


PUBLIC MEETING

FRANCHISE AND CONCESSION REVIEW COMMITTEE

WEDNESDAY MARCH 12th, 2025 @ 2:30 P.M.

Location:
22 Reade Street
Spector Hall
New York, NY 10007

NOTE: For further information on accessibility or to make a request for accommodations, such as sign language interpretation services, please contact the Mayor's Office of Contract Services (MOCS) via e-mail at DisabilityAffairs@mocs.nyc.gov or via phone at (212) 298-0800. Any person requiring reasonable accommodation for the public meeting should contact MOCS at least five (5) business days in advance of the meeting to ensure availability. 

*Franchise and Concession Review Committee Public Meeting
Wednesday March 12th, 2025 @ 2:30 P.M.*

NEW YORK CITY DEPARTMENT OF TRANSPORTATION

No. 1: **IN THE MATTER** of the intent to seek Franchise and Concession Review Committee approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into a Sole Source agreement with the City University of NY Senior Colleges (also known as The City University of New York on behalf of Baruch College) for the operation and management of the pedestrian plaza located on East 25th Street between Lexington and Third Avenues in Manhattan, New York; and maintenance and/or repair of certain amenities installed within the Plaza, including through City-approved plaza events, sponsorships, gifts, and subconcession(s), including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Plaza. The Agreement will provide for one (1) five-year term, commencing upon written Notice to Proceed, which may be renewed for up to two (2) additional five-year terms, exercisable upon mutual consent of both parties.

NEW YORK CITY DEPARTMENT OF TRANSPORTATION

No. 2: **IN THE MATTER** of the intent to seek Franchise and Concession Review Committee approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into a License Agreement with Union Square Partnership District Management Association, Inc. to provide for the operation and management

of a pedestrian plaza which is located on Broadway between East 18th Street and East 19th Street; Broadway between East 17th Street and East 18th Street; East 17th Street between Broadway and Park Avenue South; Union Square West between East 16th Street and East 17th Street; Union Square West between East 14th Street and East 15th Street; East 14th Street between University Place and Broadway; and University Place between East 13th Street and East 14th Street in Manhattan, New York, and maintenance and/or repair of certain amenities installed within the Licensed Plaza, including through City-approved plaza events, sponsorships, gifts, and subconcessions including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Licensed Plaza. The License provides for one (1) ten-year term, commencing upon written Notice to Proceed, which may be renewed for up to two (2) additional five-year terms, exercisable at the sole discretion of DOT.

NEW YORK CITY DEPARTMENT OF PARKS AND RECREATION

No. 3: **IN THE MATTER** of the intent to seek Franchise and Concession Review Committee approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into a Sole Source License Agreement with The Battery Conservancy for the operation and maintenance of a food and beverage concession in the New Amsterdam Pavilion at Peter Minuit Plaza at the Battery, Manhattan. The agreement will provide for one (1) ten (10)-year term with two (2) five (5)-year renewal options, provided that Parks has renewed its Maintenance and Operation Agreement with Licensee, according to its terms.

NEW YORK CITY DEPARTMENT OF PARKS AND RECREATION

No. 4: **IN THE MATTER** of the intent to seek Franchise and Concession Review Committee approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into a Sole Source License Agreement with the Times Square District Management Association, Inc. for the maintenance and operation of Father Duffy Square in Manhattan including the collection of special event concession fees. The agreement will provide for one (1) ten (10)-year term with two (2) five (5)-year renewal options.

NEW YORK CITY DEPARTMENT OF HOMELESS SERVICES

No. 5: **IN THE MATTER** of the intent to seek Franchise and Concession Review Committee approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a sole source License Agreement with the YMCA of Greater New York for the operation, management and maintenance of the Park Slope Armory Indoor Athletic Facility and Community Center in Brooklyn, New York.

NEW YORK CITY DEPARTMENT OF SMALL BUSINESS SERVICES

No. 6: **IN THE MATTER** of the intent to seek Franchise and Concession Review Committee approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to allow New York City Tourism + Conventions, on behalf of the New York City Department of Small Business Services, to enter into a Sole Source License Agreement with Gennaro Jewelers, Inc., for the non-exclusive use of city-owned trademarks on merchandise. The Agreement shall commence on January 1, 2025, and shall continue through December 31, 2027, unless sooner terminated pursuant to the terms and conditions of this License Agreement. Licensor shall have the option in its sole discretion of renewing the license agreement on substantially the same terms and conditions for a period of two (2) years.

NEW YORK CITY DEPARTMENT OF SMALL BUSINESS SERVICES

No. 7: **IN THE MATTER** of the intent to seek Franchise and Concession Review Committee approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to allow New York City Tourism + Conventions, on behalf of the New York City Department of Small Business Services, to enter into a Sole Source License Agreement with GreenLight Collectibles LLC, for the non-exclusive use of city-owned trademarks on merchandise. The Agreement shall commence on January 1, 2025, and shall continue through December 31, 2027, unless sooner terminated pursuant to the terms and conditions of the License Agreement. Licensor shall have the option in its sole discretion of renewing the license agreement on substantially the same terms and conditions for a period of two (2) years.

NEW YORK CITY DEPARTMENT OF SMALL BUSINESS SERVICES

No. 8: **IN THE MATTER** of the intent to seek Franchise and Concession Review Committee approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to allow New York City Tourism + Conventions, on behalf of the New York City Department of Small Business Services, to enter into a Sole Source License Agreement with Tombolo, LLC, for the non-exclusive use of city-owned trademarks on merchandise. The Agreement shall commence on January 1, 2025, and shall continue through December 31, 2027, unless sooner terminated pursuant to the terms and conditions of the License Agreement. Licensor shall have the option in its sole discretion of renewing the license agreement on substantially the same terms and conditions for a period of two (2) years.

Rule 1-16: Different Procedure

Concession Agreement Recommendation For Award Memorandum Cover Sheet

Concession Title 25th Street Plaza Concession

Concession ID 2025Con07

Description

See Additional Info Sheet for bigger text. For the operation and management of the pedestrian plaza located on East 25th Street between Lexington and Third Avenues in Manhattan, New York (the "Plaza"); and maintenance and/or repair of the amenities of certain amenities installed within the Plaza, including through City-approved plaza events, sponsorships, gifts, and subconcession(s), including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Plaza.

Agency Department of Transportation ("DOT")

☒ Additional information has been attached to this document (please use the "Additional Information Form" available on BuyWise)

Recommended Concessionaire

Name City University of NY Senior Colleges (also known as The City University of New York on behalf of Baruch College)

Telephone (646) 660-6574

Address One Bernard Baruch Way, New York, NY 10010

☒ EIN or ☐ SSN # 13-3893536

☒ Not-for-Profit Organization ☐ Certified M/WBE by SBS

Recommended Concession Agreement Term

Initial Term NTP to 5 years from NTP

Concession Site(s) ☒ Yes ☐ No

Renewal Option(s) One to 5 year (years 6 to 10)

Address 25th Street between

One to 5 year (years 11 to 15)

3rd Avenue and Lexington Avenue

Total Potential Term 15 years

Borough MN Community Board 6

☐ >20 years – FCRC unanimously approved term on / /

Block# Lot#

Recommended Annual Revenue (Check all that apply)

☐ Annual Fee(s) \$

☐ Gross Receipts %

☐ The Greater of Annual Minimum Fee(s) of \$ vs % of Gross Receipts

☒ Other See Additional Info Sheet

Selection Procedure Requirements

Please select the appropriate Different Procedure method justification below:

☐ Sole Source

☐ Amendment or extension to an existing concession agreement

☐ Not-for-Profit concession agreement

☒ Other (Please specify)

DOT Plaza Program. FCRC approved different selection procedure on 05/13/2020.

Award is a Major Concession

☐ Yes – Award was approved pursuant to Sections 197-c and 197-d of the NYC Charter as follows:

☐ CPC approved on / /

☐ City Council approved on / /

☐ N/A

☒ No

Negotiation Requirements

Below, please describe the nature of negotiations conducted, including with respect to the amount of revenue offered:

See Additional Info Sheet for bigger text. This agreement would permit the City University of NY Senior Colleges (also known as The City University of New York on behalf of Baruch College) ("Concessionaire") to provide for the operation and management of the Plaza, and maintenance and/or repair of certain amenities installed within the Plaza, including through City-approved plaza events, sponsorships, gifts, and subconcession(s), including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Plaza. Subconcessions would be awarded based on solicitations issued by the Concessionaire in the basic form of Request for Proposals or Request for Bids, subject to DOT's prior written approval of both solicitation and award. The Concessionaire will be required to invest any revenue generated this concession into the maintenance and/or repair of certain amenities within the Plaza; and reasonable administrative costs, as such costs relate to the Plaza.

Award Requirements

The agency determined that the award of this concession is in the best interest of the City because:

Since the concession will not yield a profit to Concessionaire, it is in the City's best interest to enter into an agreement with the Concessionaire because Concessionaire has operated and managed the Plaza, and assisted DOT to maintain and/or repair certain amenities with the Plaza since 2014. In 2017, Concessionaire, through private and non-tax levy sources, contributed funding to finance the capital construction of the Plaza.

Rule 1-16: Different Procedure

Concession Agreement Recommendation For Award Memorandum Cover Sheet

Public Hearing Requirements

(Only applicable for significant concessions)

☒ [IF REQUIRED] a public hearing was conducted on: 03 / 10 / 25

Subject concession is a (check one): ☐ **Citywide** or ☒ **NOT Citywide** concession and Agency hereby certifies that a notice summarizing the terms and conditions of the proposed concession, and the time, date and location of the public hearing was published once in the City Record and given to all affected CB-BP and the Committee Members on 02 / 21 / 2025 (not less than 15 days prior to the hearing date). In addition, if you have posted this notice publicly elsewhere, please describe below:

☐ Subject concession is non-significant. No public hearing is required

FCRC Approval

☒ FCRC approved this concession agreement on 03 / 12 / 2025 (date of the FCRC public meeting)

Votes in favor: ____ Votes against: ____

OR

☐ The concession was not subject to approval of the FCRC because it has a term of less than 30 days and is not subject to renewal

Law Department approved concession agreement on: ____ / ____ / ____

Authorized Signatures

Agency Staff

This is to certify that the information presented herein is accurate and that I find the proposed concessionaire to be responsible and approve of the award of the subject concession agreement

Signature _____

Name Michelle Craven

Title Associate Deputy Commissioner for Cityscape and Franchises Date _____

Certificate of Procedural Requisites

This is to certify that the agency has complied with the prescribed procedural requisites for award of the subject concession agreement

Signature _____ Date _____

City Chief Procurement Officer

For Agency Use With Concession Forms

25th Street Plaza Concession

2025Con07

Concession Title

Concession ID

Description

For the operation and management of the pedestrian plaza located on East 25th Street between Lexington and Third Avenues in Manhattan, New York (the "Plaza"); and maintenance and/or repair of the amenities of certain amenities installed within the Plaza, including through City-approved plaza events, sponsorships, gifts, and subconcession(s), including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Plaza.

Agency

Department of Transportation
("DOT")

Concession Agreement Recommendation For Award Memorandum Cover Sheet

Name: City University of NY Senior Colleges (also known as The City University of New York on behalf of Baruch College)

Description:

For the operation and management of the pedestrian plaza located on East 25th Street between Lexington and Third Avenues in Manhattan, New York (the "Plaza"); and maintenance and/or repair of the amenities of certain amenities installed within the Plaza, including through City-approved plaza events, sponsorships, gifts, and subconcession(s), including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Plaza.

Recommended Annual Revenue:

Checked box for Other: Concessionaire will be required to invest revenue generated by this concession into the maintenance of the premises of the Licensed Plaza.

Negotiation Requirements:

This agreement would permit the City University of NY Senior Colleges (also known as The City University of New York on behalf of Baruch College) ("Concessionaire") to provide for the operation and management of the Plaza, and maintenance and/or repair of certain amenities installed within the Plaza, including through City-approved plaza events, sponsorships, gifts, and subconcession(s), including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Plaza. Subconcessions would be awarded based on solicitations issued by the Concessionaire in the basic form of Request for Proposals or Request for Bids, subject to DOT's prior written approval of both solicitation and award. The Concessionaire will be required to invest any revenue generated this concession into the maintenance and/or repair of certain amenities within the Plaza; and reasonable administrative costs, as such costs relate to the Plaza.



NOTICE OF PUBLIC HEARING

To: Mark Levine, Manhattan Borough President
Bradley Sherburne, Chair, Manhattan CB 5

From: Michelle Craven, Associate Deputy Commissioner for Cityscape and Franchises

Subject: Notice of Joint Public Hearing: 3/10/2025; For the operation and management of a pedestrian plaza located on East 25th Street between Lexington and Third Avenues in Manhattan, New York ("Plaza"); and maintenance and/or repair of certain amenities installed within the Plaza, including through City-approved plaza events, sponsorships, gifts, and subconcession(s), including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Plaza.

Date: 2/21/2025

NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and Department of Transportation ("DOT") to be held on 3/10/2025, at 2 Lafayette Street, Room 1412, New York, NY 10007 commencing at 2:30pm relative to:

INTENT TO AWARD as a concession a Memorandum of Agreement ("Agreement") to the City University of NY Senior Colleges (also known as The City University of New York on behalf of Baruch College) for the operation and management of the Plaza; and maintenance and/or repair of certain amenities installed within the Plaza, including through City-approved plaza events, sponsorships, gifts, and subconcession(s), including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Plaza.



The License will provide for one (5) five-year term, commencing upon written Notice to Proceed, which may be renewed for up to two (2) additional five-year terms, exercisable upon mutual consent of both parties.

Concessionaire will be required to invest any revenue generated by this concession into the maintenance and/or repair of certain amenities within the Plaza; and reasonable administrative costs, as such costs relate to the Plaza.

Written testimony may be submitted in advance of the hearing electronically to fcrc@mocs.nyc.gov. All written testimony can be submitted up until the close of the public hearing and will be distributed to the FCRC after the hearing.

A draft copy of the agreement may be obtained at no cost by any (or all) of the following ways:

1. Submit a written request to DOT at concessions@dot.nyc.gov from 2/21/2025 through 3/10/2025.
2. Submit a written request by mail to Department of Transportation, 55 Water Street, 9th Floor, New York, NY 10038. Written requests must be received by 3/3/2025. For mail-in requests, please include your name, return address, and 25th Street Plaza/2025Con07.

The agenda and related documentation for the hearing will be posted on the MOCS website at <https://www.nyc.gov/site/mocs/opportunities/franchises-concessions.page>

For further information on accessibility or to make a request for accommodations, such as sign language interpretation services, please contact the Mayor's Office of Contract Services (MOCS) via e-mail at DisabilityAffairs@mocs.nyc.gov or via phone at (212) 298-0800. Any person requiring reasonable accommodation for the public hearing should contact MOCS at least five (5) business days in advance of the hearing to ensure availability.

THIS MEMORANDUM OF AGREEMENT (“MOA”), is made as of _____, 2024 between and among the City of New York (the “City”), a municipal corporation of the State of New York, acting by and through the New York City Department of Transportation (“DOT”), and The City University of New York on behalf of Baruch College (“PLAZA PARTNER”), a New York education corporation organized pursuant to Article 125 of the Education Law of the State of New York (collectively the “Parties”).

