

DRAFT 1/29/07

**RANDALL'S ISLAND SPORTS FIELDS IMPROVEMENT PROJECT
AGREEMENT**

by and between

**THE CITY OF NEW YORK,
acting by and through its
DEPARTMENT OF PARKS AND RECREATION**

and

RANDALL'S ISLAND SPORTS FOUNDATION

and

RANDALL'S ISLAND FIELDS GROUP LLC

Dated as of February [], 2007

RANDALL'S ISLAND SPORTS FIELDS IMPROVEMENT PROJECT
AGREEMENT

This Randall's Island Sports Fields Improvement Project Agreement (this "Agreement") dated as of February [], 2007, is made by and among The City of New York (the "City"), a municipal corporation of the State of New York, acting by and through its Department of Parks and Recreation ("Parks"), having an address of The Arsenal, 830 Fifth Avenue, New York, New York 10021, Randall's Island Sports Foundation ("RISF"), a local development corporation organized under Section 1411 of the Not-for-Profit Corporation Law of the State of New York, with offices at 24 West 61st Street, 4th Floor, New York, New York 10023, and Randall's Island Fields Group LLC (the "Schools Group"). Certain capitalized terms are defined in Article 1 of this Agreement.

RECITALS

WHEREAS, the City is the owner of the Premises (as hereinafter defined);

WHEREAS, the Premises are mapped as parkland of the City, and Parks has jurisdiction over the Premises;

WHEREAS, Randall's Island is located at the intersection of three heavily populated boroughs of the City: Manhattan, Bronx and Queens;

WHEREAS, Parks and RISF are working together in connection with the development of Randall's Island as reflected, among other things, in the agreement between Parks and RISF effective January 1, 2007 (the "License Agreement");

WHEREAS, the City, RISF and the Schools Group desire that funding be made available for the upgrade, development, maintenance and security of the sports fields (the "Sports Fields" as more specifically defined below) at Randall's Island;

WHEREAS, it is anticipated that the upgrade and development of the Sports Fields will enable users of Randall's Island, including schoolchildren and other members of the public, to train and compete in sporting events on first class playing fields;

WHEREAS, the upgrade and development of the Sports Fields will also greatly benefit other programs and summer camps hosted by RISF, many of which are offered to schoolchildren of the City from low and middle income families free of charge;

WHEREAS, in order to avail its students and prospective students with enhanced sports field facilities and to entice the City to provide initial funding of the Sports Field Project, the member schools of the Schools Group (collectively, the "Schools"), in partnership with the City, are committing to provide Payments (as hereinafter defined) to the City in exchange for RISF and the City providing construction, maintenance and security services for the Sports Fields at the Premises in accordance with the terms of this

Agreement;

WHEREAS, as a result of the upgrade and development of the Sports Fields, there will be significantly more playing fields on Randall's Island than currently exist and increased playing opportunities for all members of the public, including Board of Education schools, community-based organizations and the Schools;

WHEREAS, RISF desires to develop, use, operate, manage and maintain the Sports Fields at the Premises in accordance with the terms set forth herein.

NOW, THEREFORE, in consideration of the covenants, obligations and provisions hereinafter contained, the City, Parks, RISF and the Schools Group hereby agree as follows:

ARTICLE 1.
CERTAIN DEFINITIONS

“Agreement” means this Agreement and all exhibits hereto and all amendments, modifications and supplements hereof and thereof.

“Available Fields” means all Sports Fields as to which a Substantial Completion determination has been made.

“Available School Playing Slots” means the aggregate amount of School Playing Slots on all Available Fields.

“Commissioner” means the Commissioner of Parks.

“Concession Commencement Date” shall have the meaning set forth in Section 2.01 hereof.

“Concession Period” shall have the meaning set forth in Section 2.01 hereof.

“Construction Work” means any work performed under this Agreement including, without limitation, construction of the Sports Fields Project, a repair, a capital improvement, or other construction work performed on or within the Premises.

“Council” shall mean the City Council as contemplated by Section 21 of the New York City Charter.

“Default” means any condition or event, or failure of any condition or event to occur, which constitutes or would, after notice or the lapse of time, or both, constitute an Event of Default.

“EDC” means the New York City Economic Development Corporation, a local development corporation formed pursuant to Section 1411 of the New York Not-for-Profit Corporation Law, or any successor thereto.

“FCRC” means the Franchise and Concession Review Committee of the City of

New York or any successor thereto.

“Federal Courts” shall have the meaning set forth in Section 12.17 hereof.

“Fiscal Year” shall mean each 12-month period during the term of this Agreement beginning on July 1 and ending on the following June 30, and each specific Fiscal Year shall be identified by reference to the calendar year in which the Fiscal Year-End of such Fiscal Year falls. Notwithstanding the foregoing, references to any Fiscal Year shall be deemed to include any partial Fiscal Year occurring during the term of this Agreement.

“Funding Agreement” shall have the meaning set forth in Section 4.02(b) hereof.

“Interschool Agreement” shall have the meaning set forth in Section 4.05 hereof.

“License Agreement” shall have the meaning set forth in the recitals hereto.

“New York State Courts” shall have the meaning set forth in Section 12.17 hereof.

“Parks” means the New York City Department of Parks and Recreation or any successor thereto.

“Payment Default” shall have the meaning set forth in Section 9.02(a).

“Payment” shall have the meaning set forth in Section 4.02(a).

“Person” means an individual, corporation, limited liability company, partnership, joint venture, estate, trust, unincorporated association; any federal, state, county or municipal government or any bureau, department or agency thereof; and any fiduciary acting in such capacity on behalf of any of the foregoing.

“Playing Slot” means a three hour time period during a weekday and a two hour time period during a weekend day designated by RISF, as Parks’ agent, for the usage of a Sports Field.

“Premises” means the land on which the Sports Fields are located, and any adjacent land necessary for the upgrade and development of the Sports Fields and for their use, operation, management and maintenance, together with any improvements thereon .

“Schools” shall have the meaning set forth in the recitals hereto.

