

AUDIT REPORT



CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF FINANCIAL AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on the Compliance of Fitmar Management, LLC With Its License Agreement

FM08-104A

September 4, 2009



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the responsibilities of the Comptroller contained in Chapter 5, §93, of the New York City Charter, my office has audited the compliance of Fitmar Management LLC (Fitmar) with its license agreement with the Department of Parks and Recreation.

The agreement permits Fitmar to operate, maintain, and manage the Paerdegat Athletic Club in Canarsie, Brooklyn, and requires it to pay the City fees based on reported gross receipts derived from the facility. We audit private concerns that conduct business on City property as a means to ensure that they comply with the terms of their agreements, properly report revenue, and pay all fees due the City.

The results of our audit, which are presented in this report, have been discussed with officials from Fitmar and the Department of Parks and Recreation, and their comments have been considered in preparing this report. Their complete written responses are attached to this report.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please e-mail my audit bureau at audit@Comptroller.nyc.gov or telephone my office at 212-669-3747.

Very truly yours,

A handwritten signature in cursive script that reads 'William C. Thompson, Jr.'.

William C. Thompson, Jr.

WCT/fh

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*The City of New York
Office of the Comptroller
Bureau of Financial Audit*

**Audit Report on the Compliance of
Fitmar Management, LLC
With Its License Agreement**

FM08-104A

AUDIT REPORT IN BRIEF

This audit determined whether Fitmar Management, LLC (Fitmar) accurately reported its gross receipts, properly calculated the license fees due, paid its license fees on time, and complied with certain major non-revenue terms of the license agreement.

On December 11, 2004, the Department of Parks and Recreation (Parks) signed a 20-year license agreement with Fitmar to operate, maintain, and manage a state-of-the-art athletic facility, Paerdegat Athletic Club, and two snack bars (licensed premises) in Brooklyn. Fitmar also operates a children's center, Kidsports, at the licensed premises that provides infant care, day schooling, after-school programs, and day camps.

Under the terms of the agreement, Fitmar is required to pay the City the greater of either a minimum annual fee or seven percent of its gross receipts derived from the operation of the licensed premises. On or before the first day of each month, Fitmar is required to pay one-twelfth of the minimum annual fee. A two-percent late charge is applied if fees are 10 days overdue plus an additional charge of two percent of the total of such fees and arrears shall be charged each month. In addition, Fitmar is required to complete capital improvements costing a minimum of \$2,850,902 during the 20-year-term of the license agreement, maintain a \$73,750 security deposit with the City, maintain certain types and amounts of insurance coverage, submit monthly statements of gross receipts and an annual income and expense statement, and pay water and sewer charges and applicable taxes.

For operating year 2007, Fitmar reported \$3,035,940 in gross receipts and paid \$212,617 in fees and late charges to the City

Audit Findings and Conclusions

Fitmar's management of the Paerdegat Athletic Club was rife with internal control weaknesses and deficiencies, and its flagrant disregard for accountability and transparency resulted in a litany of abuses, which contributed to employee theft and prevented us from

determining the full extent to which gross receipts were underreported and City fees underpaid. Fitmar failed to ensure that basic accounting records were in place for tracking daily business transactions and substantiating reported receipts. In addition, Fitmar did not accurately record all gross receipts in its general ledger and did not use a segregated bank account for depositing gross receipts.

Based on the limited documentation available, we were able to calculate that, at a minimum, Fitmar underreported at least \$585,879 in gross receipts for operating years 2005 through 2007. As a result, Fitmar owes the City \$68,689 in additional fees and late charges.¹

Additionally, Fitmar did not expend required minimum amounts for capital improvements, did not maintain the premises in a safe and sanitary condition, had unpaid water and sewer charges totaling \$17,997 (which were subsequently paid), failed to submit timely monthly gross receipts statements to Parks, and allowed unauthorized businesses to operate from the premises. Finally, there was insufficient documentation to determine whether Fitmar conducted required background checks for all its Kidsports employees as required under the New York State Social Services Law.

Fitmar paid minimum annual fees on time, maintained required property and liability insurance that named the City as an additional insured party, and maintained the required security deposit.

Parks did not fully exercise its responsibility to ensure that Fitmar complied with the terms and conditions of the agreement. Parks's insufficient monitoring of the agreement has contributed to the findings disclosed in this report, which are discussed in greater detail in the following sections. Nevertheless, our review of Fitmar's operations revealed a total failure on the part of Fitmar to implement even basic internal controls over the collecting, recording and reporting of revenues generated from the licensed premises. These widespread deficiencies and utter lack of record keeping lead us to conclude that Fitmar breached its license agreement in material respects, and also raise the prospect of possible fraud against the City if Fitmar's failure to implement adequate controls was intentional for purposes of hiding revenue from the City. Accordingly, Parks should study the results of this audit and decide whether it is in the City's best interest to allow Fitmar to continue operating the licensed premises.

Audit Recommendations

Given the seriousness of the audit findings, Parks must consider terminating the agreement. Should Parks decide not to terminate Fitmar's agreement, we make 22 recommendations—12 to Fitmar concerning the operation of Paerdegat Athletic Club and 10 to Parks concerning the oversight of this concession. The following are some of the recommendations.

¹ Prior to the issuance of the draft report, Fitmar paid the City \$45,886 of the \$68,689 that was due, leaving \$22,803 in additional fees still unpaid.

Fitmar should:

- Immediately remit the remaining \$22,803 in additional license fees and late charges.
- Hire a reputable outside consultant to implement the necessary internal controls that would conform to the requirements of the license agreement.
- Coordinate with Parks and develop a needs assessment of capital improvements to help determine how the \$380,450 in unexpended capital improvements for operating years 2005 through 2007 should be used, and develop a specific timetable to complete each improvement.
- Maintain the facility in a clean, neat, and litter-free condition at all times, as required by the license agreement.

Parks should:

- Issue a Notice-to-Cure to Fitmar requiring that it pay the remaining \$22,803 in additional license fees and late charges.
- Determine whether Fitmar underreported any income for operating years 2005, 2006, and 2008.
- Revise the capital improvements schedule with specific capital improvements that would make the licensed premises a state-of-the-art athletic facility. In addition, develop a specific timetable and cost estimate to complete each improvement.
- Assign a Parks employee to closely monitor Fitmar's operation to ensure that it adheres to the terms of the license agreement. Specifically, Parks should evaluate Fitmar's internal control procedures to ensure that Fitmar maintains an adequate system of internal controls, maintains detailed and accurate books and records, reports all revenue, and pays the appropriate license fees.

Compliance with these recommendations may ensure that Parks collects all license fees due, that Fitmar's controls over the operation are adequate for recording of all gross receipts on its books and records and the accurate reporting of gross receipts to Parks, and that Parks more closely monitors Fitmar's compliance with the terms of the agreement.

INTRODUCTION

Background

On December 11, 2004, Parks signed a 20-year license agreement with Fitmar to operate, maintain, and manage a state-of-the-art athletic facility and two snack bars (Paerdegat Athletic Club) at 1500 Paerdegat Avenue North in Brooklyn (licensed premises). Fitmar also operates a children's center (Kidsports) at the licensed premises that provides infant care, day schooling, after-school programs, and day camps. Fitmar is also a Department of Education-contracted provider for a universal pre-kindergarten program and accepts vouchers issued by various City agencies and unions for child care services. In addition, Fitmar operates a holiday camp program for children, and rents space to various sports leagues. Fitmar provides space for a Silver Sneakers program—an HMO-funded program for senior citizens.

Under the terms of the agreement, Fitmar is required to pay the City the greater of either a minimum annual fee or seven percent of its gross receipts derived from the operation of the licensed premises. The \$200,000 minimum annual fee for operating year one escalates \$5,000 each succeeding year. The minimum annual fee due the City for operating year 2007 (December 1, 2006, to November 30, 2007) was \$210,000. On or before the first day of each month, Fitmar is required to pay one-twelfth of the minimum annual fee. If the percentage fee becomes applicable, the percentage fee is due on the 30th day of each succeeding month. A two-percent late charge is applied if fees are 10 days overdue. An additional charge of two percent of the total of such fees and arrears shall be charged each month.

In addition, Fitmar is required to complete capital improvements costing a minimum of \$2,850,902 during the 20-year-term of the license agreement, maintain a \$73,750 security deposit with the City, maintain certain types and amounts of insurance coverage, submit monthly statements of gross receipts and an annual income and expense statement, and pay water and sewer charges and applicable taxes.

For operating year 2007, Fitmar reported \$3,035,940 in gross receipts (see Table I) and paid \$212,617 in fees and late charges to the City.

Table I
Schedule of Reported Gross Receipts
December 1, 2006, to November 30, 2007

Individual and Family Membership	\$1,371,229
Children and Family Programs	1,616,113
Snack Bar	44,444
Vending Machines	<u>4,154</u>
Reported Gross Receipts	<u>\$3,035,940</u>
Percentage Fees Paid	\$212,516
Late Fees Paid	<u>101</u>
Total Fees Paid	<u>\$212,617</u>

Objectives

The audit's objectives were to determine whether Fitmar:

- accurately reported its gross receipts, properly calculated the license fees due the City, and paid its license fees on time, and
- complied with certain major non-revenue terms of the license agreement (i.e., completing required capital improvements, maintaining the required security deposit, carrying the required insurance, submitting the required reports, and paying its water and sewer charges).

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit was December 1, 2006, to November 30, 2007 (operating year 2007). To achieve our audit objectives, we reviewed the license agreement between Parks and Fitmar and abstracted the pertinent terms and conditions. We reviewed correspondence, revenue reports, and other relevant documents. We also analyzed the Parks concessionaire ledger for the amount of license fees paid to the City during operating year 2007, and determined whether payments were received on time. We then determined whether Fitmar submitted monthly gross receipts statements and annual income and expense statements to Parks on time.

To understand Fitmar's operations and internal controls over gross receipts, we:

- interviewed company officials including the president, bookkeeper, membership services manager, membership director, restaurant manager, and Kidsports director,
- reviewed a health and fitness management system manual (CheckFree system) for controls over membership account information and electronic funds transfer (EFT) billing,
- conducted a walk-through of the athletic center and Kidsports operations,
- conducted nine unannounced observations of the athletic center operation from February 2008 to April 2008,

- conducted two unannounced observations in June and July 2008 of Family Fun Night operations, and²
- documented our understanding of these operations in written narratives and flow charts.

Fitmar records daily gross receipts transactions in manual logs (Reco Sheets) for the athletic center and Kidsports. To determine the accuracy of the Reco Sheets, we reviewed customer registration forms for various programs (i.e., swimming, infant care, day school, after school, gymnastics, and soccer) and determined whether customer payments made during February 2008 were properly recorded. We then traced amounts listed on individual credit card charge slips and daily batch reports of credit card charges to the Reco Sheets for February 2008, the month of our unannounced observations. In addition, we compared the information from a membership receipt and contract obtained during an unannounced observation in February 2008 to the transaction recorded on the Reco Sheet.

For the snack bar, Fitmar records daily amounts collected in a snack bar log. To determine the accuracy of the reported snack bar receipts, we totaled the daily log amounts for each month and compared the totals to the monthly snack bar gross receipt amounts reported on the monthly gross receipts statements reported to Parks.

To determine whether all gross receipts were properly deposited in Fitmar's bank account, we attempted to trace the payments from the Reco Sheets to Fitmar's bank statement. In doing so, we found that payments were deposited to a bank account entitled "Paerdegat Boat & Racquet Club, Inc.," which was the corporate name by which the facility operated under a prior City agreement.³ Accordingly, we used the Paerdegat Boat & Racquet Club bank statements as the account to which we traced payments from source documents (i.e., Reco Sheets, credit card statements, CheckFree EFT reports, and deposit slips). We also determined whether any gross receipts deposited to the Paerdegat Boat & Racquet Club bank account were not recorded on the Reco Sheets.

To determine whether all gross receipts were reported to the City, we traced the Reco Sheet information and other relevant documents to the gross receipts statements submitted to Parks. To determine the accuracy of the income and expense statement that Fitmar submitted to Parks for operating year 2007, we traced the information to Fitmar's general ledger.

To determine the reliability of the data extracted from the CheckFree software (i.e., membership and member use information), we conducted three observations at the athletic center's front entrance on May 20, May 21, and May 24, 2008. We recorded members' names as

² Family Fun Night is a special Fitmar event for which patrons pay admission to use the outdoor pool area. Food and beverages are available for purchase at a poolside grill.

³ In 1985, the City of New York, through the Department of Ports and Terminals, signed a 20-year lease agreement with Paerdegat Boat & Racquet Club, Inc., (an affiliated company of Fitmar) for commercial recreation activities. On November 15, 2004, the Department of Citywide Administrative Services (DCAS), successor to the Department of Ports and Terminals, notified Parks that upon the expiration of the Paerdegat Boat & Racquet Club lease, DCAS would relinquish its rights and responsibilities to Parks.

they entered the center and compared them with member-use reports and a membership list generated from the CheckFree system. We also judgmentally selected 50 of 4,259 members listed on the membership list by randomly selecting the 26th member (using Statistical Sampling System software) on the membership list and selecting each successive 90th member. We traced the 50 sampled members to their contracts to determine the accuracy of the membership list. We then judgmentally selected 25 members who paid their annual membership fees in installments, 25 members who made payments in full, and 10 members who had outstanding payments for which Fitmar commenced collection actions. We then traced the membership contracts of the 60 sampled members to the membership list to determine whether all member information was recorded in the CheckFree system.

To determine whether Fitmar expended the required amount of capital improvements, we reviewed invoices that Fitmar submitted to Parks for operating years 2005 to 2007. We also conducted two inspections of the facility with Comptroller's Office engineers on April 2, 2008, and July 24, 2008. The purpose of the visits was to ascertain whether claimed expenditures were for legitimate capital improvements and whether work was completed.

We also determined whether Fitmar complied with other major non-revenue terms of its agreement (i.e., posted the required \$73,750 security deposit with the City, properly maintained insurance coverage, and paid water and sewer charges). We contacted the Comptroller's Bureau of Accountancy to determine whether the amount of a required security deposit posted with the City met the requirements of the agreement. In addition, we obtained Fitmar's insurance policies and contacted the insurance broker to determine whether Fitmar maintained proper insurance coverage. We then reviewed the Department of Environmental Protection's Customer Information System account records to determine whether Fitmar was properly billed and paid for water and sewer use.

Finally, to determine whether Fitmar performed personnel screenings and background checks as required by the New York State Social Services Law, we asked Fitmar to provide screening documentation for all day care and after school employees.

Discussion of Audit Results

The matters covered in this report were discussed with Fitmar and Parks officials during and at the conclusion of this audit. A preliminary draft report was sent to these officials and discussed at an exit conference held on February 3, 2009. On March 5, 2009, we submitted a draft report to Fitmar and Parks officials with a request for comments. We received written responses from Fitmar and Parks on March 18, 2009, and March 19, 2009, respectively.

