

This PERMIT, made as of _____, 2016 between and among the City of New York ("the City"), a municipal corporation of the State of New York, acting by and through the Department of Transportation ("DOT"), and _____ ("Permittee").

WITNESSETH

WHEREAS, Permittee has requested to use property under the jurisdiction of DOT that has been designated a pedestrian plaza, located at _____ in the Borough of _____ ("Premises") as further illustrated in **Exhibit A**, for the sole purpose of managing and operating the following revenue-generating activities: _____, as shall be further described in **Exhibit B**, ("Concession Activities");

WHEREAS, the total number of days for all Concession Activities, including set up and breakdown of concession space, events or Concession Activities, shall not exceed 29 days within the period of time between _____ and _____; and

WHEREAS, the City and DOT, to further encourage participation of interested organizations in providing services and events for the benefit of the public, approves use of its property by Permittee to manage and operate the Concession Activities.

NOW THEREFORE, in consideration of the mutual covenants herein, the parties agree as follows:

1. SCOPE OF PERMIT

A. DOT hereby grants to Permittee and Permittee hereby accepts from DOT this non-exclusive Permit to manage and operate the Concession Activities on the Premises.

B. It is expressly understood by Permittee that no land, building, space, improvement, or equipment is leased or otherwise conveyed to Permittee, but that during the term of this Permit, Permittee shall have the non-exclusive use of the Premises and for the purpose herein provided. Except as herein provided, Permittee has the right to occupy, manage and operate the Premises only so long as each and every term and condition in this Permit is properly complied with and so long as this Permit is not terminated by DOT in accordance with this Permit.

C. All Concession Activities are subject to the prior written approval of the Commissioner or his/her designee. Exact location of the placement of equipment associated with this Permit is subject to DOT's prior written approval. This Permit does not authorize any activity not expressly mentioned above.

2. TERM

A. The term of this Permit shall be in effect no longer than 365 days commencing on _____ through _____ (“Term”), unless terminated prior to in accordance with the terms and conditions of this Permit.

B. During the Term, the total number of days for all Concession Activities, including set up and breakdown of concession space, events or Concession Activities, shall not exceed 29 days.

3. DATES AND HOURS OF OPERATION

A. Hours of operation for all Concession Activities shall be provided in further detail in **Exhibit B** attached hereto. DOT shall approve in writing changes to the hours of operation in consideration of the hours of operation of other similar events permitted by DOT, the nature of the community and the environs of the Premises, the rules and regulations of DOT’s operations, the public health and safety, and other similar considerations.

4. COMPENSATION

[IF TAX-EXEMPT BONDS USED, FOLLOWING PROVISIONS SHOULD BE USED]

A. In lieu of a fee for the use of the Premises to conduct the Concession Activities, Permittee shall use the revenue generated from the Concession Activities to offset the cost of providing the management, operation, and maintenance, including repair of the Premises during days and hours in which Concession Activities are in operation, as shall be detailed in **Exhibit C**.

B. If revenues exceed the cost of managing, operating and maintaining the Premises, such excess revenues shall not be remitted to the City or used to benefit the City beyond the management, operation, and maintenance of the Premises.

[IF TAXABLE BONDS USED, FOLLOWING PROVISIONS SHOULD BE USED]

A. The fee for use of all Premises used for the Concession Activities is \$[XXX] and shall be due by _____. All fees must be submitted in the form of a certified bank check, official bank check, cashier’s check, or money order.

B. A late charge may be assessed for any fee payment not received by DOT on or before its due date. A late charge of 2% per month may be applied to any balance that is overdue for ten (10) days following the date for which such fees are due.

C. Unless otherwise stated herein, all fees, reports, certificates of insurance and any other items required of the Permittee shall be submitted to the following address:

New York City Department of Transportation
Office of Cityscape & Franchises
55 Water Street, 9th Floor

New York, NY 10041
Attn: Michelle Craven

5. SECURITY DEPOSIT

A. Simultaneously with signing this Permit, Permittee shall deliver to DOT \$[XXX] in the form of a certified check, official check, bank check or money order as a security deposit ("Security Deposit"). The Security Deposit will be held by DOT, without liability for the City to pay interest thereon, to ensure that Permittee fulfills all the terms and conditions of this Permit. If Permittee fails to perform any of the terms of this Permit, DOT may, at its option, and without prejudice to any other remedy which the City may have on account thereof, appropriate and apply the Security Deposit or as much as is required to compensate the City (a) toward the payment of sums due from the Permittee or (b) towards any loss, damage or expense sustained by the City resulting from such default on the part of Permittee. If Permittee fails to make timely fee payments, Permittee's Security Deposit may be seized. If Permittee operates without insurance or in a location other than the Premises or at times not allowed by this Permit, DOT may also seize Permittee's Security Deposit. If Permittee causes any damage to DOT's property, the Security Deposit may also be used to pay for the repairs. Permittee is responsible for any costs beyond those covered by the Security Deposit.

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

6. MANAGEMENT, OPERATIONS, AND MAINTENANCE

A. Permittee shall conduct the management, operations, and maintenance authorized by this Permit for the use and enjoyment of the general public.

B. Permittee shall provide for the maintenance and repair of the Premises during days and hours in which Concession Activities are in operation. Maintenance shall include cleaning and trash removal, graffiti removal, snow removal, and upkeep of plantings, as shall be detailed in **Exhibit C**.