“School Year” means the period from the Monday before Labor Day to the third Friday of June, excluding the period from November 20 through February 28.

“Schools Group Representative” means the person listed in Section 10.01(c) hereof, selected by the Schools Group pursuant to the Interschool Agreement, or such other person as the Schools Group may from time to time designate by written notice

given to RISF and Parks.

“Schools Payment Date” means the Concession Commencement Date and each anniversary thereof during the Concession Period (or, in the case of any such date that is not a business day in New York City, the immediately preceding business day).

“School Playing Slots” means, for each School Year, the period from 3:00 p.m., New York City time, to 6:00 p.m. New York City time on Monday to Friday.

“Sports Field Project” means the construction of the Sports Field pursuant to the Sports Field Plans and Specifications and the Sports Field Schematic Drawings.

“Sports Fields” means the sports fields set forth on Exhibit A located at the Premises, and all related facilities including, without limitation, parking, curb work and restrooms.

“Sports Fields Maintenance and Security Standards” means the standards for Sports Fields maintenance and security set forth in Exhibit B hereto.

“Sports Fields Plans and Specifications” shall mean the completed scale final drawings and plans and specifications prepared for Construction Work for the Sports Field Project. The Sports Fields Plans and Specifications shall conform to the Sports Fields Schematic Drawings, as approved by the Schools Group Representative pursuant to Section 5.03 hereof.

“Sports Fields Schematic Drawings” means the schematic drawings, plans and other documents that describe or depict the size, character, program elements, materials and other essential characteristics regarding the scope and scale of the Sports Fields Project.

“Substantial Completion” means, with respect to each Sports Field, that such playing field has been determined in writing by RISF to be ready for use and that the Construction Work shall have been performed substantially in accordance with the Sports Fields Plans and Specifications and all legal requirements for public use.

“Term” shall have the meaning set forth in Section 2.02(a) hereof.

“Termination At Will” shall have the meaning set forth in Section 2.02(b) hereof.

“Termination for Default” shall have the meaning set forth in Section 9.04 hereof.

“Unavoidable Delays” means delays from any and all causes beyond the City’s reasonable control, including, without limitation, labor strikes, accidents, vandalism, mechanical breakdowns, shortages or inability to obtain labor, fuel, steam, water, electricity, equipment or materials (for which no substitute is readily available at a comparable price), acts of God (including inordinately severe weather conditions), enemy action, civil commotion, fire or other casualty, of which the City or RISF has given the Schools Group Representative notice within ten (10) days after the City or RISF knows of same or has first

received knowledge of the occurrence of any of the foregoing conditions.

ARTICLE 2.
GRANT OF CONCESSION AND TERM OF AGREEMENT

Section 2.01. Grant of Concession. The City hereby grants to RISF the right to upgrade and develop the Sports Fields and to use, operate, manage and maintain the Sports Fields during the period (the “Concession Period”) beginning on the date upon which 75% of the Sports Fields are deemed Substantially Complete (the “Concession Commencement Date”), and ending on the twentieth anniversary of the Concession Commencement Date; provided, however, that on at least the fifth, tenth and fifteenth anniversaries of the Concession Commencement Date, in connection with determining whether to exercise its rights pursuant to Section 2.02(b), the City will conduct a review of the operation of the concession granted hereunder, including a review of the level of demand for School Playing Slots by public schools. Furthermore, the City hereby grants to RISF the right to grant a subconcession during the Concession Period to the Schools Group as set forth in Section 3.02 hereof.

Section 2.02. Term.

(a) The term of this Agreement shall commence on April 1, 2007 and shall expire at the end of the Concession Period, or on such earlier date upon which this Agreement may be terminated in accordance with the terms hereunder (whichever, the “Expiration Date”).

(b) Subject to Section 2.03 hereof and notwithstanding anything to the contrary in this Agreement, this is a revocable Agreement, terminable at will at the City’s option and sole discretion, at any time, upon written notice to RISF and the Schools Group Representative (such termination, a “Termination At Will”). Upon a Termination At Will or a Termination for Default, this Agreement and all rights of RISF, the Schools Group and the Schools hereunder shall expire and terminate as if the date specified in the written notice to RISF and the Schools Group Representative were the Expiration Date, and RISF shall quit and surrender the Premises within twenty-five (25) days following such termination. In the event of a Termination At Will or a Termination for Default, the permits issued to the Schools Group pursuant to Section 3.02(b) hereof shall also expire and terminate; provided, however, that the Schools shall have the right to re-apply to Parks for permits, in a manner consistent with then-existing Parks policy applicable to the issuance and renewal of permits. In exercising its rights under this Section 2.02(b), the City shall not act in a manner which is arbitrary or capricious. The parties agree that a Termination At Will by the City shall not be considered arbitrary or capricious if such termination is based on an increased level of demand for School Playing Slots by public schools, as referenced in Section 2.01 hereof.

Section 2.03. Payments and Permit Continuation Upon Termination At Will. In the event of a Termination At Will, RISF and the Schools Group shall be automatically discharged from any further payment obligations under Section 4.02 and no further

Payments shall be payable to the City or RISF thereafter, and further, any Payments already paid by the Schools Group to RISF, covering a period from and after such Termination At Will, shall be promptly refunded and returned to the Schools Group by the City or RISF, as applicable (except to the extent that any funds received in respect of such Payments have been expended in the ordinary course by RISF prior to such time as RISF received notice of the Termination at Will). If a Termination At Will occurs, then, following such Termination at Will, the City shall continue to issue permits to the Schools Group or Schools for a period equal to no less than (x) 20 years less (y) the aggregate period of time elapsed between the commencement of the Concession Period and the date on which the Termination at Will occurs, so long as doing so is consistent with then-existing Parks policy applicable to the issuance and renewal of permits.

Section 2.04. No Leasehold or Property Interest. It is expressly understood that no land, building, space, improvement, or equipment is leased to RISF, the Schools Group or any of the Schools pursuant to this Agreement and that no ownership, leasehold or other property interest shall vest in RISF, the Schools Group or any of the Schools by virtue of this Agreement.

ARTICLE 3.