In their comments, Fitmar officials generally agreed with the report's findings and stated that "we have implemented most of the recommendations and will continue to do so in the future to be 100% compliant with the terms of our license agreement."

Parks responded that "in most instances, Parks agrees with the Report's Recommendations and has already taken action to implement them." Since Fitmar has been

responsive in implementing the required corrective actions and has had a long standing operation providing programs to the Canarsie, Brooklyn, community, Parks decided to forgo terminating its agreement with Fitmar. In that regard, Parks has issued a Notice-to-Cure to Fitmar requiring it to implement the report's recommendations, and will increase its own oversight to ensure that the new procedures fully address the report's recommendations.

The full texts of the responses received from Fitmar and Parks are included as addenda to this report.

FINDINGS

Fitmar's management of the Paerdegat Athletic Club was rife with internal control weaknesses and deficiencies, and its flagrant disregard for accountability and transparency resulted in a litany of abuses, which contributed to employee theft and prevented us from determining the full extent to which gross receipts were underreported and City fees underpaid. Fitmar failed to ensure that basic accounting records were in place for tracking daily business transactions and for substantiating reported receipts—such as cash register journal tapes, a computerized point-of-sales system, a proper system of sequentially pre-numbered forms, receipts, and contracts. In addition, Fitmar did not accurately record all gross receipts in its general ledger and did not use a segregated bank account for depositing gross receipts.

Based on the limited documentation available, we were able to calculate that, at a minimum, Fitmar underreported at least \$585,879 in gross receipts for operating years 2005 through 2007. As a result, Fitmar owes the City \$68,689 in additional fees and late charges.⁴

Additionally, Fitmar did not expend required minimum amounts for capital improvements, did not maintain the premises in a safe and sanitary condition, had unpaid water and sewer charges totaling \$17,997 (which were subsequently paid), failed to submit timely monthly gross receipts statements to Parks, and allowed unauthorized businesses to operate from the premises. Finally, there was insufficient documentation to determine whether Fitmar conducted required background checks for all its Kidsports employees as required under the New York State Social Services Law.

Fitmar paid minimum annual fees on time, maintained required property and liability insurance that named the City as an additional insured party, and maintained the required security deposit.

Parks did not fully exercise its responsibility to ensure that Fitmar complied with the terms and conditions of the agreement. Parks's insufficient monitoring of the agreement has contributed to the findings disclosed in this report, which are discussed in greater detail in the following sections. Nevertheless, our review of Fitmar's operations revealed a total failure on the part of Fitmar to implement even the basic internal controls over the collecting, recording and reporting of revenues generated from the licensed premises. These widespread deficiencies and utter lack of record keeping lead us to conclude that Fitmar breached its license agreement in material respects, and also raise the prospect of possible fraud against the City if Fitmar's failure to implement adequate controls was intentional for purposes of hiding revenue from the City. Accordingly, Parks should study the results of this audit and decide whether it is in the City's best interest to allow Fitmar to continue operating the licensed premises.

⁴ Prior to the issuance of the draft report, Fitmar paid the City \$45,886 of the \$68,689 that was due, leaving \$22,803 in additional fees still unpaid.

Significant Internal Control Weaknesses

Our review of Fitmar's operations revealed a total absence of internal controls over its operations. Fitmar does not maintain an adequate system of internal controls for the athletic center, Kidsports, and snack bar operations to ensure that all gross receipts are properly recorded and reported to the City. Further, our analysis led to the discovery of employee theft, which resulted in the termination of two Fitmar employees and the resignation of another employee.

The limited records Fitmar maintained were insufficient to determine the full extent to which gross receipts were underreported and City fees underpaid. However, based on the limited records available, we conservatively calculated that for operating year 2007, the underreported revenue totaled \$474,841. (For operating years 2005 through 2007, Fitmar underreported its gross receipts by \$585,879.) Then again, given that Fitmar's internal control deficiencies were so egregious, the actual amount of underreported gross receipts is likely to be significantly greater than we estimated.

License agreement §4.7(a) states that Fitmar must: "Maintain adequate systems of internal control and shall keep complete and accurate records, books of account and data, which may be electronic records, including electronic daily sales and receipts records, which shall show in detail the total business transacted by Licensee and the Gross Receipts therefrom." Agreement §4.7(b) requires that books and records be maintained for at least six years. Moreover, license agreement §9.6 requires that Fitmar record all transactions involved in the operation of the license in cash registers.

Adequate control systems are necessary for properly tracing receipts from the point of sale and recording them in an organization's books and records. Fitmar's internal controls, however, were inadequate in significant and pervasive respects, as described by the following deficiencies.

Problems with Reco Sheets and Receipts

- Fitmar does not use cash registers with journal tapes or a computerized point-of-sales system to record or process sales. Fitmar records athletic center and Kidsports transactions in Reco Sheets manually and inconsistently, a procedure that thwarts the ability to properly account for all transactions and ensure that gross revenue is accurately recorded. Consequently, Fitmar could not demonstrate and we could not ascertain whether the revenue that Fitmar reported was accurate and reasonable.
- Pre-numbered receipts are improperly used. Fitmar uses pre-numbered receipts haphazardly to record transactions on the athletic center Reco Sheets, but many receipt numbers are not sequential. Thus, 662 (9 percent) of 7,251 pre-numbered receipts for the period December 2006 to June 2008 were not recorded in the Reco Sheets. In addition, 54 of the receipt numbers were used more than once. Transactions for Kidsports also lacked any systematic use of pre-numbered receipts, and customer receipts were not always issued. Although these transactions were sometimes handwritten in the Reco Sheets, our analysis of the sheets for February

2008 indicated that 132 (81 percent) of 162 transactions lacked receipt numbers. Since Fitmar improperly uses pre-numbered receipts, it is very possible transactions occurred and that corresponding payments were not recorded by Fitmar and reported to Parks.

- Cash transactions were are not always recorded in the Reco Sheets. For example, two gymnastics registration forms dated February 2 and February 9, 2008, for cash payments of \$175 each were made on February 9, 2008. These transactions were not recorded in the Reco Sheets, nor could Fitmar officials explain their absence. Therefore, it is very possible that cash payments were not being recorded by Fitmar and reported to Parks.
- Credit card transactions are not always recorded, and the payment methods were not properly indicated in Reco Sheets. We found that 22 (12 percent) of 186 credit card transactions for February 2008 were not recorded on the Reco Sheets. Moreover, Fitmar could not provide individual credit card slips for 14 (9 percent) of the remaining 164 (186 less 22) credit card transactions that were recorded in the Reco Sheets to indicate whether those 14 customers were indeed charged for services. Our analysis subsequently led to the discovery of employee theft, which resulted in the termination of two Fitmar employees and the resignation of another employee.
- Reco Sheet receipt numbers are not accurately recorded. For example, a gymnastics registration form dated February 9, 2008, indicated a \$250 check payment on February 9, 2008, for receipt #18523. However, the receipt number that was listed in the Reco Sheet for this transaction was #18210.

Pre-numbered Forms Not Used

Fitmar does not use pre-numbered Reco Sheets, membership contracts, or registration forms to reduce the risk of unauthorized transactions, to ensure that all documents are accounted for and to assist in identifying missing records. Thus, basketball and soccer leagues and a holiday camp program lacked registration forms. Consequently, we could not ascertain the number of enrollees in each activity and the corresponding fees and revenue collected. In operating year 2007, there were only two transactions for basketball and soccer league enrollments listed in the February 2007 Reco Sheets (a \$95 payment for one individual and an \$800 team payment). Similarly, there were few transactions listed for the holiday camp program on the Reco Sheets. The small number of recorded enrollments again leads us to question whether Fitmar is accurately recording and reporting all gross receipts.

Further, there were no rental contracts for use of facility space (e.g., basketball courts or soccer field). Therefore, it is very possible that the facility was used and the corresponding payments were not being recorded by Fitmar and reported to Parks. Consequently, it is not possible to ascertain whether the amounts of rental payments recorded on Reco Sheets were accurately recorded and reported on the gross receipts statements.

Problems with Snack Bar Transactions

Although Fitmar has a cash register in the snack bar, it is not used to record sales. Instead, the cash register is opened with the “No Sales” button simply to store the cash collected. The aggregate total of each day’s receipts are manually recorded in a snack bar log. Our review indicated that during operating year 2007, Fitmar underreported snack bar receipts for 3 of the 12 months totaling \$16,844 and overstated receipts for the remaining 9 months by \$8,407. As a result, Fitmar underreported Snack Bar receipts by \$8,437. Moreover, our discovery that the monthly totals of snack bar gross receipts that Fitmar reported to Parks for January through November 2007 were identical to the amounts reported for January through November 2006 raises further suspicions concerning the legitimacy of Fitmar’s operations.

In addition, snack bar guest checks are discarded after one week. Their absence along with the lack of register tapes precluded our reconciliation of the revenue recorded in the snack bar log with the amount of gross receipts reported to the City. Consequently, we could not determine whether all gross receipts were accurately recorded and reported.

Problems with Reporting Special Event Revenue

Fitmar did not record special event revenue in its books and records. As a result, revenue is not being reported in the gross receipts statements submitted to Parks. Despite Fitmar’s initial contention that special events were not held at the facility, we found that Fitmar hosted at least 13 events (e.g., promoter dance parties and comedy nights) between April 2005 and March 2008. (See Appendix I.) Moreover, the minutes of Community Board #18 indicated that several complaints had been made to the board regarding parties held at the facility, and, according to the February 2008 minutes, the New York Police Department and the Bergen Beach Civic Association reported “disturbing, rowdy, drunken behavior emanating from [the athletic facility] in the evening hours.”

Soon thereafter, we met with Fitmar’s President and requested all supporting documentation regarding those special events. However, Fitmar’s President continued to insist that no special events were held at the premises. Since Fitmar’s President was not forthcoming, we showed him one of the advertisements obtained from the Internet. Subsequently, Fitmar’s President admitted that parties were being held at the facility and that he was going to estimate the unreported revenue amounts generated from these parties and report the amounts to Parks.

At the February 3, 2009 exit conference, Fitmar’s president paid Parks \$391 for additional fees related to his underreporting of special event revenue. After the exit conference, we requested Fitmar’s president to provide additional information as to when these special events occurred and estimates of special event revenue earned. Based on the information supplied, we found that Fitmar’s president underestimated the number of special events and amount remitted to Parks. At a minimum, there were at least nine special event parties (each grossing up to \$1,500) and four comedy nights (each grossing up to \$250) that occurred between

April 2005 and November 2007.⁵ Thus, Fitmar considerably underreported special event revenue by at least \$14,500.

Problems with the General Ledger and Commingled Revenue

The license agreement requires Fitmar to segregate its books and records from other businesses. However, Fitmar improperly recorded a portion of its gross receipts in the general ledger of the Paerdegat Boat & Racquet Club (the facility's corporate name under a prior City agreement) while recording certain other receipts in Fitmar's ledger. Thus, our review of Fitmar's February 2008 general ledger found no recorded income. In addition, certain cash receipts were not recorded in either general ledger, nor was there a record of corresponding bank deposit slips. For example, although the February 2008 Reco Sheets show cash collections totaling \$30,997, there were no corresponding monthly bank deposit slips nor any records of the cash income in either general ledger. Finally, Fitmar improperly commingled in Paerdegat Boat & Racquet Club's bank account the revenue from the Paerdegat Athletic Club with the deposits of revenue from a privately-owned athletic club owned by Fitmar officials.

As a result of these irregularities, we were unable to reconcile the gross receipts recorded in the February 2008 Reco Sheets, snack bar log, and vending machine commission statements with deposit slips and gross receipts recorded in Fitmar's general ledger. Further, there was no evidence to show that Fitmar conducted gross receipts reconciliations to ensure that it accurately recorded gross receipts in the general ledger. We also note that Fitmar's refusal to provide any records from the privately-owned athletic club prevented us from disentangling and reconciling revenue derived from the privately-owned athletic club and that from Fitmar.⁶

\$585,879 in Gross Receipts Not Reported

Based on available records, Fitmar underreported \$585,879 in gross receipts for operating years 2005 through 2007 to the City.⁷ Of this amount, Fitmar underreported \$474,841 in gross receipts for operating year 2007. Specifically, Fitmar:

⁵ In addition, there were four special event parties and seven comedy nights that were excluded from this report because these special events occurred during operating year 2008, which was outside the scope of this audit. Consequently, Fitmar must adjust its reported gross receipts for 2008 by \$7,750 (4 parties at \$1,500 each plus 7 comedy nights at \$250 each).

⁶ To rectify the problems of using two separate general ledgers, Fitmar's independent accountant made manual inter-company transfers between the two ledgers at the end of the operating year. It is troubling that these manual, end-of-year adjusted income amounts matched exactly the total amount of gross receipts reported to Parks during the course of operating year 2007.

⁷ For operating year 2007, Fitmar underreported \$474,841 (13.5 percent) of reported gross receipts. Reported gross receipts plus underreported gross receipts equals adjusted gross receipts ($\$3,035,940 + \$474,841 = \$3,510,781$). The amount of underreported gross receipts divided by the adjusted gross receipts equals the percentage of underreported receipts ($\$474,841 \div \$3,510,781 = 13.5$ percent).

- Underreported \$117,663 in gross receipts for Individual and Family Membership and Children and Family Programs. There were discrepancies between the amounts recorded on the Reco Sheets and the EFT reports, and the amounts recorded on the gross receipts statements submitted to Parks.
- Did not report \$281,545 in Kidsports gross receipts. There were discrepancies among the amounts deposited into the bank, the amounts recorded on the general ledgers, and the amounts recorded on the Reco Sheets.
- Did not report \$142,307 in Silver Sneakers revenue to Parks for the period December 2005 through November 2007. During our review of the February 2008 gross receipts, Fitmar did not report Silver Sneakers revenue to Parks because those payments were directly deposited into the bank and not recorded on the Reco Sheets. Subsequently, we informed Parks about the unreported Silver Sneakers revenue, and on June 5, 2008, Parks issued a Notice-to-Cure requesting Fitmar to calculate all unreported gross receipts from Silver Sneakers and submit payment for the additional fees owed. As a result, Fitmar officials made two separate payments, totaling \$14,604, to Parks in August and November 2008.
- Underreported \$18,356 in snack bar gross receipts from January 1, 2006, to November 30, 2007, which was discovered after we reconciled the snack bar log to the monthly gross receipts statements submitted to Parks.
- Underreported \$11,508 in vending machine commissions from January 1, 2006, to November 30, 2007, which was uncovered after we compared the amounts recorded in the Fitmar general ledger and the monthly gross receipts statements submitted to Parks.
- Did not report at least \$14,500 in special event revenue from April 2005 to November 2007.

Although, we determined that during operating years 2005 through 2007 Fitmar underreported, at a minimum, \$585,879 in gross receipts resulting in \$68,689 in additional fees and late charges due the City, Fitmar made several payments totaling \$45,886. Therefore, Fitmar currently owes \$623 in additional license fees and \$22,180 in late charges, as detailed in Appendix II.