C. Permittee shall remove from the Premises, during days and hours in which Concession Activities are in operation, at Permittee's sole cost, all rubbish generated. Permittee shall provide adequate waste and recycling receptacles, approved by DOT, and have such receptacles emptied on a regular basis. Permittee shall comply with all Federal, State, and City regulations regarding recycling. Rubbish removal schedules are subject to DOT's prior written approval. Permittee shall, as needed, conduct or cause to be conducted pest control inspections and extermination. To the extent that the Permittee applies pesticides to any property owned or leased by the City, Permittee or any subcontractor hired by Permittee shall comply with Chapter 12 of Title 17 of the New York City Administrative Code and limit the environmental impact of its pesticide use.

D. Permittee shall cooperate with DOT with respect to all aspects of the management, operations, and management of the Premises, including the number and assignment of personnel necessary to fulfill all obligations during hours of operation at the Premises. The Permittee may designate an operations manager to oversee the management, operations, and maintenance of the Premises during days and hours in which Concession Activities are in operation. Permittee or the operations manager must be available by telephone during all hours of operation. Permittee shall replace any manager or employee if demanded by DOT upon cause.

E. Permittee shall maintain or cause to be maintained security within the Premises during days and hours in which Concession Activities are in operation and shall cooperate with DOT to ensure security of surrounding DOT property. Permittee shall secure the Premises and any equipment and inventory at the end of each day of operation.

F. No permanent fixtures or structures shall be installed within the Premises, unless otherwise permitted by DOT.

G. Permittee must maintain at minimum a clear path of travel of five feet for all pedestrians within the Premises during days and hours in which Concession Activities are in operation.

H. Where applicable, Permittee shall maintain clear access for emergency vehicles during days and hours in which Concession Activities are in operation.

I. Permittee shall comply fully with all directives of DOT personnel.

J. The public shall have free and open access to the seating areas within the Premises unless otherwise precluded by other City-approved events during days and hours in which Concession Activities are in operation.

K. Permittee shall not park within the Premises. Permittee is responsible for finding off-site parking. In addition, Permittee shall not allow any storage containers or supplies to be placed within the Premises. No item shall be placed upon any public right-of-way, including property adjacent to the Premises, without DOT's prior written approval. If any item is stored or displayed outside of the Premises, all expenses associated with enforcement of this provision will be reimbursed by the Permittee to the City.

L. Permittee shall not block any sidewalk, pathway, park entrance, building entrance or other pedestrian walkway.

M. Under no circumstances may the Permittee sell or cause to be sold on or about the Premises, cigarettes, cigars, e-cigarettes, vapor products, or any other tobacco products. Permittee should be aware that the smoking of cigarettes or any other tobacco product, or electronic cigarettes is strictly prohibited at pedestrian plazas in accordance with Local Law 11 of 2011 and Local Law 152 of 2013, respectively. In addition, smoking in any building is strictly prohibited. It is the Permittee's responsibility to adhere to and enforce the prohibitions of this paragraph.

N. Alcohol may be sold within the Premises, subject to DOT's prior written approval. Permittee must obtain, at its sole expense, all permits and licenses applicable to the sale of alcoholic beverages from the New York State Liquor Authority and any other governmental agency having jurisdiction thereof, as well as the requisite Liquor Law Liability Insurance, and comply with any other regulations and directives as required by DOT.

O. Permittee, at its sole cost and expense, and to the satisfaction of DOT, shall provide all equipment, materials and supplies necessary for the Concession Activities, and maintain, repair, or replace all such equipment. Permittee shall provide DOT with discharges for any and all liens that may be levied against any equipment or property used by it to manage, operate, and maintain under this Permit. Permittee shall use its best efforts to discharge such liens within thirty (30) days of receipt of lien by Permittee.

P. Permittee shall comply with all City, State and Federal laws relating to access for persons with disabilities. This may include providing furniture or chairs within the Premises that allow for knee and toe clearance as required by applicable provisions of the Americans with Disabilities Act Accessibility Guidelines ("ADAAG"). To the extent possible, Permittee is encouraged to exceed the minimum accessibility requirements for people with disabilities as prescribed in the ADAAG and to provide equivalent facilitation of its Concession Activities to the disabled community.

Q. All prices and items for sale are subject to DOT's prior written approval. The prices and items for sale approved for Permittee's operations under this Permit are those as shall be set forth on **Exhibit D**.

R. Permittee shall conspicuously display a price list identical to the one which has been reviewed and approved by DOT. Permittee shall not charge more than the posted and approved amounts set forth on the price list. Permittee shall not add items to its approved list of items for sale without the prior written approval of DOT.

S. Permittee shall not allow or permit others to emit loud noise, smoke beyond the normal course of business, vapor, or offensive odors from the Premises. As required by Section 24-216 of the New York City Administrative Code, devices and activities which will be operated, conducted, constructed or manufactured pursuant to this Permit and which are subject to the provisions of the New York City Noise Control Code (the "Code") shall be operated, conducted, constructed or manufactured without causing a violation of such Code. Such devices and activities shall incorporate advances in the art of noise control developed for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued pursuant to federal, state, City laws, rules, regulations and orders.

T. Permittee shall not use or permit the storage of any illuminating oils, oil lamps, turpentine, benzene, naphtha, or similar substances or explosives of any kind or any substances or things prohibited in the standard policies of insurance companies in the State of New York.

7. UTILITIES

A. DOT makes no representations regarding the adequacy of utilities currently in place at the Premises. DOT makes no representation or warranty regarding the availability of electricity, water or other utilities at the Premises or that any entity can or will make such services available.

B. Permittee, at its sole cost and expense, shall provide for all lighting, electrical and water connections and other utility services at the Premises to conduct its operations. The utility costs for which Permittee is responsible include, but are not limited to, the installation of all necessary utilities, service lines, conduits, water meters and pipes. Such utility costs shall also include all Department of Environmental Protection ("DEP") water and sewer charges.