WITNESSETH

WHEREAS, DOT is charged with the responsibility for the construction, maintenance and repair of streets pursuant to Section 2903 of the New York City Charter; and

WHEREAS, PLAZA PARTNER is a State entity acting on behalf of Baruch College (“Baruch”) to facilitate certain improvements and maintenance of certain public space as described herein; and

WHEREAS, PLAZA PARTNER applied to DOT’s plaza program in 2012 and proposed a site for a pedestrian plaza. DOT selected the site, which was located on East 25th Street between Lexington and Third Avenues in Manhattan, New York (“Plaza”). The Plaza consists of the areas illustrated in **Exhibit A**; and

WHEREAS, DOT has jurisdiction over the Plaza and designated the Plaza as a DOT Pedestrian Plaza pursuant to Section 19-157 of the New York City Administrative Code; and

WHEREAS, the City desires to encourage the participation of interested organizations in providing supplemental services, including maintenance and public programming, for the benefit of the public; and

WHEREAS, PLAZA PARTNER and DOT entered into a Memorandum of Agreement dated January 22, 2014 (the “2014 MOA”) regarding PLAZA PARTNER’s contribution to the maintenance and repair of the Plaza; and

WHEREAS, PLAZA PARTNER, DOT, and the New York City Department of Design and Construction entered into a Memorandum of Agreement dated September 20, 2017 (the “2017 MOA”) regarding the design and construction of the Plaza, which included the installation of certain amenities within the Plaza, as more particularly described in **Exhibit B**; and

WHEREAS, pursuant to the 2017 MOA, PLAZA PARTNER, through private and non-tax levy sources, contributed funding to finance the capital construction of the Plaza; and

WHEREAS, PLAZA PARTNER has operated and managed the Plaza, and assisted DOT to maintain and/or repair certain amenities within the Plaza since 2014; and

WHEREAS, PLAZA PARTNER desires to continue to operate and manage the Plaza, and assist DOT to maintain and/or repair the amenities listed in **Exhibit B** that are installed within the Plaza for the benefit of the public as specifically set forth in this MOA; and

WHEREAS, the Parties hereby agree that any and all obligations between them under

the 2014 MOA and the 2017 MOA related to the Plaza have been satisfied and no obligations remain outstanding; and

WHEREAS, PLAZA PARTNER, by virtue of operating academic facilities on both sides of the Plaza, has unique incentive to steward the Plaza in a way that promotes safe and convenient access to members of the public to the greatest extent possible; and

WHEREAS, DOT recognizes the PLAZA PARTNER will be able to significantly assist DOT's plaza program; and

WHEREAS, the Franchise and Concession Review Committee ("FCRC") authorized DOT to enter into a MOA Agreement with PLAZA PARTNER for the operation and management of the Plaza; and maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Plaza, including through City-approved plaza events, sponsorships, gifts, and subconcession(s), including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Plaza.

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

1. SCOPE OF AGREEMENT

A. DOT and PLAZA PARTNER hereby enter into this MOA on the terms and conditions set forth herein. PLAZA PARTNER shall operate and manage the Plaza and provide, or cause to be provided, services for the maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Plaza (which may be amended from time to time upon mutual consent of the parties) as specifically set forth in this MOA (collectively the "Services") and as more specifically described in Section 3 below. Services shall not include any capital improvements or Alterations as described in Section 14 below. The Parties acknowledge that the Plaza is and will remain the jurisdictional property of DOT, available for DOT purposes and uses as needed.

B. The Parties further acknowledge that PLAZA PARTNER is an entity of the State of New York and as such, is bound by certain laws and regulations governing the terms and conditions of agreements to which it is a Party including but not limited to procurement procedures, assignment of rights, and claims and that such laws and regulations govern, notwithstanding anything to the contrary in this Agreement.

C. As more particularly set forth in this MOA, PLAZA PARTNER shall be permitted to:

- (1) manage and operate a Subconcession(s) pursuant to Section 7 herein;
- (2) hold Plaza Events at the Plaza pursuant to Section 8 herein; and
- (3) accept gifts and sponsorships pursuant to Section 9 herein.

D. As more fully provided in Section 5 below, any revenue received from the management and operation of the Plaza shall be used by PLAZA PARTNER for Services at the Plaza.

E. PLAZA PARTNER shall obtain any and all approvals, permits, and other licenses required by federal, state and City laws, rules, regulations and orders which are or may become necessary for the operation and management of the Plaza; and maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Plaza, in accordance with the terms of this MOA. Whenever any act, consent, approval or permission is required of the City, DOT or the DOT Commissioner under this MOA, the same shall be valid only if it is, in each instance, in writing and signed by the DOT Commissioner or his/her duly authorized representative, and such approval or permission shall not be unreasonably delayed or withheld. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon the City, DOT, the DOT Commissioner or their agents, unless the same is, in each instance, in writing and duly signed by the DOT Commissioner or his/her duly authorized representative.

F. It is expressly understood that no land, building, space, improvement, or equipment is leased to PLAZA PARTNER, but that during the term of this MOA, as defined herein, PLAZA PARTNER and its subconcessionaire(s) shall have the non-exclusive use of the Plaza for the purpose herein provided. Except as herein provided, PLAZA PARTNER and its subconcessionaire(s) have the right to occupy and operate the Plaza only so long as each and every term and condition in this MOA is properly complied with and so long as this MOA is not terminated by DOT or PLAZA PARTNER in accordance with this MOA.

2. TERM

The term of this MOA ("Term") shall be five (5) years, commencing upon DOT providing PLAZA PARTNER written notification ("Notice to Proceed") that the Term has begun ("Commencement Date"). This MOA may be renewed for up to two (2) additional five-year terms, to be exercised upon mutual consent of the parties hereto no later than sixty (60) days prior to the expiration of the then-current term, subject to termination and revocation as hereinafter provided. This MOA may be terminated by either Party if DOT does not provide the Notice to Proceed to PLAZA PARTNER within one year of the execution of this Agreement. PLAZA PARTNER may also terminate this MOA pursuant to section 18 if it reasonably determines that it can no longer sustain its obligations pursuant to this MOA, including if such costs to sustain its obligations pursuant to this MOA become prohibitive.

3. SERVICES

A. PLAZA PARTNER shall provide, or cause to be provided the Services at the Plaza for the benefit of the public. PLAZA PARTNER shall only be required to provide the maintenance and/or repair as expressly set forth in this MOA for the amenities described below and in **Exhibit B**, which may be amended from time to time upon mutual consent of the parties. PLAZA PARTNER shall not be required to repair any amenity that is listed in **Exhibit B** as "DOT Standard". However, amenities identified as "DOT Standard" in **Exhibit B** must be maintained as reasonably necessary. For the avoidance of doubt, PLAZA PARTNER shall not be required to maintain and/or repair any amenity within the Plaza not listed in **Exhibit B**.

- (1) For the purposes of this MOA, the term "maintain" shall mean cleaning, sweeping, trash removal, snow and ice removal, landscaping, and graffiti removal, which shall be performed during the PLAZA PARTNER's

regular hours of operation.

- (2) For the purposes of this MOA, the term “repair” shall mean fixing an amenity with the purpose of returning it to a good condition, which shall be performed during the PLAZA PARTNER’s regular hours of operation. This shall not include any capital improvements, which are permanent improvements that add value to the Plaza, prolong the useful life of the Plaza, or adapt the Plaza to new uses.
- (3) For the purposes of this MOA, the term “good condition” shall mean an amenity that is fully functioning, safe, clean, and attractive.

B. PLAZA PARTNER shall provide or cause to be provided the maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Plaza as specifically required by this Section to the reasonable satisfaction of DOT.

- (1) Maintenance:
 - (a) Dirt, debris, and litter shall be removed, and trash and leaves collected and removed so as to maintain the Plaza in clean, neat and good condition as reasonably necessary.
 - (b) All walkways, sidewalks and all other amenities and facilities in the Plaza shall be routinely swept and cleaned.
 - (c) Graffiti shall be regularly painted over or removed, within a reasonable and timely manner after its appearance on any surface.
 - (d) Surface drains and surface gratings shall be cleaned regularly to prevent clogging.
 - (e) Planters and planting beds shall be free of litter and debris.
 - (f) Any umbrellas, moveable tables and chairs (“Moveable Street Furniture”) shall be maintained as reasonably necessary.
 - (g) All amenities listed in **Exhibit B**, as may be amended from time to time upon mutual written consent of the parties, shall be kept in clean, neat and good condition.
 - (h) Perimeter planters used to delineate traffic shall not be moved without DOT’s prior written approval. Such approval or denial shall not be unreasonably delayed or withheld. If a perimeter planter is moved by a third party, PLAZA PARTNER shall return the perimeter planter(s) to its original position as soon as practicable and thereafter shall immediately notify DOT.
 - (i) Snow and ice shall be removed from all walkways within a reasonable

period of time in accordance with the snow map illustrated in **Exhibit C**. If necessary, Moveable Street Furniture shall be removed from the Plaza due to such snow and/or ice conditions.

- (j) Sand or snow melting agent shall be spread as needed to minimize slippery conditions which may arise from the thawing and refreezing of snow and/or ice.
 - (k) Signs shall be posted throughout the Plaza cautioning users of any dangerous conditions due to snow and/or ice. If necessary, the Plaza may be closed due to such snow and/or ice conditions.
 - (l) Water all trees, shrubs, plantings and grass-covered areas as necessary to maintain such vegetation in a healthy condition.
 - (m) Remove or destroy any weeds from paving blocks, pavement, and concrete areas.
 - (n) Seasonal or annual pruning of shrubs and plantings.
 - (o) To the extent that PLAZA PARTNER applies pesticides to the Plaza, PLAZA PARTNER or any subcontractor, shall comply with Title 17 of Chapter 12 of the New York City Administrative Code.
- (2) Repair:
- (a) Benches or other seating: Replace broken or missing bench slats and paint benches, as needed. Repair damaged benches or other seating listed in **Exhibit B** as needed within a reasonable time.
 - (b) Moveable Street Furniture: All Moveable Street Furniture listed in **Exhibit B** shall be repaired as needed within a reasonable time.
 - (c) Facilities/Structures: All facilities, structures, equipment, subconcession structures, and subconcession areas listed in **Exhibit B** shall be repaired as needed within a reasonable time.
 - (d) Painting: All amenities listed in **Exhibit B** with painted surfaces shall be painted as needed. Surfaces shall be scraped free of rust or other extraneous matter and painted to match the existing color.
 - (e) Planters: All planters listed in **Exhibit B** shall be repaired as needed within a reasonable time.
 - (f) Plantings: Re-seed and/or re-sod grass-covered areas as needed. Seasonal or annual planting of varied plant life (excluding trees), including some flowering plants, such that at no time are planters or planting beds empty of plant life.

- (g) Other Amenities: All other amenities listed in **Exhibit B**, as may be amended from time to time upon mutual consent of the parties, except any amenity listed in **Exhibit B** as “DOT Standard” shall be repaired as needed within a reasonable time.
- (h) In the event that any of the amenities listed in **Exhibit B** are subject to construction warranties, DOT shall use good faith efforts to provide PLAZA PARTNER with copies of such applicable construction warranties and facilitate discussions between the appropriate parties.
- (i) Notwithstanding anything herein to the contrary, PLAZA PARTNER shall not be required to repair and/or replace any amenity that is listed in **Exhibit B** as “DOT Standard”. However, amenities identified as “DOT Standard” in **Exhibit B** must be maintained by DOT as reasonably necessary.
- (j) For the avoidance of doubt, the City shall retain responsibility for the repair and replacement of any amenity that is listed in **Exhibit B** as “DOT Standard” and “Infrastructure” and for any City infrastructure, including, without limitation, streets, sidewalks, subsurface utilities, storm and sanitary sewers, water mains, street signage, street lights, pedestrian and bicycle paths. Nothing contained herein shall be construed as shifting such responsibility to the PLAZA PARTNER.
- (k) For the avoidance of doubt and notwithstanding anything to the contrary, the parties further acknowledge that PLAZA PARTNER shall not be responsible, or bear any repair or other obligations or liabilities, for any damage in or to the Plaza to the extent caused by the City, a governmental entity or public authority, a utility company or other permitted third-party (such as providers of sewer, water, gas, heat, electricity, cable, broadband, and telephone), except when caused by PLAZA PARTNER or its employees.

C. The public shall have free and open access to the seating areas within the Plaza unless otherwise precluded by a DOT approved Plaza Event as set forth in Section 8 of this MOA, or other City-approved events or a DOT-approved subconcession agreement as provided herein. Notwithstanding anything herein to the contrary, at no time during the Term of this MOA shall PLAZA PARTNER, its employees, faculty, students, and related entities (“CUNY Users”) and PLAZA PARTNER’s agents, contractors, and subconcessionaire(s) acting on behalf of PLAZA Partner (“CUNY Parties”) be precluded from accessing the Plaza due to a DOT-approved Plaza Event or other City-approved event.

D. PLAZA PARTNER shall not allow CUNY Users and CUNY Parties to emit loud noise, smoke, vapor or offensive odor from the Plaza.

E. Advertising (other than in a form identifying PLAZA PARTNER and its subconcessionaire(s) with approval from DOT) is strictly prohibited. Sponsor recognition may be permitted subject to DOT approval. Such approval or denial shall not be unreasonably delayed or

withheld.

F. DOT makes no representations regarding the adequacy of utilities currently in place at the Plaza. DOT makes no representation regarding the availability of electricity, water or other utilities at the Plaza or that any entity can or will make such services available. PLAZA PARTNER, at its sole cost and expense, shall provide for all lighting, electrical and water connections and other utility services at the Plaza to conduct its operations. PLAZA PARTNER shall pay all charges for sewer, water, gas, heat, electricity, cable, broadband, and telephone used by CUNY Users and CUNY Parties at the Plaza and shall procure at PLAZA PARTNER's own cost and expense all meters, permits, approvals and licenses necessary to effectuate the requirements of this Section; provided, that, DOT shall reasonably cooperate with PLAZA PARTNER to the extent necessary to obtain such permits and/or approvals. PLAZA PARTNER shall be responsible for the installation of all necessary water, gas, heat, electricity, cable, broadband, and telephone connections. The PLAZA PARTNER shall not accept any money, commission, premium, bonus or other consideration from any person for the use or sale of utility services. PLAZA PARTNER shall not tap into DOT's electricity without prior DOT written approval, which shall not be unreasonably withheld or delayed. If generators are used, PLAZA PARTNER shall provide whatever is necessary under Federal, State, and City laws, rules, regulations, and orders for the lawful operation of its generators. In the event of a drought, PLAZA PARTNER shall comply with all City directives and restrictions.

G. PLAZA PARTNER shall prepare and provide to DOT reports of any accidents or other material incidents, if known, occurring at the Plaza, including the Subconcession(s), on a regular basis and in a format reasonably acceptable to DOT.

- (1) PLAZA PARTNER or its subconcessionaire(s) shall promptly notify DOT, in writing, of any claim for injury, death, property damage or theft, if known, which may be asserted against PLAZA PARTNER or its subconcessionaire(s) with respect to the Plaza and the Subconcession(s).
- (2) PLAZA PARTNER or its subconcessionaire(s) shall promptly notify DOT, in writing, of any unusual conditions that may develop in the course of the operation of the Subconcession(s), such as, but not limited to, fire, flood, casualty and substantial damage of any kind to the extent it is aware of any such unusual conditions.
- (3) PLAZA PARTNER shall, with respect to the operation and management of the Plaza; and maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Plaza as specifically set forth in this MOA, designate a person to handle all claims for loss or damage including all insured claims for loss or damages.