GENERAL USE OF PREMISES; GRANT OF PERMIT TO SCHOOLS

Section 3.01. General Usage. RISF may:

(a) use the Premises to develop, manage, operate and maintain the Sports Fields for Parks-appropriate, non-concession uses, including, but not limited to, athletic, cultural, educational, recreational and other activities, consistent with past practice and/or then-existing Parks policy and as long as any such usage does not materially impair the ability of the Schools Group or any of the Schools or other members of the public to use the Sports Fields for athletic purposes both during the School Playing Slots and at other times; and

(b) in its sole discretion, allocate the usage of the Playing Slots (other than those School Playing Slots with respect to which a permit has been issued to the Schools Group pursuant to Section 3.02 below) for the use of the general public for recreational activities in accordance with then-existing Parks procedures and policies and in a manner consistent with Section 3.02(b) below.

Section 3.02. Permits to Schools Group.

(a) Prior to the Concession Commencement Date, Parks (acting through RISF) shall issue permits to the Schools Group for the use by the Schools of the Available Fields in accordance with then-existing Parks procedures and policies.

(b) During the period from the Concession Commencement Date through the Expiration Date, Parks (acting through RISF) shall issue annual renewable permits to the Schools Group for the use of the Available Fields by the Schools in an amount equal to the Applicable Percentage (as defined below) of the School Playing Slots; provided, however, that, in no event shall the Schools Group and the Schools (taken as

a whole) have at any time use of more than the Applicable Percentage (as defined below in this Section 3.02) of the Available School Playing Slots; provided, further however, that nothing in this Agreement shall preclude the Schools Group (or any of the Schools) from receiving a permit for the use of such Sports Fields after the Expiration Date. Notwithstanding anything contained herein to the contrary, the Schools Group and the Schools may apply for additional permits for School Playing Slots above the Applicable Percentage, it being understood that (i) New York City public schools will have priority over any and all other applicants (including the Schools Group and the Schools) with respect to the issuance of such additional permits (such priority for permits to be determined annually without regard to whether any applicant held such permit in any prior year) and (ii) the Schools Group and the Schools will be treated no less favorably than any other applicant with respect to the issuance of any such additional permits that are not taken up by New York City public schools and without regard to whether any applicant held such permit in any prior year; provided, however, that once the Schools Group and the Schools (taken as a whole) have received permits for the use of 80% in aggregate of the Available School Playing Slots in any School Year, no permits shall be issued to the Schools Group or any of the Schools for additional School Playing Slots in such School Year if any other Person has applied for and otherwise meets the conditions to receive a permit to use the Sports Fields during such time periods. The term “Applicable Percentage” means $66\frac{2}{3}\%$ (applicable in each season to the fields primarily in use during that season, as well as all other fields), unless a Payment Default shall have occurred, in which case the Applicable Percentage shall be the percentage determined by multiplying (x) $66\frac{2}{3}\%$ by (y) the fraction where the numerator is equal to the amount in dollars paid by the Schools Group to RISF on the most recent Schools Payment Date and the denominator is 2,630,000. If a Payment Default has occurred and, as a result, the Applicable Percentage has been reduced, such reduction shall be permanent.

(c) The Schools Group shall promptly notify RISF in writing if it knows or reasonably anticipates that it (or any of the Schools) will not require the use of any one or more of the Available Fields for which a permit has been issued to the Schools Group, and RISF shall then be able to make such Sports Fields available to others.

Section 3.03. No Unlawful Use. RISF shall not use or occupy the Premises, or permit or offer the Premises or any part thereof to be used or occupied, for any unlawful, illegal, or hazardous business, use or purpose or in any way in violation of any of the legal requirements thereof or in such manner as may make void or voidable any insurance then in force with respect to the Premises or any part thereof. Immediately upon the discovery of any such unlawful, illegal or hazardous business, use or purpose, RISF shall take all necessary steps, legal and equitable, to compel the discontinuance thereof.

Section 3.04. No Nuisance. Neither RISF, the Schools Group nor the Schools shall create, nor suffer to be created, any nuisance in or about the Premises and shall not commit or cause any waste of or to the Premises.

Section 3.05. No Combustibles. Neither RISF, the Schools Group nor the Schools shall use or permit the storage of any illuminating oils, candles, oil lamps,

turpentine, benzene, naphtha or other similar substance or explosives of any kind or any substance or thing prohibited in the standard policies of fire insurance companies in the State of New York.

Section 3.06. Sound Amplification. RISF, the Schools Group and the Schools shall operate a loud speaker system only during permitted activities and in such a manner so as to avoid or minimize disturbance or discomfort to the surrounding community, but under all circumstances such system shall be operated in accordance with the Rules of the City of New York, Title 56 RCNY Section 1-05(d)(2), the Administrative Code of the City of New York, Section 24-220, and only at a level acceptable to the Commissioner. Further, RISF, the Schools Group and the Schools may operate its loud speaker system during play-off, opening day, all-star and championship games and, subject to the approval of Parks, during other games and events. However, under no circumstances shall the sound system be used after 10:00 p.m. any evening or prior to 10:00 a.m. on Sundays.

ARTICLE 4. **FINANCIAL COMMITMENTS**

Section 4.01. City Commitment. The City hereby agrees that the amounts included in each of the capital budgets for contribution to the Sports Field Project for the 2006 through 2009 Fiscal Years as set forth on Exhibit C has been and/or shall be used for that purpose to the extent needed to complete the Sports Fields.

Section 4.02. Schools Group Obligation; RISF Obligation.

(a) On each Schools Payment Date, the Schools Group shall pay to RISF \$2,630,000 in consideration of the obligations of RISF and the City set forth in this Agreement (each such payment, a "Payment"). If the City elects to grant an equivalent concession involving the Schools Group following the expiration of the Concession Period, the Schools Group agrees that it shall make payments at least equal to the Payment obligations under this Agreement during the Concession Period, provided that the parties agree that such obligations shall not require the Schools Group to make any more than ten (10) such additional annual payments.