C. Permittee shall not tap into street light poles for electricity but shall provide generators necessary for its needs and in compliance with all applicable Federal, State, and City laws, rules, regulations, and orders for the lawful operation of its generators. In the event of a drought, Permittee shall comply with all DEP directives and restrictions.

8. INSPECTION AND AUDIT OF RECORDS

A. Permittee, during the Term of this Permit, shall establish and maintain accurate records, books of account and data, including daily sales and receipts records, which shall show in detail the total business transacted by Permittee. Such books and records maintained pursuant to this Permit shall be conveniently segregated from other business matters of Permittee and shall include, but not be limited to: all federal, state and local tax returns and schedules of the Permittee, records of daily bank deposits of the entire receipts from transactions in, at, on or from the Premises; sales slips, daily dated cash register receipts, sales books; duplicate bank deposit slips and bank statements.

B. DOT and the NYC Comptroller or other duly authorized representatives of the City shall have the right to examine or audit the records, books of account and data of the Permittee and any equipment used by Permittee, including, but not limited to, cash registers and recording machines, and all reports or data generated from or by the equipment as part of this Permit. Permittee shall cooperate fully and assist DOT, the NYC Comptroller or any other duly authorized representative of the City, in such examination or audit. In the event that the Permittee's books and records, including supporting documentation, are situated at a location 50 miles or more from the City, the records must be brought to the City for examination and audit or Permittee must pay the food, board and travel costs incidental to two auditors conducting such examination or audit at said location.

C. The failure or refusal of Permittee to permit DOT, the Comptroller or any other duly authorized representative of the City to audit and examine the Permittee's records, books of account and data or the interference in any way by the Permittee in such an audit or examination is presumed to be a failure to substantially comply with the terms and conditions of this Permit and default hereunder which shall entitle DOT to terminate this Permit.

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

E. This Section 8 shall survive the expiration or earlier termination of this Permit.

9. MISCELLANEOUS

A. No temporary structures and staging areas ancillary to the Concession Activities may be erected and maintained by Permittee without prior written approval from DOT, and all necessary permits and licenses.

B. Permittee may not cut down, re-plant, or remove any plantings or trees from the Premises.

C. Permittee shall obtain equipment that will provide security for all monies received. Permittee shall provide for the transfer of all monies collected to the bank. Permittee shall bear the risk of loss of any lost, stolen or counterfeit monies derived from the management, operations, and maintenance pursuant to this Permit.

D. Permittee warrants that all food, beverages and merchandise authorized under this Permit shall be of good quality. Permittee shall maintain adequate inventory control to provide for a constant supply of food, beverages and merchandise authorized under this Permit. Permittee shall manage, operate, and maintain any Concession Activities authorized under this Permit in such a manner as to maintain the highest health inspection rating. Permittee shall not use any polystyrene foam products in the provision of any food or beverages authorized under this Permit.

E. Permittee shall prepare and provide to DOT reports of any incidents occurring on the Premises during days and hours in which Concession Activities are in operation. Permittee shall promptly notify DOT, in writing, of any claim for injury, death, property damage or theft which shall be asserted against Permittee with respect to its use of the Premises. Permittee shall also designate a person to handle all such claims, including all insured claims for loss or damage pertaining to the management, operation, and maintenance of the Premises and Permittee shall notify DOT in writing, as to said person's name and address.

G. Permittee shall promptly notify DOT personnel of any unusual conditions that may develop in the course of the management, operation, and maintenance of this Permit such as, but not limited to, fire, flood, casualty or substantial damage of any character.

H. All deliveries to Permittee shall be made on such days and at such times of day as DOT shall reasonably approve.

I. Whenever any act, consent, approval or permission is required of the City or DOT under this Permit, the same shall be valid only if it is, in each instance, in writing and signed by the Commissioner or his/her designee. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon the City, the Commissioner

or their agents, unless the same is, in each instance, in writing and duly signed by the Commissioner or his/her designee.

J. Title to any construction, renovation, or improvements made to the Premises shall vest in and belong to the DOT at the DOT's option, which option may be exercised at any time after the substantial completion of the affixing of said equipment or the substantial completion of such construction, renovation or improvement. To the extent DOT chooses not to exercise such option, it shall be the responsibility of Permittee to remove such items at its sole cost and expense.

K. Permittee should be aware that the City is the trademark owner of various trademarks and has licensed the use of those trademarks for use on certain designated merchandise. If the Permittee wants to sell merchandise that uses the City's trademarks, Permittee shall purchase such merchandise from authorized licensees of the City of New York. The sale of counterfeit or unlicensed merchandise by Permittee will result in the immediate termination of this Permit and seizure of the security deposit.

10. INSURANCE

A. From the date this Permit is executed through the date of its expiration or termination, the Permittee shall ensure that the types of insurance indicated in this Section are obtained and remain in force, and that such insurance adheres to all requirements herein.

B. The Permittee is authorized to undertake or maintain operations under this Permit only during the effective period of all required coverage.

C. Commercial General Liability Insurance:

(1) The Permittee shall maintain Commercial General Liability insurance in the amount of at least Two Million Dollars (\$2,000,000) per occurrence. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis and shall be at least Two Million Dollars (\$2,000,000). This insurance shall protect the insureds from claims for property damage and/or bodily injury, including death which may arise from any of the operations under this Permit. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be "occurrence" based rather than "claims-made."

(2) Such Commercial General Liability insurance shall name the City, together with its officials and employees, as an Additional Insured for claims that may arise from any of the operations under this Concession. Coverage shall be at least as broad as the most recent edition of ISO Form CG 2026. "Blanket" or other forms are also acceptable if they provide the City, together with its officials and employees, with coverage at least as broad as ISO Form CG 2026.