Furthermore, Fitmar did not submit timely monthly gross receipts statements for operating years 2005, 2006, and 2007. According to license agreement §4.5, Fitmar is required to submit monthly gross receipts statements on or before the 30th day following each month of each operating year. For operating year 2005, seven monthly gross receipts statements were submitted between 2 and 110 days late. For operating year 2006, eight statements were submitted between 2 and 30 days late, and for operating year 2007, 11 statements were submitted between 20 and 192 days late.

**\$380,450 in Expenditures for
Capital Improvement Work Not Done**

Fitmar did not comply with the license agreement’s requirement to expend at least \$654,301 in capital improvements for operating years 2005 to 2007.⁸ Although Fitmar claimed to have expended \$907,077 in improvements during these years, we could substantiate only \$273,851 of that amount, as shown on Table II below.

Table II
Schedule of Capital Improvements
Operating Years 2005 to 2007

Amount of Required Capital Improvements			\$654,301
Amount of Submitted Capital Improvement Invoices		\$907,077	
Disallowances:			
Repairs and Equipment	\$258,472		
Undocumented Cost of Capital Improvements Performed by an Affiliated Company	359,896		
Overcharged Sales Tax Amount	<u>14,858</u>		
Total Amount of Disallowances		<u>(633,226)</u>	
Amount of Capital Improvements Allowed			<u>273,851</u>
Total Unexpended Amount of Capital Improvements			<u>\$380,450</u>

Some of the claimed expenditures totaling \$258,472 were for items such as gym equipment, computer software and hardware, and repairs to light fixtures that were clearly not capital improvements as defined by the agreement. We also deemed ineligible \$374,754 (\$359,896 and \$14,858 in sales tax, Table II) in expenditures for Metro J&B Contracting, LLC (Metro) because of pervasive problems that we identified with that contractor, which are described in greater detail below.

Problems with an Affiliated Contractor

License agreement §10.4 requires the total cost of capital improvement work to be based on construction documents, invoices, labor time sheets, and other supporting documentation (payroll records, material purchase orders, etc.) Despite this stipulation, Fitmar submitted to Parks \$359,896 in work invoices from Metro, an affiliated contractor, which invoices lacked sufficient documentation to substantiate the value of capital improvement work performed.

Further, some of the claimed expenditures may have been for work that was performed by other vendors. For example, a \$6,800 Metro invoice dated October 16, 2005, was for the

⁸ The minimum amount of capital improvements to be expended was determined from the revised capital improvement schedule included within the letter of modification to the license agreement dated June 16, 2005.

supply and installation of 800 square feet of 3/8" rubber flooring in the stretch area. However, another vendor submitted a \$2,000 invoice dated November 7, 2005, for installing 800 square feet of customer-supplied 3/8" rubber sheet flooring. In another example, an \$8,500 Metro invoice dated May 6, 2006, was for resurfacing an outdoor pool with marble dust. However, another pool restoration vendor submitted several invoices totaling \$10,500 for resurfacing a pool with marble dust in April 2006.

Since a sizable amount of the capital improvements was performed by Metro, we requested Fitmar's president to provide Metro's payroll records that showed the labor costs, construction material purchasing records, and worksheets with a detailed breakdown of the items charged to determine whether the amounts charged to Fitmar were reasonable. However, Fitmar's president informed us that he hired "day workers" to perform capital improvement work at the athletic facility and that he did not maintain worksheets to indicate how the fair market value of the improvements was calculated. Consequently, we could not determine the quality and reasonableness of the cost of capital improvements.

In addition, we identified other problems with Metro's business practices which cause us to question whether Metro is truly an independent contractor whose billings can be accepted as capital improvements in accordance with the requirements of the license agreement. These included Metro's incorporation by Fitmar's president on January 10, 2005—less than one month after Fitmar was awarded the license agreement—the company's use of a fictitious business address and phone numbers, and Metro's failure to file New York State sales tax returns for operating years 2005, 2006, and 2007. Metro invoices also contained \$14,858 for both improper sales tax on labor costs and a higher, incorrect sales tax rate.⁹

Unsafe and Unsanitary Conditions

Fitmar has not maintained the premises in a "first class condition," as required by license agreement §11.8. During our inspection on April 2, 2008, we found unsafe and unsanitary conditions including fungi or mold underneath an indoor track, exposed electric outlets, blocked fire exits, and defective exit signs.

We subsequently notified Fitmar, and officials from Parks and other City agencies (Health and Mental Hygiene, Education, Fire, Children's Services, and Buildings) about the poor conditions and asked them to take appropriate remedial action. (See letters and photographs in Appendices III–IX.) Inspectors from Parks, Health and Mental Hygiene, Fire, and Buildings visited the facility. According to Parks officials, some of the conditions had already been cured, and Fire and Buildings inspectors had issued violation notices to Fitmar. The Fire Department, informed us of its findings on April 10, April 17, and May 1, 2008, and stated that it had conducted follow-up inspections to ensure that potential fire hazards were corrected. Parks sent Fitmar a Notice-to-Cure on April 11, 2008.

⁹ After we brought these matters to their attention, Parks officials issued a Notice-to-Cure to Fitmar on September 25, 2008. Fitmar responded by providing copies of canceled checks instead of actual tax returns, purportedly to substantiate sales tax payments.

Parks subsequently advised us on April 22, 2008, that it “found the areas of the facility where the children are located to be clean and sanitary; found minor violations but no clear health risk to the other occupants of the other areas; and, found all of the reported deficiencies to be either already cured, or in the process of being cured.” (See responses from Parks and other agencies in Appendices X–XIV.) Notwithstanding the remedial actions that Fitmar carried out in response to our audit, the maintenance and condition of the Paerdegat Athletic Club still fall far short of being considered “first class.” Therefore, Parks must be vigilant in ensuring that Fitmar performs all required maintenance and, as previously noted, that it undertakes all required improvements.

Water and Sewer Use Not Paid

Fitmar did not pay for water and sewer use since 1992 for one of its three accounts (No. 50004-82356-001) as required by the license agreement. Our review of the Department of Environmental Protection’s (DEP’s) Customer Information System indicated that the account was listed as City-owned.

After we brought this matter to its attention, DEP inspected the meters and billed Fitmar \$17,997 for water and sewer use from May 5, 2006, to September 11, 2008. (The account was paid as of October 20, 2008.) However, New York City Water Board rules preclude DEP from billing customers for water and sewer use that is more than two years old. Accordingly, the City will be unable to recoup an estimated \$61,533 in payments for water and sewer use between 1992 and 2006.

Fitmar Response: “There is no outstanding money owed to the DEP for water and sewer bills. The DEP had informed us that they billed us incorrectly. They sent us a corrected bill for money that was not billed for and we paid it. There were no late fees or any finance charges of any kind added to the bill by the DEP.”

Auditor Comment: Fitmar’s response attempts to obfuscate the issue. Fitmar failed to notify DEP that one of its accounts remained in the City’s name and benefited from remaining silent. Soon after this omission was discovered, DEP was contacted and as part of its normal course of action, provided Fitmar with an estimated bill. Once a more accurate reading of Fitmar’s use was determined, DEP made a final adjustment taking into consideration payments made to the account.

It should also be noted that Fitmar was billed only \$17,997, which it subsequently paid. However, this amount was a fraction of the \$79,530 Fitmar should have been billed for water and sewer use had it properly notified DEP. Consequently, the City lost an estimated \$61,533.

Unauthorized Use of Premises To Conduct Other Businesses

Fitmar permitted several unrelated businesses to operate at the premises, thus violating license agreement §1.1, which prohibits Fitmar from providing any services at the premises other than those required to operate, maintain, and manage a state-of-the-art athletic facility and two snack bars. Despite this prohibition, our review found evidence that several real estate management companies, owned by Fitmar's principals, and a privately operated karate studio were using the licensed premises at the Paerdegat Athletic Club to conduct private business.

Even if Parks were to permit these types of businesses to operate, license agreement §17.1 would have required Fitmar to obtain Parks's approval and execute sublicense agreements, which it did not.

Consequently, the City has no assurance that either the revenue generated from these businesses or their fair market rental income was included in Fitmar's calculation of gross receipts and that the City is receiving all associated fees. (Fitmar asserted that it had a "verbal" agreement with the operator of the karate studio which paid Fitmar 50 percent of its revenue.) According to license agreement §2.1(1)(iii), "Gross Receipts shall also include all sales made by any other operator or operators using the Licensed Premises under a properly authorized sublicense or subcontract agreement . . . and provided further that Gross Receipts shall include Licensee's income from rental and sublicense or subcontracting fees and commissions ('Commissions') received by Licensee in connection with all services provided by Licensee's subcontractors or sub licensees."

Other Issues

Lack of Criminal Background Records

Six (13.6 percent) of 44 files lacked documentation to indicate that Kidsports employees had been properly screened for criminal backgrounds, as required by the New York State Social Services Law. Fitmar's inability to provide the documentation and to verify that the employees were not listed in the State Central Register of Child Abuse and Maltreatment may pose a potential safety risk to children in the Kidsports program.

According to §390-b of the New York State Social Services Law, "the office of children and family services shall perform a criminal history record check with the division of criminal justice services regarding any operator, employee, volunteer, of a child day care center or school age child care provider." In addition, §424-a states that "the department shall inform such agency and the subject of the inquiry whether any person who is currently employed and who has the potential for regular and substantial contact with children who are cared for by such agency is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment."

Inadequate Parks Oversight

Parks did not ensure that Fitmar complied with the terms of its license agreement. New York City Charter Chapter 14, §365(c), requires the responsible agency (i.e., Parks) to “monitor the performance of the grantee and enforce the terms and conditions of any franchise, revocable consent, or concession under its jurisdiction.” However, the widespread deficiencies we uncovered were not identified by Parks, an indication that it was not actively monitoring its agreement with Fitmar.

For example, Parks did not detect any problems when Fitmar reported to Parks that its monthly snack bar receipts for January to November 2007 were identical to the amounts reported from January to November 2006, a clear sign that gross receipts were not properly reported. (See page 12.) As another example, Parks was not aware of any problems with the facility’s condition until we notified Parks of these deficiencies during the course of the audit. For a third example, Parks was remiss in allowing Fitmar to contend that maintenance and repair work expenses partially fulfilled the agreement’s requirement to expend more than \$650,000 in capital improvements.

Adequate oversight by Parks is important for verifying that City concessionaries are properly carrying out the terms of their agreements and reporting all required revenue to the City.

RECOMMENDATIONS

Fitmar is in serious breach of its license agreement. Parks therefore must consider terminating the agreement, particularly if it determines that Fitmar's conduct was intentional for purposes of hiding revenue from the City. At a minimum, Parks must address Fitmar's failure to report all its revenues on its gross receipts statements, its failure to maintain the necessary supporting documentation, and the internal control issues mentioned in this report. Should Parks decide not to terminate its agreement, Fitmar should:

1. Immediately remit the remaining \$22,803 in additional license fees and late charges.

Fitmar Response: "We do not feel we should have to pay any late fees especially 2% plus 2% or 4% per month. Since we have paid approximately \$1,000,000 in base rent plus additional fees to the NYC parks department since November 2004, it is unreasonable to charge us late fees at 4% per month especially with the current market conditions and the current economic climate. We have paid the Parks department approximately \$976,000 in the past 4 years."

Parks Response: "Parks agrees and has required Fitmar to pay the outstanding amount."

2. Hire a reputable outside consultant to implement the necessary internal controls that would conform to the requirements of the license agreement. These controls should include, but not be limited to:

- Installing a computerized point-of-sale system (POS) to record all revenue (i.e., athletic center, Kidsports, and snack bar) whereby terminals are situated at all revenue points, each terminal is interconnected to one centralized system, and all cash, checks, and credit card transactions are processed by the POS system. The POS system should eliminate the need for a manual system of records.
- Pre-numbering all documents (e.g., membership contracts, registration forms, and guest checks) and issuing them sequentially.
- Maintaining sequentially pre-numbered written contracts and a completed calendar book for all special events and space rentals.
- Depositing all gross receipts, including cash, into one bank account under the Fitmar name and ceasing the commingling of funds from affiliated businesses.
- Accurately recording all gross receipts in one general ledger under the Fitmar name.

Fitmar Response: "This is not necessary. We have implemented the controls as listed below as requested by the comptroller's office and the NYC parks department."

With additional parks oversight coupled with the controls now in place, there will be no need for an outside consultant.

- a. **Touch screen front desk cash receipt register system:** In addition to the sequentially pre-numbered reco sheets, reco receipts, registration forms, booking contracts, and all enrollment agreements; we have implemented a new touch screen cash receipt register system that ties into our general ledger. This will further insure that our income is accurately reported on a timely basis. This will also give 100% connection between point of sales, general ledger, deposits into the bank (only one account), and income reported to the parks department. Our new system will assure future auditors full transparency for all of our gross receipts and for all of our membership and children's programs. We have implemented this system at our point of sale front desk and kidsports check in areas as well.
- b. **Pre-number all documents:** The distribution of all 'pre-numbered' program registration forms, all 'pre-numbered' reco type income sheets and reco receipts, and pre-numbered membership contracts are all now controlled so there is no possibility of any theft or the illegal 'floating around' of these financial control tools.
 - a. They are signed out by the selling manager or membership coordinator and must be cosigned by either the general manager or our membership service director. All receipts numbers are sequential and are now accurately listed on the pre-numbered reco sheets and the point of sale system. The same goes for all program registration forms. This was implemented during the audit and was expanded to include all of our aforementioned forms to complete the implementation of a strong financial control system.
 - b. Additionally, all program registrants must check into the computer so if anyone has an illegal registration form they will be caught at the reception area. This system of checks and balances will assure that our entire adult and children members will have multiple points of administration awareness. This translates into the fact that it is now almost impossible for any staff member to insert a child or adult into program and us not catching on immediately.
- c. **Deposit of all Gross receipts:** We are depositing 100% of all point of sale gross receipts and almost all licensed program gross receipts into one account instead of two. We will have only one account in the next few months and will no longer co-mingle any income. The reason for this is that we have to finalize renewing our licenses under the Fitmar Management name.
- d. **All Gross receipts will be recorded under the Fitmar name only."**

Parks Response: “Parks partially agrees with this Recommendation, and has required Fitmar to implement all of the above-described internal controls. However, Parks has decided not to require Fitmar to hire an outside consultant to implement these controls. Parks will hold Fitmar accountable for the effective operation of their concession and the implementation of the necessary internal controls. While Parks would look favorably upon a decision by Fitmar to seek outside technical assistance, we are not requiring it to do so. Parks will increase its own oversight of Fitmar’s internal controls to ensure that the new procedures fully address this Report’s Recommendations. This includes requiring Fitmar to submit more detailed monthly statements of gross receipts, performing site visits to review their implementation of internal controls and conducting a follow-up internal audit.”

Auditor Comment: Our report concludes that Fitmar has violated its agreement with the City by failing to maintain the necessary controls to assure the City that all revenues are properly recorded and reported.

