed to cover such improvement and the endorsement provided to the County Director of Risk Management.

In addition, the Manager shall ensure that its contracts with any and all third parties that are engaged to perform any work, and who will enter upon or occupy any portion of Playland Park, shall include a written requirement that said third parties shall procure and maintain insurance naming the County of Westchester as an additional insured as its interest may appear, and that such third parties shall, at its own cost and expense, procure and deliver to the County proof of the above insurance coverages, including copies of policies if requested by the County Director of Risk Management.

Each party hereto shall cause each insurance policy obtained by it to provide, to the extent available, that the insurer waives all right of recovery by way of subrogation against the other party in connection with any damage and/or liability covered by said insurance.

K. **Certificates.** Manager shall obtain and deliver to the Commissioner and DPW&T Commissioner copies of all proper certificates from the County Department of Health, the Board of Fire Underwriters, or such other certificates as are customarily obtained from any department or bureau having jurisdiction. Unless a certificate of occupancy shall hereafter be held to be legally required, Manager shall deliver to the County a certificate of completion, signed by Manager's engineer or architect.

L. **Inspection.** During implementation of any improvement to be undertaken by the Manager at Manager's cost and expense, the Commissioner or the DPW&T Commissioner, or his/her designees, may, from time to time, and at reasonable times upon reasonable prior notice,

inspect such improvement, provided that the conducting of such inspection shall not interfere with Manager's construction activities or operation as an amusement park.

In the event that, during the implementation of any improvement undertaken by the Manager and prior to the completion of same, the Commissioner and/or DPW&T Commissioner, or his/her designees, shall reasonably determine that the improvement is not being constructed substantially in accordance with the Plans and Specifications and/or the applicable terms and conditions of this Agreement, then the Commissioner and/or the DPW&T Commissioner shall give prompt notice in writing to the Manager, specifying in detail the particular deficiency or omission in which the Commissioner and/or the DPW&T Commissioner claims construction does not accord with the above requirements. Manager shall respond within thirty (30) days notifying the Commissioner and/or the DPW&T Commissioner that Manager will remedy the deficiency and provide a timetable within which to do so. It shall be the responsibility of the DPW&T Commissioner to schedule inspections at times he deems reasonably necessary and the Manager has no obligation to stop or delay construction because the DPW&T Commissioner is unable to inspect at the appropriate time during the construction cycle.

M. **Document Ownership Upon Default.** In the event this Agreement shall be terminated by reason of the default of the Manager as provided in this Agreement prior to the completion of any improvement to be undertaken by the Manager at Manager's cost and expense, any and all Plans and Specifications, reports, estimates and models which shall have been prepared or made in connection with any improvement and which shall be in the possession of, and owned by, the Manager and any approved subcontractors, shall become the property of the County.

N. **Exemption from Retail Sales Tax and Compensating Use Tax.** The Manager's attention is directed to Section 1115 of the Tax Law of New York State, Chapters 513 and 514 of the Laws of 1974. In connection with capital improvement contracts entered into on or after September 1, 1974, all tangible personal property which will become an integral component of a structure, building or real property of New York State, or any of its political sub-divisions, including the County of Westchester, is exempt from State and local retail sales tax and compensating use tax. In order to utilize such exemption, the Manager shall be obliged to file the required Contractor Exempt Purchase Certificates, which may be obtained from the New York State Department of Taxation and Finance (1-800-462-8100).

O. **SEQRA.** The Manager further understands and agrees to provide the County with all information necessary for the County to comply with the New York State Environmental Quality Review Act and its implementing regulations ("SEQRA") for any improvements done under this Section 6 that require SEQRA compliance where such improvements are undertaken by the Manager at Manager's cost and expense.

#### **SECTION 6-a. Improvements undertaken by County**

(i) As used in this Agreement, the following capitalized terms shall have the following respective meanings set forth below:

“County Capital Plan” shall mean the June 10, 2019 Playland Park Capital Program Overview (as updated on January 11, 2021), which shall be attached to this Agreement and incorporated herein as **Schedule “K”**.

“County Capital Projects” shall mean the projects itemized in the County Capital Plan (each such project being a “County Capital Project”).

“County Capital Plan Amount” shall mean the budgeted amount in the County Capital Plan (i.e., the “2020 Estimated Project Cost”) for a particular County Capital Project.

“County Capital Plan Total Amount” shall mean the sum of the County Capital Plan Amounts for all County Capital Projects (i.e., One Hundred Twenty-Six Million, Six Hundred and Ninety-Eight Thousand (\$126,698,000.00) Dollars).

“[XX]% Threshold” shall refer to the ratio of (a) the County Capital Plan Amounts for the County Capital Projects that are “substantially complete” (as defined below), regardless of whether the amount actually spent is greater than or less than the County Capital Plan Amounts for any such County Capital Projects, to (b) the County Capital Plan Total Amount. For example, if the County Capital Plan Amounts for the County Capital Projects that are substantially complete total Sixty-Three Million, Three Hundred and Forty-Nine Thousand (\$63,349,000.00) Dollars, the 50% Threshold will have been met.

“Substantial completion” shall mean “the stage in the progress of the County Work when the County Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the County Work for its intended use.” For purposes of this Agreement, “County Work” as used in this definition shall mean a County Capital Project, and the Contract Documents shall mean the contract awarded by the County to the contractor for that County Capital Project. A County Capital Project shall be deemed “substantially complete” when all of the following are satisfied: (i) the entire project (not a portion thereof) is “substantially complete” in accordance with this definition; (ii) a Certificate of Occupancy has been issued for the County Capital Project or, with respect to those County Capital Projects for which a Certificate of Occupancy is not required, a Certificate of Completion has been issued; and (iii) the County has provided the Manager with a copy of the County’s initial punch list for that County Capital Project and the initial timetable agreed by the County with its contractor for completion of the punch list items (it being understood that the punch list and/or timetable may subsequently change, which shall not affect whether the County Capital Project is deemed “substantially complete” pursuant to this Agreement.) For example, if 85% of the Green Parking Lot (a County Capital Project) is sufficiently complete so that the County can use that 85% for its intended use, but the remaining 15% is not ready for use, the Green Parking Lot would not be “substantially complete.” If, however, the entire Green Parking Lot is ready to be occupied or utilized for its intended use (i.e., public parking), it would be “substantially complete.”

The County shall perform all work in connection with each County Capital Project in a good and workmanlike manner in order to keep Playland Park in a clean, orderly, safe and operational condition. The County shall fully complete each County Capital Project in accordance with the plans and specifications therefor and as contemplated by the County Capital Plan.

The County Capital Plan includes the deadlines for substantial completion of each County Capital Project (indicated as the “Finish” date under the “Proposed Bid and Construction Schedule” for each County Capital Project on **Schedule “K”** hereto); provided, that the deadline for substantial completion of the parking lot, arcade buildings, and games row (which are all County Capital Projects) shall be prior to the start of the 2025 season. The County shall be required to reach substantial completion of each County Capital Project by the deadline for substantial completion of such project set forth in the County Capital Plan, plus one year (each, a “Project Deadline”). For example, if the deadline for substantial completion of the Rehabilitation of the Employee Facilities (RP028) in the County Capital Plan is “2nd quarter 2022,” the Project Deadline for Rehabilitation of the Employee Facilities (RP028) for purposes of this Agreement shall be June 30, 2023. Additionally, the County shall be required to reasonably promptly procure and provide the Manager with a copy of the as-built drawings for each County Capital Project when such drawings become available.

If a Force Majeure or other unavoidable circumstance beyond the County’s control causes the County to miss a Project Deadline by more than thirty (30) calendar days (the “Excused Delay Period”), the applicable Project Deadline shall be extended by the period of time such Force Majeure or other unavoidable circumstance beyond the County’s control remains in effect or is unresolved; provided, that in the event the County misses a Project Deadline by more than the Excused Delay Period due to Force Majeure or other unavoidable circumstances, the County shall notify the Manager in writing within forty-eight (48) hours of the end of the Excused Delay Period, describing in reasonable detail the nature of such Force Majeure event or unavoidable circumstances, how such Force Majeure event or unavoidable circumstances are beyond the County’s control, and the County’s plan to address such Force Majeure event or other unavoidable circumstances, including a reasonable estimation of the timing and steps to resolve such Force Majeure event or other unavoidable circumstances. Any other delay that causes the County to miss a Project Deadline is a “Non-Excused County Delay.” Any disputes concerning whether the County’s delay is excused (including disputes regarding whether a claimed unavoidable circumstance is beyond the County’s control) shall be submitted to and resolved by the Monitor for decision as provided in Section 43(i).

In the event that the County fails to meet a Project Deadline because of a Non-Excused County Delay, then until the applicable County Capital Project is completed, (i) the Manager shall not be required to pay the County the Revenue Share or the Annual Management Fee, (ii) the Term shall be extended by the duration of the Non-Excused County Delay, (iii) any deadlines on the Manager’s Capital Projects shall be tolled for the period of the Non-Excused County Delay, and (iv) the Manager’s Revenue Target test shall be suspended for the period of the Non-Excused County Delay. In the event that the County fails to meet Project Deadlines because of a Non-Excused County Delay for (A) County Capital Projects for which the County Capital Plan Amounts in the aggregate represent 15% or more of the County Capital Plan Total Amount, or (B) more than two County Capital Projects, the Manager, in its sole discretion, may either (i) terminate this Agreement and be entitled to the applicable Liquidated Damages Payment for a “Termination Due to Event of Default on the Part of the County” in accordance with Section 23B herein, or (ii) elect to excuse the delay, in which case, until the applicable County Capital Project is completed, (w) the Manager shall not be required to pay the County the Revenue Share or the Annual Management Fee, (x) the Term shall be extended by the duration of the Non-Excused County Delay, (y) any deadlines on the Manager’s Capital Projects shall be tolled for the period

of the Non-Excused County Delay, and (z) the Manager's Revenue Target test shall be suspended for the period of the Non-Excused County Delay.

Notwithstanding anything to the contrary, if the County has not met (i) the 70% Threshold before April 30, 2024, or (ii) the 90% Threshold before April 30, 2026, the Manager may terminate this Agreement pursuant to Section 23(B). If such failure to meet such Threshold is the result of a Force Majeure or other unavoidable circumstance beyond the County's control, and the Manager terminates this Agreement pursuant to Section 23(B), the Manager shall be entitled to the applicable Liquidated Damages Payment payable upon a "Termination Not Due to Event of Default." If such failure to meet such Threshold is for any other reason and the Manager terminates this Agreement pursuant to Section 23(B), the Manager shall be entitled to the applicable Liquidated Damages Payment payable upon a "Termination Due to Event of Default on the Part of the County."

The County and the Manager, and their respective external engineers and consultants, shall conduct conference calls or meetings at mutually convenient times every other week or at such other intervals as they may mutually agree to discuss progress on the County Capital Projects. The County shall provide the Manager with reasonable and timely access to the County's external engineers, construction managers, and other consultants for questions or information requests relating to the County Capital Projects upon request. Although the County shall provide information to the Manager concerning the County Capital Projects as provided herein, the design and construction of the County Capital Projects shall be solely under the direction and control of the County.

Commencing with the first full month after the Effective Date, the County shall provide monthly reports to the Manager that delineate all funds spent by the County with respect to the County Capital Projects in substantially the same form that the County has historically provided such reports to the Manager; provided, that such monthly reports shall indicate how such funds spent by the County correspond to each individual County Capital Project. Such monthly reports shall be provided to the Manager on or before the last day of the month following the month to which such monthly report relates.

(ii) **County Capital Process.** If a proposed improvement, other than the County Capital Projects, is one that is classified as being the County's responsibility under this Agreement, and one that requires either an amendment to the County's Capital Budget and authorization for bond funds, or both, then the Manager shall prepare and submit to the Commissioner a list, along with detailed information, of each and every such proposed improvement to be made in Playland Park. Such list, along with the supporting detailed information shall include, but not be limited to:

- an illustrated site plan that shows existing and proposed changes;
- preliminary plans and drawings prepared by a licensed architect;
- a project by project scope of work and cost estimates which includes prevailing wage and also indicates unit prices for major construction items;
- a proposed schedule for implementation of each improvement ("Timetable(s)"). A proposed Timetable shall include, but not be limited to, a construction schedule for each project; and

- a statement of all major actions that are required to implement each such project and the affect such actions will have on Playland Park, including but not limited to, construction and demolition.