D. Workers' Compensation, Employers Liability, and Disability Benefits Insurance: The Permittee shall maintain Workers' Compensation insurance, Employers Liability insurance, and Disability Benefits insurance on behalf of, or with regard to, all employees involved in the Permittee's operations under this Permit, and such insurance shall comply with the laws of the State of New York.

E. Commercial Automobile Liability Insurance: With regard to all operations under this Permit, the Permittee shall maintain or cause to be maintained Commercial Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA0001. If vehicles are used for transporting hazardous materials, such Business Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

F. [INCLUDE IF THERE IS A BUILDING OR STRUCTURE ON THE PREMISES WORTH MORE THAN \$250,000]

Property Insurance:

(1) The Permittee shall maintain comprehensive, broad-form property insurance (such as "All Risk" policy) covering all buildings, structures, equipment, and fixtures on the Premises ("Permit Structures"), whether existing at the beginning of this Permit or built at any time before its expiration or termination. Such insurance shall provide full Replacement Cost coverage for the Permit Structures (without depreciation or obsolescence clause) and include, without limitation, coverage for loss or damage by acts of terrorism, water (other than flood-related), wind, subsidence and earthquake. Such insurance shall be "occurrence" (rather than "claims-made") based and shall designate the Permittee as Named Insured and the City as Additional Insured and Loss Payee as its interests may appear.

(2) This Section does not require coverage for damage caused by flooding.

(3) The limit of such property insurance shall be no less than the full Replacement Cost of all Permit Structures, including, without limitation, the costs of post-casualty debris removal and soft costs, to the extent that such costs can be covered by an "all risk" or "special perils form" insurance policy. If such insurance contains an aggregate limit, it shall apply separately to the Permit Structures.

(4) In the event of any loss to any of the Permit Structures, the Permittee shall provide the insurance company that issued such property insurance with prompt, complete and timely notice, and simultaneously provide the Commissioner with a copy of such notice. With regard to any Permit Structures that the City owns or in which the City has an interest, the Permittee shall also (i) take all appropriate actions in a timely manner to adjust such claim on terms that provide the City with the maximum possible payment for the loss, and (ii) either provide the City with the opportunity to participate in any negotiations with the insurer regarding adjustments for claims or, at the Commissioner's discretion, allow the City itself to adjust such claim.

G. [INCLUDE IF THERE IS A BUILDING OR STRUCTURE ON PREMISES USED BY PERMITTEE AND EITHER (1) SUCH BUILDING IS IN A FEMA SPECIAL FLOOD HAZARD AREA; OR (2) THE CITY HAS RECEIVED ASSISTANCE FROM FEMA FOLLOWING FLOODING CAUSED BY A HURRICANE OR SUPERSTORM.]

Flood Insurance: The Permittee shall maintain flood insurance through the National Flood Insurance Program (NFIP) for each building or structure on the Premises. Each building or structure shall be insured separately. For each building or structure, the Permittee shall maintain the maximum limits available under the NFIP for the both the building/structure and its contents. The Permittee shall assure that the City is listed as loss payee on the NFIP insurance. In the event the Permittee purchases flood insurance excess to the limits available under the NFIP, the Permittee shall assure that the City is listed as loss payee under all such policies.

H. Liquor Law Liability Insurance: In the event the Permittee shall serve alcohol on the Premises during days and hours in which Concession Activities are in operation, the Permittee shall carry or cause to be carried liquor law liability insurance in an amount not less than Five Million Dollars (\$5,000,000) per occurrence, and name the City as additional insured. Such insurance shall be effective prior to the commencement of any such service of alcohol and continue throughout such operations.

I. General Requirements for Insurance Coverage and Policies:

(1) Policies of insurance required under this Article shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the Commissioner.

(2) Policies of insurance required under this Article shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

(3) Wherever this Article requires that insurance coverage be "at least as broad" as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the Permittee can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

(4) There shall be no self-insurance program or self-insured retention with regard to any insurance required under this Article unless approved in writing by the Commissioner. Under no circumstances shall the City be responsible for the payment of any self-insured retention (or any other aspect of a self-insurance program). Further, the Permittee shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Article, including but not limited the defense and indemnification obligations that insurers are required to undertake in liability policies.

(5) The City's limits of coverage for all types of insurance required under this Article shall be the greater of (i) the minimum limits set forth in this Article or (ii) the limits provided to the Permittee under all primary, excess and umbrella policies covering operations under this Permit.

(6) With regard to all operations on, near or over navigable waters under this Permit, Permittee shall maintain or cause to be maintained insurance in accordance with the United States Longshoremen's and Harbor Workers Act and/or the Jones Act on behalf of all qualifying employees involved in such operations.

(7) All required policies, except for Workers' Compensation insurance, Employers Liability insurance, Disability Benefits insurance, and, if applicable, the United States Longshoremen's and Harbor Workers Act and/or the Jones Act insurance, shall contain an endorsement requiring that the issuing insurance company endeavor to provide the City with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both the Commissioner, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Such notice is to be sent at least (30) days before the expiration, cancellation or termination date, except in cases of non-payment, where at least ten (10) days written notice would be provided.

(8) All required policies, except Workers' Compensation, Employers Liability, Disability Benefits, and, if applicable, the United States Longshoremen's and Harbor Workers Act and/or the Jones Act insurance, shall include a waiver of the right of subrogation with respect to all insureds and loss payees named therein.

J. Proof of Insurance:

(1) Certificates of Insurance for all insurance required in this Article must be submitted to and accepted by the Commissioner prior to or upon execution of this Permit.