H. PLAZA PARTNER shall periodically inspect the Plaza for hazardous conditions and shall, without delay upon learning of the condition, report and cause to be repaired any portion or feature of the Plaza for which PLAZA PARTNER has repair responsibility under this MOA that exhibits hazardous defects or hazardous conditions, and shall immediately institute reasonably appropriate measures to protect the public from harm, including but not limited to the posting of warning signs and temporary barriers. With respect to any portion or feature of the Plaza for which PLAZA PARTNER does not have repair responsibility under this MOA, PLAZA PARTNER shall, without delay upon learning of the condition, report the need for repairs to DOT and immediately

institute reasonably appropriate measures to protect the public from harm, including but not limited to the posting of warning signs and temporary barriers.

I. DOT shall have the right at all times to have representatives of the City, the State and/or federal government present at the Plaza for any purpose, including but not limited to conducting routine inspections, routine repair work, emergency inspections and emergency repair work; provided, that, except in the case of an emergency, DOT shall use best efforts to provide at least one (1) business days' prior written notice to PLAZA PARTNER regarding such presence; provided further, that, DOT shall use best efforts to minimize interference with the public use of the Plaza and/or operation of the subconcession(s) thereon, Plaza Events and/or PLAZA PARTNER's operations on or around the Plaza.

4. BUDGET

A. On or before April 1st of each year the MOA is in effect, PLAZA PARTNER shall submit to DOT for review and approval its annual budget relating to the operation and management of the Plaza and maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Plaza as specifically set forth in this MOA. For accounting purposes, the fiscal year shall run from July 1st to June 30th. Notwithstanding the above, the Plaza budget for fiscal year 2023 shall be submitted within thirty (30) days of the Commencement Date.

B. The PLAZA PARTNER Plaza budget shall set forth in reasonable detail the amounts proposed to be allocated for the operation and management of the Plaza and maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Plaza as specifically set forth in this MOA; and reasonable administrative costs, including but not limited to a list of all personnel salaries or a portion thereof, reflecting their work performed as it relates to the Plaza.

C. The PLAZA PARTNER Plaza budget shall not be final until DOT provides written approval, which approval shall not be unreasonably withheld, conditioned or delayed. Such approval or denial shall occur within 30 days from the date the budget is submitted. However, DOT will endeavor to respond within 10 business days from the date the budget is submitted. Pending DOT's approval of the PLAZA PARTNER Plaza budget for the upcoming fiscal year, the PLAZA PARTNER Plaza budget for the preceding fiscal year shall govern.

D. Upon DOT's request, PLAZA PARTNER shall furnish DOT with bills, invoices, labor time books and such other supporting documents or other data as DOT deems reasonably necessary.

5. REVENUE

A. PLAZA PARTNER shall open and/or continue to maintain an account or sub account, and create a program code to segregate those funds, apart from all other funds, in a bank located within the City of New York, insured by the Federal Deposit Insurance Corporation ("Special Account"). There shall be deposited in the Special Account all revenues collected in connection with or resulting from the rights and privileges granted to PLAZA PARTNER under this MOA, including:

- (1) any funds collected for Services under Section 3;

- (2) any funds collected under a Subconcession described in Sections 6 and 7
- (3) any funds collected for Plaza Events under Section 8; and
- (4) any funds collected for sponsorships under Section 9 (collectively referred to herein as "Revenue").

In addition to any Revenue generated in the form of monetary receipts, Revenue shall be deemed to include the fair market value of any non-monetary consideration in the form of materials, services or other benefits, tangible or intangible, or in the nature of barter PLAZA PARTNER may receive in connection with its operation of the Plaza and subject to the following:

- (1) In the event that the non-monetary consideration received is from a sponsor of a sponsored event and is solely for such event, the value of such non-monetary consideration shall not be considered Revenue provided it is not useable in the performance of any of the Services. For example, if such non-monetary consideration is a tent for an event, it shall not count as Revenue; if such non-monetary consideration is landscape maintenance, it shall count as Revenue. Notwithstanding the foregoing, the value of such non-monetary consideration shall be accounted for in all financial reports, audits, statements, records and accounts as required under the provisions of this MOA.
- (2) In the event that any other non-monetary considerations are received, PLAZA PARTNER may submit a request to DOT for the exclusion of such other non-monetary consideration from the Revenue. Such case by case approval or denial shall be at DOT's reasonable discretion and shall not be unreasonably delayed. Any other PLAZA PARTNER funds not directly generated as a result of the operation and management of the Plaza, including but not limited to general sponsorships, but used solely for the benefit of the Plaza shall be considered Revenue.
- (3) PLAZA PARTNER shall not divert or recharacterize revenue that would otherwise have been considered Revenue for the purposes of this MOA.

B. PLAZA PARTNER may withdraw and use Revenue from the Special Account to expend for non-capital ordinary and necessary expenses directly attributable to PLAZA PARTNER's operation of the Plaza, including reasonable administrative costs and operating expenses for programming, operating, managing, and maintaining and repairing the Plaza as described in this MOA.

C. No withdrawals shall be made from the Special Account other than as provided in this MOA.

D. The administration of the Special Account is subject to the inspection and audit record keeping provisions set out in Section 10.

E. Revenue does not include funds collected or received by PLAZA PARTNER (such as grants, donations, bequests and contributions) other than in the course of PLAZA PARTNER's use or operation of the Plaza. Applicable law governs PLAZA PARTNER's use of such other revenues.

F. Subject to paragraph (G) below, in no event shall the total annual Revenue from managing and operating the Plaza during the Term of the MOA exceed the cost of providing the Services and reasonable administrative costs.

G. At the end of each fiscal year in which the MOA is in effect, provided that there are no outstanding accounts payables for the fiscal year, any unexpended Revenue will be deposited into a segregated interest bearing accrual fund ("Accrual Fund"). PLAZA PARTNER may use funds in the Accrual Fund for any shortfall in Revenue needed to provide the Services set forth herein in the year(s) subsequent to its accrual. If at any time during the Term of this MOA, the Accrual Fund contains an amount that is more than three times the DOT-approved Plaza budget for the current year, the excess amount of the funds in the Accrual Fund shall be used to provide any Services in the Plaza. At the end of the Term of this MOA or if this MOA is terminated, the balance, including all accrued interest, if any, of funds in the Accrual Fund shall be used to provide any Services.

6. SUBCONCESSION(S)

A. PLAZA PARTNER may, subject to DOT's prior written approval, enter into a subconcession agreement(s) for the management and operation of the Subconcession(s), which shall be located in the area described in **Exhibit A**. Such subconcessionaire(s) shall not be related to or affiliated with PLAZA PARTNER. The subconcession agreement(s) shall be subject to the terms and conditions of the form subconcession agreement attached hereto as **Exhibit D** and PLAZA PARTNER shall conduct a procurement, in accordance with PLAZA PARTNER'S procurement rules, in awarding such subconcession agreement.

B. PLAZA PARTNER must issue a public solicitation in the basic form of a Request for Proposals ("RFP") or a Request for Bids ("RFB") approved by DOT to select the entity/entities to operate and manage the Subconcession(s). A minimum of three RFP or RFB submissions must be received to select a subconcessionaire(s), unless DOT agrees to less. This RFP or RFB shall be advertised in the City Record and other appropriate publication(s) approved by DOT. DOT, at its sole option, may be on the RFP evaluation committee. Notwithstanding, in the event of a conflict between the procurement process set forth herein and the regulations and laws governing PLAZA PARTNER, the latter shall control.

C. The selection of the entity/entities to operate and manage the Subconcession(s) will be subject to DOT's prior written approval. Such approval or denial shall not be unreasonably delayed or withheld. PLAZA PARTNER shall ensure that the subconcessionaire(s) complete and submit an online Procurement and Sourcing Solutions Portal (PASSPort) Vendor and Principle Questionnaires (formerly known as Vendor Information Exchange System (VENDEX) forms) to the Mayor's Office of Contract Services if the aggregate value of City contracts, franchises and concessions awarded that subconcessionaire, including this one, during the immediately preceding twelve-month period equals or exceeds \$100,000 ("Threshold").

7. OPERATION OF THE SUBCONCESSION(S)

PLAZA PARTNER shall provide for the operation and management of the Subconcession(s) through a subconcession agreement(s) and require its subconcessionaire(s), at the subconcessionaire(s)' sole cost and expense, to operate the Subconcession(s) in such manner as

proscribed in the agreement, attached hereto as **Exhibit D**.

8. PLAZA EVENTS

A. The Plaza may be used for Plaza Events (as defined in section 1-01 of Title 50 of the Rules of the City of New York), subject to the terms and conditions set forth herein.

B. PLAZA PARTNER shall submit an application to the Street Activity Permit Office (“SAPO”) within the City’s Office of Citywide Event Coordination and Management (“CECM”) for any proposed Plaza Events to be held at the Plaza by the PLAZA PARTNER to the extent required by SAPO’s applicable rules.

C. PLAZA PARTNER may hold Plaza Events at the Plaza subject to:

- (1) the City’s right to use the Plaza for its own Plaza Events or programming or authorize others to use the Plaza; provided, that, DOT shall endeavor to coordinate with PLAZA PARTNER and provide reasonable prior notice to PLAZA PARTNER of any such use of the Plaza. DOT shall endeavor to schedule any such Plaza Events or programming at such times as will cause the least interference with PLAZA PARTNER’s operations. The City, or others authorized to use the Plaza by the City, shall be responsible for any such use of the Plaza, including any costs associated with such use.
- (2) PLAZA PARTNER obtaining any necessary City authorization, approvals, permits, and compliance with other processes that may be required by applicable laws, rules or regulations;
- (3) If applicable, PLAZA PARTNER shall be responsible for the payment of all SAPO permit fees in connection with its own Plaza Events at the Plaza;
- (4) all Plaza Events shall be open to the public and at no cost for admission; and
- (5) PLAZA PARTNER understands that the Plaza is public property and that activities at the Plaza are subject to the First Amendment of the U.S. Constitution and Article I of the New York State Constitution. Therefore:
(a) PLAZA PARTNER acknowledges that First Amendment activities may be permitted by SAPO for the Plaza; and (b) PLAZA PARTNER shall refer to SAPO applications made to PLAZA PARTNER for any activity on the Plaza that may be protected by the First Amendment.

D. The City may use the Plaza for special events, including, but not limited to exhibits, art programs, and other free cultural events open to the public. If DOT or any other agency of the City intends to utilize the Plaza for any event, it shall coordinate such use with PLAZA PARTNER and shall endeavor to provide PLAZA PARTNER with thirty (30) days prior written notice of such event. DOT acknowledges that PLAZA PARTNER, as a public institution of higher education situated directly adjacent to the Plaza to the north and south, may be sensitive to excessive noise and/or activity on the Plaza, especially during certain times of year, including, without limitation, student orientation and mid-term and finals testing periods. The City shall endeavor to minimize the extent to which use of the Plaza by the City or any of its agencies or

permittees interferes with PLAZA PARTNER's operations on or around the Plaza.

E. PLAZA PARTNER shall pay for, or cause to be paid any and all fees or royalties to ASCAP, BMI or such entities as may be required for any music or music programming during its Plaza Events, and DOT shall pay for any such fees or royalties relating to DOT's events.

F. Any sign posted by PLAZA PARTNER or its subconcessionaire(s) at the Plaza in connection with a Plaza Event, shall be appropriately located, and shall state that the Plaza is a New York City municipal concession operated by PLAZA PARTNER.

G. In addition to the SAPO permit fee collected by CECM, PLAZA PARTNER may collect a concession fee from the event sponsor or holder for any Commercial/Promotional events (as defined in section 1-01 of Title 50 of the Rules of the City of New York) held at the Plaza. These fees shall be included as part of PLAZA PARTNER's Revenue pursuant to Section 5 of this MOA. Such fees shall be set forth in attached **Schedule A**, which may be amended from time to time upon mutual consent of the parties, and shall be posted on SAPO's website.

9. SPONSORSHIPS AND GIFTS

A. Sponsorships

- (1) DOT may, in its discretion, permit PLAZA PARTNER to accept sponsorships solely for the benefit of the Plaza. However, under no circumstances are tobacco, e-cigarette, non-tobacco smoking products, or alcohol sponsorships permitted. As set forth in Section 5, such sponsorships shall be considered Revenue. Sponsorships generated for the general benefit of the PLAZA PARTNER, or which are not otherwise for the benefit of the Plaza, shall not be subject to DOT approval and shall not be considered Revenue. However, if portions of such general sponsorships are for the benefit of the Plaza, those portions thereof shall be included in the Revenue and shall be subject to the provisions of this subsection. Any such sponsorships shall be restricted in size, quantity and location as deemed appropriate by DOT.
- (2) All sponsorships benefiting the Plaza must be approved by DOT prior to their acceptance by PLAZA PARTNER. Additionally, PLAZA PARTNER must obtain DOT's prior written approval before entering into any sponsorship agreements (if any) where the sponsorship benefits the Plaza. Such approval or denial shall not be unreasonably delayed or withheld. PLAZA PARTNER shall provide DOT with no less than thirty (30) days (or such lesser period as shall be acceptable to DOT) prior written notice of any such proposed sponsorships.

B. Gifts

- (1) DOT may, in its discretion, permit PLAZA PARTNER to accept gifts solely for the benefit of the Plaza. For purposes of this MOA, such gifts shall not

be considered Revenue. Gifts obtained for the general benefit of the PLAZA PARTNER or which are not otherwise for the benefit of the Plaza shall not be subject to DOT approval. However, if portions of such general gifts are for the benefit of the Plaza, those portions thereof shall be subject to the provisions of this subsection.

- (2) All gifts benefiting the Plaza must be approved by DOT prior to their acceptance by PLAZA PARTNER. Additionally, PLAZA PARTNER must obtain DOT's prior written approval before entering into any gift agreements (if any) where the gift benefits the Plaza. Such approval or denial shall not be unreasonably delayed. PLAZA PARTNER shall provide DOT with no less than thirty (30) days (or such lesser period as shall be acceptable to DOT) prior written notice of any such proposed gift.
- (3) PLAZA PARTNER shall prepare and provide to DOT quarterly reports detailing any such gifts benefiting the Plaza, in a format reasonably acceptable to DOT.

C. The parties hereto agree that no writing, posters, plaques or banners shall be placed at the Plaza at any time, without DOT's prior written approval. Such approval or denial shall not be unreasonably delayed. It is expressly agreed that commemorative plaques and banners shall be erected in conformance with all applicable rules.

D. PLAZA PARTNER shall not place or allow the placement of any notice or sign in or on the Plaza without DOT's written approval. Such approval or denial shall not be unreasonably delayed. PLAZA PARTNER, upon one (1) business days' notice, shall remove any and all unauthorized notice or signage placed in or on the Plaza. In the case of PLAZA PARTNER's failure to remove any such notice or signage, DOT may remove such notice or signage at PLAZA PARTNER's cost for such removal.

E. For the avoidance of doubt, sponsorships and gifts as contemplated in this Section are not considered Plaza Events and are not subject to SAPO's rules.