Upon submission of the above, the County Executive will cause legislation relating to the same to be prepared for submission to the Board of Legislators promptly after any request thereof by the Manager, and the County Executive will promptly submit such legislation to the Board of Legislators for its consideration.

(iii) **Pre-Qualification and Selection.** The County will be responsible to comply with all applicable local laws and rules for the prequalification and selection of architects, engineers and land surveyors for any improvement that the County is responsible for under this Agreement. (See Laws of Westchester County-§161.31 and §277.81 - §277.121; see also Act 5-1976, Act 22-1992, Act 144-1996, Act 94-2012, and Act 166-2020.) The Manager shall assist the County by providing names of firms with specific expertise in amusement park work for prequalification.

(iv) **Public Bidding.** The County will be responsible to comply with all applicable laws and rules regarding public bidding for any improvement that the County is responsible for under this Agreement. The Manager shall cooperate with the County in connection with the County's obligation to publicly bid an improvement.

#### **SECTION 7: Utilities.**

As the owner of Playland Park, the County shall remain responsible to continue to provide or cause to be provided all utility connections, including water and electricity, cable/fiber optics, sanitary sewer facilities and the like serving Playland Park on the Management Commencement Date (including those intended to be provided and necessary for the operation of Playland Park even though they may be temporarily out of service or seasonally discontinued on the Management Commencement Date). The County shall provide any and all utilities that are currently provided in Playland, including, but not limited to, electric, water, fuel oil, propane and gasoline (each a "Utility" and collectively "Utilities"). Any other utilities that are not included within this definition are the Manager's responsibility to obtain and pay for separately.

The Manager shall be responsible for the payment of all charges for Utilities within thirty (30) calendar days of receipt of a bill from the County. The County shall pass along any discounts that it receives by virtue of the fact that it is a municipality. The Manager shall not be responsible to pay for Utilities used at the Ice Casino, the Tiki Bar and/or Westchester Children's Museum, as long as same are operated by a third party. If the Manager takes over operation of any of these facilities, then the Manager shall be responsible to pay for Utilities at such facilities.

The Manager acknowledges that the County is committed to pursuing alternative energy generation, including, but not limited to, solar and geothermal ("alternative energy generation"), on County-owned facilities, including at Playland Park, and in particular utilizing the parking lot and other surface areas, where practicable. In furtherance of this commitment, the Parties shall work together to determine the feasibility and efficacy of pursuing such alternative energy generation for the purpose of reducing Utility costs and maximizing energy efficiency, provided that the implementation and undertaking of such alternative energy generation does not increase

the Manager's costs and expenses or adversely affect the operations of Playland Park and that any capital expenditures to be made by the Manager for the implementation and undertaking of such alternative energy generation shall be in the Manager's sole discretion. The foregoing, however, does not preclude the County from pursuing alternative energy generation at its own cost and expense.

The Manager shall not seek damages from the County and shall not hold the County liable for an interruption of any Utility service that is not due to the County's actions or omissions.

The County shall cooperate with the Manager should the Manager, at its sole cost and expense, desire to install sub-meters at Playland Park after the Management Commencement Date. If the Manager installs a sub-meter, it shall still have the option to purchase Utilities through the County and reimburse the County for all charges for Utilities on a monthly basis.

The County will be responsible for the costs of maintaining or improving the Utility distribution systems at Playland Park at levels necessary to support attendance of up to one million visitors annually at Playland Amusement Park. Any and all costs necessary to maintain and improve the Utility distribution systems at Playland Park above the levels necessary to support attendance of over one million visitors annually shall be borne by the Manager.

Notwithstanding the above, to the extent the Manager or any approved subcontractors make any improvement which would necessitate: (i) a new connection to any existing Utility distribution system(s) at Playland maintained by the County (e.g. electricity, telephone, sewer and water); or (ii) increase the demand for such Utility distribution systems; or (iii) otherwise materially affect the capacity or efficiency of such Utility distribution systems, the prior review and approval of the DPW&T Commissioner shall be required, not to be unreasonably withheld, conditioned or delayed.

Manager, at its sole cost and expense, for any improvement requiring review under this Section, shall cause building mechanical schematics and site plans and specifications showing the method and location of all Utility connections, normal and peak load demands for such services and such other information reasonably required by the DPW&T Commissioner to determine the effect, if any, of such increase in service on the capability, reliability and efficiency of the existing Utility distribution systems at Playland.

**SECTION 8: Temporary Closing of Playland Park or Selected Areas.**

After the Management Commencement Date, the Commissioner shall notify the Manager of any closing by the County (i.e., a County department or instrumentality acting on behalf, at the request of, or for the benefit of, the County) of the Park, or any portion thereof, due to an emergency or disaster declared by any federal, state or local government in accordance with applicable law. Such notice to the Manager shall be provided at the earliest possible time considering all of the facts and circumstances surrounding the emergency.

Manager shall not be obligated to pay the full Annual Management Fee for any period when Playland Park is closed per this Section 8, if Playland Park is closed for more than ten (10) business days during the in-season within a twelve (12) month period. In such circumstance, the

Annual Management Fee will be prorated for the period of time that Playland Park is closed, as provided in Section 3(B) of this Agreement.

**SECTION 9: Permits and Sponsorships.**

A. **Sponsorships.** After the Management Commencement Date, the Manager shall manage the application and processing of corporate sponsorships relating to Playland Park (“Sponsorship Agreement(s)”), except for those contracts, licenses and lease delineated in Section 1 above (e.g., Ice Casino, Children’s Museum) to which the Manager has no rights under this Agreement. Applications for Sponsorship Agreements shall be made to the Manager, who shall make the determination whether the requested Sponsorship Agreement is appropriate for a family park considering all of the available facts and circumstances.

The Manager agrees that it will not enter into any Sponsorship Agreement with any person or entity that engages in activities that are clearly defamatory or engages in activities that are offensive to the reasonable standards of the community.

B. **Permits.**

- (i) Other than normal operational uses of Playland Park, the Manager shall give the Commissioner reasonable notice of any public programs, events, meetings or other public functions of any kind to be held by the Manager, or an approved subcontractor, in Playland Park. Unless the Commissioner, within seventy-two (72) hours of receipt of such notice, notifies the Manager that such activity may not be conducted, the Manager may conduct such activity, except for those routine performances approved by the Commissioner as part of the Annual Operating Plan (such approval will not be unreasonably withheld, conditioned or delayed).
- (ii) During the Term, except as specifically provided in sub-paragraph (i) above, the Commissioner shall grant or withhold permits in Playland Park for assemblies, meetings, exhibits and or other activities in accordance with the rules and regulations of the Department of Parks, Recreation and Conservation. Application for a permit for any such assembly, meeting, exhibit and or other activity shall be made to the Manager, which shall recommend to the Commissioner that the permit be granted or denied, except for those which are specifically approved by the Commissioner in the Annual Operating Plan (such approval will not be unreasonably withheld, conditioned or delayed).
- (iii) Notice of each application for a permit under subparagraph (ii) above, and of the Manager’s recommendation as to such application, shall be sent to the Commissioner at least thirty (30) days before the commencement of any assembly, meeting, exhibit and or other activity for which permission is sought (or such shorter time as is practicable, if the Manager notifies the Commissioner that time is of the essence). Unless the Commissioner shall give notice to the Manager, no later than fifteen (15) days prior to the commencement of the proposed permitted activity (or if it the Commissioner has received less than thirty (30) days’ notice, as soon as practicable), that the Manager’s recommendation is disapproved, with

reasons therefor, the Manager's recommendation as to such application shall be deemed approved.

C. **Advertising.** Except for those existing agreements that cannot be assigned to the Manager (e.g., County-wide bus and bus stop advertising agreement) or will not be assigned under this Agreement, the Manager shall have the right to sell signage and/or advertising for use inside Playland Park. If the Commissioner finds any of the content to be clearly defamatory or offensive to the reasonable standards of the community, then the Commissioner shall request a modification to the signage and/or advertising, which modification will not be unreasonably withheld or delayed by the Manager.

It is understood and agreed that nothing in this Agreement grants authority to the Manager for the naming rights of Playland Park, or any facility, building or area in Playland Park. Such naming rights rest solely with the County.

The County retains the right to advertise in Playland Park for other County programs or events, provided that the quantity and location of such advertisements shall be mutually agreed upon by the Parties.

#### **SECTION 10: Assignment and Subcontracting.**

The Manager shall not delegate any duties or assign any of its rights under this Agreement, or subcontract any part of the Work, without the prior express written consent of the County, which consent will not be unreasonably withheld, conditioned or delayed (and in any event, shall be delivered within five (5) business days of such request, except in the case of exigent circumstances, then as soon as reasonably practicable under the circumstances); provided, that such consent right shall not apply to proposed subcontractors, assignees or delegees who will (i) perform such subcontracted, assigned or delegated work physically outside of Playland Park or (ii) be paid less than One Hundred Fifty Thousand (\$150,000.00) Dollars per year for such subcontracted, assigned or delegated work (such amount to be adjusted annually (starting December 31, 2021) by the change in the CPI-U for New York-Northeastern New Jersey during the preceding twelve (12) month period ending December 31st, as published by the Bureau of Labor Statistics of the United States Department of Labor. Verification of the calculation for the increase in the Annual Management Fee must be submitted to the Commissioner by June 30<sup>th</sup> of each year. If the Bureau of Labor Statistics ceases to publish the CPI-U or any comparable revised or successor index, then the Manager, in consultation with the County, will substitute a suitable index of the cost of living for the area in which Playland is located, as published by another federal government agency or a responsible financial periodical of recognized national authority). Additionally, the Manager shall conduct, or shall require to be conducted, criminal background checks for any proposed subcontractors, assignees or delegees who will interact directly with guests of Playland Park in the course of performing such subcontracted, assigned or delegated work, regardless of the amount such subcontractors, assignees or delegees will be paid for the performance of such work. The County shall consider only the following criteria when determining whether to consent to a subcontract, assignment or delegation of duties proposed by the Manager: subcontractor's, assignee's or delegee's integrity; subcontractor's, assignee's or delegee's prior performance of a County contract(s) (but the absence of any such prior work shall not be disqualifying); and subcontractor's, assignee's or delegee's compliance with Federal, State, and Local Laws and

Regulations. Notwithstanding the foregoing, if the Manager seeks to assign substantially all of its rights and delegate substantially all of its obligations under this Agreement to another person or entity, the County may also consider such delegee's or assignee's ability to fulfill the Manager's obligations under this Agreement, it being agreed that an assignee or delegee with (x) at least five (5) years' experience operating or running an amusement park of a similar or larger size to Playland Amusement Park (in terms of revenues, geographic area or number of rides and concessions in the aggregate), and (y) cash, cash equivalents or availability under existing credit facilities or equity commitments of at least the greater of (A) the dollar amount of the Manager's remaining portion of the Manager's Investment under this Agreement, and (B) Three Million (\$3,000,000.00) Dollars, shall be an acceptable assignee/delegee; and the County's prior express written consent or non-consent to such assignment and delegation shall be delivered within thirty (30) days of such request, and if the County does not grant such consent, the writing must explain the reasons for refusing to consent. Any purported delegation of duties, assignment of rights or subcontracting of Work under this Agreement without such prior express written consent is void.