(2) For Workers' Compensation, Employers Liability Insurance, Disability Benefits, if applicable, the United States Longshoremen's and Harbor Workers Act and/or the Jones Act insurance the Permittee shall submit one of the following: C-105.2 Certificate of Worker's Compensation Insurance; U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance; Request for WC/DB Exemption (Form CE-200); equivalent or successor forms used by the New York State Workers' Compensation Board; or other proof of insurance in a form acceptable to the City. ACORD forms are not acceptable proof of workers' compensation coverage.

(3) For all insurance required under this Article other than Workers Compensation, Employers Liability, Disability Benefits, if applicable, the United States Longshoremen's and Harbor Workers Act and/or the Jones Act insurance the Permittee shall submit one or more Certificates of Insurance in a form acceptable to the Commissioner. All such Certificates of Insurance shall (a) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) be accompanied by the provision(s) or endorsement(s) in the Permittee's policy/ies (including its general liability policy) by which the City has been made an additional insured or loss payee, as required herein. All such Certificates of Insurance shall be accompanied by either a duly executed

“Certification by Insurance Agent or Broker” in the form attached as **Exhibit E** or certified copies of all policies referenced in such Certificate of Insurance.

(4) Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of all policies required under this Permit. Such Certificates of Insurance shall comply with subsections (2) and (3) directly above.

(5) Acceptance or approval by the Commissioner of a Certificate of Insurance or any other matter does not waive Permittee’s obligation to ensure that insurance fully consistent with the requirements of this Article is secured and maintained, nor does it waive Permittee’s liability for its failure to do so.

(6) The Permittee shall be obligated to provide the City with a copy of any policy of insurance required under this Article upon request by the Commissioner or the New York City Law Department.

K. Miscellaneous:

(1) The Permittee may satisfy its insurance obligations under this Article through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

(2) The Permittee shall be solely responsible for the payment of all premiums for all policies and all deductibles to which they are subject, whether or not the City is an insured under the policy.

(3) Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Article, the Permittee shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this Permit (including notice to Commercial General Liability insurance carriers for events relating to the Permittee’s own employees) no later than 20 days after such event. For any policy where the City is an Additional Insured, such notice shall expressly specify that “this notice is being given on behalf of the City of New York as Insured as well as the Named Insured.” Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. The Permittee shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

(4) The Permittee’s failure to secure and maintain insurance in complete conformity with this Article, or to give the insurance carrier timely notice on behalf of the City, or to do anything else required by this Article shall constitute a material breach of this Permit. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

(5) Insurance coverage in the minimum amounts provided for in this Article shall not relieve the Permittee of any liability under this Permit, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Permit or the law.

(6) In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Article, the Permittee shall at all times fully cooperate with the City with regard to such potential or actual claim.

(7) Apart from damages or losses covered by Workers' Compensation Insurance, Employers Liability Insurance, Disability Benefits Insurance, or Commercial Automobile Insurance, if applicable, the United States Longshoremen's and Harbor Workers Act and/or the Jones Act insurance the Permittee waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Permittee and/or its employees, agents, or servants of its contractors or subcontractors.

(8) In the event the Permittee requires any entity, by contract or otherwise, to procure insurance with regard to any operations under this Permit and requires such entity to name the Permittee as an additional insured under such insurance, the Permittee shall ensure that such entity also name the City, including its officials and employees, as an additional insured with coverage at least as broad as ISO form CG 20 26.

(9) In the event the Permittee receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, the Permittee shall immediately forward a copy of such notice to both the Commissioner [of the New York City Department of Transportation, 55 Water Street, 9th floor, New York, NY 10041, and the New York City Comptroller, attn: Office of Contract Administration, Municipal Building, One Centre Street, room 1005, New York, New York 10007. Notwithstanding the foregoing, the Permittee shall ensure that there is no interruption in any of the insurance coverage required under this Article.

11. RESPONSIBILITY FOR SAFETY, INJURIES OR DAMAGE, AND INDEMNIFICATION

A. Permittee Responsibility

(1) The Permittee shall be solely responsible for the safety and protection of its employees, agents, servants, contractors, and subcontractors, and for the safety and protection of the employees, agents, or servants of its contractors or subcontractors.

(2) The Permittee shall be solely responsible for taking all reasonable precautions to protect the persons and property of the City or others from damage, loss or injury resulting from any and all operations under this Permit.

(3) The Permittee shall be solely responsible for injuries to any and all persons, including death, and damage to any and all property arising out of or related to the

operations under this Permit, whether or not due to the negligence of the Permittee, including but not limited to injuries or damages resulting from the acts or omissions of any of its employees, agents, servants, contractors, subcontractors, or any other person.

(4) The Permittee shall use the Premises in compliance with, and shall not cause or permit the Premises to be used in violation of, any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adapted in the future which are or become applicable to the Permittee or the Premises (collectively "Environmental Laws"). Except as may be agreed by the City as part of this Permit, Permittee shall not cause or permit, or allow any of its personnel to cause or permit, any Hazardous Materials to be brought upon, store, used generated, treated or disposed of on the Premises. As used herein, "Hazardous Materials" means any chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects.

B Indemnification and Related Obligations.

(1) To the fullest extent permitted by law, the Permittee shall indemnify, defend and hold the City and its officials and employees harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements) arising out of or related to any of the operations under this Permit (regardless of whether or not the Permittee itself had been negligent) and/or the Permittee's failure to comply with the law or any of the requirements of this Permit. Insofar as the facts or law relating to any of the foregoing would preclude the City or its officials and employees from being completely indemnified by the Permittee, the City and its officials and employees shall be partially indemnified by the Permittee to the fullest extent permitted by law.