(b) The Schools Group hereby agrees that its obligation (and, as set forth in the Funding Agreement dated as of January __, 2007 between the Schools Group and the Schools, the Schools' obligation) to make the total (i.e., 20) Payments to RISF required by Section 4.02(a) hereof is unqualified, absolute and unconditional and that such Payments must be made without set-off, reduction or other claim even if any other party to this Agreement is in default of its obligation hereunder, except as provided in Section 4.02(c) below. RISF agrees that the Payments may be made, in whole or in part, by the Schools for and on behalf of the Schools Group. In addition, the provisions of this paragraph shall apply even in the event that the City exercises its remedy of reducing the Applicable Percentage pursuant to Section 3.02(b) of this Agreement and/or its remedy of a Termination for Default pursuant to Section 9.04 of this Agreement because of an Event of Default by the Schools Group.

(c) The obligation of the Schools Group to make the Payments to RISF required by Section 4.02(a) hereof (and the corresponding obligation of RISF to make the payments the City required by Section 4.02(d) hereof) shall be (i) terminated in the event of a Termination At Will or a Termination for Default pursuant to Section 9.04 of this Agreement because of an Event of Default by RISF or the City, and (ii) suspended during any period in which the annual renewable permits to the Schools Group for the use of the Sports Fields during the School Playing Slots required by Section 3.02(b) hereof shall not have been issued.

(d) Within five (5) business days after RISF has received a payment from the Schools Group in respect of a Payment pursuant to Section 4.02(a) and (b), RISF shall pay to the City an amount equal to the lesser of (a) \$2,230,000 and (b) the amount so received from the Schools Group in respect of such Payment.

Section 4.03. Notice of Payment Default. If the Schools Group knows or reasonably anticipates that it will default in any way on its obligation to make a Payment pursuant to Section 4.02 (including, without limitation, if the Schools Group has been notified by any School that it may not be willing or able to fund its portion of the Payment on or before the applicable Schools Payment Date), then the Schools Group shall give prompt written notice thereof to RISF (and, if possible, shall give such notice at least 30 days prior to the applicable Schools Payment Date).

Section 4.04. Payment Procedures. All funds required to be paid pursuant to this Agreement shall be paid by wire transfer of immediately available funds to the account of the payee as specified in writing from time to time by such payee to such payor.

Section 4.05. Assignment; Transfer. The Schools Group shall not transfer or assign its Payment obligation, or any permit (or rights thereunder) issued to it pursuant to Section 3.02, without the prior written consent of the City and RISF, except (i) as provided in the Funding Agreement and (ii) among the Schools in accordance with the Interschool Agreement dated as of January __, 2007 (the "Interschool Agreement").

ARTICLE 5.

CONSTRUCTION WORK

Section 5.01. Construction of Sports Fields.

(a) Upon the mutual agreement of Parks and RISF, and under the supervision of RISF and through EDC, the City shall develop the Sports Fields substantially in accordance with the Sports Field Plans and Specifications. The City, acting through EDC, shall require any contractor hired for the construction, design or development of the Sports Fields to comply with all requirements set forth in this Agreement.

(b) Subject to Unavoidable Delays, the City, acting through EDC shall commence development of the Sports Fields in accordance with the phases and time periods set forth on Exhibit D.

Section 5.02. Approval of Sports Fields Plans and Specifications. The City, RISF and the Schools Group acknowledge that they have approved the Sports Fields Plans and Specifications and the Sports Fields Schematic Drawings.

Section 5.03. Modification of Approved Sports Fields Plans and Specifications. Any modification of the Sports Fields Plans and Specifications shall conform to the Sports Field Schematic Drawings. If the City, with the approval of RISF, or RISF, with the approval of the City, desires to modify the Sports Fields Plans and Specifications after they have been approved by the Schools Group, RISF shall submit the proposed modifications to the Schools Group Representative for a determination of whether the modified Sports Fields Plans and Specifications continue to conform to the Sports Fields Schematic Drawings. The Schools shall carry out such review within ten (10) days of the date of submission of the proposed modifications to the Schools Group Representative. In the event a modification is approved which changes or reduces either the number of Sports Fields, School Playing Slots, or composition of Sports Fields (i.e., a change in the number of baseball or soccer fields, etc.), the parties to this Agreement agree to work together to come to an equitable adjustment in the allotment of School Playing Slots and a proportionate increase or decrease in the School Group's Payment.

Section 5.04. City and RISF to Keep the Schools Informed. The City and RISF shall keep the Schools Group Representative fully informed of their progress in the performance of all Construction Work. Upon request of the Schools Group Representative, the City or RISF shall promptly provide the Schools Group Representative with copies of all materials normally or actually provided to a construction lender including, but not limited to, scheduling of payments, projections and certifications of construction costs and sources of funds on a monthly basis, and all construction documents and all plans and specifications reasonably specified by the Schools Group Representative to assist the Schools Group Representative in monitoring said progress by the City.

ARTICLE 6. **MAINTENANCE OF THE PREMISES**

Section 6.01. Funds To Be Used For Maintenance of Premises. Any Payments made to RISF pursuant to Section 4.02(a) hereof not used by RISF to make payments to the City pursuant to Section 4.02(d) hereof shall be used to fund the maintenance of the Sports Fields.

Section 6.02. RISF Shall Maintain the Premises. RISF shall maintain and operate the Premises in safe condition and in accordance with all requirements of law and as set forth in the Sports Fields Maintenance and Security Standards.

Section 6.03. Clean-Up and Debris Removal. Each School shall be responsible for the clean-up of and removal of debris, litter, and garbage from the Sports Fields during the time such School is using the Sports Fields. As part of such obligation, the City or RISF shall make waste receptacles and properly labeled recycling receptacles

available for use at the Premises, which the Schools shall use for the labeled waste and recycling purpose.

ARTICLE 7.
REPRESENTATIONS AND WARRANTIES

Section 7.01. RISF's Representations and Warranties.

RISF represents and warrants as follows:

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

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

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

Section 7.02. Schools Group's Representations and Warranties.