All subcontracts, assignments or delegations that have received such prior written consent shall provide that subcontractors, assignees, or delegees are subject to all terms and conditions set forth in this Agreement. It is recognized and understood by the Manager that for the purposes of this Agreement, all Work performed by County-approved subcontractors, assignees or delegees shall be deemed Work performed by the Manager and the Manager shall use commercially reasonable efforts to ensure that such subcontracted, assigned or delegated work is subject to the material terms and conditions of this Agreement. All subcontracts, assignments or delegations for the Work shall expressly reference the County-approved subcontractor's, assignee's or delegee's duty to comply with the material terms and conditions of this Agreement and shall attach a copy of the County's contract with the Manager. The Manager shall obtain a written acknowledgement from the owner and/or chief executive of County-approved subcontractors, assignees or delegees or his/her/their duly authorized representative that the subcontractors, assignees or delegees has/have received a copy of the County's contract, read it and is familiar with the material terms and conditions thereof. The Manager shall include provisions in its subcontracts, assignments and/or delegations designed to ensure that the Manager and/or its auditor has the right to examine all relevant books, records, documents or electronic data of the County-approved subcontractors, assignees or delegees necessary to review the subcontractor's, assignee's or delegee's compliance with the material terms and conditions of this Agreement. For each and every year for which this Agreement continues, the Manager shall submit to the Commissioner a letter signed by the owner and/or chief executive officer of the Manager or his/her duly authorized representative certifying that each and every County-approved subcontractor, assignee or delegee is in compliance with the material terms and conditions of the Agreement.

**SECTION 11: Employees.**

The Manager shall, as of the Management Commencement Date, have the sole and exclusive right and power to select, appoint, employ, direct, supervise, control, remove, discipline and discharge all persons employed by the Manager in Playland Park, subject to the notice and eligibility requirements set forth in Section 2(BB) above. The Manager's rights in this respect shall include, but not be limited to, the right to establish all terms and conditions of employment, to fix compensation, and to make promotions on the basis of fitness and ability. The Manager shall ultimately be responsible to the County for the employees of any approved subcontractors

who carry out its duties under this Agreement, as the County shall have no contractual privity with such subcontractors.

All employees who carry out the Manager's duties under this Agreement shall be the employees of Manager or of approved subcontractors and not of the County. All matters pertaining to the employment of such employees shall be the sole responsibility of Manager or of its approved subcontractors and the County shall bear absolutely no responsibility or liability therefore.

The County shall make available certain Playland Park employees with specialized skills to train Manager's employees during the first year after the Management Commencement Date, as agreed to by the Parties in a separate writing.

All County employees who work in any capacity at Playland Park or who have responsibilities of any kind with respect to Playland Park prior to the Management Commencement Date and who are not hired by the Manager or an approved subcontractor as of the Management Commencement Date shall remain the sole responsibility of the County.

Manager, and its approved subcontractors, shall establish, administer, and maintain the payroll procedure and systems for Manager's employees at the Park and shall be responsible for overseeing the benefits to, and handling the appropriate payroll deductions for, individual employees. Manager, and its approved subcontractors, shall fully comply with all applicable laws and regulations concerning workers' compensation, social security, unemployment, tax withholding and reporting, hours of labor, wages, working conditions and all other laws affecting or respecting the employment of such employees or independent contractors. All employees of Manager and all approved subcontractors shall be a citizen of the United States or an alien who has been lawfully admitted to the United States for permanent residence as evidenced by an alien registration receipt card. The Manager shall use commercially reasonable efforts to hire employees who are residents of Westchester County. The Manager, and its approved subcontractors, shall supervise and train its staff to perform their duties and to conduct themselves in an orderly and professional manner at all times. Each employee must thoroughly understand the need to exercise and display a courteous and polite demeanor when dealing with the public. The Manager, and its approved subcontractors, shall be required to remove from Playland Park any employee whose conduct, demeanor or appearance is objectionable to the Commissioner (which objection is based on Department of Parks, Recreation and Conservation standards and is in compliance with all laws) after consultation with the Manager. The Manager, and its approved subcontractors, shall have no authority to enter into any employment contract which purports to be on behalf of the County, or which otherwise obligates the County in any respect. The Manager, and its approved subcontractors, shall comply with federal and state labor and/or employment laws.

The Manager shall have the option to utilize the full-time County employees that are assigned to work at Playland from and after the Management Commencement Date. The County shall provide a list of such full-time employees to the Manager by April 1<sup>st</sup> of each year of the Management Term. The Manager must notify the County of its intention to use these full-time employees by June 30<sup>th</sup> of each year of the Management Term. Should the Manager desire to use the full-time employees such use shall be for one full year. If the Manager desires to continue to use these employees the Manager shall provide notice to the County in accordance with this

paragraph. If the Manager determines not to use these employees the County does not have to guarantee their availability from and after that point in time. If the Manager notifies the County that it will be utilizing these employees, the Manager shall reimburse the County as follows:

The Manager shall reimburse the County one hundred (100%) percent of salary and overtime expenses for such employees plus thirty (30%) percent of salary for fringe benefits per employee. The Manager shall provide such reimbursement on a quarterly calendar basis within thirty (30) days of receipt by the Manager of a County invoice detailing the particular employee, hours worked, hourly rate and benefits. The Manager shall have the option to utilize the full-time County employees that are assigned to work at Playland at this specified rate for a maximum of two years from the Management Commencement Date. After the two years, the above rate will change and if the Manager desires to continue to utilize the full-time County employees that are assigned to work at Playland, the Manager shall reimburse the County one hundred (100%) percent of salary and overtime expenses for such employees plus one hundred (100%) percent of the County's actual cost for fringe benefits per employee.

Notwithstanding any provision of this Agreement to the contrary, the County shall be responsible for any employment claims or disputes by any employee employed by the County with respect to such employee's employment by the County prior to the Manager's employment of such employee by the Manager.

The County shall not be obligated to replace any full-time County employee that is assigned to work at Playland should such employee leave the County's employment for any reason whatsoever.

The Manager acknowledges the County is a large summer youth employer and the Manager agrees that it will continue to support this arrangement. The Manager anticipates a continuing need for a large number of seasonal workers at Playland throughout the Management Term, including many entry-level positions suitable for young people of high school or college age, and the Manager desires to maintain access to a robust and diverse pool of prospective employees drawn from such young people residing in the County or adjoining areas. During the Management Term, the Manager will employ reasonably effective procedures to provide access and opportunity for summer employment at Playland for young people residing in the County and adjoining areas, subject to any relevant changes in labor and employment laws and trends. The County will provide such advice and cooperation as the Manager may reasonably request to assist the Manager in achieving that objective.

Attached hereto and made a part hereof as **Schedule "M"** is the "Intra-Governmental Memorandum of Understanding by and among the County Executive and the County Board of Legislators of Westchester County, New York Dated the 10<sup>th</sup> day of August, 2015" ("Intra-Governmental MOU") regarding full-time employees currently working at Playland. The Manager acknowledges that while not a party to this Intra-Governmental MOU, the Manager understands the importance of the arrangement.

**SECTION 12: Equipment and Amusement Park Rides.**

**A. Equipment.**

The Manager shall, as of the Management Commencement Date, assume the use of all equipment which is the property of the County and has not been removed by the County in accordance with Section 1(C)(iv) of this Agreement and a list of such equipment shall be created and attached hereto as **Schedule "B"** on or before June 30, 2021. The equipment shall be in good working order as of the Management Commencement Date.

The Manager will procure additional equipment that it deems necessary for the proper execution of its responsibilities as set forth herein and shall supply equipment reasonably deemed necessary for the proper operation of Playland Park after the Management Commencement Date, and make full payment for the same.

"Fixed Equipment" shall be defined as items or fixtures that are permanently or structurally attached to the County's premises. Fixed Equipment shall not include items or fixtures that can be removed without material damage or destruction to the adjacent area within or upon the County's premises ("Removable Personal Property"). If requested, the County shall reasonably cooperate with the Manager in connection with the removal of any Removable Personal Property and upon removal of any Removable Personal Property, the Manager, at its sole cost and expense, shall make all necessary repairs to restore the area damaged by such removal. Removable Personal Property will be limited to property acquired by the Manager and will not include any property that belongs to the County. Any Removable Personal Property procured by the Manager in order to fulfill its obligations herein will remain the property of the Manager, except that if the Manager removes such personal property upon the early Termination of this Agreement, it cannot seek recovery of the unamortized cost of such equipment in the event of such early Termination pursuant to Section 23B below. Once any Removable Personal Property is fully depreciated pursuant to the Internal Revenue Code schedules, ownership of that property shall transfer to the County. During the Agreement Term, the County shall not remove such fully depreciated property without the Manager's prior written consent, unless the Manager notifies the County that the property is no longer needed for use at Playland Park.

Any Equipment will be replaced as follows:

- (i) The Manager shall be responsible if the Equipment is required to perform the Work as defined herein (e.g., lawn mower); and
- (ii) The County shall be responsible if the Equipment is structurally necessary for the Manager to perform the Work as defined herein (e.g., HVAC system equipment).

Title to Fixed Equipment purchased by the Manager or an approved subcontractor for use at Playland Park shall vest in the County at such time as the Fixed Equipment is affixed to the County's premises at Playland Park. To the extent permitted by law, the Manager, and/or its approved subcontractors, shall have the right, for tax purposes under the Internal Revenue Code, to immediately expense such Fixed Equipment.

B. **Amusement Park Rides.**

The Manager shall, as of the Management Commencement Date, assume the use of all County-owned amusement park rides at the Playland Amusement Park. There are currently seven (7) Historic Amusement Park Rides owned by the County and thirty five (35) Non-Historic Amusement Park Rides owned by the County. Such Non-Historic Amusement Park Rides shall be treated in accordance with Section 2 of this Agreement. With respect to Non-Historic Amusement Park Rides, the Manager has the discretion to replace any one or more of such rides in accordance with the terms set forth herein. A "Historic Amusement Park Ride" means a Playland Amusement Park ride listed on **Schedule "L."** A "Non-Historic Ride" means any now or hereafter existing Playland Amusement Park ride that is not a Historic Amusement Park Ride.

The Manager shall maintain, repair and operate the Historic Amusement Park Rides in accordance with the following: the National Historic Preservation Act and its applicable regulations, standards and guidelines; current industry standards; operating and maintenance manuals applicable to such historic rides; and other applicable laws, rules, regulations and requirements, including, but not limited to, operating permit conditions promulgated by the New York State Department of Labor.

The Manager shall maintain, repair and operate the Non-Historic Amusement Park Rides in accordance with the following: the manufacturer's standards, as set forth in applicable manuals, guidelines and bulletins; any other operating and maintenance manuals applicable to such non-historic rides; current industry standards; and applicable laws, rules and regulations, including but not limited to, operating permit conditions promulgated by the New York State Department of Labor.

In addition to the rides that Manager has committed to procure in accordance with **Schedule "C-1"**, the Manager shall procure such additional rides that it deems necessary for the proper execution of its responsibilities as set forth herein after the Management Commencement Date, and make full payment for the same.

"Fixed Amusement Park Rides" shall be defined as Playland Amusement Park rides that are permanently or structurally attached to the County's premises. Fixed Amusement Park Rides shall not include Playland Amusement Park rides that can be removed without material damage or destruction to the adjacent area within or upon the County's premises ("Removable Amusement Park Rides"). If requested, the County shall reasonably cooperate with the Manager in connection with the removal of any Removable Amusement Park Rides. Removable Amusement Park Rides will be limited to property managed by the Manager and will not include any property that belongs to the County. Any Removable Amusement Park Rides procured by the Manager in order to fulfill its obligations herein will remain the property of the Manager, except that if the Manager removes such Removable Amusement Park Rides upon the early Termination of this Agreement, it cannot seek recovery of the unamortized cost of such Removable Amusement Park Rides in the event of such early Termination pursuant to Section 23B below. Once any Removable Amusement Park Ride is fully depreciated pursuant to the Internal Revenue Code schedules, ownership of that ride shall transfer to the County. During the Agreement Term, the County shall not remove such fully depreciated rides without the Manager's prior written consent, unless the Manager notifies the County that the ride is no longer needed for use at Playland Park.

Title to Fixed Amusement Park Rides purchased by the Manager or an approved subcontractor for use at Playland Park shall vest in the County at such time as the Fixed Amusement Park Rides are affixed to the County's property at Playland Park. To the extent permitted by law, the Manager, and/or its approved subcontractors, shall have the right, for tax purposes under the Internal Revenue Code, to immediately expense such Fixed Amusement Park Rides.