(2) The Permittee's obligation to defend, indemnify and hold the City and its officials and employees harmless shall not be (i) limited in any way by the Permittee's obligations to obtain and maintain insurance under this Permit, nor (ii) adversely affected by any failure on the part of the City or its officials and employees to avail themselves of the benefits of such insurance.

12. ASSUMPTION OF RISK

A. In accepting this Permit, Permittee assumes all risks involved in its management, operation, and maintenance of the Premises. Permittee represents that Permittee has inspected the Premises, found it suitable for Permittee's purposes, and accepts it in its present condition "as is."

B. Subject to DOT's prior written approval, any improvements and repairs deemed necessary shall be performed by Permittee at Permittee's sole cost and expense. Permittee shall provide adequate security at all times for Permittee's equipment, products and personnel.

13. APPROVALS AND TAXES

A. This Permit is granted to Permittee provided Permittee obtains, at its sole cost and expense, any and all approvals, permits, and other licenses required by Federal, State and City laws, rules, regulations and orders necessary to conduct its operations in accordance with the terms of this Permit.

B. If Permittee is selling food and beverages, Permittee shall obtain all Federal, State, and City authorizations necessary for the sale of food and beverages, and at all times display appropriate Department of Health and Mental Hygiene and other permits in accordance with applicable Federal, State and City rules, laws, statutes, regulations or orders.

C. Permittee shall obtain and provide to DOT a New York State Sales Tax Number from the New York City Department of Finance. Permittee shall collect and pay New York State and City Sales Tax as well as all other applicable taxes.

14. ADVERTISING

A. Advertising (other than in a form identifying Permittee with prior written approval from DOT) is strictly prohibited.

15. SIGNAGE

A. Under DOT direction, Permittee may post such signs, at and nearby the Premises, as may be necessary to direct Permittee's patrons to its Concession Activities or facilities within the Premises. Permittee shall not affix signs to the Premises in such a way that removal of such will cause damage to the Premises or other DOT property. The design and content of all signs are subject to the DOT's prior written approval. At the expiration or sooner or termination of this Permit, all signs placed by Permittee must be removed by Permittee so as to restore the Premises to the condition it was in prior to Permittee's use of it.

B. Permittee shall conspicuously display any other permit, license, sticker or identification issued to Permittee by DOT, the City or other governmental agency, for display purposes on the equipment used in its operations under this Permit.

16. INSPECTION OF PREMISES

A. DOT or any representatives of the City, state, or federal government shall have the right at all times to inspect the Premises during the Term of this Permit. If at the end of the Term, or earlier termination of this Permit, necessary repair work is needed to bring the Premises back to the condition it was in prior to Permittee's use, DOT shall notify Permittee of such repair work. Permittee shall perform or caused to be performed all such repairs at its sole cost and expense. In the event Permittee fails to make the necessary repairs within the time agreed upon by DOT and Permittee, DOT shall have the right to complete the necessary repairs at the sole cost and expense of Permittee, which may be deducted from the Security Deposit.

B. This Section 16 shall survive the expiration or earlier termination of this Permit.

17. SPECIAL EVENTS

It is expressly understood that this Permit shall in no way limit DOT's right to sponsor or promote special events or to enter into agreements with third parties to sponsor or promote such events. DOT reserves the right to relocate the Permittee from the Premises or suspend operations under this Permit in the event that such special event occurs within the Premises during days and hours in which Concession Activities are in operation. Permittee shall cooperate with DOT during special events and other unforeseen contingencies.

18. NO EXCLUSIVE RIGHTS

This Permit does not grant Permittee exclusive rights to sell in the location in which the Premises are located. Moreover, DOT may grant other permits to third parties to sell the same or similar items authorized under this Permit within the same location in which the Premises are located. Permittee acknowledges and understands that DOT does not guarantee that vendors, or persons unauthorized by DOT, will not compete with Permittee or operate on or near the Premises.

19. PROHIBITION AGAINST TRANSFER; ASSIGNMENTS AND SUBLICENSES

A. Permittee shall not sell, transfer, assign, sublicense or encumber in any way this Permit, a majority of the shares or ownership interest of Permittee, or any equipment furnished as provided herein, or any interest therein, or consent, allow or permit any other person or party to use any part of the Premises, building, space or facilities covered by this Permit, nor shall this Permit be transferred by operation of law, unless approved in advance in writing by DOT, it being the purpose and spirit of this Permit Agreement to grant this Permit and privilege solely to Permittee herein named.

20. COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS

A. Permittee shall comply and cause its employees and agents to comply with all laws, rules, regulations and orders now or hereafter prescribed by the Commissioner, and to comply with all laws, rules, regulations and orders of any City, State, Federal agency or governmental entity having jurisdiction over operations of the Permit and the Premises and/or Permittee's use and occupation thereof, including but not limited to the New York City Paid Sick Leave Law, attached hereto as **Exhibit F**.

B. Permittee shall not use or allow the Premises, or any portion thereof, to be used or occupied for any unlawful purpose or in any manner violating a certificate pertaining to occupancy or use during the Term of this Permit.

21. NO DISCRIMINATION

A. Permittee shall not unlawfully discriminate against any customer, employee or applicant for employment because of race, creed, sex, color, sexual preference or orientation, national origin, disability, or any other protected class of individuals as defined by City, State or Federal laws, rules or regulations.