By Fitmar’s own admission, Fitmar offers 22 programs and handles thousands of transactions each month. Due to the weak controls and limited records available, we could not determine the full extent to which gross receipts were underreported and City fees underpaid. Consequently, our audit was limited to only a few programs. Nonetheless, from our findings, one might surmise that Fitmar management lacked the wherewithal, will, or business expertise to implement necessary controls—or, that it might actually have intended to operate with weak controls. We are therefore disappointed that Fitmar and Parks decided to forgo the hiring of an outside consultant. A consultant would obtain an in-depth understanding of the internal controls currently in place, would offer advice on the areas that are in need of improvement, and would test enhanced controls to provide Fitmar and the City the assurance that all revenue is appropriately accounted for.

However, Parks has assured us that it will increase its own oversight of Fitmar’s internal controls and will hold Fitmar accountable for the effective operation of their concession.

3. Maintain for at least six years the required source documentation to support the gross receipts reported to the City.
4. Estimate the total revenue lost to the City resulting from the employee theft that occurred at the licensed premises, and pay appropriate additional fees to Parks.

Fitmar Response: “The amount of employee theft was minimal and caught in a timely manner. It should not be required to guess at this amount and pay the city for revenue that Fitmar Management did not collect.”

Parks Response: “Parks agrees and has required Fitmar to comply with Recommendations 3 and 4 and pay for amounts related to employee theft. Additionally, Parks addressed these Recommendations in a prior NTC [Notice-to-

Cure] sent to Fitmar on June 5, 2008 which resulted in a payment to the City of \$14,604 for Fitmar's Silver Sneakers program.”

5. Coordinate with Parks and develop a needs assessment of capital improvements to help determine how the \$380,450 in unexpended capital improvements for operating years 2005 through 2007 should be used, and develop a specific timetable to complete each improvement.

Fitmar Response: “The comptroller’s office, along with the parks department, made numerous inspections to view all of our stated and approved capital improvements. None were disqualified as far as being performed.

- We made them and they were correctly priced.
- We went over all of the capital improvement items that with the parks dept. The parks department inspected our facility many times and looked at all of the capital improvement jobs that we had reported.
- The parks department approved most and disapproved a few of these items. As a result the parks department submitted to us a final reported amount of capital improvements that were approved for the calendar years of 2005, 2006, and 2007.
- The type of furniture items such as fitness equipment is very heavy and would become the property of the parks department if and when we leave the premises. Therefore, like attached equipment such as basketball back boards, sinks, and faucets; this is equipment that will last 10 to 15 years and should count as credit in our capital expenditure budget. As the parks department has already signed off on these items in the past, they should stay as a contributing factor to our capital expense budget. These items were all purchased to make the club a top notch club.
- We are not aware that any of our ‘approved capital expenditures’ should be reclassified as repair and maintenance items since we went thru all of these items and received approval in the past from the parks department.
- **Installed floor and pool marble dusting:** As far as the questions raised by the comptroller’s office regarding the pools and the floors on pages [15 & 16], we explained how these invoices were calculated and showed the amount charged were at or below market rates. As for the pools, the invoices were for two of the three outdoor pools. As for the floor; one invoice was for the removal of the old floor, preparation of the floor sub base, and the installation of the brand new floor; the other floor invoice was for purchasing the actual flooring and adhesive costs.”

Parks Response: “Parks agrees with this Recommendation, and has requested that Fitmar develop a needs assessment of capital improvement to help determine how and under what timetable unexpended capital improvements amounts will be spent for operating years 2005 through 2007. However, we are still reviewing the Comptroller’s extensive capital analysis and issues related to the affiliated contractor, Metro J and B, in order to determine the extent we agree with the amount of unexpended capital calculated in the Report.”

6. Repair and maintain the licensed premises in good working order, at its sole cost and expense, and discontinue claiming as capital improvements routine maintenance and repair items and equipment purchases.

Parks Response: “Parks will continue to require Fitmar to keep the licensed premises in good working order, and will not accept routine maintenance toward Fitmar’s capital commitment.”

7. Establish a preventive maintenance schedule that includes, but is not limited to, the periodic replacement of air conditioning filters as well as painting and repairs throughout the licensed premises.
8. Maintain the facility in a clean, neat, and litter-free condition at all times, as required by the license agreement.
9. Submit accurate monthly gross receipts statements to Parks within 30 days after the end of each month.
10. Obtain written approval from Parks to enter into a written sublicense agreement with the private operator of the karate studio, and any other sublicensees.

Parks Response: “Parks agrees and has required Fitmar to comply with Recommendations 7 through 10. Indeed, these recommendations were addressed in NTCs sent to Fitmar on June 5, 2008 and January 5, 2009 which required Fitmar to ‘. . .ensure the facility is cleaned daily. . .’ ‘. . .ensure that gross receipts are accurately reported. . .’ and to ‘. . .submit for approval proposed sublicense agreements.’”

11. Obtain written approval from Parks to enter into a separate license agreement for the unrelated entities (affiliated real estate management businesses) to operate at the licensed premises. If Parks approves that the unrelated entities may continue to operate at the licensed premises, then Fitmar in conjunction with Parks, should determine a fair market rent that should be paid retroactively to the inception of the license agreement.

Parks Response: “Parks does not approve of the one unrelated entity (an affiliated real estate management business) being run out of the licensed premises, and has instructed Fitmar to identify an alternative off-premises location from which to operate its real estate management business.”

12. Perform background checks of all employees, as required by the New York State Social Services Law.

Fitmar Response: “We explained to the comptroller’s office that all licensed program employees that worked directly with children all did have the proper background

checks. They have asked that administration staff have the background checks as well. Although this is not required by the state for licensed children's programs, we will comply with the comptroller's request in this matter."

Parks Response: "Parks agrees and has required Fitmar to comply with Recommendation 12."

Auditor Comment: Fitmar's president has misinterpreted the requirements of the New York State Social Services law. The law does not differentiate between program employees and administrative staff. The law explicitly states that any person who is currently employed and who has the potential for regular and substantial contact with children must have a criminal history check. Nevertheless, Fitmar's president responded that Fitmar will comply and obtain the required background checks.

Parks should:

13. Issue a Notice-to-Cure to Fitmar requiring that it pay the remaining \$22,803 in additional license fees and late charges.

Parks Response: "Parks agrees and has issued the NTC requiring the additional payment of \$22,803."

14. Ensure that Fitmar complies with all the recommendations in this report.

Parks Response: "We have already issued NTCs covering a number of issues in the Report. Parks will issue further NTCs in accordance with Parks' determinations with respect to the Report's Recommendations."

15. Determine whether Fitmar underreported any income for operating years 2005, 2006, and 2008.

Parks Response: "Parks will audit Fitmar's manual logs used for recording daily gross receipts (Reco Sheets) and determine whether Fitmar underreported income for 2005, 2006 and 2008."

16. Review Fitmar's estimates of revenue lost to the City resulting from the special events and from the employee theft that occurred at the licensed premises, determine the amount of additional fees and late charges, and request payment from Fitmar.

Parks Response: "In accordance with Recommendation 4, Parks will review Fitmar's estimates of revenues. If Fitmar's estimate should be increased, Parks will require Fitmar to make additional payments to the City inclusive of late charges."

17. Revise the capital improvements schedule with specific capital improvements that would make the licensed premises a state-of-the-art athletic facility. In addition, develop a specific timetable and cost estimate to complete each improvement.

Parks Response: “In accordance with the language in Recommendation 5 Parks will require Fitmar to ‘. . .develop a needs assessment of capital improvements to help determine how the...unexpended capital improvements for operating years 2005 through 2007 should be used, and develop a specific timetable to complete each improvement.’ Parks will revise the capital improvements schedule prepared by Fitmar as necessary, in order to ensure that Fitmar undertakes the most useful physical improvements at the licensed premises, on the most appropriate timetable.”

18. Annually review all capital improvement invoices submitted for each operating year and disallow any invoices that relate to equipment and general repair and maintenance items that are not listed specifically on the capital improvements schedule.

Parks Response: “Parks will continue to review all capital improvement invoices submitted to us by Fitmar. Prior to the commencement of this audit in 2008, Parks had already disallowed over \$85,000 in capital submissions. However, given the serious nature of some of the Comptroller’s findings related to capital, Parks will undertake enhanced review of Fitmar’s submissions, and will disallow any submissions that we believe are general repair and maintenance and are not specifically listed on the revised capital improvement schedule discussed in Recommendation 17.”

19. Consider instituting §10.1 of the license agreement whereby Fitmar would be required to post a construction security bond equal to the cost of the capital improvements stated in the license agreement.

Parks Response: “Parks will consider requiring Fitmar to post a construction security bond equal to the cost of the capital improvements stated in the license agreement.”

20. Conduct periodic unannounced site inspections and perform an annual site inspection of the licensed premises. Document results and immediately notify Fitmar of needed repairs and of any noncompliance with the license agreement.

Parks Response: “Parks has already instituted a rigorous plan for unannounced site inspections in 2009 by Inspectors from both our Revenue Division and our Office of Management and Planning. Moreover, we have already performed two inspections in February 2009, and will continue indefinitely.”

21. Determine the appropriateness of having an unrelated business operating at the licensed premises. If Parks decides to allow the unrelated business, then it should decide whether a sublicense or separate license agreement should be negotiated and whether the gross receipts of the unrelated business should be included in Fitmar’s

calculation of gross receipts. If an agreement is reached, Parks, in conjunction with Fitmar, should determine the amount of additional fees that should be paid retroactively to the inception of the license agreement.

Parks Response: “Parks does not consider such a use appropriate and has required Fitmar to . . . (See response to Recommendation 11).”

22. Assign a Parks employee to closely monitor Fitmar’s operation to ensure that it adheres to the terms of the license agreement. Specifically, Parks should evaluate Fitmar’s internal control procedures to ensure that Fitmar maintains an adequate system of internal controls, maintains detailed and accurate books and records, reports all revenue, and pays the appropriate license fees.

Parks Response: “Parks will continue to closely monitoring Fitmar’s overall operation. In early 2009 we began an enhanced monitoring of Fitmar through a combination of unannounced inspections, revised financial reporting, increased requirements for Fitmar’s capital submissions and site visits by Parks’ staff to review record keeping and internal controls.”

**Paerdegat Athletic Club
Special Event Advertisements**

Appendix I

FRIDAY, AUGUST 4, 2006

**LIVE VIDEO AND PHOTOS
GO ON SALE RIGHT AFTER**

**TUNE INTO:
HOT 97 EVERY SUNDAY
WAH GWAAN 95.9
ROYAL 106.3 FM
94.1FM
97.5**

MUSIC BY:

**STEELIE BASHMENT (SINCO FR. 95.5) STAR VIBES 97.5 | LION PALM | INFARED
ESSENTIAL SOUNDS 97.5 | ULTIMATE SENSATION | STATIC SOUNDS**

**LIVE PERFORMANCE
PUNK ROCK
LOS & JAY-BUTTA
FR. BREAKDOWN RECORDS**

**LOG ON TO:
ESSENTIALBOOM.COM
TWIZZDESIGNS.COM
BLUNITE.COM
MYSPACE.COM**

LOOK OUT FOR PUNK ROCK BIG FASHION SHOW AND AFTER PARTY @ C-7AC JUL 9th 2006

**21 TO DRINK
I.D. A MUST
NYPD SECURITY
FLAWLESS GRAPHX: 718-771-1744 | 917-609-2190**

PAERDEGAT CLUB
1500 PAERDEGAT AVE & EAST 80TH ST. (CARNARSI)
ENTRANCE THROUGH PARKING LOT

**ADV TICKETS \$10
BEFORE JUL 10th
TICKETS \$15 AFTER
FOR INFO: 646-510-5784**

**ABBEY JAH IN ASSOC. WITH TASTE BUDS PRESENT
THE SECOND ANNUAL
Birthday Celebration
for
ABBEY JAH
SATURDAY, FEB 16TH 2008**

**MUSIC BY BEST IN
R&B • HIP-HOP • REGGAE & SOCA**

EVOLUTION SOUND
GLAMOUR WAYNE

COUNTRY FLEX
ON TRACK DISCO
RESTRICTED ZONE

**ADMISSION \$20
DOORS OPEN 10PM**
CRISS CROSS

**FOR TICKETS & INFO
TASTE BUDS 718.272.7544 :: ABBEY JAH 917.498.5607
CAKE'S END'S 718.257.6010 :: LEON 347.268.2266
MASK 917.416.6136 :: COUNTRY KILLA 347.653.4258.
FOOD BOWL 718.346.2711
TOTAL DELICIOUS 718.209.3562
TASTY DELICIOUS 718.221.1222**

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1500 PAERDEGAT AVE • CARNARSI BROOKLYN NEAR BELT PKWY

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Schedule of Additional Fees and Late Charges Owed

Appendix II

(Page 1 of 2)

Date	Additional Amount Due	Payment Amount	(Overpayment)/ Underpayment	Accumulated Total	Period		Late Charge of 2%
					From	To	
11/30/05	\$10,119.32		\$10,119.32	\$10,119.32	12/01/05	12/06/05	\$ 40.48
12/07/05		\$ 1,373.31	(1,373.31)	8,786.49	12/07/05	12/28/05	128.87
12/29/05		10,848.81	(10,848.81)	(1,933.45)	12/29/05	12/29/05	0.00
12/30/05	11,074.77		11,074.77	9,141.32	12/30/05	01/29/06	182.83
01/30/06				9,324.14	01/30/06	02/27/06	186.48
02/28/06				9,510.62	02/28/06	03/29/06	190.21
03/30/06				9,700.84	03/30/06	04/29/06	194.02
04/30/06				9,894.85	04/30/06	05/29/06	197.90
05/30/06				10,092.75	05/30/06	06/29/06	201.86
06/30/06				10,294.61	06/30/06	07/29/06	205.89
07/30/06				10,500.50	07/30/06	08/29/06	210.01
08/30/06				10,710.51	08/30/06	09/29/06	214.21
09/30/06				10,924.72	09/30/06	10/29/06	218.49
10/30/06				11,143.21	10/30/06	11/29/06	222.86
11/30/06				11,366.08	11/30/06	12/29/06	227.32
12/30/06	4,399.72		4,399.72	15,993.12	12/30/06	01/29/07	319.86
01/30/07				16,312.98	01/30/07	02/27/07	326.26
02/28/07				16,639.24	02/28/07	03/29/07	332.78
03/30/07				16,972.03	03/30/07	04/29/07	339.44
04/30/07				17,311.47	04/30/07	05/29/07	346.23
05/30/07				17,657.70	05/30/07	06/29/07	353.15
06/30/07				18,010.85	06/30/07	07/29/07	360.22
07/30/07				18,371.07	07/30/07	08/29/07	367.42
08/30/07				18,738.49	08/30/07	09/29/07	374.77
09/30/07				19,113.26	09/30/07	10/29/07	382.27
10/30/07				19,495.52	10/30/07	11/29/07	389.91
11/30/07	21,097.34		21,097.34	40,982.77	11/30/07	12/29/07	819.66
12/30/07	14,657.35		14,657.35	56,459.78	12/30/07	01/29/08	1,129.20
01/30/08				57,588.97	01/30/08	02/18/08	767.85
02/19/08		2,566.12	(2,566.12)	55,790.71	02/19/08	02/28/08	371.94
02/29/08				56,162.64	02/29/08	03/04/08	187.21
03/05/08			(51.32)	56,298.53	03/05/08	03/29/08	938.31
<i>Fees owed before Retroactive Payments</i>			\$46,508.94				\$10,727.90
03/30/08				57,236.84	03/30/08	04/29/08	1,144.74
04/30/08				58,381.58	04/30/08	05/29/08	1,167.63