The Manager may remove, replace, or relocate any Non-Historic Amusement Park Ride, whether a Fixed Amusement Park Ride or a Removable Amusement Park Ride, or install a new Non-Historic Amusement Park Ride, in accordance with the provisions hereof, and provided that the Manager delivers written notice thereof to the County containing drawings, descriptions, plans, and/or specifications reasonably sufficient to identify (i) the subject ride, including the name, manufacturer, model, and manufacturer's specifications for any new ride, (ii) the proposed location of the ride, (iii) the utilities (e.g., electrical, water) needed to support the ride, (iv) the proposed dates and plans for removal, installation and, to the extent applicable, site remediation and (v) a list of the names of the entity(ies) from which the Manager will select a vendor to perform the removal, installation and/or site remediation. The Manager shall deliver all notices and materials to be submitted or provided to the County hereunder to the Commissioner or such Commissioner's designee, who shall involve other County Departments or personnel in the review process as necessary or appropriate, provided that such involvement shall not expand the scope of the review set forth in this Section 12(B).

Within ten (10) business days of submission by the Manager, the County shall provide written notice to the Manager whether the County intends to evaluate such ride in accordance with this Section 12(B). If such notice is timely received by the Manager and states that the County does not intend to review such ride, or if no such notice is timely received, then the Manager may proceed with such ride without further review under this Section 12(B). If such notice is timely received and states that the County does intend to review such ride, then the Manager may proceed with such ride without further review under this Section 12(B) unless the County has delivered a written report to the Manager on or before the applicable Section 12 Response Date (as defined below), limited to, and describing in detail, the County's finding one or more of the following:

- (i) the ride (including its location) described in the notice violates applicable codes, rules and regulations in effect at the time of construction, and citing the specific violations;
- (ii) the firm(s) on the list provided by the Manager to install the ride is/are not a third-party firm experienced in installing rides in amusement parks, with bonding and insurance reasonably sufficient to cover the installation work;
- (iii) the theming or name of the ride is clearly defamatory or offensive to the reasonable standards of the community;
- (iv) the installation of the ride in, or the removal of the ride from, the location set forth in the notice may result in losing the historic designation of Playland Park, provided that if the parties are unable to agree on this clause (iv), the Parties shall jointly seek guidance from SHPO, and the Manager shall proceed in accordance with any

direction or guidance received from SHPO if the Manager proceeds with the installation, removal or relocation of the ride, provided, however, that neither Party shall have any substantive *ex parte* communication with SHPO concerning the subject ride installation or removal; or

- (v) the Manager has not submitted one or more engineering or other report(s) from one or more New York State-licensed professional(s) in the relevant discipline(s) stating that the ride:
  - a. location set forth in the notice is, or is able to be (and the Manager has confirmed it will undertake at its expense to ensure that such location is), serviced by the water and/or electric utilities needed to operate the ride; and
  - b. may be safely operated from such location, including with respect to the soil conditions, foundation, and access to the ride for emergencies (including fire, medical, police, and rescue) and maintenance servicing.

If a report making one (1) or more such findings has been timely delivered, then the County and the Manager shall work together cooperatively and in good faith to resolve the findings cited in the report addressing clauses (i) through and including (v) above. If the Manager submits a revised notice to address the findings, the County shall issue a revised report within ten (10) business days after receipt of such re-submission (including each successive re-submission, if there are more than one) by the Manager. If the County fails to issue a timely revised report in response to the Manager's submission of a revised notice as provided herein, the Manager may proceed as if the County had failed to issue a timely report in response to the Manager's initial notice.

Once either the Manager and the County mutually agree in writing, or the Monitor has determined, that the findings cited in the report addressing clauses (i) through and including (v) above are not substantiated or have been satisfactorily resolved, the Manager may proceed with the ride without further review under this Section 12(B). If the Parties are unable to agree as contemplated hereunder, any Party may at any time submit the disputed finding(s) to the Monitor for resolution.

The Manager shall not remove any Fixed Amusement Park Ride unless the Manager agrees to remediate all resulting damage or destruction (including without limitation any required environmental remediation, other than remediation of environmental conditions that existed in that location prior to the Management Commencement Date ("Pre-Existing Environmental Conditions")) at its own expense to the County's reasonable satisfaction and on a reasonable timetable that will not have a material adverse effect on the County's obligation to maintain Playland Park as a public park. As between the County and the Manager, the County shall be responsible for remediation of all Pre-Existing Environmental Conditions and shall use commercially reasonable efforts to promptly remediate the same as and when required by applicable law. If the Manager's removal or relocation of a Fixed Amusement Park Ride would cause the County to be required by applicable law to remediate a Pre-Existing Environmental Condition that the County otherwise would not be required to remediate at that time, the Manager may nonetheless remove the ride, provided that (a) the ride has reached the end of its useful life or has become unsafe, (b) the Manager has reasonably and in good faith determined that the proposed

replacement ride would materially increase ridership and/or revenues, provided, however, that in such case the County may require the Manager to delay any such ride removal until the following County budget year if the County is unable to fund the legally required remediation at the time of the proposed removal under the then-current County budget, or (c) the County consents to the removal. The Manager shall be solely responsible for all costs of acquisition, lease, licensing, removal, relocation, and installation of Non-Historic Amusement Park Rides, including without limitation site preparation, utilities infrastructure, and remediation (other than costs for Pre-Existing Environmental conditions) of any site from which a ride has been removed, provided, however, that with respect to removal of rides, the Manager shall only be required to reasonably disassemble the ride for removal from Playland Park by the County, at the County's risk and expense, as promptly as reasonably possible, but in no event later than nine (9) months after the County's receipt of the notice required herein that the Manager intends to remove the ride. Except for the removal of disassembled rides as provided above and remediation of Pre-Existing Environmental conditions, all work done by the Manager pursuant to this Section 12(B) shall be at the Manager's sole cost and expense. For the avoidance of doubt, the Manager shall have the exclusive right to select the Playland Amusement Park rides it will procure, operate, relocate and/or remove during the Management Term, except to the extent that right is expressly limited or conditioned in this Agreement. Notwithstanding the foregoing, the Manager shall not remove or relocate any of the Historic Amusement Park Rides without the County's prior written consent.

A "Section 12 Response Date" means, with respect to a notice submitted under this Section 12(B), the twentieth (20<sup>th</sup>) business day after the Manager's submission of such notice containing all of the required information (inclusive of the initial ten (10) business days during which the County may notify the Manager of its decision to review such notice), unless the County is then reviewing notices with respect to three (3) or more rides submitted by the Manager pursuant to this Section 12(B), and for which the applicable Section 12 Response Date has not expired, in which case, the twenty-fifth (25<sup>th</sup>) business day after such submission, provided the County is then diligently conducting all such reviews.

C. **Prohibition against sale or disposal of County property.**

It is recognized and understood by the Parties that the Manager does not have the right to sell or dispose of any County property which the Manager has the right to use to carry out the terms of this Agreement. Such property may only be sold or disposed of by the County in accordance with Section 836.31 of the Laws of Westchester County. The disassembly, relocation or removal of Playland Amusement Park rides in accordance with the provisions of Section 12(B) above shall not be deemed a sale or disposal under this paragraph.

**SECTION 13: Subject to Appropriations.**

The Parties recognize and acknowledge that the obligations of the County to pay amounts or incur any expense or financial liability under this Agreement are subject to annual appropriations by the Board of Legislators. Therefore, the payment obligations of the County under this Agreement shall be deemed executory only to the extent of the monies appropriated and available for payment. In the event that the County is obligated to pay amounts to the Manager under this Agreement, including amounts due under Section 23B hereof, the County Executive hereby covenants and agrees to:

- (i) include in the next annual County budget (operating or capital) that it submits to the Board of Legislators after any such amounts due to the Manager under this Agreement shall become due and owing by the County, a request for appropriation (including executive authorization for payment) of funds sufficient to pay all such amounts due and owing from the County under this Agreement, and if such appropriation is not made by the Board of Legislators, include a request for appropriation for such amounts due and owing to the Manager in each annual County budget thereafter until such amounts have been paid by the County;
- (ii) use its best efforts to cause the Board of Legislators to appropriate amounts that will be sufficient to enable the County to pay all such amounts due and owing under this Agreement, including exhausting all available reviews and appeals if such amounts are not appropriated; and
- (iii) if appropriated and available for payment, pay to the Manager all amounts due and owing to the Manager under this Agreement.

The Parties understand and intend that the obligation of the County hereunder shall constitute a current expense of the County and shall not in any way be construed to be a debt of the County in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the County, nor shall anything contained in this Agreement constitute a pledge of the general tax revenues, funds or moneys of the County. The County shall pay amounts due under this Agreement exclusively from legally available funds appropriated for this purpose. To the extent any funds due from the County under this Agreement are insufficient in any year, the Manager shall have no obligation to fund such deficiency except as may be specifically set forth herein.

Notwithstanding anything herein to the contrary, the failure of the Board of Legislators to appropriate amounts due under this Agreement in any one fiscal year of the County will not result in a termination or expiration of this Agreement and in the event an appropriation is not made by the Board of Legislators, the obligations of the County Executive set forth in (i), (ii) and (iii) immediately above shall continue in each subsequent fiscal year until amounts due the Manager under this Agreement are appropriated by the Board of Legislators and the Manager is paid in full.

**SECTION 14: Inspection.**

The Commissioner, or his/her designee, and the County Director of Risk Management, or his/her designee shall be entitled to enter any space assigned to Manager hereunder for the purpose of inspecting, observing and monitoring any aspect of the Manager's operations. Manager shall also permit inspection, observation and monitoring of same by any federal, state, county or municipal officer having jurisdiction, at reasonable times upon reasonable prior notice to Manager. The Manager, at its sole cost and expense, shall promptly, and within a reasonable timeframe, remedy any and all violations issued as a result of such inspection.

**SECTION 15: Eminent Domain.**

In the event that the space assigned to Manager hereunder, or such a substantial part thereof so as to render impossible the operation of this Agreement, is taken by eminent domain, this

Agreement shall terminate on the date upon which title vests in the condemnor and neither party shall have any liability to the other on account of such. If the Agreement is terminated pursuant to this Section 15, the County in accordance with Section 13, will reimburse Manager in accordance with the provisions of Section 23B.

**SECTION 16: Condition of Playland Park.**

The Manager acknowledges that the County has not made any representation as to the condition of Playland Park or any structures, improvements, equipment (except that equipment transferred from the County to the Manager under Section 12 above shall be in good working order), rides, vehicles, machinery and tools situated at Playland Park and accepts same in "as is" condition. The Manager further acknowledges, that as of the Management Commencement Date, it will have inspected Playland Park and the structures, improvements, equipment, rides, vehicles, machinery and tools and that it will rely solely upon such inspection. Nothing contained in this section will affect either Party's responsibility for maintenance and repairs outlined in this Agreement.

**SECTION 17: Bankruptcy.**

If at any time during the Agreement Term, any petition in bankruptcy shall be filed by or against Manager and if filed against the Manager, remains uncontested by the Manager or if Manager shall be adjudicated as bankrupt, or if a Receiver shall be appointed to take possession of Manager's property, or if Manager shall make any assignment for the benefit of creditors, this Agreement shall, at the option of the Board of Acquisition and Contract of the County, immediately cease, terminate or expire. Nothing hereunder shall relieve Manager from any liability incurred under this Agreement except as same may be discharged in bankruptcy.

**SECTION 18: Audit Provisions.**

A. Upon request by the County, no more than once a year and not to extend beyond the prior year, the County may conduct a single audit of the Manager's claimed Manager's Investment expenditures (including the Overhead Allocation) for the prior calendar year. Such annual audit must be concluded within ninety (90) days from the date the County requests to conduct such audit, which request must be made on or before March 31 of the subsequent calendar year (the "Annual Audit Request Date"), provided that the Manager reasonably and timely cooperates with the audit, provides the County with reasonable access to the Manager's books and records within thirty (30) days of the Annual Audit Request Date, and promptly provides all information, other than information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privilege against disclosure, in the Manager's possession, custody, or control reasonably requested by the County. All costs and expenses of such audit shall be borne by the County. The County's right to audit the Manager's Investment expenditures (but not the Manager's revenues) shall expire the calendar year following the calendar year when the Manager's Investment has been fully expended.