B. All advertising for employment shall indicate that Permittee is an Equal Opportunity Employer.

22. CUMULATIVE REMEDIES; NO WAIVER

A. The specific remedies to which the City may resort under the terms of this Permit are cumulative and are not intended to be exclusive of any other remedies or means of redress to which it may be lawfully entitled in case of any default hereunder. The failure of the City to insist in any one or more cases upon the strict performance of any of the covenants of this Permit, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenants or option. No acceptance by DOT or the City of any compensation, fees, penalty sums, charges or other payments in whole or in part for any periods after a default of any terms and conditions herein shall be deemed a waiver of any right on the part of DOT to terminate this Permit. No waiver by DOT or the City of any default on the part of Permittee in performance of any of the terms and conditions herein shall be construed to be a waiver by DOT of any other or subsequent default in the performance of any of the said terms and conditions.

23. INVESTIGATIONS CLAUSE

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

B. (1) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York or New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York; or

(2) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation

to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City; then

C. (1) The DOT Commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five days' written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

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

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

(1) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

(2) The cancellation or termination of all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Permit, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, with the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

E. The DOT Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in subparagraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (3) and (4) below in addition to any other information which may be relevant and appropriate:

(1) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

(2) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

(3) The nexus of the testimony sought to the subject entity and its contracts, leases, permits, or licenses with the City.

(4) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under subparagraph D above, provided that the party or entity has given actual notice to the DOT Commissioner or agency head upon the acquisition of the interest, or at the hearing called for in subparagraph C (1) above gives notice and proves that such interest previously was acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

F. Definition of Terms:

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

(2) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

(3) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.

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

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

24. NOTICE

A. All notices from Permittee to DOT shall be in writing and delivered to the attention of the Office of Cityscape & Franchise, New York City Department of Transportation, 55 Water Street, 9th Floor, New York, NY 10041, or such other address as DOT may designate, with copies sent to DOT's General Counsel at same address.

B. All notices from DOT to Permittee shall be dispatched in the same manner, and delivered to _____, or such other address as may be notified from time to time.

25. TERMINATION

A. Notwithstanding any language contained herein, this Permit is terminable at will by DOT, and such termination shall be effective upon written notice to the Permittee.

B. Should Permittee breach or fail to comply with any of the provisions of this Permit, any federal, state or local law, rule, regulation or order affecting this Permit or the Premises with regard to any and all matters, DOT may in writing order Permittee to remedy such breach or to comply with such provision, law, rule, regulation or order. In the event that Permittee fails to comply with such written notice within five days, then this Permit shall immediately terminate. If said breach or failure to comply is corrected, and a second or repeated violation of the same provision, law, rule, regulation or order follows thereafter, DOT, by written notice, may revoke and terminate this Permit, with such revocation and termination effective upon the written notices.

C. Upon expiration or sooner termination of this Permit by DOT, all rights of Permittee herein shall be forfeited without claim for loss, damages, refund of investment or any other payment whatsoever against the Commissioner, DOT or the City.

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

E. Permittee shall, on or prior to the expiration or sooner termination of this Permit, remove all personal possessions from the Premises. Permittee acknowledges that any personal property remaining on the Premises after the expiration, or sooner termination of this Permit, is intended by Permittee to be abandoned. Permittee shall remain liable to the City for any damages, including lost revenues and the cost of removal or disposal of property, should Permittee fail to remove all possessions from the Premises on or before the expiration or termination date. Pursuant to Section 5 of this Permit, the City may seize the Security Deposit to recover such damages in part or in whole.

F. At the expiration or sooner termination of this Permit, Permittee shall turn over to DOT the Premises well maintained, in good repair and in clean condition.

G. Permittee expressly waives any and all claims for compensation, loss of profit, or refund of its investment, if any, or any other payment whatsoever, in the event this Permit is terminated by DOT sooner than the fixed term.

26. CHOICE OF LAW/CONSENT TO JURISDICTION AND VENUE

A. This Permit shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Permittee, and shall be governed by and construed in accordance with the laws of the State of New York. Any and all claims asserted by or against the City arising under this Permit or related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Courts") or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this Permit and intent, Permittee agrees:

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

its address set forth in this Permit, or to such other address as the Permittee may provide to the City in writing; and

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

(3) With respect to any action between the City and the Permittee in Federal Court located in New York City, the Permittee expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.

(4) If the Permittee commences any action against the City in a court located other than in the City and State of New York, upon request of the City, the Permittee shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Permittee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

B. All disputes arising out of this Permit shall be interpreted and decided in accordance with the laws of the State of New York.

27. WAIVER OF JURY TRIAL

A. Permittee hereby expressly waives trial by jury in any action, proceeding, or counterclaim brought by either of the parties against the other in any matter directly or indirectly related to this Permit.

B. This Section 27 shall survive the expiration or termination of this Permit.

28. INDEPENDENT STATUS OF PERMITTEE

A. Permittee is not an employee of DOT or the City and in accordance with such independent status neither Permittee nor its employees or agents will hold themselves out as, nor claim to be, officers or employees of the City, or of any department, agency, or unit thereof, and they will not make any claim, demand, or application to or for, any right or privilege applicable to an officer of, or employee of, the City, including but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage or employee retirement membership or credit.

29. CONFLICT OF INTEREST

A. Permittee represents and warrants that neither it nor any of its officers, trustees, employees, or volunteers has any interest, nor shall they acquire any interest directly or indirectly, which would or may conflict in any manner or degree with the performance or

rendering of the services herein provided. Permittee further represents and warrants that in the performance of this Permit no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City or DOT, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Permit which affects his or her personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this Permit or in the proceeds thereof.

30. PROCUREMENT OF AGREEMENT

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

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

31. ALL LEGAL PROVISIONS DEEMED INCLUDED

A. It is the intent and understanding of the parties to this Permit that each and every provision of law required to be inserted in the Permit shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Permit shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

32. SEVERABILITY

A. If any provision(s) of this Permit is held invalid or unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

33. JUDICIAL INTERPRETATION

Should any provision of this Permit require judicial interpretation, it is agreed that the court interpreting or considering same shall not apply the presumption that the terms

hereof shall be more strictly construed against a party by reason of the rule of construction that a document should be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that all parties hereto have participated in the preparation of this Permit and that legal counsel was consulted by each responsible party before the execution of this Permit.