Schedule of Additional Fees and Late Charges Owed**Appendix II**

(Page 2 of 2)

Date	Additional Amount Due	Payment Amount	(Overpayment)/ Underpayment	Accumulated Total	Period		Late Charge of 2%
					From	To	
05/30/08				\$59,549.21	05/30/08	06/29/08	\$1,190.98
06/30/08				60,740.20	06/30/08	07/29/08	1,214.80
07/30/08				61,955.00	07/30/08	08/14/08	619.55
08/15/08		\$13,497.46	(\$13,497.46)	49,077.09	08/15/08	08/29/08	490.77
08/30/08				49,567.86	08/30/08	09/29/08	991.36
09/30/08				50,559.22	09/30/08	10/29/08	1,011.18
10/30/08				51,570.40	10/30/08	10/30/08	34.38
11/01/08		1,106.91	(1,106.91)	50,497.87	11/01/08	11/29/08	976.29
11/30/08				51,474.16	11/30/08	12/29/08	1,029.48
12/30/08				52,503.65	12/30/08	01/29/09	1,050.07
01/30/09				53,553.72	01/30/09	02/02/09	142.81
02/03/09		31,282.00	(31,282.00)	22,414.53	02/03/09	02/27/09	388.52
Total	\$61,348.50	\$60,674.61	\$ 622.57	\$22,803.05			\$22,180.48

Summary of Additional Fees and Late Charges Owed	
Total Additional Fees Due	\$ 46,508.94
Total Late Charges Due	\$ 22,180.48
Total Additional Fees and Late Charges Due	\$ 68,689.42
Four Retroactive Payments (\$13,497.46+\$1,106.91+\$30,891+\$391)	\$ (45,886.37)
Net Amount Due	\$ 22,803.05



COMPTROLLER OF THE CITY OF NEW YORK
 1 CENTRE STREET
 NEW YORK, NY 10007-2341
 (212) 669-3500

WILLIAM C. THOMPSON, JR.
 COMPTROLLER

April 10, 2008

Mr. Richard Marshel, President
 Fitmar Management, LLC
 d/b/a Paerdegat Athletic Club
 1500 Paerdegat Avenue North
 Brooklyn, NY 11236

Dear Mr. Marshel:

I am writing to alert you to unsafe and unsanitary conditions at the premises of the Paerdegat Athletic Club concession in Brooklyn. As part of an audit of the license agreement between Fitmar Management and the Department of Parks and Recreation, my staff visited the premises on April 2, 2008, and found conditions that may pose a threat to the health and safety of the occupants. I am particularly concerned because children enrolled in day care and pre-kindergarten programs at the concession facility may be exposed to hazardous conditions.

The License Agreement (Article 11.1) requires that the "Licensee shall, at its sole cost and expense and to the satisfaction of Commissioner, put, keep, repair and preserve in good order the Licensed Premises." However, my auditors and engineers found evidence of wall and ceiling water damage; mold; exposed electrical outlets, wiring, and equipment; damaged play equipment; blocked fire exits and damaged exit signs; damaged lighting fixtures; and poorly maintained roof and mechanical systems (see attached photographs). Moreover, the premises—including areas used by the children—have not been kept clean and litter free, as required by the license agreement, which states that "Licensee shall at all times keep the Licensed Premises clean, litter free, neat . . ."

Immediate action to correct these conditions is required by Fitmar Management. I have also informed the Commissioners of the Department of Parks and Recreation, the Department of Health and Mental Hygiene, the Fire Department, the Buildings Department, the Administration for Children's Services, and the Chancellor of the Department of Education asking them to take appropriate action. If you have any questions regarding this matter, please contact Mr. John Graham, Deputy Comptroller for Audits, Accountancy and Contracts, at (212) 669-2797.

Yours truly,

William C. Thompson, Jr.

Enc.

c: Jeffrey Kay, Director, Mayor's Office of Operations
 George Davis, III, Mayor's Office of Operations
 John Graham, Deputy Comptroller for Audits, Accountancy & Contracts



COMPTROLLER OF THE CITY OF NEW YORK
 1 CENTRE STREET
 NEW YORK, NY 10007-2341
 (212) 669-3500

WILLIAM C. THOMPSON, JR.
 COMPTROLLER

April 10, 2008

The Honorable Adrian Benepe
 Commissioner
 Department of Parks and Recreation
 The Arsenal, Central Park
 New York, NY 10021

Dear Commissioner Benepe:

I am writing to alert you to unsafe and unsanitary conditions at the premises of the Paerdegat Athletic Club concession in Brooklyn. As you are aware, my office is conducting an audit of the license agreement between the Department of Parks and Recreation and Fitmar Management, LLC to operate, maintain and manage the concession. As part of the audit, my staff visited the premises on April 2, 2008, and found conditions that may pose a threat to the health and safety of the occupants. I am particularly concerned because children enrolled in day care and pre-kindergarten programs at the concession facility may be exposed to hazardous conditions.

Specifically, auditors and engineers found evidence of wall and ceiling water damage; mold; exposed electrical outlets, wiring, and equipment; damaged play equipment; blocked fire exits and damaged exit signs; damaged lighting fixtures; and poorly maintained roof and mechanical systems (see attached photographs). Moreover, the premises—including areas used by the children—have not been kept clean and litter free, as required by the license agreement.

Immediate action by your office is required to ensure that Fitmar Management, LLC corrects these conditions, including an inspection by your staff of the deficient conditions. I am also writing to the Commissioners of the Department of Health and Mental Hygiene, the Fire Department, the Buildings Department, the Administration for Children's Services, and the Chancellor of the Department of Education asking them to take appropriate action.

Please inform me of the specific actions your office will take to remedy the situation. If you have any questions regarding this matter, please do not hesitate to contact Mr. John Graham, Deputy Comptroller for Audits, Accountancy and Contracts, at (212) 669-2797.

Yours truly,

William C. Thompson, Jr.

Enc.

- c: Robert Garafola, Deputy Commissioner for Operations, Department of Parks and Recreation
 Jeffrey Kay, Director, Mayor's Office of Operations
 George Davis, III, Mayor's Office of Operations
 John Graham, Deputy Comptroller for Audits, Accountancy & Contracts



COMPTROLLER OF THE CITY OF NEW YORK
 1 CENTRE STREET
 NEW YORK, NY 10007-2341
 (212) 669-3500

WILLIAM C. THOMPSON, JR.
 COMPTROLLER

April 10, 2008

The Honorable Nicholas Scoppetta
 Commissioner
 New York City Fire Department
 9 MetroTech Center, Room 8W6
 Brooklyn, NY 11201

Dear Commissioner Scoppetta:

I am writing to alert you to unsafe and unsanitary conditions at the premises of the Paerdegat Athletic Club concession in Brooklyn. My office is conducting an audit of the license agreement between the Department of Parks and Recreation and Fitmar Management, LLC. Under the agreement Fitmar Management is required to operate, maintain and manage the concession. As part of the audit, my staff visited the premises on April 2, 2008, and found conditions that may pose a threat to the health and safety of the occupants. I am particularly concerned because children enrolled in day care and pre-kindergarten programs at the concession facility may be exposed to hazardous conditions.

Specifically, auditors and engineers found evidence of wall and ceiling water damage; mold; exposed electrical outlets, wiring, and equipment; damaged play equipment; blocked fire exits and damaged exit signs; damaged lighting fixtures; and poorly maintained roof and mechanical systems (see attached photographs). Moreover, the premises—including areas used by the children—have not been kept clean and litter free, as required by the license agreement.

I request that you immediately send fire inspectors to this facility to document any violations of the fire code. The address of the facility is 1500 Paerdegat Avenue North, Brooklyn, New York 11236.

Please inform me of the specific actions your office will take to remedy the situation. If you have any questions regarding this matter, please don't hesitate to call Mr. John Graham, Deputy Comptroller for Audits, Accountancy and Contracts, at (212) 669-2797.

Yours truly,

William C. Thompson, Jr.

Enc.

c: Ray Saylor, Chief Compliance Officer, FDNY
 Jeffrey Kay, Director, Mayor's Office of Operations
 George Davis, III, Mayor's Office of Operations
 John Graham, Deputy Comptroller for Audits, Accountancy & Contracts



COMPTROLLER OF THE CITY OF NEW YORK
1 CENTRE STREET
NEW YORK, NY 10007-2341
(212) 669-3500

WILLIAM C. THOMPSON, JR.
COMPTROLLER

April 10, 2008

The Honorable Patricia J. Lancaster, FAIA
Commissioner
New York City Department of Buildings
280 Broadway
New York, NY 10007

Dear Commissioner Lancaster:

I am writing to alert you to unsafe and unsanitary conditions at the premises of the Paerdegat Athletic Club concession in Brooklyn. My office is conducting an audit of the license agreement between the Department of Parks and Recreation and Fitmar Management, LLC. Under the agreement Fitmar Management is required to operate, maintain and manage the concession. As part of the audit, my staff visited the premises on April 2, 2008, and found conditions that may pose a threat to the health and safety of the occupants. I am particularly concerned because children enrolled in day care and pre-kindergarten programs at the concession facility may be exposed to hazardous conditions.

Specifically, auditors and engineers found evidence of wall and ceiling water damage; mold; exposed electrical outlets, wiring, and equipment; damaged play equipment; blocked fire exits and damaged exit signs; damaged lighting fixtures; and poorly maintained roof and mechanical systems (see attached photographs). Moreover, the premises—including areas used by the children—have not been kept clean and litter free, as required by the license agreement.

I request that you immediately send Buildings inspectors to this facility to document any violations of the building code. The address of the facility is 1500 Paerdegat Avenue North, Brooklyn, New York 11236.

Please inform me of the specific actions your office will take to remedy the situation. If you have any questions regarding this matter, please don't hesitate to call Mr. John Graham, Deputy Comptroller for Audits, Accountancy and Contracts, at (212) 669-2797.

Yours truly,

A handwritten signature in black ink, appearing to read "William C. Thompson, Jr.", written over a horizontal line.

William C. Thompson, Jr.

Enc.

- c: Richard Bernard, Director, Program & Management Analysis, DOB
Jeffrey Kay, Director, Mayor's Office of Operations
George Davis, III, Mayor's Office of Operations
John Graham, Deputy Comptroller for Audits, Accountancy & Contracts



COMPTROLLER OF THE CITY OF NEW YORK
 1 CENTRE STREET
 NEW YORK, NY 10007-2341
 (212) 669-3500

WILLIAM C. THOMPSON, JR.
 COMPTROLLER

April 10, 2008

The Honorable Thomas R. Frieden, M.D., M.P.H.
 Commissioner
 Department of Health and Mental Hygiene
 125 Worth Street
 New York, NY 10013

Dear Commissioner Frieden:

I am writing to alert you to unsafe and unsanitary conditions at the premises of the Paerdegat Athletic Club concession in Brooklyn. My office is conducting an audit of the license agreement between the Department of Parks and Recreation and Fitmar Management, LLC. Under the agreement Fitmar Management is required to operate, maintain, and manage the concession. As part of the audit, my staff visited the premises on April 2, 2008, and found conditions that may pose a threat to the health and safety of the occupants. I am particularly concerned because children enrolled in day care and pre-kindergarten programs at the concession facility may be exposed to hazardous conditions.

Specifically, auditors and engineers found evidence of wall and ceiling water damage; mold; exposed electrical outlets, wiring, and equipment; damaged play equipment; blocked fire exits and damaged exit signs; damaged lighting fixtures; and poorly maintained roof and mechanical systems (see attached photographs). Moreover, the premises—including areas used by the children—have not been kept clean and litter free, as required by the license agreement.

I request that you immediately send health inspectors to this facility to document any violations of the health code. The address of the facility is 1500 Paerdegat Avenue North, Brooklyn, New York 11236.

Please inform me of the specific actions your office will take to remedy the situation. If you have any questions regarding this matter, please don't hesitate to call Mr. John Graham, Deputy Comptroller for Audits, Accountancy and Contracts, at (212) 669-2797.

Yours truly,

William C. Thompson, Jr.

Enc.

c: Charles Troob, Assistant Commissioner, DOHMH
 Jeffrey Kay, Director, Mayor's Office of Operations
 George Davis, III, Mayor's Office of Operations
 John Graham, Deputy Comptroller for Audits, Accountancy & Contracts



COMPTROLLER OF THE CITY OF NEW YORK
1 CENTRE STREET
NEW YORK, NY 10007-2341
(212) 669-3500

WILLIAM C. THOMPSON, JR.
COMPTROLLER

April 10, 2008

The Honorable John B. Mattingly
Commissioner
New York City Administration for Children's Services
150 William Street.
New York, NY 10038

Dear Commissioner Mattingly:

I am writing to alert you to unsafe and unsanitary conditions at the premises of the Paerdegat Athletic Club concession in Brooklyn. My office is conducting an audit of the license agreement between the Department of Parks and Recreation and Fitmar Management, LLC. Under the agreement Fitmar Management is required to operate, maintain and manage the concession. As part of this audit, my staff visited the premises on April 2, 2008, and found conditions that may pose a threat to the health and safety of the occupants. I am particularly concerned because children enrolled in day care and a universal pre-kindergarten program at the concession facility may be exposed to hazardous conditions.

Specifically, auditors and engineers found evidence of wall and ceiling water damage; mold; exposed electrical outlets, wiring, and equipment; damaged play equipment; blocked fire exits and damaged exit signs; damaged lighting fixtures; and poorly maintained roof and mechanical systems (see attached photographs). Moreover, the premises—including areas used by the children—have not been kept clean and litter free, as required by the license agreement.

I have alerted the City's Health, Fire, Buildings, Parks, and Education Departments about this situation and have asked each of them to take immediate action. The address of the facility is 1500 Paerdegat Avenue North, Brooklyn, New York 11236.

If you have any questions regarding this matter, please don't hesitate to call Mr. John Graham, Deputy Comptroller for Audits, Accountancy and Contracts, at (212) 669-2797.

Yours truly,

A handwritten signature in black ink, appearing to read "William C. Thompson, Jr.", written over a horizontal line.

William C. Thompson, Jr.

Enc.