B. The Commissioner also reserves the right to annually audit the Manager's, and its approved subcontractors', performance under this Agreement at the County's sole cost and expense. Such audit may include requests for documentation or other information which the

Commissioner may deem necessary and appropriate to verify the information provided by the Manager under the terms of this Agreement. The County may also make site visits to the location(s) where the services to be provided under this Agreement are performed, upon reasonable prior written notice to the Manager, in order to review the Manager's or approved subcontractor's records and to observe the performance of services, and/or to conduct interviews of staff and patrons, where appropriate and not otherwise prohibited by law. In exercising this right to audit performance hereunder, the Commissioner may not intrude upon or disrupt in any manner the business and activities being conducted by the Manager or an approved subcontractor and any dissatisfaction on the part of the Commissioner observed on site at Playland Park shall be conveyed to the Manager or an approved subcontractor in private and out of earshot of any member of the public or any employee working in the Park. If the Commissioner's dissatisfaction warrants it, any verbal discussion shall be followed up by a written report delivered to the Manager or an approved subcontractor.

**SECTION 19: Property Insurance, Damage or Destruction.**

To safeguard the interests and property of the County, the County, in its own name as the insured, will procure, maintain and pay for, throughout the Agreement Term, all risk insurance policies covering County-owned structures, County-owned boiler and machinery, County-owned contents, Fixed Equipment, and improvements at Playland Park which the County owns or obtains title to pursuant to this Agreement. Such policies shall cover one hundred (100%) percent of the insurable replacement value thereof, reserving the right to increase such coverage as and when the replacement values increase. Insurance proceeds, if any, shall be paid to the County.

After the Management Commencement Date, the Manager shall provide the Director of Risk Management with a list, to be updated as necessary during the Agreement Term, of any and all improvements upon their completion and any and all Fixed Equipment upon its attachment to the County's property.

The County shall not be responsible to insure non-County property that the Manager and/or its approved subcontractors bring into Playland Park, including but not limited to, Removable Personal Property which the Manager and/or its approved subcontractors shall identify in writing to the Director of Risk Management. It is recognized and understood by the Parties that the Manager and/or its approved subcontractors shall at their sole cost and expense procure insurance for all of their Removable Personal Property and provide evidence of same to the County's Director of Risk Management and that the insurance be for one hundred (100%) percent of the insurable replacement value thereof. To the extent that any loss is recouped by actual payment of the proceeds of any insurance to the Manager and/or its approved subcontractors, all such proceeds must first be used to replace the Removable Personal Property.

In the event any Fixed Equipment installed or improvements made by the Manager at Playland Park, insurable or uninsurable, are damaged or destroyed (except damage or destruction caused by the Manager as set forth below) to the extent that they are unusable by the Manager for the purposes for which they were used prior to such damage, or same are destroyed, the County shall be required to repair, replace or reconstruct such Fixed Equipment and improvements substantially as they were immediately prior to such casualty. The funds for such repair, replacement or reconstruction shall be paid from insurance proceeds, to the extent available.

In the event any portion of Playland Park is damaged or destroyed by fire or other causes, by reason of any act or omission of the Manager, and/or its approved subcontractors, their respective officers, employees or agents, which constitutes negligence or willful misconduct, this Agreement shall continue in full force and effect, and the Manager and/or its approved subcontractors shall be responsible to pay for the cost to repair or rebuild Playland Park or any portion thereof so damaged or destroyed, and unless otherwise reimbursable by insurance hereunder, the same shall be at their own cost and expense. The Manager and/or its approved subcontractors shall be responsible for any deductible under these circumstances. The failure of the Manager and/or its approved subcontractors to pay for the cost to repair or rebuild within a reasonable period of time shall be construed as a material breach of this Agreement.

**SECTION 20: Standard Insurance and Indemnity.**

A. The Manager agrees to procure and maintain insurance naming the County as additional insured, as provided and described in **Schedule "E,"** which is attached hereto and made a part hereof. In addition to, and not in limitation of, the insurance provisions contained in **Schedule "E,"** the Manager agrees:

- (i) that except for the amount, if any, of damage contributed to, caused by, or resulting from the negligent acts or omissions or willful misconduct of the County, its officers, elected officials, employees, contractors or agents, the Manager shall indemnify and hold harmless the County, its officers, elected officials, employees, contractors and agents, from and against any and all liability, damage, claims, demands, costs, judgments, fees, reasonable attorney's fees or loss arising out of the negligent acts or omissions or the reckless or willful misconduct of the Manager, its officers, employees, contractors or agents; and
- (ii) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action relating to this Agreement and arising out of the alleged negligent acts or omissions or willful misconduct of the Manager, its officers, employees, contractors or agents and to bear all other reasonable costs and expenses related thereto.

B. The County shall indemnify and hold the Manager and its members, officers and employees harmless from and against any and all liability, damage, claims, demands, costs, or judgments arising out of any act/occurrence prior to the Management Commencement Date and after said date for any act/occurrence with respect to work undertaken by the County in accordance with its responsibilities under this Agreement and any Pre-Existing Environmental Conditions, and the County shall defend any action arising out of said act/occurrence and be responsible for all costs and expenses relating thereto, including but not limited to Manager's reasonable attorney's fees should it become necessary for the Manager to retain counsel.

**SECTION 21: Events of Default.**

Any of the following shall be an event of default, the continuation of which beyond the expiration of any time permitted herein to cure shall thereupon be deemed an "Event of Default" under this Agreement:

A. With respect to the Manager:

- (i) the Manager shall fail to perform or observe any material obligation of the Manager under any provision of this Agreement, and such failure shall continue and shall not be remedied within thirty (30) days after notice from the Commissioner specifying the nature of the default. Notwithstanding the immediately preceding sentence, it shall not be an Event of Default if, for causes beyond the reasonable control of the Manager, such failure cannot be cured within thirty (30) days, as long as the Manager immediately takes steps necessary to remedy same and duly institutes and diligently prosecutes same to completion. For tasks in this Agreement that require performance within less than thirty (30) days, e.g., filing an accident report within 24 hours, then the Manager shall only have an equivalent time period from the time of notice within which to cure; or
- (ii) the Manager shall fail to procure and maintain the insurance policies required by this Agreement and such failure shall continue for fifteen (15) days after notice from the County Director of Risk Management specifying the same; provided, however, that should the Manager fail to procure and maintain Commercial General Liability insurance for the operation of Playland Park after the Management Commencement Date, as required by Section 19 and **Schedule "E,"** then this Agreement shall terminate immediately, there shall be no opportunity to cure and the provisions of Section 22 below shall not apply; or
- (iii) the Manager abandons Playland Park after the Management Commencement Date, or ceases to manage Playland Park after the Management Commencement Date; or
- (iv) any or all of the Manager's interest in this Agreement or Playland Park or any part thereof shall be taken upon execution or by other process of law directed against the Manager, or shall be taken upon or subject to any attachment at the instance of any creditor of or claimant against the Manager, and said attachment shall not be bonded, discharged or disposed of within ninety (90) days after levy thereof.

B. With respect to the County:

- (i) the County shall fail to perform or observe any material obligation of the County under any provision of this Agreement, and such failure shall continue and shall not be remedied within thirty (30) days after notice from the Manager specifying the nature of the default. Notwithstanding the immediately preceding sentence, it shall not be an Event of Default if, for causes beyond the reasonable control of the County, such failure cannot be cured within thirty (30) days, as long as the County immediately takes steps necessary to remedy same and duly institutes and diligently prosecutes same to completion. For tasks in this Agreement that require performance by the County within less than thirty (30) days, the County shall only have an equivalent time period from the time of notice within which to cure; or
- (ii) the County or the Board of Legislators willfully and intentionally takes or omits to take any action, directly or indirectly, that is intended to and in fact does materially

impede or prevent the Manager from exercising its rights or performing its duties under this Agreement (including, without limitation, the transition of day-to-day management of Playland from the County to the Manager on the Management Commencement Date and the Manager's operation of Playland after the Management Commencement Date), and such willful and intentional misconduct occurs on or before September 30, 2023. For the avoidance of doubt, "willful and intentional misconduct" within the meaning of this Section 21(B)(ii) shall not include (a) conduct that is negligent or reckless, but not intentional, (b) a breach of contract on the part of the County, no matter how material, unless such breach is willfully and intentionally committed for the intended purpose of impeding or preventing the Manager from exercising its rights or performing its duties under the Agreement and achieves that intended effect, or (c) the County's reasonable and good faith exercise of its rights under the Agreement. The United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") shall retain jurisdiction to enforce this provision; provided, however, that if it is found that the Bankruptcy Court lacks such jurisdiction, or the Bankruptcy Court declines to exercise such jurisdiction, such dispute shall be resolved by arbitration in accordance with the procedures set forth in Section 43 below.

**SECTION 22: Remedies for Default.**

A. After a material Event of Default on the part of the Manager beyond any applicable notice and cure period that remains uncured, the Commissioner shall have the right to elect to terminate this Agreement by notice to the Manager as provided in Section 23 below, subject to all necessary legal approvals.

B. After a material Event of Default on the part of the County beyond any applicable notice and cure period that remains uncured, the Manager shall have the right to elect to terminate this Agreement by notice to the Commissioner as provided in Section 23 below.

C. The failure of either the County or the Manager to seek redress for any Event of Default, or to insist upon the strict performance of any provision of this Agreement, shall not prevent a subsequent act that would have originally constituted an Event of Default from having all the force and effect of an original Event of Default.

**SECTION 23: Termination.**

A. If the Commissioner elects to terminate this Agreement pursuant to Section 22 above, the Manager shall be given a thirty (30) day written notice of the election to so terminate, specifying in such notice a termination date and on such date the Agreement Term and this Agreement shall terminate in all respects, provided that (except as otherwise provided in this Agreement) no Party hereto shall be relieved of any obligation or liability which accrued prior to such date. After the receipt of such notice and on or before such termination date, unless the Event of Default (if applicable) giving rise to such termination notice has been theretofore cured, the Manager shall vacate Playland Park in accordance with the provisions of this Agreement.

B. If the Manager elects to terminate this Agreement pursuant to Section 22 above, the Manager shall give the Commissioner a thirty (30) day written notice of its election to so terminate, specifying in such notice a termination date, and on such date the Agreement Term and this Agreement shall terminate in all respects, provided that (except as otherwise provided in this Agreement) no Party hereto shall be relieved of any obligation or liability which accrued prior to such date. After the giving of such notice and on or before such termination date, unless the Event of Default (if applicable) giving rise to such termination notice has been theretofore cured, the Manager shall vacate Playland Park in accordance with the provisions of this Agreement.

The date upon which either the Commissioner pursuant to subsection A above, or the Manager pursuant to this subsection B or Section 23A below, may terminate the Agreement Term and this Agreement shall be called the "Termination Date".

C. Unless earlier terminated upon an Event of Default, this Agreement shall expire on the Expiration Date, and on or before such day the Manager shall vacate Playland Park, unless a new agreement for the purposes herein is entered into by the Parties.

D. Upon termination or expiration of this Agreement, the Manager shall assign to the County, at the County's option, any contracts with third parties that shall then be in effect.

E. Upon termination or expiration of this Agreement, all rights of the Manager under this Agreement shall revert to the County or its designee, and the County and the Manager shall have no further responsibility or liability under or with respect to this Agreement, except as provided in Section 23B below and except that within thirty (30) days of the Termination Date or of the Expiration Date, as the case may be, the Manager shall deliver to the Commissioner an accounting for the year prior to the Termination Date or Expiration Date and the Manager shall be obligated to pay the County any sums due and owing under this Agreement as a result of that accounting. Such accounting shall be performed by a certified public accountant licensed in New York State in accordance with generally accepted accounting principles.