10. INSPECTION AND AUDIT OF RECORDS

A. PLAZA PARTNER agrees that it shall comply with all of the provisions set forth in this Section, and with respect to the operations of the Subconcession(s), such provisions will be incorporated in the subconcession agreement, as attached as **Exhibit D**.

B. PLAZA PARTNER shall establish and maintain accurate records and accounts, in a manner reasonably satisfactory to DOT, which sufficiently and properly reflect all Revenue and direct and indirect costs of any nature resulting from PLAZA PARTNER's operations pursuant to this MOA, and set forth, in a manner reasonably satisfactory to DOT, its expenditures in any way connected to the Services under this MOA. Such records and accounts shall conform to generally accepted accounting principles.

C. PLAZA PARTNER shall establish and maintain accurate records and accounts, in a manner reasonably satisfactory to DOT, which sufficiently and properly reflect all activities

concerning the Accrual Fund subject to section 5(G) above.

D. PLAZA PARTNER will provide notice to DOT of all public meetings, hearings, and proceedings of PLAZA PARTNER's Board of Directors related to the operation and management of the Plaza; maintenance and/or repair of the amenities listed in Exhibit B that are installed within the Plaza as specifically set forth in this MOA, and will make available for consultation, at reasonable times and upon reasonable prior written notice, any of the CUNY Users whose work relates to the performance of this MOA. PLAZA PARTNER also will make available, at its principal place of business and upon reasonable prior written notice, for audit, inspection, or removal of copies by DOT, the Comptroller of the City of New York ("Comptroller"), and/or by a DOT-authorized independent auditor, PLAZA PARTNER's books and records relating to the performance of this MOA, including, but not limited to:

- (1) all fiscal records, including books, accounts, and canceled checks;
- (2) internal and external audits completed within the last three fiscal years;
- (3) minutes of public meetings of the Board of Directors;
- (4) reports of accidents and other incidents;
- (5) programs, research, and other reports and publications in connection with PLAZA PARTNER's responsibilities in the Plaza pursuant to this MOA; and
- (6) records of PLAZA PARTNER sponsored programs, and any other matters relating to the performance of and compliance with this MOA, or with any laws or regulations governing the conduct of PLAZA PARTNER under this MOA.

E. PLAZA PARTNER shall furnish to DOT a detailed audited and certified financial statement of PLAZA PARTNER related to the operation and management of the Plaza; and the maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Plaza as specifically set forth in this MOA for each fiscal year during the Term of this MOA and any renewals thereof. Such statements shall include in reasonable detail the amounts allocated for the operation and management of the Plaza; and the maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Plaza as specifically set forth in this MOA, including but not limited to the Services described herein and reasonable administrative costs, including but not limited to a list of all personnel salaries or a portion thereof, reflecting their work performed as it relates to the Plaza. Such statements shall be prepared by an independent certified public accountant retained at the sole cost and expense of PLAZA PARTNER. Such annual statement shall be submitted to DOT no later than 180 days after the close of each fiscal year. In addition, PLAZA PARTNER shall provide DOT within thirty (30) days of execution, any required tax filings with the Internal Revenue Service (such as the Form 990 and any successor form) and any required financial reports with the New York State Department of Law (such as annual report to be filed with the Charities Bureau or any successor report). Finally, PLAZA PARTNER shall prepare and provide to DOT any other reports as reasonably requested by DOT and/or pursuant to this MOA.

- (1) Notwithstanding the above, for each fiscal year in which PLAZA PARTNER generates less than \$150,000 in Revenue, PLAZA PARTNER, may, in lieu of the audited and certified financial statement related to the operation and management of the Plaza; and the maintenance and/or repair of the amenities listed in Exhibit B that are installed within the Plaza as specifically set forth

in this MOA for each fiscal year during the Term of this MOA and any renewals thereof, furnish to DOT a reviewed financial statement of PLAZA PARTNER related to the operation and management of the Plaza; and the maintenance and/or repair of amenities listed in Exhibit B that are installed within the Plaza as specifically set forth in this MOA for each fiscal year during the Term of this MOA and any renewals thereof. Such statements shall include in reasonable detail the amounts allocated for the operation and management of the Plaza; and the maintenance and/or repair of the amenities listed in Exhibit B that are installed within the Plaza as specifically set forth in this MOA, including but not limited to the Services described herein and reasonable administrative costs, including but not limited to a list of all personnel salaries or a portion thereof, reflecting their work performed as it relates to the Plaza. Such review shall be conducted by an independent certified public accountant at the sole cost and expense of PLAZA PARTNER. Such annual statement shall be submitted to DOT no later than 180 days after the close of each fiscal year.

F. PLAZA PARTNER shall 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 PLAZA PARTNER, including Revenue and Accrual Fund (if applicable). Such books and records maintained pursuant to this MOA shall be conveniently segregated from other business matters of PLAZA PARTNER and shall include, but not be limited to:

- (1) all federal, state and local tax returns and schedules of PLAZA PARTNER;
- (2) records of daily bank deposits of the entire receipts from transactions in, at, on or from the Plaza, whether maintained in hard copy or in electronic form;
- (3) sales slips, daily dated cash register receipts, sales books; and
- (4) duplicate bank deposit slips and bank statements, whether maintained in hard copy or in electronic form.

G. PLAZA PARTNER shall submit to DOT reports, including but not limited to the monthly Revenue, the Accrual Fund (if applicable), monthly reconciliation reports demonstrating the difference between the Revenue and the DOT-approved budgeted expenses, and operational status reports in a form reasonably acceptable to DOT, within 10 business days of the end of each quarter during the Term of the MOA. Notwithstanding the above, however, DOT reserves the right to reasonably request PLAZA PARTNER to submit to DOT any other reports and/or information by electronic mail to plazas@dot.nyc.gov.

H. PLAZA PARTNER shall use such accounting and internal control methods and procedures and keep such additional books and records as may be reasonably prescribed by DOT or the Comptroller, and DOT and/or the Comptroller shall have the right to examine the recordkeeping procedures of PLAZA PARTNER prior to the commencement of the term of this MOA, and at any time thereafter, in order to assure that the procedures are adequate to reveal the true, correct and entire business conducted by PLAZA PARTNER.

I. The failure or refusal of PLAZA PARTNER to furnish any of the statements required to be furnished under this Section within thirty (30) days after its due date, the failure or

refusal of PLAZA PARTNER to maintain adequate internal controls or to keep any of the records as required by this Section after written prior notice from DOT or the Comptroller or the existence of any unexplained discrepancy in the amount of fees required to be expended hereunder, as disclosed by audit conducted by DOT or the Comptroller, the results of which are provided by written notice to PLAZA PARTNER in each instance, of more than five percent (5%) in any two (2) out of three (3) consecutive months or more than ten percent in one month, shall be presumed to be a failure to substantially comply with the terms and conditions of this MOA and a default hereunder, which shall entitle DOT, at its option, to terminate this MOA.

J. PLAZA PARTNER shall and shall require its subconcessionaire(s) to retain all books, records, documents and other evidence relevant to this MOA for six (6) fiscal years after the expiration or termination of this MOA. City, State and federal auditors shall have full access to and the right to examine any of said materials during this period at reasonable times and upon reasonable prior written notice to PLAZA PARTNER. In addition, if any litigation, claim, or audit concerning this MOA has commenced before the expiration of such six-year period, the books, records, documents, and other evidence must be retained until the completion of such litigation, claim or audit. Any books, records, documents or other evidence that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, documents, or other evidence that are created in the regular course of business as paper copy may be retained in an electronic format provided that they satisfy the requirements of N.Y. Civil Practice law and Rules (“CPLR”) 4539(b), including the requirement that the reproduction is created in a manner “which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes.”

K. Notwithstanding anything else to the contrary contained in this MOA, the parties acknowledge and agree that the powers, duties and obligations of the Comptroller, pursuant to the provisions of the New York City Charter, shall not be diminished, compromised or abridged in any way.

L. This Section shall survive the expiration or earlier termination of this MOA.

11. INTENTIONALLY OMITTED

12. RESPONSIBILITY FOR SAFETY, INJURIES OR DAMAGE

A. PLAZA PARTNER Responsibilities

- (1) PLAZA PARTNER shall take all reasonable precautions to protect the safety of the CUNY Users and CUNY Parties while they are involved in the operations under this MOA. Notwithstanding the foregoing, and for the avoidance of doubt, the Parties agree that any precautions taken by PLAZA PARTNER as hereinbefore stated shall in no way be deemed an assumption, or transfer to, PLAZA PARTNER of liability for security or public safety on the Plaza.
- (2) PLAZA PARTNER shall take 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 which are within the scope of PLAZA

PARTNER'S responsibilities under this MOA.

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

13. ASSIGNMENT

A. No assignment, sale, mortgage or transfer of any interest of this MOA by any Party, in whole or in part, will be effective unless it is agreed to, in writing, by the other Parties and signed by the appropriate official, nor shall this MOA be transferred by operation of law, it being the purpose and spirit of this MOA to grant this privilege solely to the undersigned Parties.

B. PLAZA PARTNER shall not enter into any subcontracts where the aggregate value per annum is \$20,000 or above for the performance of its obligations, in whole or in part, under this License as referenced in Section 3 herein without DOT's prior written approval, including a favorable responsibility determination. Such approval or denial shall not be unreasonably delayed. Two (2) copies of each such proposed subcontract shall be submitted to DOT with PLAZA PARTNER's written request for approval. Such approval or denial shall not be unreasonably delayed. The PLAZA PARTNER shall ensure that the subcontractor(s) complete and submit an online Procurement and Sourcing Solutions Portal (PASSPort) Vendor and Principle Questionnaires (formerly known as Vendor Information Exchange System (VENDEX) forms) to the Mayor's Office of Contract Services if the aggregate value of City contracts, franchises and concessions awarded that subcontractor, including this one, during the immediately preceding twelve-month period equals or exceeds the Threshold. For the avoidance of doubt, the requirements in this Section shall not apply to subconcessionaires. All subcontracts shall contain provisions specifying:

1. that work performed by the subcontractor must be in accordance with the terms of the MOA between DOT and PLAZA PARTNER;
2. that nothing contained in such agreement shall impair the rights of DOT;
3. that nothing contained herein, or under the MOA between DOT and PLAZA PARTNER, shall create any contractual relation between the subcontractor and DOT;
4. that PLAZA PARTNER is fully responsible to DOT for the acts and omissions of

the subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it; and

5. that the subcontractor is not in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the City, unless such default or breach has been waived in writing by the City;

6. that the subcontractor has not been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) fiscal years;

7. that the subcontractor has not been convicted of a felony in the past ten (10) fiscal years;

8. that the subcontractor has not received formal written notice from a federal, state or local governmental agency or body that such person is currently under investigation for a felony criminal offense; and/or

10. that the subcontractor has not received notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in court or other appropriate forum.

C. Failure of any Party to obtain any required consent to any assignment (the "Assigning Party") shall be grounds for termination for cause, at the option of the other Party (the "Non-Assigning Party"). If so terminated, the Non-Assigning Party shall thereupon be relieved and discharged from any further liability and obligation to the Assigning Party, its assignees or transferees. If PLAZA PARTNER is the Assigning Party, all monies due under the MOA as of the date of such assignment shall be forfeited to the City.

D. Subject to Section 13(A), this MOA may be assigned by the City to any corporation, agency or instrumentality having authority to accept such assignment.

14. CAPITAL IMPROVEMENTS AND ALTERATIONS

A. PLAZA PARTNER may, at its sole cost and expense, make or permit the subconcessionaire(s) to make capital improvements to the Plaza by installing other amenities in addition to those already installed and listed in **Exhibit B** upon DOT's prior written approval. PLAZA PARTNER shall not apply any Revenue to any such capital improvements, however, PLAZA PARTNER may apply gifts as contemplated in Section 9(B) to any such capital improvements. If the PLAZA PARTNER plans to capitally improve the Plaza, PLAZA PARTNER shall submit to DOT such plans for its prior written approval. Such approval or denial shall not be unreasonably delayed. The capital improvement plans shall include a detailed description of the proposed improvements, a cost breakdown, drawings/schematics of the proposed improvements and any other documentation that DOT requests relevant to the proposed improvements.

B. PLAZA PARTNER may, at its sole cost and expense, make or permit the subconcessionaire(s) to make alterations to the Plaza as described below. PLAZA PARTNER shall not apply any Revenue to any such alterations, however, PLAZA PARTNER may apply gifts

as contemplated in Section 9(B) to any such alterations.

C. PLAZA PARTNER shall not make, or permit the subconcessionaire(s) to make, any alterations to the Plaza without the prior written approval of DOT. "Alteration" shall have the following meaning:

- (1) any restoration, rehabilitation, modification, renovation or major improvement to the Plaza;
- (2) any work or construction which would affect in any manner, or have substantial impact upon the exterior structure, character, appearance, horticulture or design of any portion of the Plaza, including adjacent areas and Subconcession(s);
- (3) any work, excluding maintenance and repair, affecting the Plaza's plumbing, heating, electrical, mechanical, ventilating, or other systems;
- (4) removal of perimeter planters on the Plaza;
- (5) affixing or installing any equipment to the walls or any other area of the Plaza.

D. Upon installation of any such capital improvements and Alteration(s), title to all improvements and Alteration(s) shall vest in and thereafter belong to the City at the City's option, which may be exercised at any time after the substantial completion of the capital improvements and Alteration(s). Such title may only vest in the City upon payment of the fair market value of the capital improvements and Alteration(s) by the City to PLAZA PARTNER. To the extent the City chooses not to exercise its option with respect to any of the capital improvements and Alteration(s) made by PLAZA PARTNER, it shall be the responsibility of PLAZA PARTNER to remove such items after the expiration or termination of this MOA and restore the Plaza to its original state as of the Commencement Date, normal wear and tear excepted and to the reasonable satisfaction of DOT at the sole cost and expense of PLAZA PARTNER; provided, that, PLAZA PARTNER shall have no obligation with respect to removal items that are "DOT Standard".

E. Additions, Alterations, Repairs, Decorations, or Improvements

- (1) DOT may, in its sole judgment, make additions, alterations, repairs, decorations or improvements to the Plaza at DOT's and the City's expense, but nothing contained herein shall be deemed to obligate or require DOT to make any additions, alterations, repairs, decorations, or improvements, nor shall this provision in any way affect, increase or impair PLAZA PARTNER's obligations in any respect.
- (2) DOT will coordinate with PLAZA PARTNER and provide reasonable prior notice to PLAZA PARTNER of any such additions, alterations, repairs, decorations or improvements. DOT shall use best efforts to schedule any such alteration, additions, decorations, repairs, or improvements to be made by DOT at such times as will cause the least interference with PLAZA

PARTNER's operations.

- (3) DOT shall use best efforts to schedule work at times that would completely restrict Noise Work (as hereinafter defined) from taking place on the Plaza during (i) scheduled study periods prior to final exams and the final exam period; (ii) the four (4) scheduled Welcome Days at the beginning of each semester; and (iii) commencement period (collectively "Noise Sensitive Days"). PLAZA PARTNER shall provide DOT with notice of the Noise Sensitive Days as soon as such Noise Sensitive Days are known, but no less than thirty (30) in advance of such Noise Sensitive Days. The total number of Noise Sensitive Days shall not exceed fourteen (14) days in the aggregate during each academic semester and no more than four (4) academic semesters (fall, spring, winter and summer), will be covered by this restriction each calendar year.
- (4) For purposes of this section, "Noise Work" means work that involves the use of drills, sledge-hammers, other similarly loud tools, and any type of work that is disruptive to the surroundings.