The Schools Group represents and warrants as follows:

(a) The Schools Group is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York and has all requisite power and authority to execute, deliver and perform this Agreement.

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

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

ARTICLE 8.
INDEMNIFICATION AND INSURANCE

Section 8.01. Obligation to Indemnify. The indemnity obligations as between the City, acting by and through Parks, and RISF shall be as set forth in the License Agreement.

Section 8.02. Obligation of the Schools Group to Indemnify and Insure.

(a) The Schools, at their own cost and expense, shall procure public liability insurance to protect RISF, Parks, and the City from any claims for loss or damage to property and for personal injuries, including death, which may arise directly or indirectly from the School's authorized use of the Sports Fields. All public liability policies shall provide for a combined single limited liability coverage of at least \$1,000,000 and a minimum property damage liability of \$50,000. All required insurance policies must be issued by companies which have an A.M. Best rating of at least A-7 or a Standard & Poor's rating of at least AA and are duly licensed to do business in the State of New York and must be in effect and continue so during the Term of this Agreement. Such policies shall name the City of New York, its officers, agents and employees, Parks, and RISF as additional insured parties.

(b) The original and a duplicate copy of each liability insurance policy and certificate of insurance shall be delivered to Parks with the premiums fully paid and so marked thereon prior to the issuance by Parks to the Schools Group of the permits as set forth in section 3.02(b) of this Agreement. All policies shall be subject to the approval of Parks as to form of protection and shall be kept in force by the Schools throughout the Concession Period.

(c) The Schools shall procure and maintain such insurance as will protect the Schools from claims under the Workers' Compensation Act.

(d) In addition to the above, the following terms and conditions shall apply and shall be written into the policies of insurance as riders:

- (i) The policies shall not be canceled, terminated or modified unless 30 (thirty) days prior written notice is sent by certified mail to the Schools Group, RISF and to the City addressed to the General Counsel, City of New York Department of Parks & Recreation, The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10021.
- (ii) Notices of claim shall be given by the Schools to their insurance company(ies) within 120 (one hundred and twenty) days after such claim shall be filed with the Comptroller of the City of New York.
- (iii) Notices of accidents occurring at the Premises, sent by any of the Schools to its insurance company, shall be deemed notice by both the School and Parks to the insurance company.

- (iv) The insurance company shall defend, indemnify and hold harmless the City, Parks, RISF their officers, employees and agents from any and all claims, suits, actions or judgments for loss, damage or injury, including death, or property damage of whatever kind or nature arising from the Schools' use of the Sports Fields, including but not limited to the negligence or carelessness of the Schools, their agents, servants, employees and invitees.
- (v) The insurer waives all rights of subrogation against Parks, RISF and the City and their officers, agents and employees for the acts of the Schools, their agents, servants, employees and invitees which give rise to indemnification as set forth in Section iv above.

(e) Failure of the Schools to take out or maintain any insurance required under this Agreement shall not relieve the Schools from any liability under this Agreement nor shall these insurance requirements be construed to conflict with the obligations of the Schools to indemnify the City and RISF pursuant to Section 8.03 herein.

(f) If, for some reason beyond a School's control, insurance in the amounts required by this Agreement cannot be obtained, the Commissioner may decide to alter the requirement rather than treating the same as a Default under this Agreement.

(g) The Schools shall require performance and payment bonds of all contractors who perform any alterations or other major work at the Site. Such bonds shall be in an amount at least equal to the value of the applicable contract and in a form approved by the Commissioner.

Section 8.03. Obligation of the Schools to Indemnify. The Schools shall defend, indemnify and hold harmless RISF, the City and Parks and their officers, employees and agents from any and all claims, actions or judgments arising out of any violation of any law and from any and all claims, suits, actions or judgments for loss, damage or injury, including death, or property damage of whatever kind or nature arising from the Schools' use of the Premises, including but not limited to the negligence or carelessness of the Schools, their agents, servants, employees and invitees.

ARTICLE 9.

EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 9.01. Events of Default of RISF. Each of the following events shall be an "Event of Default" of RISF:

- (a) if RISF shall fail to observe or perform one or more of the terms, conditions, covenants or agreements of this Agreement and such failure shall continue for a period of thirty (30) days after receipt of the Schools Group Representative's or Parks' written notice to RISF thereof specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such thirty (30) day period, in which case no Event of Default shall be deemed to exist as long as

RISF shall have commenced to cure the same within such thirty (30) day period and shall diligently and continuously prosecute the same to completion within a reasonable period); or

(b) if any of the representations or warranties made by RISF herein are or shall become false, incorrect or incomplete in any material respect, provided that, if such misrepresentation was unintentionally made, the underlying condition is susceptible to being corrected, and the Schools Group and Parks have not been adversely affected by such misrepresentation or underlying condition, RISF shall have a period of thirty (30) days after receipt of the Schools Group Representative's or Parks' written notice of such misrepresentation to correct the underlying condition and thereby cure such Default.

Section 9.02. Event of Default of the Schools Group. Each of the following events shall be an "Event of Default" of the Schools Group:

(a) if the Schools Group fails to make all or any part of any Payment required to be made on any Schools Payment Date pursuant to Section 4.02(a) and such failure shall continue for a period of thirty (30) days after the RISF's or Parks' written notice thereof to the Schools Group Representative (each such Default, a "Payment Default");

(b) if the Schools Group fails to observe or perform one or more of the other terms, conditions, covenants or agreements of this Agreement and such failure shall continue for a period of thirty (30) days after receipt of RISF's or Parks' written notice to the Schools Group thereof specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such thirty (30) day period, in which case no Event of Default shall be deemed to exist as long as the Schools Group shall have commenced to cure the same within such thirty (30) day period and shall diligently and continuously prosecute the same to completion within a reasonable period);

(c) if any of the representations or warranties made by the Schools Group herein are or shall become false, incorrect or incomplete in any material respect, provided that, if such misrepresentation was unintentionally made, the underlying condition is susceptible to being corrected, and RISF and Parks have not been adversely affected by such misrepresentation or underlying condition, the Schools Group shall have a period of thirty (30) days after receipt of RISF's or Parks' written notice of such misrepresentation to correct the underlying condition and thereby cure such Default;