**SECTION 23A: Termination Due to Unexpected Risk Event.**

The Manager shall have the right to terminate this Agreement if:

- (i) the County fails to appropriate sufficient funds to carry out its responsibilities under this Agreement, which in turn materially impacts the ability of the Manager to carry out its duties under this Agreement; or
- (ii) in the event that damage to the property, buildings and equipment of Playland Park due to Force Majeure is so severe that the material revenue generating operations of the Park cannot be resumed within a period of: three (3) months during the in-season and six (6) months during the off-season; or
- (iii) as a result of a decision in a lawsuit or an administrative proceeding brought by a third party, the rights of the Manager under this Agreement are modified and/or diminished in whole or in part and as a result of such modification or diminution the economic value to the Manager of this Agreement has been substantially reduced; or

- (iv) in the event a law is adopted by the Board of Legislators or a county regulation is adopted or modified which specifically relates to Rye Playland, the result of which substantially reduces the economic value to the Manager of this Agreement or prevents the Manager from performing its obligations under this Agreement (each, an “Unexpected Risk Event”). For the avoidance of doubt, a law that specifically relates to Playland but that does not substantially reduce the economic value of this Agreement to the Manager or prevent the Manager from performing its obligations under this Agreement (e.g., a law prohibiting the construction of residential housing on Playland property) would not entitle the Manager to terminate this Agreement.

**SECTION 23B: Liquidated Damages Payment.**

It is recognized and understood by the Parties that the Manager is making a large investment in Playland Park. If this Agreement is terminated by either Party as set forth herein, then the County, consistent with Section 13, shall make a liquidated damages payment to the Manager in accordance with the following schedule (each such payment, a “Liquidated Damages Payment”):

(i) **Termination Due to Event of Default on the Part of the County.**

- a. If the Manager elects to terminate this Agreement pursuant to Section 6-a(i) (regarding the County’s failure to meet Project Deadlines because of Non-Excused County Delays or the County’s failure to meet a Threshold for any reason other than a Force Majeure event or other unavoidable circumstance beyond the County’s control), Section 22(B) (in connection with an Event of Default on the part of the County under Section 21(B)(i)), Section 23A(i), or Section 42, before the County reaches the 90% Threshold, the Manager shall be entitled to a payment equal to the sum of: (i) Eleven Million (\$11,000,000.00) Dollars (the “Damages Amount”) plus interest accruing at twelve (12%) percent compounded annually from the Effective Date; *plus* (ii) all amounts spent toward the Manager’s Investment under this Agreement plus interest accruing at twelve (12%) percent compounded annually from the date each such funds are spent;
- b. If the Manager elects to terminate this Agreement pursuant to Section 22(B) (in connection with an Event of Default on the part of the County under Section 21(B)(ii)) before the County reaches the 90% Threshold, the Manager shall be entitled to a payment equal to the sum of: (i) the Damages Amount plus interest accruing at the Default Rate (as defined below) compounded annually from the Original Agreement Commencement Date by and through December 31, 2021; *plus* (ii) all amounts spent toward the Manager’s Investment under this Agreement plus interest accruing at twelve (12%) percent compounded annually from the date each such funds are spent;
- c. If the Manager elects to terminate this Agreement pursuant to Section 6-a(i) (regarding the County’s failure to meet Project Deadlines because of Non-

Excused County Delays) or the County's failure to meet a Threshold for any reason other than a Force Majeure event or other unavoidable circumstance beyond the County's control), Section 22(B) (in connection with an Event of Default on the part of the County under Sections 21(B)(i), Section 23A(i), or Section 42, after the County reaches the 90% Threshold, the Manager shall be entitled to a payment equal to the sum of: (i) Six Million (\$6,000,000.00) Dollars plus interest accruing at twelve (12%) percent compounded annually from the Effective Date; *plus* (ii) all amounts spent toward the Manager's Investment under this Agreement plus interest accruing at twelve (12%) percent compounded annually from the date each such funds are spent; or

- d. If the Manager elects to terminate this Agreement pursuant to Section 22(B) (in connection with an Event of Default on the part of the County under Section 21(B)(ii)), after the County reaches the 90% Threshold, the Manager shall be entitled to a payment equal to the sum of: (i) Six Million (\$6,000,000.00) Dollars plus interest accruing at the Default Rate (as defined below) compounded annually from the Original Agreement Commencement Date by and through December 31, 2021; *plus* (ii) all amounts spent toward the Manager's Investment under this Agreement plus interest accruing at twelve (12%) percent compounded annually from the date each such funds are spent.

**(ii) Termination Due to Event of Default on the Part of the Manager.**

- a. If the County elects to terminate this Agreement pursuant to Section 3(D) (regarding the Manager's failure to invest the Manager's Investment by no later than five (5) years after the Management Commencement Date), Section 3(G)(i) (regarding the Manager's failure to timely pay any real property tax assessment in excess of One Hundred Thousand (\$100,000) Dollars), or Section 22(A) (in connection with an Event of Default on the part of the Manager under Sections 21(A)(i) through (iv)) before the County reaches the 90% Threshold, the Manager shall be entitled to a payment equal to the sum of: (i) 50% of the Damages Amount without interest (subject to the second-to-last paragraph of this Section 23B); *plus* (ii) all amounts spent toward the Manager's Investment under this Agreement without interest (subject to the second-to-last paragraph of this Section 23B); or
- b. If the County elects to terminate this Agreement pursuant to Section 3(D) (regarding the Manager's failure to invest the Manager's Investment by no later than five (5) years after the Management Commencement Date), Section 3(G)(i) (regarding the Manager's failure to timely pay any real property tax assessment in excess of One Hundred Thousand (\$100,000) Dollars), or Section 22(A) (in connection with an Event of Default on the part of the Manager under Sections 21(A)(i) through (iv)) after the County reaches the 90% Threshold, the Manager shall be entitled to a payment

equal to the sum of: (i) Three Million (\$3,000,000.00) Dollars without interest (subject to the second-to-last paragraph of this Section 23B); *plus* (ii) all amounts spent toward the Manager's Investment under this Agreement without interest (subject to the second-to-last paragraph of this Section 23B).

(iii) **Termination Not Due to Event of Default.**

- a. If this Agreement is terminated pursuant to Section 3(G)(ii) (regarding the Manager's election to challenge the real property tax assessment), Section 6a-1 (regarding the County's failure to meet a Threshold as a result of a Force Majeure or other unavoidable circumstance beyond the County's control), Section 15, Section 23A(ii) or Section 23A(iii), or for any other reason not due to an Event Default by a Party before the County reaches the 90% Threshold, the Manager shall be entitled to a payment equal to the sum of: (i) the Damages Amount plus interest accruing at six (6%) percent compounded annually from the Effective Date; *plus* (ii) all amounts spent toward the Manager's Investment under this Agreement plus interest accruing at six (6%) percent compounded annually from the date each such funds are spent;
- b. If this Agreement is terminated pursuant to Section 3(C) (regarding a Revenue Performance Termination) before the County reaches the 90% Threshold, the Manager shall be entitled to a payment equal to the sum of: (i) the Damages Amount, without interest (subject to the second-to-last paragraph of this Section 23B); *plus* (ii) all amounts spent toward the Manager's Investment under this Agreement, without interest (subject to the second-to-last paragraph of this Section 23B);
- c. If this Agreement is terminated pursuant to Section 3(G)(ii) (regarding the Manager's election to challenge the real property tax assessment), Section 6a-1 (regarding the County's failure to meet a Threshold as a result of a Force Majeure or other unavoidable circumstance beyond the County's control), Section 15, Section 23A(ii) or Section 23A(iii), or for any other reason not due to an Event of Default by a Party after the County reaches the 90% Threshold, the Manager shall be entitled to a payment equal to the sum of: (i) Six Million (\$6,000,000) Dollars plus interest accruing at six (6%) percent compounded annually from the Effective Date; *plus* (ii) all amounts spent toward the Manager's Investment under this Agreement plus interest accruing at six (6%) percent compounded annually from the date each such funds are spent; or
- d. If this Agreement is terminated pursuant to Section 3(C) (regarding a Revenue Performance Termination) after the County reaches the 90% Threshold, the Manager shall be entitled to a payment equal to the sum of: (i) Six Million (\$6,000,000) Dollars, without interest (subject to the second-to-last paragraph of this Section 23B); *plus* (ii) all amounts spent toward the

Manager's Investment under this Agreement, without interest (subject to the second-to-last paragraph of this Section 23B).

(iv) **Termination Under Section 23A(iv).**

- a. Except as set forth below, if the Manager elects to terminate this Agreement pursuant to Section 23A(iv), the Liquidated Damages Payment applicable to a Termination Due to Event of Default on the Part of the County set forth in Section 23B(i) shall apply. For example, a law imposing a public park fee for visitors to County parks, including Playland, would entitle the Manager to terminate this Agreement under Section 23A(iv) and receive the Liquidated Damages Payment applicable to a Termination Due to Event of Default on the Part of the County.
- b. If the Manager elects to terminate this Agreement pursuant to Section 23A(iv) and the law at issue has not been adopted for the intended purpose of substantially reducing the economic value of this Agreement to the Manager or preventing the Manager from performing its obligations under this Agreement, but has the effect of substantially reducing the economic value of this Agreement to the Manager or preventing the Manager from performing its obligations under this Agreement, the Liquidated Damages Payment applicable to a Termination Not Due to Event of Default set forth in Section 23B(iii) shall apply. For example, a law requiring the temporary closure of Playland Park to remediate the effects of a natural disaster would entitle the Manager to terminate this Agreement under Section 23A(iv) and receive the Liquidated Damages Payment applicable to a Termination Not Due to Event of Default.

In the event of a Liquidated Damages Payment pursuant to Sections 23B(i), (ii), or (iii) hereunder, if the Agreement was terminated (1) within the first twenty-four (24) months from the Management Commencement Date, the County shall reimburse the Manager for the entire amount of the Manager's Investment actually made by the date of termination, and (2) subsequent to the first twenty-four (24) months from the Management Commencement Date, the County shall reimburse the Manager for the unamortized portion of the Manager's Investment actually made by the date of termination as determined on a straight-line depreciation basis over thirty (30) years, net of any insurance proceeds that the Manager is entitled to recover. For purposes of clarifying the Parties' intent, the following examples are provided (without regard to interest or any other amounts that may be owed):

- If the Manager has invested \$30,000,000 and the Agreement is terminated as described above in the third year after the Management Commencement Date, the Manager would be entitled to the return of its \$30,000,000 less one-thirtieth of the investment, or \$29,000,000.
- If the Manager has invested \$30,000,000 and the Agreement is terminated as described above in the seventh year after the Management Commencement Date, the Manager

would be entitled to the return of its \$30,000,000 less five-thirtieths (or one-sixth) of the investment, or \$25,000,000.

Any Liquidated Damages Payment to which the Manager is entitled under this Section 23B shall be paid by the County not more than ninety (90) days after this Agreement has been terminated. If any Liquidated Damages Payment due from the County hereunder are not made within ninety (90) days after this Agreement has been terminated, such Liquidated Damages Payment shall (whether or not the Liquidated Damages Payment itself carries interest) accrue interest at eighteen (18%) percent compounding annually (the "Default Rate") from the date such Liquidated Damages Payment was due until the date the County makes such payment.

The Parties acknowledge and agree that the Manager is making a substantial investment in Playland Park under this Agreement and has previously expended substantial sums under and in reliance on the Original Agreement and the 2016 Agreement that this Agreement amends and replaces. The Parties further acknowledge and agree that the foregoing Liquidated Damages Payments shall not be considered a penalty under New York law, but instead a reasonable estimation of the amount necessary to compensate the Manager for the investment it has made since the Original Agreement and will make to prepare to perform its duties under this Agreement.