15. INTENTIONALLY OMITTED

16. PERSONNEL

A. All persons who are employed by PLAZA PARTNER and all PLAZA PARTNER's subconcessionaire(s) and subcontractor(s) (including without limitation, consultants and independent contractors) that are retained to perform services under or in connection with this MOA are neither employees of the City nor under contract with the City. PLAZA PARTNER, and not the City, is responsible for their work, direction, compensation, and personal conduct while PLAZA PARTNER is engaged under this MOA. Nothing in this MOA, and no entity or person's performance pursuant to or in connection with this MOA, shall create any relationship between the City and CUNY Users (including without limitation, a contractual relationship, employer-employee relationship, or quasi-employer/quasi-employee relationship) or impose any liability or duty on the City (i) for or on account of the acts, omissions, liabilities, rights or obligations of CUNY Users (including, without limitation, obligations set forth in any collective bargaining agreement), its subconcessionaire(s), or its subconcessionaire(s) employees or agents; or (ii) for taxes of any nature; or (iii) for any right or benefit applicable to an official or employee of the City or to any CUNY User or any other entity (including without limitation, Workers' Compensation coverage, Employers' Liability coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage, employee health and welfare benefits or employee retirement benefits, membership or credit). CUNY Users shall not, by reason of this MOA or any performance pursuant to or in connection with this MOA, (i) hold themselves out as, or claim to be, officials or employees of the City, including any department, agency, office, or unit of the City, or (ii) make or support in any way on behalf of or for the benefit of PLAZA PARTNER or CUNY Users any demand, application, or claim upon or against the City for any right or benefit applicable to an official or employee of the City or to any CUNY Users or any other entity. Except as specifically stated in this MOA, nothing in the MOA and no performance pursuant to or in connection with the MOA shall impose any liability or duty on the City to any person or entity whatsoever.

17. INTENTIONALLY OMITTED

18. NOTICE

All notices, from PLAZA PARTNER to DOT shall be in writing and delivered to the attention of the Assistant Commissioner of Public Realm, New York City Department of Transportation, 55 Water Street, 6th Floor, New York, NY 10041, or such other address as DOT may designate, with copies sent to DOT's General Counsel at same address. All notices from DOT to PLAZA PARTNER shall be dispatched in the same manner and delivered to PLAZA PARTNER at to the Office of Legal Affairs and Labor Relations, Baruch College, 137 E. 22nd St., 3rd Floor, New York, NY 10010, with a copy to the Office of the General Counsel, The City University of New York, 205 East 42nd Street, 11th Floor, New York, New York 10017, or such other address as may be notified from time to time.

19. TERMINATION

A. PLAZA PARTNER shall have the right to terminate this MOA in whole or in part with cause and it shall provide DOT with no less than six months' written notice.

B. DOT shall have the right to terminate this MOA in whole or in part:

- (1) Under any right to terminate as specified in any Section of this MOA providing for termination for cause.
- (2) If PLAZA PARTNER breaches any of the material terms and conditions of this MOA, including PLAZA PARTNER'S failure to perform, or to cause subconcessionaire(s) to perform, services at the required standards set forth in Sections 1, 3, 6, 7, 8, and 14 of this MOA.
- (3) Upon PLAZA PARTNER becoming insolvent.
- (4) Upon the commencement of any proceeding under the Bankruptcy Act, by or against PLAZA PARTNER, either voluntary or involuntary.
- (5) Upon DOT's determination that this MOA should be terminated without cause. DOT shall provide written notice of such termination to PLAZA PARTNER, and this MOA shall terminate effective ninety (90) days from the date such notice is received by PLAZA PARTNER.

C. DOT shall give PLAZA PARTNER written notice of any termination of the MOA specifying therein the applicable provisions of subsection B of this Section and the effective date thereof, which shall not be less than sixty (60) days from the date of receipt of written notice by PLAZA PARTNER.

D. With regard to paragraph B(2) of this Section, DOT shall first give written notice to PLAZA PARTNER outlining in reasonable detail, the alleged breach. If the breach(es) is not

cured by PLAZA PARTNER within a reasonable time (if no time is specified), or in the time specified in DOT's notice, either of which shall in no event be less than ninety (90) days except in cases of emergency (as reasonably determined by DOT), the failure to cure the deficiencies shall result in immediate termination of this MOA.

E. Upon such termination PLAZA PARTNER shall quit the Plaza and surrender all City property therein in good, clean, and orderly condition, ordinary wear and tear excepted.

F. PLAZA PARTNER agrees that upon expiration, or sooner termination of this MOA, it shall immediately cease all operations and cause any subconcessionaire(s) to cease all operations pursuant to this MOA and shall vacate and cause any subconcessionaire(s) to vacate the Plaza without any further notice by the City and without resort to any judicial proceeding by the City. Upon the expiration, or sooner termination of this MOA, City reserves the right to take immediate possession of the Plaza.

G. PLAZA PARTNER shall, or shall cause its subconcessionaire(s), on or prior to the expiration or sooner termination of this MOA, remove all personal possessions from the Plaza. PLAZA PARTNER acknowledges that any personal property remaining on the Plaza after the expiration, or sooner termination of this MOA, is intended by PLAZA PARTNER to be abandoned. PLAZA PARTNER shall remain responsible to the City for actual damages, including the reasonable cost of removal or disposal of property, should PLAZA PARTNER and/or its subconcessionaire(s) fail to remove all possessions from the Licensed Plaza on or before the expiration or termination date. PLAZA PARTNER shall pay any damages promptly upon the City's demand. In lieu of payment of damages or costs, and upon notice and demand from DOT, PLAZA PARTNER may remove any property and/or remedy any damages at its own cost.

H. Upon termination of this MOA, PLAZA PARTNER shall comply with DOT close-out procedures, including but not limited to:

- (1) Furnishing within thirty (30) days an inventory to DOT of all equipment, appurtenances and property purchased through or provided under this MOA, and carrying out any DOT directive concerning the disposition thereof.
- (2) Not incurring or paying any further obligation pursuant to this MOA beyond the termination date. Any obligation necessarily incurred by PLAZA PARTNER on account of this MOA prior to receipt of notice of termination and falling due after such date shall be paid by DOT, if such obligation was required by DOT in accordance with the terms of this MOA. PLAZA PARTNER shall be solely responsible for any obligations that are not specifically incurred on account of this MOA. In no event shall the term "obligation", as used herein, be construed as including any lease agreement, oral or written, entered into between PLAZA PARTNER and its landlord.
- (3) Turn over to DOT or its designees all books, records, documents and materials specifically relating to this MOA.
- (4) Submit, within ninety (90) days, a final statement and report relating to the MOA. The report shall be made by a certified public accountant or a licensed public accountant.

I. DOT may suspend this MOA for any reason with written notice to PLAZA PARTNER. Such suspension shall be immediately effective upon the mailing, e-mail or hand delivery thereof. In the event of such notice of suspension, PLAZA PARTNER shall not operate. In the event that PLAZA PARTNER's operation is disrupted due to construction in the immediate area where the Plaza is located, this License may be suspended, at DOT's option.

J. The rights and remedies of the City provided in this Section shall not be exclusive and are in addition to all other rights and remedies provided by law or under this MOA.

K. In the event PLAZA PARTNER continues to operate and manage the Plaza; and/or maintain and/or repair the amenities listed in **Exhibit B** that are installed within the Plaza under this MOA, after the expiration or termination of this MOA, PLAZA PARTNER shall continue to comply with all provisions of this MOA as if the MOA was still in force and effect, throughout the period of such continued operation, provided that any such continued operation and compliance with this MOA shall in no way be construed as a renewal or other extension of this MOA, nor as a limitation on the remedies available to the City as a result of such continued operation after the term of this MOA, including but not limited to, damages and restitution and injunctive relief.

L. Notwithstanding any other provisions of this License, PLAZA PARTNER shall not be relieved of liability to the City for damages sustained by the City by virtue of PLAZA PARTNER's breach of this MOA.

20. COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS

A. PLAZA PARTNER shall faithfully perform and carry out the provisions of this MOA and cause CUNY Users or CUNY Parties to perform and carry out the provisions of this MOA. PLAZA PARTNER shall comply with and shall cause its subconcessionaire(s) to comply with all federal, state, and local laws, rules, regulations, and DOT specifications, standards, and policies applicable to the Plaza and PLAZA PARTNER's use and occupation thereof, including but not limited to the provisions of the New York State Labor Law regarding gratuities.

B. With respect to services provided under this MOA, PLAZA PARTNER shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, partnership status, marital status, disability, presence of a service animal, race, color, national origin, alienage, citizenship status, or military status, or any other class of individuals protected from discrimination in public accommodations by City, State or Federal laws, rules or regulations. PLAZA PARTNER shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

C. This MOA is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 et seq. ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. PLAZA PARTNER shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this MOA. This includes providing safe and accessible opportunities for everyone. To the extent possible, PLAZA PARTNER is encouraged to exceed all applicable accessibility requirements for people with disabilities.

21. REPRESENTATIONS, WARRANTIES AND COVENANTS

A. PLAZA PARTNER makes the following representations and warranties:

- (1) PLAZA PARTNER is a New York education corporation, organized pursuant to Article 125 of the Education Law of the State of New York and acting on behalf of Baruch, and has all requisite power and authority to execute, deliver and perform this MOA.
- (2) Subject to the State Approvals, as defined below, this MOA has been duly authorized by all necessary action on the part of PLAZA PARTNER has been duly executed and delivered by PLAZA PARTNER, and assuming due execution and delivery by DOT, constitutes a legal, valid, binding and enforceable obligation of PLAZA PARTNER.
- (3) The execution and delivery of this MOA, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under PLAZA PARTNER's by-laws, or any statute, indenture, mortgage, deed of trust or other MOA or instrument to which PLAZA PARTNER is bound, or, to the knowledge of PLAZA PARTNER, any order, rule or regulation of any court, governmental agency or body having jurisdiction over PLAZA PARTNER or any of its activities or properties.
- (4) The PLAZA PARTNER has neither been asked to pay, offered to pay, nor paid any illegal consideration, whether monetary or otherwise, in connection with obtaining this MOA.
- (5) The PLAZA PARTNER represents and warrants that, with respect to securing or soliciting this MOA, PLAZA PARTNER is in compliance with the requirements of the New York State Lobbying Law (Legislative Law §§ 1-a et seq.). PLAZA PARTNER makes such representation and warranty to induce the City to enter into this MOA and the City relies upon such representation and warranty in the execution of this MOA. For any breach or violation of the representation and warranty set forth in this paragraph, the Commissioner shall have the right to annul this MOA without liability; and PLAZA PARTNER shall not make claim for, or be entitled to recover, any sum or sums due under this MOA. The rights and remedies of the City provided in this Section are not exclusive and are in addition to all other rights and remedies allowed by Law or under this MOA.

B. City hereby represents and warrants that this MOA has been duly authorized by all necessary action on the part of the City, has been duly executed and delivered by the City and assuming due execution and delivery by PLAZA PARTNER, and registration with the Comptroller, constitutes a legal, valid, binding and enforceable obligation of the City.

C. The parties acknowledge that PLAZA PARTNER is a New York State entity organized pursuant to New York State Education Law and, as such, is subject to certain laws and regulations of the State of New York.

22. CONFLICT OF INTEREST

PLAZA PARTNER represents and warrants that neither it nor any CUNY Users 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. PLAZA PARTNER further represents and warrants that in the performance of this MOA no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this MOA 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 MOA or in the proceeds thereof.

23. NO LEASE

It is expressly understood that the City has title to the Plaza and that no land, building, space, or equipment is leased to PLAZA PARTNER, but that during the term of this MOA, PLAZA PARTNER shall be allowed the use of the Plaza only as herein provided.

24. FEDERAL EMPLOYER IDENTIFICATION NUMBER

PLAZA PARTNER represents that it is not in arrears to the City upon any debt, contract or taxes and is not a defaulter as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of PLAZA PARTNER to receive a MOA or public contracts. The Federal Employer Identification Number of PLAZA PARTNER is 13-3893536.

25. RESERVATION OF RIGHTS AND INTERESTS

A. The parties to this MOA will give each other timely written notice in advance of all press conferences, public ceremonies, or other public or planned news events relating to the subject of this MOA.

B. At any time during the Term of this MOA, PLAZA PARTNER, CUNY Users, and CUNY Parties shall notify and, to the extent practicable, consult with DOT in advance of any intended statement to the press or any intended submission of any material for publication in any media of communication (print, news, television, radio, internet, etc.) regarding the services provided pursuant to this MOA. PLAZA PARTNER, CUNY Users, and CUNY Parties shall provide such notification at least 24 hours prior to any statement to the press and at least one business day prior to the submission of any material for publication, or such shorter periods as are reasonable under the circumstances. In addition, DOT or anyone affiliated with the DOT shall provide advance notification of at least 24 hours prior to any statement to the press and at least one business day prior to the submission of any material for publication, or such shorter periods as are reasonable under the circumstances.

C. If PLAZA PARTNER, or DOT, as the case may be, publishes a work discussing any aspect of the operation of the Plaza as set forth in this MOA (the “Publishing Party”), the Publishing Party will acknowledge therein the involvement, if any, of the other Party hereto (the “Non-Publishing Party”), when appropriate, and the Non-Publishing Party, to the extent referenced therein, will have a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use such publication.

26. INTENTIONALLY OMITTED

27. CHOICE OF LAW/CONSENT TO JURISDICTION AND VENUE

A. This MOA shall be deemed to be executed in the City of New York, State of New York and shall be governed by and construed in accordance with the internal laws of the State of New York. Any and all claims asserted by or against the Parties, or by or against the Parties arising under this MOA or related hereto shall be heard and determined either in the courts of the United States (“Federal Courts”) located within New York City 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 MOA and intent, it is understood that if the City initiates any action arising out of this MOA against PLAZA PARTNER in Federal Court or in New York State Court, service of process may be made on PLAZA PARTNER in accordance with applicable statute. With respect to any action arising out of this MOA between the City and PLAZA PARTNER in New York State Courts, PLAZA PARTNER expressly waives and relinquishes any rights it might otherwise have to move to dismiss on the ground of *forum non conveniens*, to remove the action to Federal Court; and to move for change of venue to a New York State Court located outside of New York County. With respect to any action arising out of this MOA between the City and PLAZA PARTNER in Federal Court located in New York City, PLAZA PARTNER expressly waives and relinquishes any right it might otherwise have to move for a transfer of the action to a Federal Court outside of New York City. If PLAZA PARTNER commences any action arising out of this MOA against the City in a court located other than in the County, City, and State of New York, upon request of the City, PLAZA PARTNER shall consent to a transfer of the action to a court of competent jurisdiction located in the County, City, and State of New York, or if the court where the action is commenced cannot or will not transfer the action, PLAZA PARTNER shall consent to the dismissal of such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction within New York City. All disputes arising out of this MOA shall be interpreted and decided in accordance with the laws of the State of New York.