34. MODIFICATION

A. No waiver or modification of any provision of this Permit will be effective unless it is in writing and signed by duly authorized representatives of DOT and the Permittee.

35. COUNTERPARTS

A. This Permit may be executed in one or more counterparts which, when taken together, shall constitute one and the same.

36. ENTIRE AGREEMENT

This Permit contains all the terms and conditions agreed upon by the parties hereto and no other agreement, oral or otherwise, regarding the subject matter of this Permit shall be deemed to exist or to bind any of the parties hereto or to vary any of the terms contained herein..

Agreed to this ____ day of _____, 20__ :

By:

[NAME]
[TITLE]
New York City Department of Transportation

By:

[PERMITTEE]
[TITLE]

EXHIBIT A
[Map of Premises]

EXHIBIT B

[Concession Activities and Days and Hours of Operation]

EXHIBIT C

[Maintenance Services]

EXHIBIT D

[Prices and Items for Sale]

EXHIBIT E

CERTIFICATES OF INSURANCE

Instructions to New York City Agencies, Departments, and Offices

All certificates of insurance (except certificates of insurance solely evidencing Workers' Compensation Insurance, Employer's Liability Insurance, and/or Disability Benefits Insurance) must be accompanied by one of the following:

- (1) the Certification by Insurance Broker or Agent on the following page setting forth the required information and signatures;

-- OR --

- (2) copies of all policies as certified by an authorized representative of the issuing insurance carrier that are referenced in such certificate of insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

CITY OF NEW YORK
CERTIFICATION BY INSURANCE BROKER OR AGENT

The undersigned insurance broker or agent represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects.

[Name of broker or agent (typewritten)]

[Address of broker or agent (typewritten)]

[Email address of broker or agent (typewritten)]

[Phone number/Fax number of broker or agent (typewritten)]

[Signature of authorized official, broker, or agent]

[Name and title of authorized official, broker, or agent (typewritten)]

State of

) ss.:

County of

Sworn to before me this ____ day of _____ 20__

NOTARY PUBLIC FOR THE STATE OF _____

EXHIBIT F

[New York City Paid Sick Leave Law Concession Agreement Rider]

Introduction and General Provisions

The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.¹ Concessionaires of the City of New York or of other governmental entities may be required to provide sick time pursuant to the PSLL.

The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the New York City Administrative Code. It is administered by the City’s Department of Consumer Affairs (“DCA”); DCA’s rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York (“Rules”).

The Concessionaire agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this agreement. The Concessionaire further acknowledges that such compliance is a material term of this agreement and that failure to comply with the PSLL in performance of this agreement may result in its termination.

The Concessionaire must notify the Concession Manager in writing within ten (10) days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this agreement. Additionally, the Concessionaire must cooperate with DCA’s education efforts and must comply with DCA’s subpoenas and other document demands as set forth in the PSLL and Rules.

The PSLL is summarized below for the convenience of the Concessionaire. The Concessionaire is advised to review the PSLL and Rules in their entirety. On the website www.nyc.gov/PaidSickLeave there are links to the PSLL and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Concessionaire can get more information about how to comply with the PSLL. The Concessionaire acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

Pursuant to the PSLL and the Rules:

Applicability, Accrual, and Use

An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSLL (“Year”) must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee’s regular hourly rate or the

¹ Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant to New York City Administrative Code §20-912(g), such employer has the option of providing such employees uncompensated sick time.

minimum wage. Employers are not required to provide more than forty hours of sick time to an employee in any Year.

An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per day. In addition, an employee may carry over up to forty hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than forty hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first day of such Year.

An employee entitled to sick time pursuant to the PSSL may use sick time for any of the following:

- such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;
- such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of an employee's spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;
- closure of such employee's place of business by order of a public official due to a public health emergency; or
- such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency.

An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSSL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee's use of sick time pursuant to the PSSL must be treated by the employer as confidential.

If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

Sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the sick time was used.

Exemptions and Exceptions

Notwithstanding the above, the PSSL does not apply to any of the following:

- an independent contractor who does not meet the definition of employee under section 190(2) of the New York State Labor Law;
- an employee covered by a valid collective bargaining agreement in effect on April 1, 2014 until the termination of such agreement;
- an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSSL are expressly waived in such collective bargaining agreement;
- an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSSL for such employee;
- an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;
- an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
- an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or
- a participant in a Work Experience Program (WEP) under section 336-c of the New York State Social Services Law.

Retaliation Prohibited

An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSSL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSSL.

Notice of Rights

An employer must provide its employees with written notice of their rights pursuant to the PSSL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA's website at <http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml>.

Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed fifty dollars for each employee who was not given appropriate notice.

Records

An employer must retain records documenting its compliance with the PSSL for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSSL.

Enforcement and Penalties

Upon receiving a complaint alleging a violation of the PSSL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PSSL has occurred, it has the right to issue a notice of violation to the employer.

DCA has the power to grant an employee or former employee all appropriate relief as set forth in New York City Administrative Code 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSSL civil penalties not to exceed \$500 for a first violation, \$750 for a second violation within two years of the first violation, and \$1,000 for each succeeding violation within two years of the previous violation.

More Generous Policies and Other Legal Requirements

Nothing in the PSSL is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time. The PSSL provides minimum requirements pertaining to sick time and does not preempt, limit or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSSL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.