- c: Thomas Welsh, Director of Audit Services, Administration for Children's Services
Jeffrey Kay, Director, Mayor's Office of Operations
George Davis, III, Mayor's Office of Operations
John Graham, Deputy Comptroller for Audits, Accountancy & Contracts



COMPTROLLER OF THE CITY OF NEW YORK
1 CENTRE STREET
NEW YORK, NY 10007-2341
(212) 669-3500

WILLIAM C. THOMPSON, JR.
COMPTROLLER

April 10, 2008

The Honorable Joel I. Klein
Chancellor
New York City Department of Education
52 Chambers St.
New York, NY 10007

Dear Chancellor Klein:

I am writing to alert you to unsafe and unsanitary conditions at the premises of the Paerdegat Athletic Club concession in Brooklyn. My office is conducting an audit of the license agreement between the Department of Parks and Recreation and Fitmar Management, LLC. Under the agreement Fitmar Management is required to operate, maintain and manage the concession. As part of this audit, my staff visited the premises on April 2, 2008, and found conditions that may pose a threat to the health and safety of the occupants. I am particularly concerned because children enrolled in day care and a universal pre-kindergarten program at the concession facility may be exposed to hazardous conditions.

Specifically, auditors and engineers found evidence of wall and ceiling water damage; mold; exposed electrical outlets, wiring, and equipment; damaged play equipment; blocked fire exits and damaged exit signs; damaged lighting fixtures; and poorly maintained roof and mechanical systems (see attached photographs). Moreover, the premises—including areas used by the children—have not been kept clean and litter free, as required by the license agreement.

I have alerted the City's Health, Fire, Buildings, Children's Services and Parks Departments about this situation and have asked each of them to take immediate action. The address of the facility is 1500 Paerdegat Avenue North, Brooklyn, New York 11236.

If you have any questions regarding this matter, please don't hesitate to call Mr. John Graham, Deputy Comptroller for Audits, Accountancy and Contracts, at (212) 669-2797.

Yours truly,

A handwritten signature in black ink, appearing to read "William C. Thompson, Jr.", written in a cursive style.

William C. Thompson, Jr.

Enc.

c: Brian Fleischer, Auditor General, Department of Education
Jeffrey Kay, Director, Mayor's Office of Operations
George Davis, III, Mayor's Office of Operations
John Graham, Deputy Comptroller for Audits, Accountancy & Contracts



City of New York
Parks & Recreation

The Arsenal
Central Park
New York, New York 10065

Adrian Benepe
Commissioner

April 22, 2008

Comptroller William C. Thompson, Jr.
Comptroller of the City of New York
1 Centre Street
New York, N.Y. 10007-2341

Dear Comptroller Thompson:

I am writing in response to your letters of April 10, 2008 to us and to other Commissioners that reported conditions your audit team discovered at the Paerdegat Athletic Club in Brooklyn on April 2, 2008. Please find below the response of this agency as well as a summary of the responses of the other city agencies that dispatched their inspectors to the site to investigate your findings.

As you will see, upon inspection, all of the agencies, including the Parks Department, found the areas of the facility where the children are located to be clean and sanitary; found minor violations but no clear health risk to the other occupants of the other areas; and, found all of the reported deficiencies to be either already cured, or in the process of being cured.

More specifically, immediately after receiving the information from your office, Parks dispatched a Concessions Inspector as well as our Resident Architect on the morning of April 10, 2008. Upon their return, we issued a Notice to Cure (attached) which was hand-delivered on Friday April 11, 2008. The Notice required the concessionaire to address within 24 hours those 4 items that posed safety hazards, and within 30 days those items in need of repair but that were not considered to be of an immediate health/safety issue.

Parks inspectors discovered no evidence of any serious health or life safety issues within the areas of the facility frequented by children. Specifically, there were no blocked exits, exposed wires, fungi or mold detected in these areas. Our inspectors noted that many of the repairs were already addressed or in process of being corrected. Notably, the fungi discovered by the indoor track had been removed and the area sanitized. The plywood beneath the track in this area was being removed and replaced. There were no blocked exits and the electric panel in the mechanical room had been replaced.

A follow-up inspection was conducted by Parks on April 15, 2008. The damaged wood underneath the track had been replaced, as had a section of the wall in the same area. There was no visible sign of water damage, mold or fungi in the area. The areas with sheet rock damage in

the basketball courts had been replaced and the electric conduit that was exposed in the electric closet was covered. The electric fuse box cover panel had been replaced. All of the electrical sockets that were previously observed to have been missing covers had been either covered or the outlet had been removed and sheet-rocked over. They had also replaced the two return duct filters in the gym area that were in need of replacement. Most of the exit signs had been repaired, including all in the day care areas; crews were still attempting to repair 5 signs that were still not fully illuminated. Another Notice to Cure was issued for these repairs, and our inspectors will visit the site again this week.

In addition, your letter requested investigations by the Fire Department, the Administration for Children's Services, the Department of Education, the Department of Buildings, and the Department of Health and Mental Hygiene. Please find below a summary of their findings.

- Fire Department of New York: FDNY conducted an immediate inspection of the premises upon receipt of your report. Inspectors revealed several violations, some of which were noted in the Parks Notice to Cure, namely several defective exit signs, emergency lighting units and exposed wires at electric panels inside secured closets. No exposed wiring was noted in any areas accessible to children or club members. The sprinkler system in the infant care areas was present but appeared to be missing heads in 2 places, and a sprinkler control valve for the system was not chained in an open position. Repairs to the alarm systems were being carried out by electricians while the inspection was in progress. A number of reported hazardous or unsanitary conditions included in your letter were not found by the FDNY inspectors, including smell of gas, accumulations of rubbish in electrical rooms, blocked means of egress and fire exits and storage of flammable materials in the 1st floor boiler room. All violations were required to be addressed in 16 days, and inspectors noted that most of the repairs were already underway.
- Administration for Children's Services: While some parents utilize publicly funded child care vouchers there, ACS does not contract with this facility and as such does not have the authority to inspect it. They notified DOHMH when they received your report.
- Department of Education: DOE responded that they would be largely governed by the assessments and recommendations of DOHMH, FDNY, and DOB.
- Department of Buildings: DOB's inspection revealed 2 exit doors with illegal hardware near the soccer field and locker rooms for which violation notices were issued. No other violations were issued.
- Department of Health and Mental Hygiene: In response to a complaint independently received on April 7, 2008, of mold conditions and other hazards at the facility, the Bureau for Child Care (BCC) of the New York City Department of Health and Mental Hygiene conducted an inspection on April 8, 2008 of all areas utilized in the facility by the Preschool and Infant programs, as well as the After School program. No mold conditions or hazards were observed at the time. The inspection did not include areas of the facility beyond those approved for childcare use. On April 10, 2008 the BCC received your



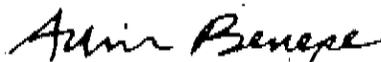
letter describing the conditions observed by your staff on April 2, 2008. The BCC re-inspected the site accompanied by a Public Health Sanitarian from the Department of Health and Mental Hygiene's Office of Environmental Investigation. This inspection encompassed not only a re-inspection of all childcare areas but included the adult area gymnasiums and pool areas. No mold, electrical or other hazardous conditions were observed at the time of the re-inspection. There was no evidence of accumulated dirt or garbage in the facility. A significant amount of dust was observed in the adult activity area's intake and return air vent covers. The director of the facility was instructed to clean the covers and inspect the ventilation system. No violations were cited in the childcare areas.

Interviews by DOHMH inspectors with the facility director revealed that the mold condition observed by your staff was located in the adult weight room. It was the result of a leak in an air conditioning unit in that area. Moisture from that unit pooled under a rubber running track. It was reported that mold had grown in that area and was cleaned up prior to our inspections. The area was observed clean and free of mold or fungus.

In summary, Parks, FDNY, DOB and DOHMH personnel inspected the Pacrdegat Athletic Club on April 10th and determined that the conditions at the facility including those in childcare areas were generally acceptable; that the conditions did not pose a threat to the health and safety of the occupants; and, that the facility was within substantial compliance. Parks as the licensor, and all relevant agencies with jurisdiction over the facility, will continue to monitor the site for compliance according to their own schedules and processes.

Thank you for your thorough review of our facility and for bringing these important matters to our attention. In the future, should your inspectors uncover any conditions at any facility that suggests health or safety hazards, please contact us immediately. In addition to contacting us at all of our relevant phone numbers and email addresses you and your staff should feel free to reach out to our 24-hour dispatch at 646-613-1200 and we will immediately address any issues that you find. Please let us know if, in the course of your audit, any other situations come to your attention.

Sincerely,



Adrian Benepe
Commissioner

Cc:

Thomas Frieden, Commissioner Department of Health and Mental Hygiene
Joel Klein, Chancellor of the Department of Education
Patricia Lancaster, Commissioner Department of Buildings
John Mattingly, Administration for Children's Services
Nicholas Scoppetta, Fire Commissioner
Robert Garafola, Deputy Commissioner, Department of Parks and Recreation



John Graham, Deputy Comptroller for Audits, Accountancy and Contracts
Michael Morgese, Jr. Assistant Director Financial Audit





City of New York
Parks & Recreation

Adrian Benepe
Commissioner

The Arsenal
Central Park
New York, New York 10065

Elizabeth W. Smith
Assistant Commissioner
Revenue and Marketing

(212) 360-1366
betsy.smith@parks.nyc.gov

April 11, 2008

Mr. Richard Marshel
RJR Management Corp.
1500 Paerdegat Avenue North
Brooklyn, NY 11236

**Notice To Cure
Permit #B406-O**

Dear Mr. Marshel:

On Thursday, April 10, 2008, inspectors from the New York City Department of Parks & Recreation inspected the Paerdegat Athletic Club in Brooklyn. The inspectors observed the following conditions that are in need of your immediate attention:

- Several emergency exit signs lights were not lit throughout the facility. All exit signage must be illuminated.
- Two (2) return duct filters along the indoor track were dirty. All filters must be replaced in a timely matter.
- There was water damage observed beneath the indoor track. Plywood in the affected area needs to be replaced and the rubber matting must be cleaned and scraped to prevent the build up of mold.
- An electric panel cover was missing and wire conduit was exposed within the electric room closest. Replace all missing panel covers and enclose all wires.

The above conditions must be taken care of within 24 hours from the date of this notice.

During the course of the inspection other issues were observed that need to be repaired:

- There was a hole in the skylight located above the basketball facility. Repair the skylight.
- There were numerous areas throughout the facility with damaged sheet rock. In particular in the basket ball court there is a large hole and the ceiling insulation has become exposed. Repair all holes and cover all wall and ceiling openings.

Please rectify these issues within 30 days from the date of this notice.



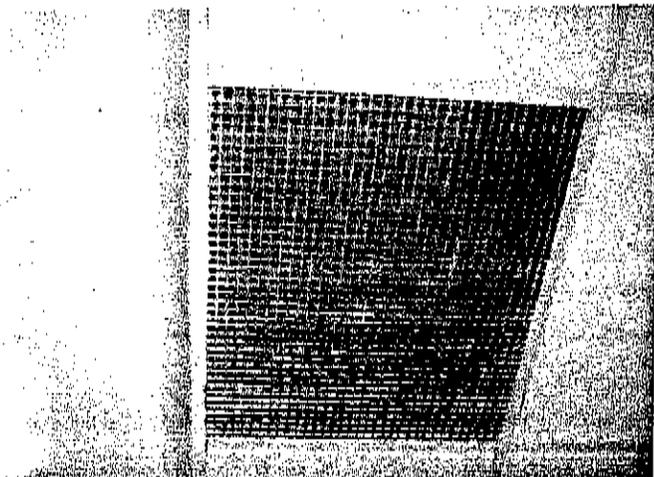
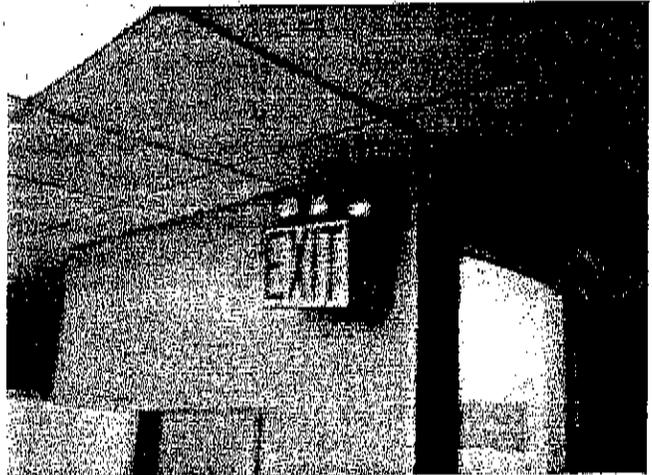
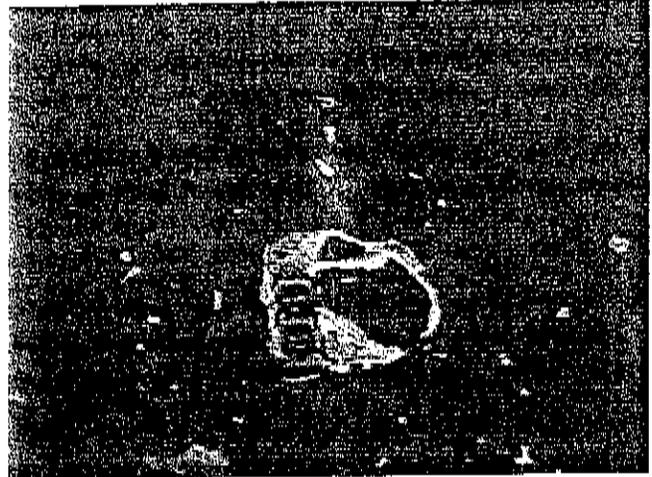
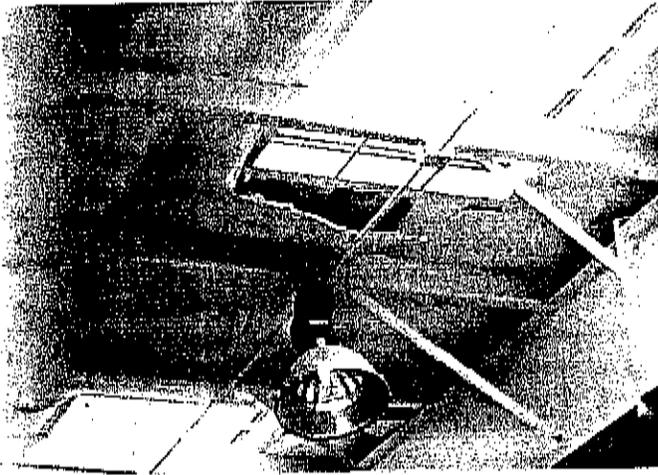
These conditions are violations of your license agreement, which requires you to keep the facility clean and in good order and repair at all times. Attached please find photographic examples of these violation. An inspector will revisit the location to ensure compliance.