28. CLAIMS AND ACTIONS THEREON

A. No action at law or proceeding in equity against the Parties shall lie or be maintained upon any claim based upon this MOA or arising out of this MOA or in any way connected with this MOA unless the Parties have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims to the extent herein provided.

29. CLAIM AGAINST OFFICERS OR EMPLOYEES

No claim whatsoever shall be made by the Parties against any officer, agent, employee or volunteer of such Party for, or on account of, anything done or omitted in connection with this MOA.

30. PARTICIPATION IN AN INTERNATIONAL BOYCOTT

A. PLAZA PARTNER agrees that neither PLAZA PARTNER nor any substantially owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.

B. Upon the final determination by the Commerce Department or any other agency of the United States as to conviction of PLAZA PARTNER or a substantially-owned affiliated company thereof, or participation in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, or the regulations promulgated thereunder, the Comptroller may, at his option, render, forfeit and void this License.

C. PLAZA PARTNER shall comply in all respects, with the provisions of §6-114 of the Administrative Code of the City of New York and the rules and regulations issued by the Comptroller thereunder.

31. TRADEMARK

The City is the trademark owner of various marks and has licensed the use of those trademarks for use on certain designated merchandise. If PLAZA PARTNER or its subconcessionaire(s) sells merchandise that uses the City's trademarks, they shall purchase such merchandise from authorized licensees of the City of New York. The knowing sale of counterfeit or unlicensed merchandise at the Plaza will result in the immediate termination of this MOA.

32. INTENTIONALLY OMITTED

33. STATE APPROVALS

In accordance with Section 112 of the New York State Finance Law and Section 6218 of the New York State Education Law, this agreement, and any amendment or modification to same, shall not be valid, effective or binding upon the State of New York, CUNY, or Arcadis until it has been approved by the New York Attorney General Contract Approval Unit and the Office of the State Comptroller (collectively, the "State Approvals").

34. EMINENT DOMAIN AND PUBLIC USE

In the event that the Plaza or any part thereof is condemned for a public use, whether by DOT or any other agency of government, PLAZA PARTNER waives any and all claims to an award for its MOA or other damage by reason of such requirement or condemnation, including but not limited to awards for fixtures and moving expenses. Notwithstanding the foregoing, DOT shall, upon PLAZA PARTNER's request, use reasonable efforts to provide PLAZA PARTNER with a new location if relocation is feasible, or, alternatively, at PLAZA PARTNER'S election, the MOA term may be tolled for the period of time during which the public work being performed causes an interruption to PLAZA PARTNER's business or the business of any subconcessionaire operating at the Plaza. In such case, the MOA term shall begin to run again as soon as the public

work is completed and PLAZA PARTNER or its subconcessionaire(s), as the case may be, is able to resume its business.

35. DEVELOPMENT PURPOSES

In the event that the Plaza or any part thereof is required by DOT or any other agency of government for development purposes, construction, repairs or other work, PLAZA PARTNER agrees that this MOA shall terminate with regard to the affected area(s) and PLAZA PARTNER shall vacate the affected area(s) upon twenty-five (25) days' written notice from DOT. Notwithstanding, PLAZA PARTNER does not waive its rights to claims for damage to adjacent property caused by the actions of DOT and/or its contractors or subcontractors.

36. SEVERABILITY

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

37. ALL LEGAL PROVISIONS DEEMED INCLUDED

It is the intent and understanding of the parties to this MOA that each and every provision of law required to be inserted in the MOA 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 MOA 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.

38. MODIFICATION

No waiver or modification of any provision of this MOA will be effective unless it is in writing and signed by duly authorized representatives of DOT and PLAZA PARTNER.

39. ENTIRE AGREEMENT

This MOA, and the Standard Clauses for New York State Contracts, Version June 2023 ("Appendix A"), annexed hereto, 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 MOA shall be deemed to exist or to bind any of the parties hereto or to vary any of the terms contained herein. In the event of a conflict between the terms of Appendix A and any other terms of this Agreement, the terms of Appendix A shall take precedence.

NO FURTHER TEXT ON THIS PAGE

40. COUNTERPARTS

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

Agreed to this _____ day of _____, 20__:

By: _____

Michelle Craven
Associate Deputy Office of Cityscape and Franchises New York
City Department of Transportation

Dated:

By: _____

Derek Davis
Senior Vice Chancellor for Legal Affairs and General Counsel
The City University of New York

Dated:

Approved as to Form and Certified as to Legal Authority:

COUNTY OF NEW YORK)

On this _____ day of _____, 20____ before me personally came Michelle Craven to me known, and known to be the Associate Deputy Commissioner, Office of Cityscape and Franchises for the New York City Department of Transportation, and the said person described in and who executed the forgoing instrument and she acknowledged that she executed the same in her official capacity and for the purpose mentioned therein.

Notary Public

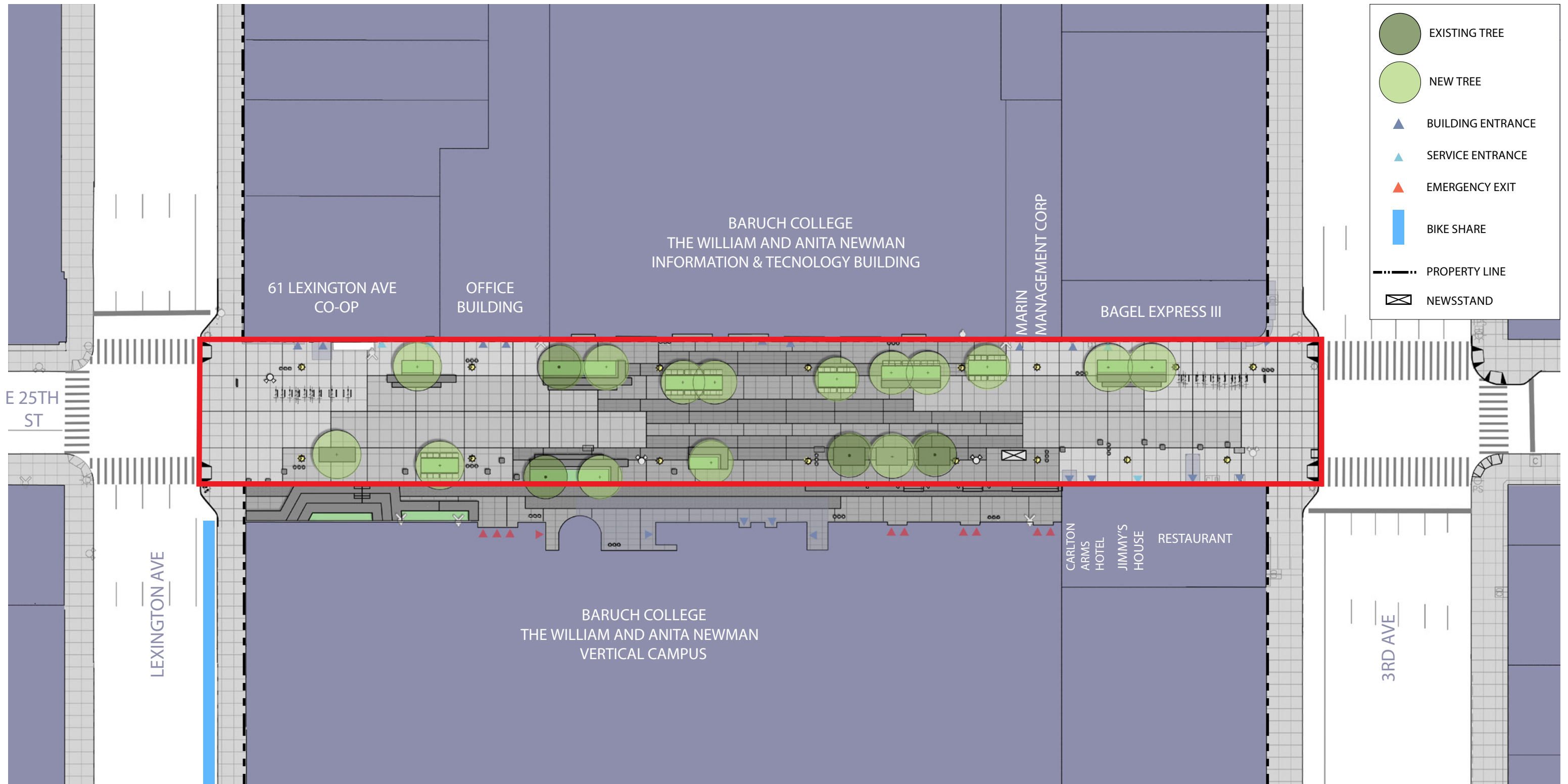
COUNTY OF NEW YORK)

On this day of , 20__ before me personally came Derek Davis, who, being duly sworn by me did depose and say that he is the General Counsel the City University of New York the corporation described in and who executed the foregoing instrument and he acknowledged that he executed the same in his/her official capacity and for the purposes mentioned therein.

Notary Public

Exhibit A

[Map of Plaza, which includes total square footage]



25th STREET PLAZA



Plaza Area = Approx. 28,000 SF

Exhibit B

[List of Amenities (all quantities listed below are approximations)]

Plaza Paving

- DOT Standard pigmented concrete paving, 25,200 Square Feet)
- DOT Standard Steel faced concrete curb (94 Linear Feet)

Landscaping

- In-ground planters (14)
- Metal tree guards (614 Linear Feet)
- Moveable planters (4)
- Plantings (1,812 Square Feet)
- Trees (19)

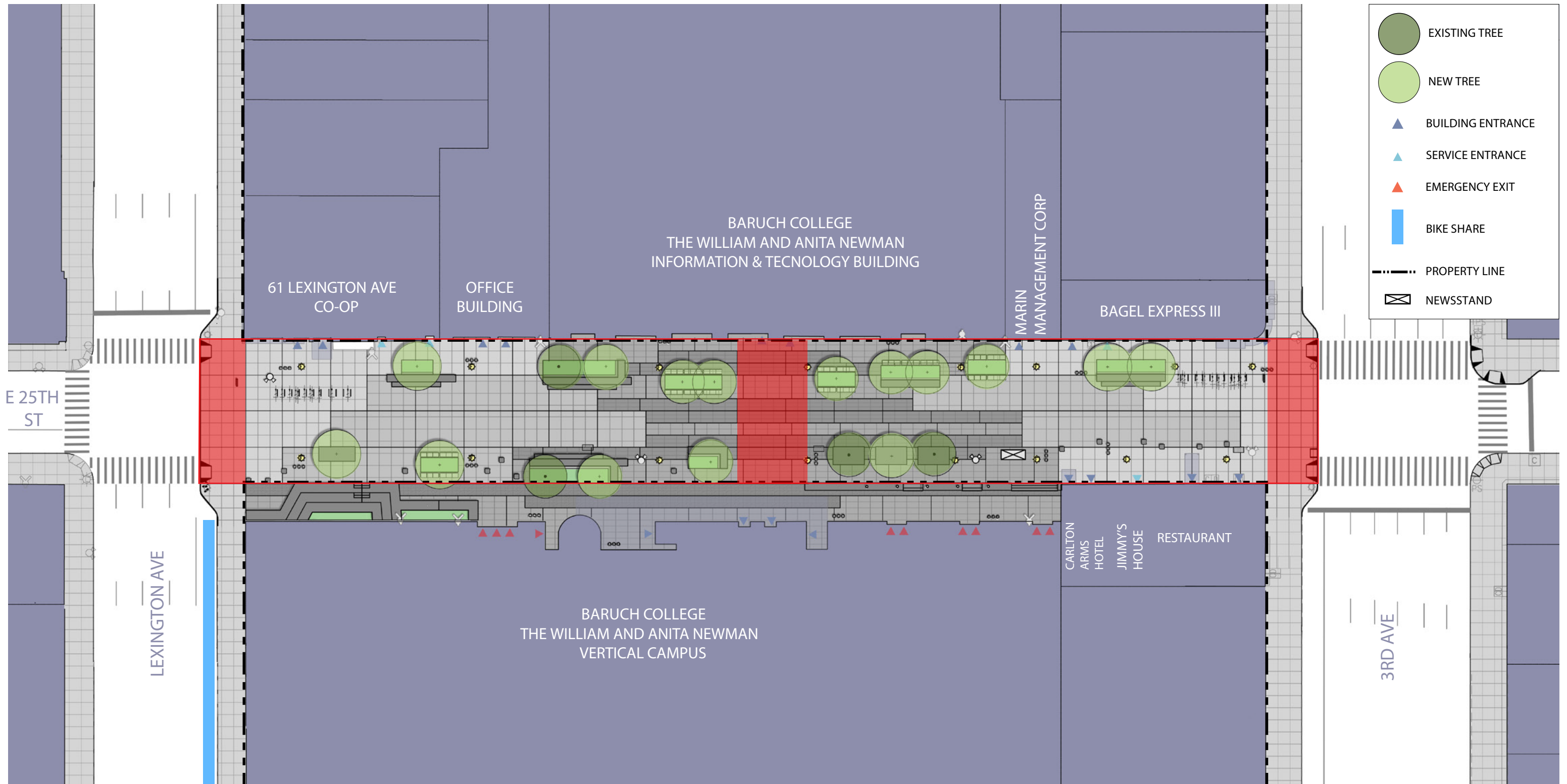
Furnishings

- Umbrellas (10)
- Movable tables (14)
- Movable chairs (44)
- DOT Standard Bicycle Racks (21)
- DOT Standard City Benches (21)
- Granite Seat Walls (207 Linear Feet)
- 44 Gallon Trash Bins (15)
- 44 Gallon Metal Recycling Bins (15)
- 44 Gallon Plastic Recycling Bins (15)
- DOT Standard Wayfinding Kiosks (2)

Infrastructure

- Electrical Box (1)
- Ground Hydrant (3)
- DOT Standard Flushing Meadow pedestrian light poles (16)
- Catch Basins (7)

Exhibit C
[Snow Removal Map]



25th STREET PLAZA



Plaza Area = Approx. 28,000 SF



Snow Removal Zone

Exhibit D
[Form of Subconcession Agreement]

**SUBLICENSE AGREEMENT
FOR THE OPERATION OF A PLAZA SUBCONCESSION
TERMS AND CONDITIONS**

THIS SUBLICENSE AGREEMENT ("Sublicense"), made and effective as of the ____ day of _____, 20__ between the The City University of New York, acting on behalf of Baruch College (the "College") at [PARTNER ADDRESS] and [SUBLICENSEE NAME], having its principal office at [SUBLICENSEE ADDRESS] ("SUBLICENSEE").

WHEREAS, through a non-exclusive concession license agreement ("License Agreement") with the City of New York ("City") through its Department of Transportation ("DOT"), the College operates and manages a DOT designated pedestrian plaza, located at XXXX in the borough of XXX, NY ("Licensed Plaza"), and as illustrated in **Attachment A**.

WHEREAS, the Franchise and Concession Review Committee of the City of New York ("FCRC") authorized DOT to enter into a License Agreement with College, to provide for the operation and management of the Licensed Plaza and maintenance and/or repair of certain amenities installed within the Licensed Plaza, including through City-approved plaza events, sponsorships, gifts, market concession(s) and subconcession(s), including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Licensed Plaza. See **Attachment B** for a complete copy of the License Agreement.