**SECTION 24: Non-Discrimination.**

The Manager expressly agrees that neither it nor any approved subcontractor, employee, or any other person acting on its behalf shall discriminate against or intimidate any employee or other individual on the basis of race, creed, religion, color, gender, age, national origin, ethnicity, alienage or citizenship status, disability, marital status, sexual orientation, familial status, genetic predisposition or carrier status during the Agreement Term, as those terms may be defined in Chapter 700 of the Laws of Westchester County. The Manager acknowledges and understands that the County maintains a zero tolerance policy prohibiting all forms of harassment or discrimination against its employees by co-workers, supervisors, vendors, contractors, or others. If isolated instances of harassment or discrimination by a person acting on behalf of the Manager should occur (i.e., not part of a pattern of discrimination or harassment by the same person or group of related persons), such isolated instances shall not in and of themselves be deemed a breach of this Agreement, provided that the Manager takes appropriate steps to investigate all allegations of harassment or discrimination and responds appropriately to any substantiated allegation, including where appropriate through termination of the offending subcontractor, employee, or other person acting on its behalf.

**SECTION 25: Compliance with Laws.**

A. The Manager, and all approved subcontractors, shall comply, at their own expense, with the provisions of all applicable local, state and federal laws, rules and regulations, orders and ordinances and other legal requirements ("Law or Laws").

B. Subject to any necessary legal approvals, the Manager may appeal or contest the validity or application of any Law upon the following conditions:

- (i) the Manager shall appeal or contest the same in good faith and by appropriate proceedings;

- (ii) such appeal or contest (or any resulting delay in compliance with any Law) shall not subject the County to any criminal or civil sanction, fine or penalty, or to any other financial obligation or liability, unless the Manager furnishes the County with a written undertaking, in form acceptable to the County Attorney in his/her reasonable discretion, to indemnify the County against the same; and
- (iii) the Manager from time to time shall advise the County Attorney, upon written request of the County Attorney, as to the status of any such appeal or contest.

**SECTION 26: MBE/WBE.**

Pursuant to Section 308.01 of the Laws of Westchester County, it is the goal of the County to use its best efforts to encourage, promote and increase the participation of business enterprises owned and controlled by persons of color or women in contracts and projects funded by all departments of the County. Attached hereto and forming a part hereof as **Schedule "G"** is a questionnaire entitled "Business Enterprises Owned and Controlled by Persons of Color or Women," which the Manager agrees to complete.

**SECTION 27: Records and Intellectual Property.**

In connection with the performance of the Manager's obligations and the exercise of its rights under this Agreement, the County grants to the Manager an exclusive, non-transferable, royalty-free license during the Term to use the names "Playland" or "Rye Playland" together with all existing and future developed logos, trademarks and copyrights owned by the County and used in connection with Playland Park. Notwithstanding the above, the Manager shall reimburse the County any and all costs and expenses incurred by the County in connection with same. The Manager may grant sublicenses of the same to its subcontractors and to vendors. All logos, trademarks and copyrights owned by the County or licensed by the Manager from and after the Management Commencement Date, or newly created logos, trademarks or copyrights created by the Manager during the Term for use with respect to the operation of Playland Park, shall remain exclusively the property of the County. Notwithstanding the above, all newly created logos, trademarks and copyrights created by the Manager for use with respect to the operation of Playland Park are subject to the prior written approval of the Commissioner, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the County shall retain a right to use County-owned logos, trademarks and copyrights licensed to the Manager, so long as such use does not adversely impact the Manager's rights under this Agreement.

All records or recorded data of any kind compiled by the Manager in completing the Work described in this Agreement and relating specifically and exclusively to the Work, including but not limited to written reports, studies, drawings, blueprints, computer printouts, graphs, charts, plans, specifications and all other similar recorded data, shall become and remain the property of the County. The Manager may retain copies of such records for its own use and shall not disclose any such information without the express written consent of the Commissioner. The County shall have the right to reproduce and publish such records, if it so desires, at no additional cost to the County, subject to any third-party restrictions.

Notwithstanding the foregoing, all deliverables that contain or constitute intellectual property (e.g., advertising or signs) created under this Agreement by the Manager specifically and exclusively relating to the Work are to be considered “works made for hire.” If any of the deliverables do not qualify as “works made for hire,” the Manager hereby assigns to the County all right, title and interest (including ownership of copyright) in such deliverables and such assignment allows the County to obtain in its name copyrights, registrations and similar protections that may be available. The Manager agrees to assist the County, if required, in perfecting these rights, at the County’s sole cost and expense. The Manager shall provide the Commissioner with at least one copy of each deliverable.

Notwithstanding the foregoing, any and all intellectual property, including but not limited to the Manager’s trademarks, copyrights and protected property related to the Manager’s general company operations shall remain the property of the Manager.

The Manager agrees to obtain from any approved subcontractor or other third party engaged by the Manager to deliver Work product containing intellectual property a representation and warranty to defend, indemnify and hold harmless the County and the Manager for all damages, liabilities, losses and expenses arising out of any claim that a deliverable infringes upon an intellectual property right of a third party. If such a claim is made, or appears likely to be made, the Manager agrees to require such approved subcontractor or other third party to provide documentation that will enable the County’s continued use of the deliverable, or to modify or replace it. If the Commissioner determines that none of these alternatives is reasonably available, the deliverable shall be returned, to the extent the deliverable can be returned.

Except as provided above, the Manager shall not claim ownership to or use of any County intellectual property such as trademarks, copyrights and other such protected property without written permission from the County.

**SECTION 28: Independent Contractors.**

The Manager and the County agree that the Manager, and its approved subcontractors, and their respective officers, employees, agents, and any third parties acting on their behalf, are independent contractors and not employees of the County or any department, agency or unit thereof. In accordance with their status as independent contractors, the Manager covenants and agrees that neither the Manager, nor its approved subcontractors, and their respective officers, employees, agents, and any third parties acting on their behalf, will hold themselves out as, or claim to be, officers or employees of the County or any department, agency or unit thereof.

**SECTION 29: Criminal Background Disclosure.**

The Manager agrees to complete the Criminal Background Disclosure as required by Executive Order No. 1-2008 and attached hereto as **Schedule “H”**, which is hereby incorporated by reference.

**SECTION 30: MacBride.**

Pursuant to Act No. 56-1999, as codified in Chapter 310 of the Laws of Westchester County, no County procuring officer may award or recommend for award any contract not subject

to competitive bidding to a party that does not execute a certification in substantially the form attached hereto and forming a part hereof as **Schedule "I"**. Therefore, the Manager agrees, as part of this Agreement, to complete the form attached hereto as **Schedule "I"**.

**SECTION 31: Required Disclosure.**

Attached hereto and forming a part hereof as **Schedule "J"** is a questionnaire entitled "Required Disclosure of Relationships to County." The Manager agrees to complete said questionnaire as part of this Agreement. In the event that any information provided in the completed questionnaire changes during the Agreement Term, the Manager agrees to notify the Commissioner in writing within ten (10) business days of such event. The Manager shall also have each approved subcontractor complete this questionnaire and shall advise each approved subcontractor of the duty to report any changes to the information contained therein to the Manager within ten (10) business days of such event and such information shall be forwarded by the Manager to the Commissioner.

**SECTION 32: No Waiver.**

Failure of either Party hereto to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment of such term or condition, but the same shall remain in full force and effect. Acceptance by either Party of any Work or the payment of any fee or reimbursement due hereunder with knowledge of a breach of any term or condition hereof shall not be deemed a waiver of any such breach, and no waiver under such circumstances by a Party of any provision hereof shall be implied.

**SECTION 33: No Lease.**

Neither Playland Park, nor any land, building, space, improvement or equipment is being sold or leased hereunder, nor is any interest in real property being granted, or any possessory right with respect to Playland Park or any part thereof being granted, to the Manager and/or its approved subcontractors; but the Manager shall manage and operate Playland Park at all times on behalf of the County. Under no circumstances shall this Agreement be construed as granting the Manager, or its approved subcontractors, any real property rights, nor any title or interest of any kind or character in, on, or about Playland Park.

**SECTION 34: Notices.**

All notices of any nature referred to in this Agreement shall be in writing and either sent by registered or certified mail postage pre-paid, or delivered by hand or overnight courier, or sent by facsimile (with acknowledgment received and a copy of the notice sent by registered or certified mail postage pre-paid), or email (with a copy of the notice also sent by overnight, registered or certified mail postage pre-paid) as set forth below or to such other addresses as the respective Parties hereto may designate in writing. All such notices will be deemed received: (a) upon actual receipt thereof by the addressee, or (b) on the day of faxing, e-mailing or sending by other means of recorded electronic communication; provided that such day in any event is a business day and the communication is so delivered, faxed, e-mailed or sent before 11:59 p.m. Eastern Time on such day. Otherwise, such communication will be deemed to have been given and made and to have

been received on the next following business day. Any Party may from time to time change its address under this Section 34 by providing notice to the other Party given in the manner provided by this Section 34. A "business day" means any day on which banks are required by law to be open for business in the State of New York. Notices shall be sent to the following:

To the County:

County Executive  
County of Westchester  
Michaelian Office Building, 9<sup>th</sup> Floor  
148 Martine Avenue  
White Plains, NY 10601

Chair  
County Board of Legislators  
Michaelian Office Building, 8<sup>th</sup> Floor  
148 Martine Avenue  
White Plains, NY 10601

With copies to (which shall not constitute notice for purposes hereof):

Commissioner  
Westchester County Department of Parks, Recreation & Conservation  
450 Saw Mill River Road  
Ardsley, NY 10502

Commissioner  
Westchester County Department of Public Works and Transportation  
Michaelian Office Building, Room 518  
148 Martine Avenue  
White Plains, New York 10601

County Attorney  
Michaelian Office Building, Room 600  
148 Martine Avenue  
White Plains, New York 10601

To the Manager:

Standard Amusements LLC  
PO Box 809  
Rye, New York 10580  
Attn: [●]

With copies to (which shall not constitute notice for purposes hereof):

United Parks LLC  
1395 Brickell Avenue, Suite 800  
Miami, Florida 33131  
Attn: [●]

Greenberg Traurig, LLP  
333 SE 2<sup>nd</sup> Avenue  
Miami, FL 33131  
Attn: Daniella G. Silberstein

Katten Muchin Rosenman LLP  
575 Madison Avenue  
New York, New York 10022  
Attn.: James S. Normile, Esq. and William F. Dudine, Esq.

**SECTION 35: Definition of Commissioner.**

Notwithstanding anything contained herein to the contrary, it is agreed by the Parties that if it were to be concluded or determined that it has been and now is inappropriate for the Department of Parks, Recreation and Conservation and its Commissioner to manage and operate Playland Park based upon the definitional provisions in Chapter 134 and 249 of the Laws of Westchester County, then the day-to-day management and operations of Playland Park would fall to the DPW&T Commissioner who is “in charge of the preservation and maintenance of all buildings and grounds owned by the county for county purposes, except the lands and buildings under the jurisdiction of the Department of Parks, Recreation and Conservation...” (Laws of Westchester County Section 241.261) or, alternatively, the day-to-day management and operations of Playland Park would fall to the County Executive pursuant to Chapter 110 of the Laws of Westchester County, which provides, among other things, that the County Executive “shall be the chief executive and administrative officer of the county government. It shall be the duty of the County Executive: (1) to supervise, direct and control, subject to law and the provisions of this act and local laws, the administrative services and departments of the county.” (Laws of Westchester County Section 110.11).

**SECTION 36: Entire Agreement.**

This Agreement and its attachments constitute the entire Agreement between the Parties with respect to the subject matter hereof and shall supersede all previous agreements, negotiations, commitments and writings. This Agreement shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the Parties.

**SECTION 37: No Third Party Rights.**

Nothing herein is intended or shall be construed to confer upon or give to any third party or its successors and assigns any rights, remedies or basis for reliance upon under or by reason of this Agreement, except in the event that specific third-party rights are expressly granted herein.

**SECTION 38: Conflict of Interest.**

The Manager shall use all reasonable means to avoid any conflict of interest with the County relating to this Agreement and shall immediately notify the Commissioner in the event of such a conflict of interest. The Manager shall also use all reasonable means to avoid any appearance of impropriety relating to this Agreement.