(d) to the extent permitted by law, if the Schools Group shall file a voluntary petition under the present or any future federal bankruptcy law or any other present or future federal, state or other bankruptcy or insolvency statute or law, or if such petition shall be filed against the Schools Group and an order for relief shall be entered, or if the Schools Group shall file a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment,

liquidation, dissolution or similar relief under the present or any future federal bankruptcy law or any other present or future federal, state or other bankruptcy or insolvency statute or law, or shall seek, or consent to, or acquiesce in, or suffer the appointment of, any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Schools Group, or of all or any substantial part of its properties, or of the Premises or any interest of the Schools Group therein;

(e) to the extent permitted by law, if within sixty (60) days after the commencement of a proceeding against the Schools Group seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy law or any other present or future applicable federal, state or other bankruptcy or insolvency statute or law, such proceeding shall not be dismissed, or if, within one hundred twenty (120) days after the appointment, without the consent or acquiescence of the Schools Group, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Schools Group, or of all or any substantial part of its properties, such appointment shall not be vacated or stayed on appeal or otherwise, or if, within one hundred twenty (120) days after the expiration of any such stay, such appointment shall not be vacated.

Section 9.03. Event of Default of the City. If the City shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements of this Agreement and such failure shall continue for a period of thirty (30) days after receipt of RISF's written notice to the City thereof specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such thirty (30) day period, in which case no Event of Default shall be deemed to exist as long as the City shall have commenced to cure the same within such thirty (30) day period and shall diligently and continuously prosecute the same to completion within a reasonable period), such failure shall be deemed an Event of Default of the City.

Section 9.04. Enforcement of Performance and Termination for Default.

(a) Except in the case of a Payment Default attributable to a specific School or Schools, and except in the case of any other Default attributable to a specific School or Schools, if a material Event of Default occurs, RISF, the City and the Schools Group, as the case may be, may elect to terminate the Agreement (a "Termination for Default") or to proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by RISF, the City or the Schools Group, as the case may be, of the applicable provisions of this Agreement and/or to recover damages for breach thereof.

(b) In the event of a Payment Default, there shall be a reduction in the Applicable Percentage, as set forth in Section 3.02(b). In addition, in the event of a Payment Default, the City and/or RISF may proceed by appropriate judicial proceedings against the Schools Group (and, pursuant to Sections 4.02(b) and 12.10 hereof, against the defaulting School(s)) to enforce the Payment obligations under this Agreement and/or to recover damages for breach thereof. The remedies set forth in the preceding two

sentences shall also apply to a material Default (that is not a Payment Default) attributable to a particular School or Schools (after expiration of any cure period applicable thereto), as though such Default were a Payment Default.

ARTICLE 10.
NOTICES

Section 10.01. All Notices, Communications, Etc. in Writing. Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, either of the parties by the other, or whenever either of the parties desires to give or serve upon the other any notice, demand, request, consent, approval or other communication with respect hereto, each such notice, demand, request, consent, approval or other communication shall be in writing and shall be effective for any purpose only if given or served as follows:

(a) if to RISF by hand with proof of delivery, by reputable overnight courier, or by mailing the same to RISF by express or certified mail, postage prepaid, return receipt requested, addressed to:

Randall's Island Sports Foundation
24 West 61st Street, 4th Floor
New York, New York 10023
Attention: Aimee Boden

with a copy to:

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153-0119
Attention: Richard J. Davis, Esq.

or to such other address as RISF may from time to time designate by notice given to the Schools Group Representative by express or certified mail, return receipt requested.

(b) If to Parks and the City, in triplicate, by hand with proof of delivery, by reputable overnight courier, or by mailing the same to Parks and the City by express or certified mail, postage prepaid, return receipt requested, one addressed to:

Department of Parks and Recreation of the City of New York
The Arsenal
830 Fifth Avenue
New York, New York 10021
Attention: General Counsel

one to:

The City of New York
c/o New York City Economic Development Corporation
110 William Street
New York, New York 10038
Attention: General Counsel

and one to:

The New York City Law Department
100 Church Street
New York, New York 10007
Attention: Chief, Economic Development Division

or to such other address(es) and attorneys as the City or Parks may from time to time designate by notice given to RISF by express or certified mail, return receipt requested.

(c) if to the Schools Group or the Schools Group Representative, by reputable overnight courier, or by mailing the same to the Schools Group or the Schools Group Representative, as applicable, by express or certified mail, postage prepaid, return receipt requested, addressed to:

Section 10.02. Service. Every notice, demand, request, consent, approval or other communication hereunder shall be deemed to have been given or served three (3) days after the time that the same shall have been actually deposited in the United States mails, postage prepaid, as aforesaid, except that notice by express or certified mail, return receipt requested, shall be deemed effective on the date such receipt is dated by the Post Office or express mail carrier, as the case may be, and notice by hand shall be effective upon delivery, as evidenced by a signed receipt.

ARTICLE 11.
CONSENTS AND APPROVALS

Section 11.01. Effect of Granting or Failure to Grant Approvals or Consents. All consents and approvals which may be required under this Agreement shall, as a condition of their effectiveness, be in writing. The granting of any consent or approval by a party to perform any act requiring consent or approval under the terms of this Agreement, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any further similar act.

Section 11.02. Remedy for Refusal to Grant Consent or Approval. If, pursuant to the terms of this Agreement, any consent or approval by the Schools Group or RISF or the City is not to be unreasonably withheld or is subject to a specified standard, then in the event there shall be a final determination that the consent or approval was unreasonably withheld or that such specified standard has been met so that the consent or approval should have been granted, the consent or approval shall be deemed granted and such granting of the consent or approval shall be the only remedy to the party requesting or requiring the consent or approval. The provisions of this Section 11.02 shall not apply to any required action of the FCRC.

ARTICLE 12. **MISCELLANEOUS**

Section 12.01. Captions. The captions of this Agreement are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement.