WHEREAS, College provides, or causes to be provided, services for the maintenance and repair of certain amenities within the Licensed Plaza to the reasonable satisfaction of the DOT ("Services"), in accordance with the License Agreement.

WHEREAS, College issued a competitive Request for Proposals for the Baruch Plaza on [DATE OF RFP], and SUBLICENSEE was the winning proposer, as recommended by the Selection Committee and ratified by the College's Board of Directors on [DATE OF RATIFICATION]. A copy of the SUBLICENSEE's proposal is provided in **Attachment C** and a copy of the RFP is provided in **Attachment D**.

WHEREAS, SUBLICENSEE has been selected to operate and manage a subconcession, more specifically a [TYPE OF SUBCONCESSION e.g. food and beverage kiosk/market] at the [PLAZA NAME] ("Subconcession"). The Subconcession and surrounding seating area will be located [LOCATION DESCRIPTION] of the Baruch Plaza ("Subconcession Area"), Another similar subconcession will not be selected to operate in the Subconcession Area for the duration of this Sublicense.

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

I. SCOPE OF SUBLICENSE AND USE OF LICENSED PLAZA

- A. This Sublicense shall constitute a license, not a lease, where no leasehold or other proprietary rights are offered. This Sublicense and every right of SUBLICENSEE hereunder is and shall be at all times remain subject and subordinate in all respects to each and every term, covenant, condition and provision of the License Agreement, and is incorporated herein. It is expressly understood that SUBLICENSEE has no property interest in the Licensed Plaza and that no land, building, space, or equipment is leased or otherwise conveyed to SUBLICENSEE by this document.
- B. College grants SUBLICENSEE, at its sole cost and expense, the right to operate the [Kiosk] in such a manner as College and DOT shall reasonably prescribe, pursuant to this Sublicense, and as permitted by the laws, rules, regulations and orders of government agencies having jurisdiction thereof.
- C. SUBLICENSEE shall accept the Licensed Plaza in its “as is” condition.
- D. SUBLICENSEE shall provide the necessary number of personnel having the requisite skills together with the necessary personal equipment and consumable supplies and shall operate the Subconcession as provided herein.
- E. SUBLICENSEE shall, at its sole cost and expense, obtain all licenses, permits and approvals from all government agencies having jurisdiction over the conduct of SUBLICENSEE's business at the Subconcession, as required for the operation of the Subconcession in accordance with all applicable laws, rules and regulations, specifications, standards and policies. SUBLICENSEE shall provide complete copies of all relevant permits, licenses, operating certificates and other documents that provide or otherwise evidence SUBLICENSEE's due authorization to _____ in the City of New York.
- F. SUBLICENSEE shall utilize existing Licensed Plaza seating and amenities that are provided and maintained by the College. SUBLICENSEE shall ensure that the Subconcession and Subconcession Area be arranged so that pedestrian traffic and the site lines of motorists are not unreasonably inhibited and the Subconcession and Subconcession Area do not create an impediment to pedestrian and public safety.
- G. SUBLICENSEE shall be responsible for maintaining the Subconcession and Subconcession Area as described in more detail below. SUBLICENSEE shall [fill in as appropriate]. SUBLICENSEE shall operate the Subconcession in such a manner as to maintain the highest New York City Department of Health and Mental Hygiene (“DOHMH”) inspection rating. SUBLICENSEE must obtain any and all approvals and other permits required by Federal, State and City laws, rules, regulations and orders to sell food to the public. (In furtherance of the foregoing, any staff assigned by the SUBLICENSEE to sell food and beverages to the public must possess all Federal, State, and City authorizations and possess, and at all times display, appropriate DOHMH permits. Any person selling food to the public without all necessary permits may be subject to fines and/or confiscation of goods. SUBLICENSEE shall not use in its

operations any polystyrene packing or food containers pursuant to Local Law 142 of 2013. H SUBLICENSEE acknowledges and agrees that the Subconcession Area, is not being licensed and is for use by the public at large. Tables, chairs, and umbrellas ("Moveable Street Furniture") are provided by College within the Subconcession Area. The College has responsibility for maintaining and repairing Moveable Street Furniture, barring any damage or destruction resulting from the SUBLICENSEE's actions. SUBLICENSEE's responsibility for the Subconcession Area is further described herein.

- H. The public shall have free and open access to the seating areas within the Licensed Plaza unless otherwise precluded by a DOT-approved Special Event as set forth in Section 8 of the License Agreement, or other City-approved events. SUBLICENSEE acknowledges that such events may require the Licensed Plaza, Subconcession, and/or Subconcession Area to be closed. College agrees to provide reasonable advance notice of any such events.
- I. Hours of operation are subject to approval by the College and will be no earlier than TIME and no later than TIME DAY through DAY. Hours of operation may change at the request of the College or the SUBLICENSEE, and may fluctuate seasonally at the request of the SUBLICENSEE with approval from College. Such approval or denial shall be provided within XX . SUBLICENSEE acknowledges and agrees that its days and hours of operation may be increased or decreased at the reasonable request of the College or DOT. At all times, DOT reserves the right to review and approve such hours of operation at its reasonable discretion.
- J. The menu and price list is subject to the approval of the College, see **Attachment E** for the sample approved menu and price list. Menu items and pricing may fluctuate seasonally or change based on other factors but proposed changes to the menu and pricing must be reviewed by the [PARTNER NAME]. Such review shall not be unreasonably withheld. SUBLICENSEE, at its sole cost and expense, shall print, frame, and prominently display the current approved schedule of operating days, hours and prices. The sale of any merchandise beyond food or beverage must be approved in advance by [PARTNER NAME]. At all times, DOT reserves the right to review menu and price list at its reasonable discretion.
- K. It is expressly understood that no land, building, space improvement, or equipment is leased to the SUBLICENSEE, but that during the term of this Sublicense (as defined hereinafter), SUBLICENSEE shall have the non-exclusive use of the Subconcession and Subconcession Area for the purpose herein provided. Except as herein provided. SUBLICENSEE shall have the right to occupy and operate the Subconcession and Subconcession Area only so long as all material terms and conditions of this Sublicense are complied with and so long as the License Agreement is not terminated by the DOT or this Sublicense is not terminated by College
- L. Smoking of cigarettes or any other tobacco product is strictly prohibited at the Licensed Plaza in accordance with Local Law 11 of 2011. Using electronic cigarettes is also prohibited at the Licensed Plaza in accordance with Local Law 152 of 2013. Using non-tobacco smoking products is also prohibited at the Licensed Plaza in accordance

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with Local Law 187 of 2017. Sublicensee shall adhere to and enforce these prohibitions.

- M. DOT shall have the right at all times to have representatives of the City and/or the State or federal government present at the Licensed Plaza for any purpose.

II. TERM

- A. The term of this Sublicense ("Initial Term") shall commence as set forth in the RFP, Notice to Proceed shall be issued when SUBLICENSEE obtains all necessary approvals required to operate the Subconcession in the manner prescribed herein.
- B. This Sublicense may be renewed as set forth in the RFP ("Renewal Term"), to be exercised and subject to termination and revocation as hereinafter provided. College shall provide SUBLICENSEE with sixty (60) days' advance written notice of its intent to renew for any Renewal Terms.

OR

[If Subconcession is a kiosk, Subconcession should operate seasonally and include following provisions]

- A. SUBLICENSEE shall install the Subconcession and operate it seasonally. Seasonal operation shall mean no less than a XX period, but no more than an eleven-month period. Changes to the seasonal schedule prescribed above shall be discussed and approved in advance by the [PARTNER NAME].
- B. The SUBLICENSEE shall operate the Subconcession pursuant to Section I(F) above.
- C. Sublicense may be renewed for XX additional seasonal terms ("Renewal Term"), to be exercised and subject to termination and revocation as hereinafter provided.

III. SECURITY DEPOSIT

- A. Upon execution of this Sublicense, SUBLICENSEE shall deposit the sum as set forth in the RFP as security for the full, faithful and punctual performance by SUBLICENSEE of all the terms of this Sublicense. In the event SUBLICENSEE defaults in the performance of any of the terms of this Sublicense, including the payment of the Base License Fee (as defined hereinafter) or any other fees, College may use, apply, or retain the whole or any part of the security deposit to the extent required for the payment of any fees due hereunder or for any sum which College may reasonably expend or may be reasonably required to expend by reason of SUBLICENSEE'S default with respect to any of the terms of this Sublicense. In the case of every such use, application or retention, SUBLICENSEE shall on demand pay to College the sum so used, applied or retained which shall be added to the security deposit so that the same shall be replenished to its

former account.

- B. If SUBLICENSEE complies with all terms of this Sublicense, the security deposit, without interest, shall be returned to SUBLICENSEE within sixty (60) days after the termination of this Sublicense.

IV. FEES AND REVENUES

- A. SUBLICENSEE shall pay the fees as set forth in the RFP.
- B. "Subconcession Revenue" shall mean the aggregate sum of all of SUBLICENSEE's revenues from the following sources: (A) sales from the Subconcession made directly to SUBLICENSEE's patrons, regardless of whether the sales were made in the form of payment by cash, credit, or any other means, (B) sales from the Subconcession for functions which do not take place at the Subconcession, including, without limitation, catering services, office or home delivery services, internet sales or any other similar services, whether or not taking place on the Licensed Plaza, (C) sales made by reason of SUBLICENSEE's location upon the Licensed Plaza, including, without limitation, for functions or events which take place on the Licensed Plaza, and (D) any and all other revenues received by Sublicensee in connection with the operation of the Subconcession, less taxes, voids, and reasonable discounts and promotions. "Subconcession Revenues" shall not include (i) sales taxes and similar taxes collected separately from customers; provided that such exclusion shall not extend to any other taxes for which the SUBLICENSEE is liable; (ii) fees on credit card sales (not in excess of 2% of Subconcession Revenue in the Initial Term or any one Renewal Term); (iii) gift cards or "loaded" debit or credit cards, unless they are redeemed for merchandise or other goods at the Subconcession; (iv) insurance proceeds received from the settlement of claims for loss of or damage to goods, fixtures and other personal property of SUBLICENSEE; (v) services charges payable to SUBLICENSEE on accounts receivable; and (vi) employee purchases (not in excess of 2% of Subconcession Revenue in the Initial Term or any one Renewal Term. College acknowledges that SUBLICENSEE operates a location as set forth in SUBLICENSEE's proposal and no sales made from this location shall be included in the Subconcession Revenues unless the Subconcession has been involved in making or fulfilling such sales.
- C. Subconcession Revenue shall include without limitation all funds received by SUBLICENSEE, without deduction or set-off of any kind, from the sale of food and beverages, wares, merchandise or services of any kind from the Subconcession, provided that Subconcession Revenue shall exclude the amount of any federal, state or City taxes which may now or hereafter be imposed upon or be required to be collected and paid by SUBLICENSEE as against its sales. All sales made or services rendered by SUBLICENSEE from the Subconcession shall be construed as made and completed therein even though payment therefore may be made at some other place. In addition to any Subconcession Revenue generated in the form of monetary receipts, Subconcession Revenue shall be deemed to include the fair market value of any non-monetary consideration in the form of materials, services or other benefits, tangible or intangible, or in the nature of barter the subconcessionaire(s) may receive.

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Subconcession Revenue shall include sales made for cash or credit (credit sales shall be included in Revenue as of the date of the sale) regardless of whether the sales are paid or uncollected, it being the intention and agreement of the parties that all sums due to be received by SUBLICENSEE from all sources from the operation of the Subconcession shall be included in Subconcession Revenue.

In addition to any sales from the Subconcession made directly to customers using all forms of payment, Subconcession Revenue shall include all sales from the Subconcession for functions which do not take place at the Subconcession including, without limitation, catering services, office or home delivery services, internet sales and any other similar services. This includes any sales made by reason of SUBLICENSEE's location on the Licensed Plaza, including for functions and events which could take place on the Licensed Plaza, and any other revenues received by SUBLICENSEE in connection with the management and operation of the Subconcession, less taxes, voids and reasonable discounts and promotions.

On or before the thirtieth (30th) day following the end of each fiscal year, SUBLICENSEE submit to College and DOT a statement of Revenue, signed and verified by an officer of SUBLICENSEE, reporting any Subconcession Revenue generated from the Subconcession during the preceding twelve (12) month period. Notwithstanding the foregoing, SUBLICENSEE shall submit to College such statement of Subconcession Revenue on a monthly basis.

SUBLICENSEE shall also submit a report of Subconcession Revenue for the period since the prior 12-month report on or before the thirtieth (30th) day following the termination of this Sublicense, or June 30th, whichever is sooner. The obligation to submit a final report of Subconcession Revenue shall survive the termination of this Sublicense. These reports submitted to College by SUBLICENSEE shall be provided to DOT within a reasonable time thereafter. SUBLICENSEE shall indicate on its statement of Subconcession Revenue whether or not these amounts are inclusive of sales tax collected.

V. LATE CHARGES

- A. In the event that SUBLICENSEE fails to pay any installment of the Base License Fee, within XX days after said fee shall be due and payable, SUBLICENSEE shall pay a late charge of \$XXX, which shall be due and payable on demand.

VI. SPECIFIC TERMS, CONDITIONS, AND RESPONSIBILITIES.

A. MAINTENANCE

- 1. SUBLICENSEE will be responsible for cleaning and maintaining the tables and chairs in the Subconcession Area throughout the business day (i.e., picking up trash, clearing and wiping down tables, ensuring chairs are in place) and closing and securing the seating area at the close of business each day.

2. Moveable Street Furniture will be secured according to College protocol and will be stored in the designated storage area, as agreed upon in advance by College and SUBLICENSEE. At the opening of each business day, SUBLICENSEE shall set up and maintain the Moveable Street Furniture in a neat, evenly spaced and orderly manner within the Subconcession Area throughout the business day.
3. SUBLICENSEE shall be responsible for general cleanliness, refuse storage, and refuse removal within the Subconcession and Subconcession Area. They should be kept in a neat and clean condition, and free from rubbish, dirt, litter, leaves and debris at all times. SUBLICENSEE shall neatly place and stack in an orderly and safe manner all of its rubbish in plastic trash bags and shall place the same in one or more leak proof, covered and secured trash receptacles located within the Subconcession. SUBLICENSEE shall not dispose of its trash in the custom receptacles located on the Licensed Plaza. SUBLICENSEE shall promptly clean all spillage, leakage or other waste on the Licensed Plaza resulting from the removal of its trash from the Subconcession Area.
4. SUBLICENSEE must maintain trash receptacles and separate receptacles for recyclable materials and comply with all recycling regulations at its sole cost and expense, arrange for the removal, by a duly licensed private carter, of all refuse relating to the Subconcession, including but not limited to trash, boxes and trade waste.

B. OPERATION OF SUBCONCESSION

1. SUBLICENSEE shall employ an operations manager ("Manager") with appropriate qualifications to manage operations at the Subconcession in a manner that is reasonably satisfactory to College and DOT. The Manager must be available by telephone during all hours of operation, and [PARTNERNAME] shall continuously notify DOT of a 24-hour cellular telephone number through which DOT may contact the Manager in the event of an emergency. SUBLICENSEE shall replace any Manager, employee, subcontractor whenever reasonably demanded by DOT, provided that DOT supplies reasons for such demand and offers SUBLICENSEE an opportunity to cure within 30 days of receipt of such demand.
2. SUBLICENSEE shall provide access up to the Subconcession to people with disabilities as required by law. This accessibility shall be clearly indicated by signs.
3. If appropriate, SUBLICENSEE, at its sole cost and expense, must provide a twenty-four (24) hour per day security system at the Subconcession, which shall be either an electronic security system, or a twenty-four hour unarmed guard, or both. SUBLICENSEE will be responsible for securing the Subconcession and any other equipment used immediately upon closing each day in a manner reasonably approved by DOT.
4. DOT shall have the right to reasonably approve the days and times on which deliveries to the Subconcession may be made. SUBLICENSEE shall provide an

overview of proposed days and times on which deliveries will be made to College and DOT. Such approval or denial will not be unreasonably delayed.