Please remember that your agreement requires compliance with all city rules and regulations. In addition, your license agreement also requires you to address in a timely fashion any violation or conditions noted by other city, state, or federal enforcement personnel.

Sincerely,

A handwritten signature in black ink, appearing to read 'Elizabeth W. Smith', with a long horizontal line extending to the right.

Elizabeth W. Smith



----- Original Message -----

From: Edward Kilduff <kildufe@fdny.nyc.gov>

To: Graham, John

Cc: Salvatore Cassano <cassans@fdny.nyc.gov>; Patrick McNally <mcnallp@fdny.nyc.gov>

Sent: Thu Apr 10 17:12:02 2008

Subject: 1500 Paerdegat Ave. North

Mr. Graham:

The administrative Fire Department unit inspected the above premises this afternoon and found the following:

1. Electricians were on site in the process of repairing the exposed wiring and exit signs.
2. Two violation orders were written to insure the repair of the exposed wiring and exit signs
3. A cover has been installed on the breaker/fuse panel and covers placed on all electrical outlets.
4. Unit found no blocked exits and housekeeping in good order.

Written report to follow.

Telephone notification to Mr. Graham at 5PM.

Edward S. Kilduff

Assistant Chief

Brooklyn Borough Command

718 965-0434



NEW YORK CITY
FIRE DEPARTMENT
 9 METROTECH CENTER BROOKLYN, N.Y. 11201-3857
 2008 MAY -2 PM 1:56

April 17, 2008

William C. Thompson Jr.
 Comptroller of the City of New York
 1 Centre Street
 New York NY 10007

RE: 1500 Paerdegat Ave
 Brooklyn NY 11236

Dear Comptroller Thomson:

The New York City Fire Department received your letter dated April 10, 2008, the matter involved possible fire hazards at the above location.

In response to your inquiry the Administrative Fire Company Ladder 170 inspected the above location on April 10th 2008. At the time of inspection the following actions were taken:

1. Inspection revealed several violations for which Violation Orders were given. Among the violations, the occupancy was found to have several defective exit signs, defective emergency lighting units in several hallways and stairwell and exposed wiring at electrical service panels located inside secured closets. No exposed wiring was noted in any area that would normally be accessible to the club members or children enrolled in the day care facility.
2. The interior alarm system was online but there were 2 pull stations being repaired by the electricians. Sprinkler system in infant-care area was present but appeared to be missing heads in two places. VO# A 61751 was served.
3. There were no accumulation of rubbish, no blocked exits or means of egress and no odor of gas at the deck outside the pool area at the time of inspection.

This Department greatly appreciates your fire safety concerns. If you have any questions regarding this matter please contact Joseph Polcha at 718-999-2533.

Sincerely

A handwritten signature in cursive script that reads "Thomas Jensen".

Thomas Jensen
 Chief of Fire Prevention

JP/Js



FIRE DEPARTMENT NEW YORK CITY
9 METROTECH CENTER BROOKLYN, N.Y. 11201-3857

2008 MAY -5 PM 2:50

PATRICK McNALLY
Chief of Operations
Bureau of Operations

Room 7W-4

May 1, 2008

Honorable William C. Thompson
Comptroller
City of New York
1 Centre Street
New York, NY 10007

Dear Comptroller Thompson:

Re: Complaint -1500 Paerdegat Avenue North

As per your request, Ladder Company 170, the administrative unit responsible for 1500 Paerdegat Avenue conducted an inspection of the premises on April 10, 2008. The inspection resulted in the following violations being issued.

Violation Order number A 61751:

- 1) Repair of exit signs (FP-25)
- 2) Sealing of sprinkler control valves (FP-60)
- 3) Repair of damaged sprinkler heads (SP-53)
- 4) Provide affidavit from a licensed contractor that all emergency light is functioning as designed (SP-1)
- 5) Obtain a Certificate of Fitness for storage of liquid chlorine (SP-2)
- 6) Provide affidavit from licensed contractor that the interior alarm system is functioning as designed. (SP-3)

Violation Order number A 61752:

- 1) Repair opening in wall adjacent to circuit breaker panel (SP-1)
- 2) Provide cover for electrical service where the electrical service enters the building (SP-2)

On April 11, 2008 a follow up inspection was conducted and the following violation items were corrected and dismissed.

- 1) Repair opening in wall adjacent to circuit breaker panel (SP-1)
- 2) Provide cover for electrical service where the electrical service enters the building (SP-2)
- 3) Sealing of sprinkler control valves (FP-60)
- 4) Repair of damaged sprinkler heads (SP-53)

Honorable William C. Thompson
May 1, 2008
Page 2

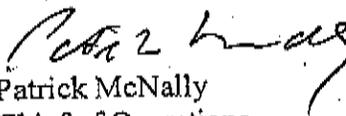
A final inspection of 1500 Paerdegat Avenue was conducted by Ladder Company 170 on April 29, 2008 and all violations have been corrected.

Note: the alpha numeric number listed after each violation corresponds to the violation number listed on the Fire Department standard violation order form.

Additional items mentioned in your letter relative to unsanitary conditions, water damage and mold do not fall under the enforcement authority of the Fire Department. Hence no action was taken relative to these conditions.

If I can be of any further assistance in this matter please let me know.

Yours truly,


Patrick McNally
Chief of Operations

PM:ib



ADMINISTRATION FOR CHILDREN'S SERVICES
OFFICE OF THE COMMISSIONER
150 WILLIAM STREET- 18th FLOOR
NEW YORK, NEW YORK 10038 2008 APR 28 PM 3: 52

JOHN B. MATTINGLY
Commissioner

April 24, 2008

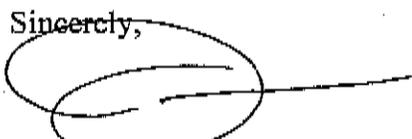
William C. Thompson, Jr.
Comptroller of the City of New York
1 Centre Street
New York, NY 10007-2341

Dear Comptroller Thompson:

I am writing in response to your letter about the Paerdegat Athletic Club in Brooklyn. As your office has already been alerted, the Administration for Children's Services (ACS) does not contract with Paerdegat Athletic Club. The Club has a private licensed Child Program not managed by Children's Services. ACS does not have the authority to inspect private licensed programs that do not contract with us.

If you have any questions, please contact me at 212-341-0903.

Sincerely,



John B. Mattingly
Commissioner

Fitmar Management LLC

1500 Paerdegat Ave. North Brooklyn NY 11236 718-209-1010

Re: Audit Report On the compliance of Fitmar Management, LLC with its License Agreement
FM08-104A March 18th, 2009

March 18, 2009

The City of New York
Office of the Comptroller
Executive Offices
1 Centre Street
New York, N.Y. 10007-2341
William C Thompson Jr.
Comptroller
Attention: Mr. John Graham

Re: Audit Report On the compliance of Fitmar Management, LLC with its License Agreement
FM08-104A

Dear Mr. Graham:

I have included our answers to the comptroller's office recommendations to be considered and included in the final audit compliance report for Fitmar Management LLC. I thank you for the opportunity to address and implement the recommendations that the comptroller's office has strongly suggested. We have implemented most of the recommendations and will continue to do so in the future to be 100% compliant with the terms our license agreement with NYC department of Parks in the future.

If you or any of your staff have any questions whatsoever, please call me at 718-209-1010.

Sincerely Yours,



Arnold & Richard Marshel
Fitmar Management LLC

Response to recommendations:

1. **Late fees:** We do not feel we should have to pay any late fees especially 2% plus 2% or 4% per month. Since we have paid approximately \$1,000,000 in base rent plus additional fees to the NYC parks department since November 2004, it is unreasonable to charge us late fees at 4% per month especially in with current market conditions and the current economic climate. We have paid the Parks department approximately \$976,000 in the past 4 years.
2. **Outside consultant:** This is not necessary. We have implemented the controls as listed below as requested by the comptroller's office and the NYC parks department. With additional parks oversight coupled with the controls now in place, there will be no need for an outside consultant.
 - a. **Touch screen front desk cash receipt register system** : In addition to the sequentially pre-numbered reco sheets, reco receipts, registration forms, booking contracts, and all enrollment agreements; we have implemented a new touch screen cash receipt register system that ties into our general ledger. This will further insure that our income is accurately reported on a timely basis. This will also give 100% connection between point of sales, general ledger, deposits into the bank (only one account), and income report to the parks department. Our new system will assure future auditors full transparency for all of our gross receipts and for all of our membership and children's programs. We have implemented this system at our point of sale front desk and kidsports check in areas as well.
 - b. **Pre-number all documents**: The distribution of all "pre-numbered" program registration forms, all "pre-numbered" reco type income sheets and reco receipts, and pre-numbered membership contracts are all now controlled so there is no possibility of any theft or the illegal "floating around" of these financial control tools.
 - a. They are signed out by the selling manager or membership coordinator and must be cosigned by either the general manager or our membership service director. All receipts numbers are sequential and are now accurately listed on the pre-numbered reco sheets and the point of sale system. The same goes for all program registration forms. This was implemented during the audit and was expanded to include all of our aforementioned forms to complete the implementation of a strong financial control system.
 - b. Additionally, all program registrants must check into the computer so if anyone has an illegal registration form they will be caught at the reception area. This system of checks and balances will assure that our entire adult and children members will have multiple points of administration awareness. This translates into the fact that it is now almost impossibility for any staff member to insert a child or adult into program and us not catching on immediately.

Fitmar Management LLC

1500 Paerdegat Ave. North Brooklyn NY 11236 718-209-1010

Re: Audit Report On the compliance of Fitmar Management, LLC with its License Agreement
FM08-104A
March 18th, 2009

- c. **Deposit of all Gross receipts:** We are depositing 100% of all point of sale gross receipts and almost all licensed program gross receipts into one account instead of two. We will have only one account in the next few months and will no longer co-mingle any income. The reason for this is that we have to finalize renewing our licenses under the Fitmar Management name.
- d. **All Gross receipts will be recorded under the Fitmar name only.**
- o **The reason we had do-mingled accounts was due to the following:**
We had two accounts, the original Paerdegat Boat & Racquet club account and the Fitmar Management account. Both accounts were used together to receive income for all of the paerdegat activities. We have been using the Boat & Racquet club account since 1980. It is into this account that all of our city and state program licenses have been held for more than 25 years. All the incomes from the multitude of programs that we manage are paid by check or direct deposit from the various agencies to the Paerdegat Athletic club or the Paerdegat kidsport programs and deposited or direct deposited into the Paerdegat bank account. This money could not be legally deposited into an account called fitmar management.

3. Employee theft: The amount of employee theft was minimal and caught in a timely manner. It should not be required to guess at this amount and pay the city for revenue that Fitmar Management did not collect.

5. Capital improvements: The comptroller's office, along with the parks department, made numerous inspections to view all of our stated and approved capital improvements. None were disqualified as far as being performed.

- o We made them and they were correctly priced.
- o We went over all of the capital improvement items that with the parks dept. The parks department inspected or facility many times and looked at all of the capital improvement jobs that we had reported.
- o The parks department approved most and disapproved a few of these items. As a result the parks department submitted to us a final reported amount of capital improvements were approved for the calendar years of 2005, 2006, and 2007.
- o The type of furniture items such as fitness equipment is very heavy and would become the property of the parks department if and when we leave the premises. Therefore, like attached equipment such as basketball back boards, sinks, and faucets; this is equipment that will last 10 to 15 years and should count as credit in our capital expenditure budget. As the parks department has already signed off on these items in the past, they should stay as a contributing factor to our capital expense budget. These items were all purchased to make the club a top notch club.

Fitmar Management LLC

1500 Paerdegat Ave. North Brooklyn NY 11236 718-209-1010
 Re: Audit Report On the compliance of Fitmar Management, LLC with its License Agreement
 FM08-104A March 18th, 2009

- We are not aware that any of our "approved capital expenditures" should be reclassified as repair and maintenance items since we went thru all of these items and received approval in the past from the parks department.
- **Installed floor and pool marble dusting:** As far as the questions raised by the comptroller's office regarding the pools and the floors on pages 14 & 15, we explained how these invoices were calculated and showed the amount charged were at or below market rates. AS for the pools, the invoices were for two of the three outdoor pools. As for the floor; one invoice was for the removal of the old floor, preparation of the floor sub base, and the installation of the brand new floor; the other floor invoice was for purchasing the actual flooring and adhesive costs.

12. Background checks: We explained to the comptroller's office that all licensed program employees that worked directly with children all did have the proper background checks. They have asked that administration staff have the background checks as well. Although this is not required by the state for licensed children's programs, we will comply with the comptrollers request in this matter.

We would like to respond to numerous comments made in the report:

Response to Findings

Page 8: Under reporting of income: paragraphs 2 & 3:

We are not able to verify these amounts of money that the comptroller's office says we owe, but in good faith we have paid the requested principle to the parks department.

Page 8: Fitmar's operations controls: paragraph 5:

There was not a total failure but a partial failure of internal controls.

Page 9: Fitmar's operations controls paragraph 1:

There was not a total absence of internal controls but only a partial absence. The controls that were in place worked for us for many years, but now are much more prevalent for the scope of Fitmar's business.

Page 15: Unsafe and Unsanitary conditions: paragraph 3:

While improvements were needed, the findings of the comptroller's office were limited to a small area within a very large and generally well kept facility.

Points:

We were notified in the morning and were not given any time to correct said violations or in this case a punch list of items that were in need of being repaired. Our license agreement allows for us to cure any violations from 24 hours to 30 days depending on its severity. When we were notified of the items that were in need of repair we took immediate steps to correct the items. Many were completed in one day.

Fitmar Management LLC

1500 Paerdegat Ave. North Brooklyn NY 11236 718-209-1010

Re: Audit Report On the compliance of Fitmar Management, LLC with its License Agreement
FM08-104A March 18th, 2009

Fitmar is a huge facility whose indoor physical structure has about 96,000 Square feet and outdoor area has about 128,000 Square feet. The breakdown is shown below.

- Soccer and kids multi-sport building: 56,000 Square feet
- Fitness club and outdoor locker rooms: 40,000 Square feet
- Outdoor area: 127,000 Square feet

The areas that were included in the report were in a small area compared with the large size of the overall facilities, but those items were indeed in need of repair.

After the auditor's inspection and the many follow up inspections from the health department (its child welfare division, its mold safety department), fire department, building department, department of environmental conservation, DEP, which all occurred within 24 hours of the press conference that the comptrollers audit gave. The conclusions as a result of these inspections by the various agencies were clear:

Health department

The health department inspected our facilities two weeks prior to this inspection and the day that we were given the comptroller's office notice.

The health department found no mold anywhere and found the Fitmar's facilities to be in acceptable order. There were no violations issued.

Fire department:

The fire department showed up the same day and spent hours walking though and inspecting our facilities. They left without issuing us any violations at around 4pm. They came back at 7pm. Their second inspection resulted violations requesting for us to replace a number of exit lights and install two additional emergency exit push bars. They gave us 30 days to cure these violations.

We had other inspections and only a few minor and no severe violations were issued.