**SECTION 39: Force Majeure.**

Neither the County nor the Manager, as the case may be, shall be deemed in breach hereof if it is prevented from or materially delayed in performing any of the obligations hereunder by reason of acts of God, acts of terrorism, acts of the public enemy, acts of superior governmental authority, strikes or labor disputes, floods, riots, rebellion, sabotage, pandemics or other government-declared public health crises or public safety emergencies or any other similar circumstances not within its reasonable control. Notwithstanding any other notice obligations of the Parties in this Agreement, if either Party is made aware of or has knowledge of a Force Majeure event that affects such Party's performance of any of its obligations under this Agreement, such Party will notify the other Party reasonably promptly after the occurrence of such Force Majeure event.

**SECTION 40: Authority.**

The Board of Legislators has duly authorized this Agreement by Act No. [●] approved by the Board of Legislators at a meeting duly held on [●] day of [●], 20[●].

The Board of Acquisition and Contract has duly authorized this Agreement by Resolution approved at its meeting held on the [●] day of [●], 20[●].

**SECTION 41: Enforceability.**

This Agreement shall be construed and enforced in accordance with the laws of the State of New York. In addition, the Parties hereby agree that for any cause of action arising out of this Agreement that is not subject to the Alternative Dispute Resolution procedures provided in Section 43, any such action shall be brought in the County of Westchester, New York. The Bankruptcy Court shall retain sole and exclusive jurisdiction with respect to any matters arising under or related to this Agreement prior to the Effective Date and with respect to any matters arising under Section 21(B)(ii) to the extent provided therein.

If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this Agreement shall in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such term or provision shall be restricted in applicability or reformed to the minimum extent

required for such to be enforceable. This provision shall be interpreted and enforced to give effect to the original written intent of the Parties prior to the determination of such invalidity or unenforceability.

**SECTION 42: County Attorney Opinion.**

It is recognized and understood by the Parties that, in addition to all other rights of termination set forth herein, the Manager has the option to terminate this Agreement if a separate opinion from the Westchester County Attorney addressed to the Manager is not given stating that when this Agreement has been duly authorized by the Board of Legislators and the Board of Acquisition and Contract and has been fully executed by the Parties, it will be a valid, binding and enforceable agreement. Said form of opinion shall be reasonably acceptable to the Manager and shall be delivered simultaneously with the execution of this Agreement by the Parties hereto.

**SECTION 43: Alternative Dispute Resolution.**

Except for those matters for which the Bankruptcy Court retains jurisdiction pursuant to Section 41 above, the alternative dispute resolution mechanisms set forth in this Section 43 shall control any disputes between the Parties arising under this Agreement (“Disputes”).

If a Dispute arises between the Parties that the Parties are unable to resolve within thirty (30) days of the date both Parties become aware of such Dispute, either Party may provide written notice of such Dispute, including a reasonably detailed explanation of the circumstances surrounding such Dispute and a request for escalation, to senior management for each of the County and the Manager, which shall include the County Executive on behalf of the County and Nicholas Singer (or another member of the Manager’s Key Personnel) on behalf of the Manager (collectively, the “Representatives”). Upon receipt of such notice and request for escalation, the Representatives shall use their commercially reasonable efforts in good faith to resolve such Dispute. If the Representatives are unable to resolve such disputes within thirty (30) days of receipt of such notice and request for escalation, then:

- (i) For any Dispute concerning a Party’s obligation to provide information under this Agreement, any County Capital Project, any Project Deadline, any Manager’s Capital Project, the Manager’s Operating Plan, inspections by the Commissioner or the DPW&T Commissioner pursuant to Section 6(L), permits for public functions held in Playland Park pursuant to Section 9(B), audits by the County or the Commissioner pursuant to Section 18, whether an Event of Default has been cured, any other operational issues relating to Playland or the Manager, or the performance of the Work or matters relating thereto, or as otherwise expressly provided in this Agreement, such Dispute shall be promptly submitted to David M. Murphy of Phillips ADR Enterprises LLC (the “Monitor”), or in the event the Monitor is unable or unwilling to take such assignment, a successor neutral arbitrator selected as provided in Section 43(a)–(g) below. The Monitor will be required to render a decision within thirty (30) days of submission of the Dispute to the Monitor. The Monitor’s decision will be binding on the Parties.

- (ii) All other Disputes (including Disputes arising from Sections 21, 22, 23, 23A and 23B) shall be submitted to binding, expedited arbitration before a panel of three arbitrators (the “Arbitrators”) consisting of each Party’s party-appointed Arbitrator and a neutral umpire selected by the two party-appointed Arbitrators. Arbitrations hereunder shall be conducted under the JAMS Optional Expedited Arbitration Procedures, except where such procedures are inconsistent with this Agreement or the Parties otherwise mutually agree in writing, but shall not be conducted under the auspices of JAMS or limited to JAMS arbitrators unless the Parties so agree. All of the Arbitrators shall be retired federal court or New York state appellate court judges. The Parties agree that (i) the initiation of the arbitration will be publicly announced and (ii) all proceedings in the arbitration shall be publicly posted on the County Executive’s website, or another forum that is reasonably accessible to the public.

The Monitor or the Arbitrators, as applicable, shall have the power and discretion to direct the specific performance of a Party’s obligations under this Agreement and allow that Party to bring itself into compliance with the Monitor’s or the Arbitrator’s decision by specifically performing those obligations. If the Party directed to specifically perform does so within the timeframe established by the Monitor or the Arbitrators, as applicable, the other Party may not use the decision of the Monitor or the Arbitrators, as applicable, as a basis to terminate this Agreement.

The Monitor or the Arbitrators, as applicable, shall have the power and discretion to award costs and expenses to the prevailing Party in any Dispute, taking into account the extent to which the Monitor or the Arbitrators determined the prevailing Party has prevailed on the issues in such Dispute. The prevailing Party in any Dispute may ask the Monitor or the Arbitrators for, and the Monitor or the Arbitrators shall have the power to award, recovery from the losing Party of the prevailing Party’s reasonable legal costs and expenses incurred in connection with the Dispute. The award of such relief shall be in the sole discretion of the Monitor or the Arbitrators, as the case may be, and shall take into account the extent to which the Monitor or the Arbitrators determined the prevailing Party has prevailed on the issues in such Dispute.

Notwithstanding anything to the contrary herein, until the 90% Threshold is satisfied, to assist the Monitor in performing his or her ongoing monitoring role, the Parties shall each provide the Monitor with quarterly status reports, and conduct a quarterly joint meeting with the Monitor, for the purpose of enabling the Monitor to remain informed if, as and when called upon to resolve any disputes between the Parties. The Parties shall split the reasonable costs and expenses of the Monitor’s services 50/50 in connection with such quarterly meetings and reports.

Within 30 days of notice to the Parties that the incumbent Monitor intends to resign or has become unable to serve due to death, illness, incapacity, or other reason, the Parties shall select a successor Monitor as follows:

- a. Each Party shall propose three candidates. Each such candidate shall (i) have substantial experience as an arbitrator or mediator of commercial disputes, (ii) have an office or residence located within 100 miles of Playland Park, and (iii) not have a prior or existing commercial relationship with either Party (other than in the candidate’s capacity as an arbitrator or mediator).

- b. A Party may strike up to three candidates proposed by the other Party if in the reasonable, good-faith judgment of the striking Party the candidate is biased or unqualified to serve as the Monitor.
- c. The Parties shall jointly interview at least four candidates, of which at least two have been proposed by each Party. If the number of candidates stricken by a Party has caused less than two candidates proposed by each Party to remain as candidates, the Party whose candidates were stricken shall propose enough substitute candidates to ensure that at least two candidates proposed by that Party will remain to be interviewed. For example, if the County strikes two of the three candidates proposed by the Manager, the Manager shall propose one substitute candidate so that two candidates proposed by the Manager remain as candidates.
- d. Following the interviews, the Parties shall endeavor to agree on a jointly appointed successor Monitor.
- e. In the event that the Parties are unable to agree on a successor Monitor within 30 days from notice that the incumbent Monitor intends to resign, the incumbent Monitor shall consider each Party's reasons for preferring or disfavoring each candidate under consideration and shall select the successor Monitor from among the candidates.
- f. If the incumbent Monitor is unable or unwilling to select a successor Monitor as provided above, each Party shall rank the candidates in order of preference (a rank of 1 representing the Party's first choice) and the candidate ranked the highest (i.e., the candidate for whom the sum of each Party's respective rankings is the lowest) shall be the successor Monitor. In the event of a tied ranking, the successor Monitor shall be selected by lot (i.e., randomly) from the tied candidates.
- g. If a Party does not comply with any of the foregoing procedures and fails to cure such non-compliance within ten (10) days' notice of such non-compliance by the other Party, the other Party shall have the right to select the successor Monitor, provided that such successor Monitor meets the criteria set forth in Section 43(a) above.

**SECTION 44: Mutual Release.**

Attached hereto and forming a part hereof as **Schedule "N"** is a mutual release of claims and causes of action entitled "Mutual Release" that each Party agrees to execute as part of this Agreement (the "Mutual Release"), which Mutual Release shall be effective as of the Effective Date of this Agreement.

**SECTION 45: Non-Disparagement.**

The Manager and the County Executive's Office of the current administration (including the administration of the current County Executive if he is reelected) each acknowledge and agree that it will not, and will cause each of its affiliates not to, directly or indirectly engage in any conduct or make (or cause to be made) to any person any statement concerning the other Party or its or its affiliates conduct that is reasonably likely to have the effect of undermining or disparaging the reputation of the other Party, or that Party's good will, products, or business opportunities.

**SECTION 46: Estoppel Letters.**

Upon reasonable request from the Manager from time to time, the County shall furnish the Manager with estoppel letters (including for delivery to third parties, including, without limitation, potential investors and lenders). Such estoppel letters shall be in a form that is customary for estoppel letters requested by such third parties, but shall include, at a minimum, those certifications set forth in the form of Estoppel Letter attached hereto as **Schedule "O"**; provided, that the County may qualify such estoppel letter to the extent any statements in the estoppel letter are not true or accurate in the County's reasonable opinion.

APPROVED BOARD OF ACQUISITION & CONTRACTS - MAY 15 2021 - LISI MARIJA SECRETARY

**IN WITNESS WHEREOF**, the County and the Manager have caused this Agreement to be executed on the day and year first above written.

**THE COUNTY OF WESTCHESTER**

By: \_\_\_\_\_

**STANDARD AMUSEMENTS LLC**

By: \_\_\_\_\_

Approved by the Board of Legislators at a meeting duly held on \_\_\_ day of \_\_\_\_\_, 20\_\_ by Act No. [●] at a meeting duly held on \_\_\_ day of \_\_\_\_\_, 20\_\_.

Approved by the Board of Acquisition and Contract on the \_\_\_ day of \_\_\_\_\_, 20\_\_ and \_\_\_\_\_, 20\_\_.

Approved as to form  
and manner of execution

\_\_\_\_\_  
Associate County Attorney  
County of Westchester



**CERTIFICATE OF AUTHORITY-LIMITED LIABILITY COMPANY**

I, \_\_\_\_\_,  
(member or manager other than person executing the agreement)

certify that I am a \_\_\_\_\_ of \_\_\_\_\_  
(member/manager) (Name of Limited Liability Company)

(the "LLC") duly organized under the Laws of the State of \_\_\_\_\_; that  
(Name of State)

\_\_\_\_\_ who signed said Agreement on behalf of the LLC  
(Person Executing Agreement)

was, at the time of execution, a manager of the LLC; that said Agreement was duly signed for and on behalf of said LLC and as the act of said LLC for the purposes therein mentioned.

\_\_\_\_\_  
(Signature)

STATE OF NEW YORK )

ss.:

COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20[ ] before me, the undersigned, a Notary Public in and for said State, \_\_\_\_\_ personally appeared, personally known to me or proved to me on the basis of satisfactory evidence to be the member/manager described in and who executed the above certificate, who being by me duly sworn did depose and say that he/she resides at \_\_\_\_\_, and he/she is a member/manager of said LLC; that he/she is duly authorized to execute said certificate on behalf of said LLC, and that he/she signed his/her name thereto pursuant to such authority.

Date: \_\_\_\_\_

\_\_\_\_\_  
Notary Public