Section 12.02. Table of Contents. The table of contents is for the purpose of convenience of reference only, and is not to be deemed or construed in any way as part of this Agreement.

Section 12.03. Survival of Agreements. All of the provisions contained in this Agreement which by their nature should survive shall survive the Expiration Date.

Section 12.04. No Assignment. Neither RISF nor the Schools Group shall sell, assign, mortgage or otherwise transfer any interest provided for herein, or consent, allow or permit any other person or party to use any part of the Premises except as provided herein or approved in writing by Parks, such approval not to be unreasonably withheld, nor shall this Agreement be transferred by operation of law, it being the purpose and spirit of this Agreement to grant this Agreement and privilege solely to RISF and the Schools Group.

Section 12.05. Records and Audits.

(a) RISF and the Schools Group shall keep books of account and records of all expenses and revenues resulting from their operations pursuant to this Agreement in a manner reasonably satisfactory to the Commissioner, and upon request allow an inspection of said accounts and records by Parks, the New York City Comptroller, or by a Parks-authorized independent auditor. RISF and the Schools Group shall keep the aforementioned books of accounts and records up to six (6) years from the date of termination of this Agreement. RISF and the Schools Group shall cooperate fully with and assist Parks, the Comptroller or any other duly authorized representative of the City in any examination or audit thereof. In the event that RISF's or the School Group's books and records, including supporting documentation, are situated at a location 50 miles or more from the City, the records must be brought to the City for examination, copy and audit or RISF or the Schools Group must pay the food, board and travel costs incidental to two auditors conducting such examination or audit at said

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

(b) RISF shall furnish to the Commissioner detailed annual financial statements for each year during the Term. Such statements, if they involve amounts over \$10,000 (ten thousand dollars) shall be reviewed by an independent Certified Public Accountant retained at the cost and expense of RISF. Such annual statement shall be submitted to the Commissioner no later than 120 (one hundred and twenty) days after the close of each fiscal year, but in no event later than April 15 of each calendar year, whether or not the Term shall have ended prior to the date for submission of such statement.

(c) In the event that the above-mentioned books of account and records of expenses and annual financial statements are not reasonably sufficient to meet the Commissioner's informational requirements, the Commissioner may, upon not less than 90 (ninety) days' written notice, require the RISF to open and maintain in a bank located within the City of New York, insured by the Federal Deposit Insurance Corporation, an account as Trustee for the City of New York ("Special Account"). There shall be deposited in the Special Account all such revenues ("Revenues") collected from the operation of any revenue producing activity authorized under this Agreement. Such Revenues may be withdrawn from the Special Account and expended by RISF solely for operating, managing, maintaining and improving the Premises. No withdrawals shall be made from the Special Account other than as provided herein. The administration of any such Special Account will be subject to the audit and record keeping provisions set out hereinabove.

Section 12.06. Investigations.

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

(b) If any person:

- (i) who has been advised that his or her statement and any information from such statement will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract or license entered into with the City, the State or any

political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation with the City, or any public benefit corporation organized under the laws of the State of New York, or;

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

(c) the Commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license shall convene a hearing, upon not less than five days' written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify. If any non-governmental party to the hearing requests an adjournment, the Commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit or license pending the final determination pursuant to paragraph (e) below without the City incurring any penalty or damages for delay or otherwise.

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

- (i) the disqualification for a period not to exceed five years from the date of an adverse determination for any person or entity of which such person was a member at the time the testimony was sought from submitting bids for, transacting business with or entering into or obtaining any contract, lease, permit or license with or from the City; and/or
- (ii) the cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this License, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

(e) The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in clauses (i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in clauses (iii) and (iv) below in addition to any other information which may be relevant and appropriate:

- (i) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit including, but not limited to, the discipline, discharge or disassociation of any person failing to testify, the production of accurate and complete books and records and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.
- (ii) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.
- (iii) The nexus of the testimony sought to subject entity and its contracts, leases, permits or licenses with the City.
- (iv) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under paragraph (d) above, provided that the party or entity has given actual notice to the Commissioner or agency head upon the acquisition of the interest, or at the hearing called for in the first sentence of paragraph (c) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.
- (v) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.
- (vi) The term "person" as used herein shall be defined as a natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
- (vii) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association or person that receives monies, benefits, licenses, leases or permits from or through the City or otherwise transacts business with the City.

- (viii) The term “member” as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

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

Section 12.07. Remedies Cumulative. Each right and remedy of each party provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by each party of any one or more of the rights or remedies provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by such party of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise. Notwithstanding the foregoing, the exclusive remedies for any Payment Default shall be as set forth in Section 9.04.

Section 12.08. Personnel. Except for the Parks Administrator, it is understood that all personnel of RISF, the Schools Group and the Schools are employees of RISF, the Schools Group and the Schools, respectively, and not of Parks or the City and that RISF, the Schools Group and the Schools, respectively, alone are responsible for the work, direction, compensation and personal conduct of such personnel while engaged under this Agreement. Nothing included in this paragraph or in any other provision of this Agreement shall be construed to impose any liability or duty upon Parks or the City to persons, firms or corporations employed or engaged by RISF, the Schools or the Schools Group as consultants, experts or independent contractor or in any other capacity whatsoever as employees, servants or agents of RISF, the Schools or the Schools Group or to make Parks or the City liable to any persons, firms corporations, associations or to any government for the acts, omissions, liabilities, obligations and taxes of whatsoever nature, including unemployment insurance of RISF, the Schools or the School Group or their consultants, experts, employees, servants, agents or independent contractors.

Section 12.09. No Discrimination. None of RISF, the Schools and the Schools Group shall discriminate against any employee, applicant for employment or anyone desiring to attend or participate in activities or programs of RISF, the Schools or the Schools Group because of race, creed, religion, color, marital status, sex, disability, national origin, or sexual orientation. Any violation of this Section 12.09 shall be a material breach of this Agreement.

Section 12.10. Schools' Compliance with Agreement. The obligation of each School to comply with the terms of this Agreement applicable to it is set forth in the Funding Agreement. The parties hereto acknowledge that each of RISF and the City is a third party beneficiary of the Funding Agreement.