Page 16: Water and sewer not paid

There is no outstanding money owed to the DEP for water and sewer bills. The DEP had informed us that they billed us incorrectly. They sent us a corrected bill for money that was not billed for and we paid it. There were no late fees or any finance charges of any kind added to the bill by the DEP.

Unauthorized use of premises to conduct other Business:

We have inhabited the fitmar premise since 1983, and built the structure ourselves. When the premises opened in 1984, we built an office area at the club where we could conduct our other business. This would allow us to spend all of our time in one place, managing the club and our other business. We have been operating our other business here at the club since 1984. When we renewed our license in 2004, we never were told we could not continue to keep some office space for our other business. Nor did we or would we hide the fact. We

Fitmar Management LLC

1500 Paerdegat Ave. North Brooklyn NY 11236 718-209-1010

Re: Audit Report On the compliance of Fitmar Management, LLC with its License Agreement
 FM08-104A
 March 18th, 2009

have two employees occupying two desks and file cabinets in this office space that we constructed in 1984 at the Fitmar club premises. With this convenience we are able to spend all of our time managing the recreational and existing children's programs at the club or developing new facilities and new programs as well. We have separate phone lines for our other business.

Page 17: Criminal background records:

Of our 42 employees who should have been screened, the comptroller's office says that 4 were not. We have been conducting licensed children's programs since 1980 and have followed the strict guidelines that the child welfare department requires. Our facilities and our records are inspected numerous times per year. We're keenly aware of our obligations under the state and city guidelines and our kidsports manager of 28 years is also our compliance director. We have been carefully screening our employees and doing criminal background checks and finger printing as required by New York State Social Services Law for all the years we have been conducting licensed children programs.

We explained to the comptroller's office that all licensed program employees that worked directly with children did all have the proper background checks. They have asked that administration staff have the background checks as well. Although this is not required by the state for licensed children's programs, we will comply with the comptrollers request in this matter.

Reporting of Gross receipts

This process is now coordinated by our membership service department, our bookkeeping department and our general manager. Now that three offices confirm the gross receipts for the club, it will be reported accurately and on time.

Non recorded transactions:

Of the thousands of transactions that occur each and every month from our many programs, there were an extremely small percentage of cash transactions that were not recorded. Now that the new financial controls are in place and being managed by two office people in addition to me, the probability of any incorrect, missed, or stolen transactions will be reduced hopefully to zero.

Non-recorded transactions:

We have more than 22 programs in the paerdegat athletic club that enhances the everyday sports, education and recreational needs for all families in south Brooklyn and have implemented new systems that have vastly improved the financial control over these programs. During the audit we started the process and now all income reconciliation sheets, payment receipts, and all of our newly "pre-numbered" program registration forms are all centralized in a secure office and controlled by one staff member in addition to myself.

General ledger question concerning February 2008:

Fitmar Management LLC

1500 Paerdegat Ave. North Brooklyn NY 11236 718-209-1010

Re: Audit Report On the compliance of Fitmar Management, LLC with its License Agreement
FM08-104A March 18th, 2009

Upon further checking the general ledger for February 2008 there was \$155,604 deposited into the Paerdegat account of which there were two big deposits of \$50, 793 and a second large deposit of \$36,500. This left a balance of about \$68,300 left that were comprised of over 40 deposits over the course of the month.



City of New York
Parks & Recreation

Adrian Benepe
Commissioner

The Arsenal
Central Park
New York, New York 10065

Elizabeth W. Smith
Assistant Commissioner
Revenue and Marketing

(212) 360-1366
betsy.smith@parks.nyc.gov

March 19, 2009

Mr. John Graham
Deputy Comptroller
The City of New York Office of the Comptroller
1 Centre Street
New York, NY 10007

**RE: Notice to Cure
Comptroller's Draft Audit on Fitmar Management, LLC
December 1, 2006 to November 30, 2007, Audit Number FM08-104A, Dated March 5,
2009
License Agreement B-406O**

Dear Mr. Graham:

This letter represents the New York City Department of Parks & Recreation's (Parks) response to the recommendations contained in the Draft Audit Report (Report) issued by the Office of the New York City Comptroller (Comptroller) on March 5, 2009 regarding Parks' License Agreement (Agreement) with Fitmar Management, LLC (Fitmar). The report determined that "Fitmar paid minimum fees on time, maintained required property and liability insurance that named the City as an additional insured party, and maintained the required security deposit." However, the Report also identified serious issues with respect to the adequacy of financial-related internal controls, and underreported gross receipts. The specifics of these matters are addressed below in response to each audit Recommendation.

As a first matter, we note that the Comptroller suggests that Parks should consider whether to allow Fitmar to continue operating the premises. While the City has considered termination, we have chosen not to do so at this time. Fitmar has had a longstanding operation at this location, and Fitmar was the sole respondent to a Request for Proposals issued in 2004. Since June 2008, Parks advised Fitmar of the concerns raised in the Report and has sent three (3) Notices to Cure (NTC) to them- dated June 5, 2008, September 25, 2008 and January 5, 2009, and in response the operator has implemented or is in the process of implementing the required corrective actions.

Additionally, Fitmar, through its daycare, afterschool, and summer camp programs and fitness facilities, serves a large number of children and adults in the Canarsie, Brooklyn



community. Our focus is to ensure that Fitmar provides the public with the best service possible while complying with the terms and conditions of the License Agreement. That said, the City may revisit its decision not to terminate as we continue to monitor Fitmar's progress toward a transparent and compliant operation.

The following is Parks' response to each Recommendation contained in the Report. In most instances, Parks agrees with the Report's Recommendations and has already taken action to implement them. Further, based on our receipt of the Report Parks has now also sent a fourth NTC to Fitmar (dated March 19, 2009) requiring it to comply with the following Recommendations:

Recommendation 1: Immediately remit the remaining \$22,803 in additional fees and late charges.

Response: Parks agrees and has required Fitmar to pay the outstanding amount.

Recommendation 2: Hire a reputable outside consultant to implement the necessary internal controls that would conform to the requirements of the Agreement. These controls should include, but not be limited to:

- Installing a computerized point-of-sale system (POS) to record all revenue (i.e. athletic center, Kidsports, and snack bar) whereby terminals are situated at all revenue points; each terminal is interconnected to one centralized system; and all cash, checks, and credit card transactions are processed by the POS system. The POS system should eliminate the need for a manual system of records.
- Pre-numbering all documents (e.g. membership contracts, registration forms and Guest checks) and issuing them sequentially,
- Maintaining sequentially pre-numbered written contracts and a completed calendar book for all special events and space rentals.
- Depositing all gross receipts, including cash, into one bank account under the Fitmar name and ceasing the commingling of funds from affiliated businesses.
- Accurately recording all gross receipts in one general ledger under the Fitmar name.

Response: Parks partially agrees with this Recommendation, and has required Fitmar to implement all of the above-described internal controls. However, Parks has decided not to require Fitmar to hire an outside consultant to implement these controls. Parks will hold Fitmar accountable for the effective operation of their concession and the implementation of the necessary internal controls. While Parks would look favorably upon a decision by Fitmar to seek outside technical assistance, we are not requiring it to do so. Parks will increase its own oversight of Fitmar's internal controls to ensure that the new procedures fully address this Report's Recommendations. This includes requiring Fitmar to submit more detailed monthly statements of gross receipts, performing site visits to review their implementation of internal controls and conducting a follow-up internal audit.

Recommendation 3: Maintain for at least six years the required source documentation to support the gross receipts reported to the City.

Recommendation 4: Estimate the total lost revenue lost to the City resulting from the employee theft that occurred at the licensed premises, and pay appropriate additional fees to Parks.

Response: Parks agrees and has required Fitmar to comply with Recommendations 3 and 4 and pay for amounts related to employee theft. Additionally, Parks addressed these Recommendations in a prior NTC sent to Fitmar on June 5, 2008 which resulted in a payment to the City of \$14,604 for Fitmar's Silver Sneakers program.

Recommendation 5: Coordinate with Parks and develop a needs assessment of capital improvement to help determine how the \$380,450 in unexpended capital improvements for operating years 2005 through 2007 should be used, and develop a specific timetable to complete each improvement.

Response: Parks agrees with this Recommendation, and has requested that Fitmar develop a needs assessment of capital improvement to help determine how and under what timetable unexpended capital improvements amounts will be spent for operating years 2005 through 2007. However, we are still reviewing the Comptroller's extensive capital analysis and issues related to the affiliated contractor, Metro J and B, in order to determine the extent we agree with the amount of unexpended capital calculated in the Report.

Recommendation 6: Repair and maintain the licensed premises in good working order, at its sole cost and expense, and discontinue claiming as capital improvement routine maintenance and repair items and equipment purchases.

Response: Parks will continue to require Fitmar to keep the licensed premises in good working order, and will not accept routine maintenance toward Fitmar's capital commitment.

Recommendation 7: Establish a preventive maintenance schedule that includes, but is not limited to, the periodic replacement of air conditioning filters as well as painting and repairs throughout the licensed premises.

Recommendation 8: Maintain the facility in a clean, neat and litter-free condition at all times, as required by the license agreement

Recommendation 9: Submit accurate monthly gross receipts statements to Parks within 30 days after the end of each month.

Recommendation 10: Obtain written approval from Parks to enter into a separate license agreement with the private operator of the karate studio, and any other sublicensees.

Response: Parks agrees and has required Fitmar to comply with Recommendations 7 through 10. Indeed, these recommendations were addressed in NTCs sent to Fitmar on June 5, 2008 and January 5, 2009 which required Fitmar to "...ensure the facility is

cleaned daily..." "...ensure that gross receipts are accurately reported..." and to "...submit for approval proposed sublicense agreements."

Recommendation 11: Obtain written approval from Parks to enter into a separate license agreement for the use of unrelated entities (affiliated real estate management businesses) to operate at the license premises. If Parks approves that the unrelated entities may continue to operate at the license premises, then Fitmar, in conjunction with Parks, should determine a fair market rent that should be paid retroactively to the inception of the license agreement.

Response: Parks does not approve of the one unrelated entity (an affiliated real estate management business) being run out of the licensed premises, and has instructed Fitmar to identify an alternative off-premises location from which to operate its real estate management business.

Recommendation 12: Perform background checks of all employees as required by the NYS Social Services Law.

Response: Parks agrees and has required Fitmar to comply with Recommendation 12.

The following Recommendations in the Report were directed to Parks.

Recommendation 13: Issue a Notice-to-Cure to Fitmar requiring that it pay the remaining \$22,803 in additional license fees and late charges.

Response: Parks agrees and has issued the NTC requiring the additional payment of \$22,803.

Recommendation 14: Ensure that Fitmar complies with all the recommendations in this report.

Response: We have already issued NTCs covering a number of issues in the Report. Parks will issue further NTCs in accordance with Parks' determinations with respect to the Report's Recommendations.

Recommendation 15: Determine whether Fitmar underreported any income for operating years 2005, 2006, and 2008.

Response: Parks will audit Fitmar's manual logs used for recording daily gross receipts (Reco Sheets) and determine whether Fitmar underreported income for 2005, 2006 and 2008.

Recommendation 16: Review Fitmar's estimates of revenue lost to the City resulting from the special events and from the employee theft that occurred at the licensed premises,

determine the amount of additional fees and late charges, and request payment from Fitmar.

Response: In accordance with Recommendation 4, Parks will review Fitmar's estimates of revenues. If Fitmar's estimate should be increased, Parks will require Fitmar to make additional payments to the City inclusive of late charges.

Recommendation 17: Revise the capital improvements schedule with specific capital improvements that would make the licensed premises a state-of-the-art athletic facility. In addition, develop a specific timetable and cost estimate to complete each improvement.

Response: In accordance with the language in Recommendation 5 Parks will require Fitmar to "...develop a needs assessment of capital improvements to help determine how the...unexpended capital improvements for operating years 2005 through 2007 should be used, and develop a specific timetable to complete each improvement." Parks will revise the capital improvements schedule prepared by Fitmar as necessary, in order to ensure that Fitmar undertakes the most useful physical improvements at the licensed premises, on the most appropriate timetable.

Recommendation 18: Annually review all capital improvement invoices submitted for each operating year and disallow any invoices that relate to equipment and general repair and maintenance items that are not listed specifically on the capital improvements schedule.

Response: Parks will continue to review all capital improvement invoices submitted to us by Fitmar. Prior to the commencement of this audit in 2008, Parks had already disallowed over \$85,000 in capital submissions. However, given the serious nature of some of the Comptroller's findings related to capital, Parks will undertake enhanced review of Fitmar's submissions, and will disallow any submissions that we believe are general repair and maintenance and are not specifically listed on the revised capital improvement schedule discussed in Recommendation 17.

Recommendation 19: Consider instituting §10.1 of the license agreement whereby Fitmar would be required to post a construction security bond equal to the cost of the capital improvements stated in the license agreement.

Response: Parks will consider requiring Fitmar to post a construction security bond equal to the cost of the capital improvements stated in the license agreement.

Recommendation 20: Conduct periodic unannounced site inspections and perform an annual site inspection of the licensed premises. Document results and immediately notify Fitmar of needed repairs and of any noncompliance with the license agreement.

Response: Parks has already instituted a rigorous plan for unannounced site inspections in 2009 by Inspectors from both our Revenue Division and our Office of

Management and Planning. Moreover, we have already performed two inspections in February 2009, and will continue indefinitely.

Recommendation 21: Determine the appropriateness of having an unrelated business operating at the licensed premises. If Parks decides to allow the unrelated business, then it should decide whether a sublicense or separate license agreement should be negotiated and whether the gross receipts of the unrelated business should be included in Fitmar's calculation of gross receipts. If an agreement is reached, Parks, in conjunction with Fitmar, should determine the amount of additional fees that should be paid retroactively to the inception of the license agreement.

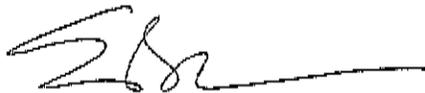
Response: Parks does not consider such a use appropriate and has required Fitmar to... (See response to Recommendation 11).

Recommendation 22: Assign a Parks employee to closely monitor Fitmar's operation to ensure that it adheres to the terms of the license agreement. Specifically, Parks should evaluate Fitmar's internal control procedures to ensure that Fitmar maintains an adequate system of internal controls, maintains detailed and accurate books and records, reports all revenue, and pays the appropriate license fees.

Response: Parks will continue to closely monitoring Fitmar's overall operation. In early 2009 we began an enhanced monitoring of Fitmar through a combination of unannounced inspections, revised financial reporting, increased requirements for Fitmar's capital submissions and site visits by Parks' staff to review record keeping and internal controls.

Finally, we wish to thank the Comptroller's audit staff for their efforts in performing this review.

Sincerely,



Elizabeth W. Smith

Cc:	Adrian Benepe	Robert L. Garafola
	Michael Morgese	Marla Simpson
	Jeffrey Kay	George Davis
	Alessandro Olivieri	Vicki Metger
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