Section 12.11. Relationship of Parties. This Agreement is not to be construed to create a partnership or joint venture between the parties.

Section 12.12. Right to Perform Work. The City hereby reserves a right to enter the Premises for any City purpose, including, but not limited to, for the purpose of performing at the Premises, during the term of this Agreement, construction, maintenance, repair and replacement of municipal facilities located at or under the Premises, including, without limitation, sewers, water mains and other sub-surface utilities, and inspection of any such facilities, and RISF, the Schools Group and the Schools shall permit the City access to the Premises for such purposes.

Section 12.13. Waiver, Modification, Etc. No covenant, agreement, term or condition of this Agreement shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by all parties. No waiver of any Event of Default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent Event of Default thereof.

Section 12.14. Invalidity Of Certain Provisions. If any term or provision of this Agreement or the application thereof to any Person or circumstances shall, to any extent, be invalid and unenforceable, the remainder of this Agreement, and the application of such term or provision to Persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 12.15. Governing Law. This Agreement shall be governed by, and be construed in accordance with, the laws of the State of New York.

Section 12.16. Compliance with Laws. RISF and the Schools Group shall faithfully perform and carry out the provisions of this Agreement and cause their agents, employees and invitees to conform to all rules, regulations and orders now prescribed or which may hereafter be prescribed by the Commissioner and comply with all laws, regulations, rules and orders of any kind whatsoever and of any agency or entity of government whatsoever applicable to the Premises and RISF's and the School Group's occupation thereof.

Section 12.17. Claims. Any and all claims asserted by or against any party arising under this Agreement or related hereto shall be heard and determined either in the courts of the United States ("Federal Courts") located in the City of New York and County of New York, or in the courts of the State of New York ("New York State Courts") located in the City of New York and County of New York. To effect this agreement and intent,

the parties agree and, where appropriate, shall require each contractor or consultant to agree, as follows:

(a) If any party initiates any action against any other party in Federal Court or in New York State Court, service of process may be made on such party either in person or by registered mail (return receipt requested) addressed to such party at its address as set forth in this Agreement, or to such other address as such party may provide in writing.

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

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

(d) If a party commences any action against another party in a court located other than in the City and State of New York, then upon request of the party against which the action has been commenced, the other party shall either consent to a transfer of the action to a court of competent jurisdiction located in the City, County, and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, then the party bringing such action shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City and New York County in which event the opposing party shall waive any statute of limitations defense that might otherwise arise from such reinstatement.

Section 12.18. No Claim Against Officers, Agents or Employees. No claim whatsoever shall be made by RISF, the Schools Group or the Schools against any officer, agent or employee of the City for, or on account of, anything done or omitted in connection with this Agreement.

Section 12.19. Successors and Assigns. The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, the City, Parks, RISF and the Schools Group and, except as otherwise provided herein, their respective successors and assigns.

Section 12.20. Waivers. Each of the parties hereby waives trial by jury in any action, proceeding or counterclaim brought by any of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Agreement, the relationship of the parties, the use or occupancy of the Premises, and/or any claim for injury or damages.

Section 12.21. All Legal Provisions Deemed Included. Each and every provision of law required to be inserted in this Agreement shall be and is inserted herein. Every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Agreement shall, forthwith upon the application of either party, be amended by such insertion so as to comply with the law and without prejudice to the rights of either party hereunder.

Section 12.22. Force Majeure. Notwithstanding any contrary provision contained in this Agreement, performance under this Agreement shall be excused and no liability or loss of rights hereunder shall result to the extent that such performance is prevented or delayed by war, terrorist activities, riot, epidemic, insurrection, fire, flood, storm, explosion, earthquake or other acts of God or public enemy to the extent that such failure or delay in performance and the consequences thereof are reasonably beyond the control and without the fault or negligence of the party claiming excuse; provided, however, that such party shall use its reasonable efforts to mitigate the extent of any such failure or delay in performance and any adverse consequences thereof.

Section 12.23. Severability. If any provision(s) of this Agreement is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

Section 12.24. Entire Agreement. This Agreement constitutes the entire agreement between the parties and cannot be changed, modified or terminated orally, but only by an instrument in writing executed by each of the parties hereto.

Section 12.25. Conflicts of Interest. RISF and the Schools Group represent and warrant that neither they nor any of their directors, officers, members, partners, or employees, has any interest, nor shall they knowingly acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. For the purposes of the preceding sentence, “knowingly” shall mean that RISF or the Schools Group knew or should have known of such interest. RISF and the Schools Group further represent and warrant that in the performance of this agreement no person having such conflicting interest or possible conflicting interest shall be employed by RISF or the Schools Group. No elected official or other officer or employee of the City or Parks, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly, interested; nor shall any such person have any interest, direct or indirect, in this agreement or in the proceeds thereof.

Section 12.26. Title to Improvements. Title to all structures, alterations, fixtures, landscaping and any other improvements made to, installed, attached or affixed to the Premises shall pass to the City at its option immediately upon installation, attachment or affixation thereto.

[signature page follows]

IN WITNESS WHEREOF, each party has executed this Agreement as of the date set forth on the first page of this Agreement.

THE CITY OF NEW YORK

By: _____
Commissioner, Department of Parks
& Recreation

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY:

Acting Corporation Counsel

RANDALL'S ISLAND SPORTS
FOUNDATION

By: _____
Name:
Title:

RANDALL'S ISLAND FIELDS GROUP
LLC

By: _____
Name:
Title:

EXHIBIT A
SPORTS FIELDS

EXHIBIT B
SPORTS FIELDS MAINTENANCE AND SECURITY STANDARDS

**EXHIBIT C
CITY FINANCIAL COMMITMENT
AS OF JANUARY 2007**

FY06	FY07	FY08	FY09	Grand Total FY06-09
\$ 3,912,000	\$ 24,456,559	\$ 30,509,976	\$ 6,315,916	\$ 65,194,451

EXHIBIT D
PHASES OF CONSTRUCTION

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