5. If applicable, SUBLICENSEE may sell wine and beer only with the appropriate license from the New York State Liquor Authority ("SLA"). Such wine and beer shall be served in recyclable cups and be consumed only within the boundaries of the Licensed Plaza, as permitted by the SLA. A copy of such SLA license must be submitted to College] prior to the commencement of any alcoholic beverage service. Subconcession staff serving alcoholic beverages must be of legal age, and Subconcession staff must check identification of all patrons to ensure that the legal drinking age is enforced.
6. The sale of cigarettes, cigars or any tobacco product is strictly prohibited. Additionally, the sale of electronic cigarettes and non-tobacco smoking products are strictly prohibited.
7. No trucks or storage containers may be stationed at the Subconcession area or Licensed Plaza, unless otherwise approved in writing by DOT. Additionally, SUBLICENSEE shall not use or permit the storage of any illuminating oils, oil lamps, turpentine, benzene, naphtha, or similar substances or explosives of any kind (excluding fuel for generators).
8. The City shall own any copyrights, trademarks, logos and brands, if any, developed in association with the management and operation of the Subconcession by College and SUBLICENSEE, that include the name of the Licensed Plaza or is directly associated with the Licensed Plaza. However, the City shall not own any portion of a name that consists of the name, portrait or signature of a living or deceased individual; or a restaurant identifier or trade name that is not otherwise associated with the Licensed Plaza.
9. SUBLICENSEE shall not allow its employees, agents, contractors and subcontractors to emit unreasonably loud noise, smoke, vapor or offensive odor from the Subconcession and Subconcession area.
10. SUBLICENSEE shall inform College and DOT of any accidents or other incidents, if known, occurring at the Subconcession and Subconcession area, on a regular basis and in a format reasonably acceptable to College.
11. SUBLICENSEE shall promptly notify College and DOT, in writing, of any claim for injury, death, property damage or theft which may be asserted against College or SUBLICENSEE with respect to the Licensed Plaza and the [Kiosk].
12. SUBLICENSEE shall promptly notify College and DOT, in writing, of any unusual conditions that may develop in the course of the operation of the Subconcession such as, but not limited to, fire, flood, casualty and substantial damage of any kind.
13. SUBLICENSEE shall designate a person to handle all claims for loss or damage including all insured claims for loss or damages.

14. SUBLICENSEE shall provide equipment that will provide security for all monies received and transfer of all monies collected to the SUBLICENSEE'S banking institution. SUBLICENSEE will bear the loss of any lost, stolen, misappropriated or counterfeit monies derived from operations under this Sublicense.
15. SUBLICENSEE, at its sole cost and expense, shall provide, hire, train, supervise, and be responsible for the acts of all personnel necessary for the proper operation of this Sublicense, including but not limited to (i) collect and safeguard all monies generated under this Sublicense; (ii) maintain any Subconcession structure in accordance with this Sublicense; (iii) conduct and supervise the provision of qualified Subconcession personnel and cashier(s); (iv) provide a Point of Sale (POS) system and (v) secure the Subconcession.
16. Advertising is strictly prohibited on the Licensed Plaza; however, SUBLICENSEE shall use reasonable efforts to promote the Subconcession such as flyers, announcements of the Subconcession opening and special sales, etc. in coordination with College. College reserves the right to meet with the SUBLICENSEE on a periodic basis to discuss the marketing and advertising activities and efforts with respect to the Subconcession and to discuss future plans.
17. It is expressly understood that if SUBLICENSEE installs any signs off-site that advertise the Subconcession, such as on nearby highways or streets, it shall be SUBLICENSEE'S responsibility to obtain any necessary approvals or permits from any governmental agency having jurisdiction over such highways, streets or locations. The design and content of all such signs are subject to DOT's reasonable prior approval, which approval shall not be unreasonably delayed.
18. SUBLICENSEE, at its sole cost and expense, shall obtain sound permits and provide any lighting, which it determines may be necessary to operate the Subconcession.
19. SUBLICENSEE, in operating the Subconcession, shall maintain the sound level of all events and activities at an appropriate level to prevent an unreasonable nuisance to neighbors living and working near the Subconcession.
20. SUBLICENSEE at its sole cost and expense shall pay for, or cause to be paid any and all fees or royalties to ASCAP, BMI or such entities as may be required for any music or music programming during its operations.
21. Installation of additional fixed lighting or fixed sound equipment by SUBLICENSEE at the Subconcession shall require the prior written approval of College and DOT. Such approval or denial will not be unreasonably delayed.
22. SUBLICENSEE shall comply with the Earned Safe and Sick Time Act, also known as the Paid Safe and Sick Leave Law, as a subconcessionaire of the City of New York as set forth in the Paid Safe and Sick Leave Law Concession Agreement Rider annexed hereto as **Attachment []**.

C. INSTALLATION AND CONSTRUCTION OF SUBCONCESSION STRUCTURE
[IF APPLICABLE]

1. SUBLICENSEE, at its sole cost and expense, shall design, fabricate,

construct and install a Subconcession structure subject to the College and DOT's prior written approval. SUBLICENSEE shall retain ownership of the Subconcession structure and be permitted to remove the same at the end of the Term.

2. Upon installation, title to any improvements, equipment, and fixtures made to the Subconcession structure shall vest in and thereafter belong to the City at the City's option, which may be exercised at any time after the substantial completion of the installation, affixing, or placement of such improvements, equipment, and fixtures. Such title may only vest in the City upon payment for the fair market value of the improvements, equipment, and fixtures made to the Subconcession structure by the City to SUBLICENSEE. To the extent the City chooses not to exercise its option with respect to any of the improvements, equipment and fixtures made to the Subconcession structure, SUBLICENSEE shall remove such items after the expiration or termination of this Sublicense to the reasonable satisfaction of DOT at the sole cost and expense of SUBLICENSEE.

3. SUBLICENSEE shall use its best efforts to minimize the extent to which the public use of the Licensed Plaza is disrupted in connection with its construction, installation, operation, management, maintenance and/or repair activities at the Licensed Plaza.

4. SUBLICENSEE shall pay all applicable fees and shall submit to DOT and all other governmental agencies having jurisdiction, for prior approval, all plans, specifications, schematics, working and mechanical drawings which shall be signed and sealed by a New York State Registered Architect or Licensed Professional Engineer. All plans, specifications, schematics, and working and mechanical drawings shall be in such detail as DOT shall require. All work shall be undertaken in accordance with the plans, specifications, schematics, and working and mechanical drawings approved in writing in advance by DOT.

5. SUBLICENSEE shall apply for and obtain all applicable licenses and permits prior to the commencement of any work. Further, all designs will require prior approval from DOT and any other agencies having jurisdiction, including but not limited to the Public Design Commission of the City of New York.

6. During the term of this License, SUBLICENSEE shall be responsible for the protection of the Subconcession structure, whether or not construction is complete, against any damage, loss or injury. In the event of such damage, loss or injury, SUBLICENSEE shall promptly repair the Subconcession structure at the sole cost and expense of SUBLICENSEE.

7. SUBLICENSEE shall construct the Subconcession structure in accordance with all federal, state, and City laws, rules, regulations, orders, and industry standards, and with materials as set forth in the approved plans, specifications, schematics, working and mechanical drawings. All equipment and materials installed shall be new, free of defects, of the best grade quality, suitable for the purpose intended and furnished in ample quantities to prevent delays. SUBLICENSEE shall obtain all manufacturers' warranties and guarantees for all such equipment and materials, as applicable.

8. 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 License 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.

9. SUBLICENSEE shall provide written notice to College and DOT when the Subconcession structure is substantially completed, and the College and DOT shall inspect the Subconcession structure within a reasonable time after receipt of such notice from SUBLICENSEE. After such inspection, SUBLICENSEE, DOT and College shall jointly develop a single final "punch list" incorporating all findings from such inspection concerning all work not completed to the satisfaction of DOT and College. SUBLICENSEE shall proceed with diligence to complete all "punch list" items within a reasonable time as determined by DOT and College.

10. In the event that SUBLICENSEE fails to comply with any phase of the construction of the Subconcession structure for a period of thirty days following written notice to cure, College may terminate this Sublicense by giving ten days written notice of termination.

11. SUBLICENSEE shall provide College and DOT with discharges for any and all liens which may be levied against the Subconcession structure during construction of such improvements. SUBLICENSEE shall use its best efforts to discharge such liens within thirty business days of receipt of lien by SUBLICENSEE.

12. SUBLICENSEE shall promptly repair as College and DOT reasonably may determine, defects of materials, workmanship or design which may appear or to which damages may occur because of such defects, during the one year period subsequent to the date of the final completion of the Subconcession structure.

13. SUBLICENSEE shall, at its sole cost and expense and to the reasonable satisfaction of the College, provide, and replace if necessary, all equipment and materials necessary for the successful operation of this Sublicense, and put, keep, repair, preserve and maintain in good order all equipment found on, placed in, installed in or affixed to the Licensed Premises.

14. Should the College decide that SUBLICENSEE is not operating the Subconcession structure in a satisfactory manner, College may in writing order SUBLICENSEE to improve operations or correct such conditions as College may deem unsatisfactory. In the event that SUBLICENSEE fails to comply with such written notice or respond in a manner reasonably satisfactory to College within the timeframe set forth in said notice, subject to unavoidable delays beyond the reasonable control of SUBLICENSEE notwithstanding any other provisions herein, then College may terminate this Sublicense.

15. In addition, SUBLICENSEE must keep all signs and structures on the Licensed Premises in good condition and free of graffiti. SUBLICENSEE shall provide for the

removal of all graffiti in less than 24 hours, except as directed in order to comply with a criminal investigation.

16. SUBLICENSEE shall keep College and DOT fully informed of SUBLICENSEE's progress in the construction of the Subconcession structure.

17. All risks of construction of the Subconcession structure are hereby expressly assumed by SUBLICENSEE except as may be specifically provided otherwise herein. The Subconcession structure will be designed, constructed, maintained, secured and insured entirely at SUBLICENSEE's expense without reimbursement by College and DOT or credit or offset of any kind for cost overruns or otherwise, and SUBLICENSEE shall pay all municipal fees and impositions in connection therewith.

VII. INSPECTION AND AUDIT OF RECORDS

- A. SUBLICENSEE shall establish and maintain accurate records and accounts, in a manner reasonably satisfactory to College, which sufficiently and properly reflect all Subconcession Revenue resulting from SUBLICENSEE's operations pursuant to this Sublicense. Such records and accounts shall conform to generally accepted accounting principles.
- B. SUBLICENSEE shall 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 SUBLICENSEE, including Subconcession Revenue. Such books and records maintained pursuant to this Sublicense shall be conveniently segregated from other business matters of SUBLICENSEE and shall include, but not be limited to (i) all federal, state and local tax returns and schedules of SUBLICENSEE; (ii) records of daily bank deposits of the entire receipts from transactions in, at, on or from the Subconcession, whether maintained in hard copy or in electronic form; (iii) sales slips, daily dated cash register receipts, sales books; and (iv) duplicate bank deposit slips and bank statements, whether maintained in hard copy or in electronic form.
- C. SUBLICENSEE shall submit to College reports, including but not limited to the monthly revenue reports and operational status reports in a form reasonably acceptable to College, within 10 business days of the end of each quarter during the Term of the Sublicense. Notwithstanding the above, however, College reserves the right to reasonably request SUBLICENSEE to submit to College any other reports and/or information.
- D. SUBLICENSEE shall use such accounting and internal control methods and procedures and keep such additional books and records as may be reasonably prescribed by DOT or the Comptroller of the City of New York ("Comptroller").
- E. The failure or refusal of SUBLICENSEE to furnish any of the statements required to be furnished under this Sublicense within thirty (30) days after its due date, the failure or refusal of SUBLICENSEE to maintain adequate internal controls or to keep any of the records as required by this Sublicense or the existence of any unexplained discrepancy

in the amount of fees required to be expended hereunder shall be presumed to be a failure to substantially comply with the terms and conditions of this Sublicense and a default hereunder, which shall entitle College at its option, to terminate this Sublicense.

- F. SUBLICENSEE is required to retain all books, records, and other documents relevant to this Sublicense for six (6) fiscal years after the expiration or termination of this License. City, State and federal auditors shall have full access to and the right to examine any of said materials during this period. In addition, if any litigation, claim, or audit concerning this License has commenced before the expiration of such six-year period, the books, records, documents, and other evidence must be retained until the completion of such litigation, claim or audit. Any books, records, documents or other evidence that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, documents, or other evidence that are created in the regular course of business as paper copy may be retained in an electronic format provided that they satisfy the requirements of N.Y. Civil Practice law and Rules (“CPLR”) 4539(b), including the requirement that the reproduction is created in a manner “which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes.” Furthermore, SUBLICENSEE agrees to waive any objection to the admissibility of any such books, records, documents, or other evidence on the grounds that such documents do not satisfy CPLR 4539(b).
- G. Notwithstanding anything else to the contrary contained in this Sublicense, the parties acknowledge and agree that the powers, duties and obligations of the Comptroller, pursuant to the provisions of the New York City Charter, shall not be diminished, compromised or abridged in any way.
- H. This Section shall survive the expiration or earlier termination of this Sublicense.

VIII. INSURANCE

- A. SUBLICENSEE’s Obligation to Insure
 - 1. Upon written Notice to Proceed through the date of expiration or termination of this Sublicense, SUBLICENSEE shall ensure that the types of insurance indicated in this Section, with the exception of Liquor Law Liability Insurance, are obtained and remain in force, and that such insurance adheres to all requirements herein. SUBLICENSEE shall ensure that Liquor Law Liability Insurance adheres to all requirements herein and is in effect prior to the commencement of any service of alcohol and continue throughout such service of alcohol.
 - 2. SUBLICENSEE is authorized to undertake or maintain operations under this Sublicense only during the effective period of all required coverage.
- B. The Minimum Insurance Coverage which SUBLICENSEE is required to maintain and the specific conditions which College and the City requires to be satisfied are as follows:
 - 1. SUBLICENSEE shall maintain Commercial General Liability Insurance in the

amount of at least [____] million dollars (\$_____) combined single limit per occurrence for bodily injury (including death) and property damage, [____] million dollars (\$_____) for personal and advertising injury, [____] million dollars (\$_____) products completed operations, and [____] million dollars (\$_____) aggregate. The aggregate shall apply on a per-location basis applicable to the Licensed Plaza. The insurance shall protect the insureds from claims that may arise from any of the operations under this Sublicense Agreement. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 00 001, shall contain no exclusions other than as approved by the DOT Commissioner, and shall be "occurrence" based rather than "claims-made." Such Commercial General Liability insurance shall list the City, together with its officials and employees; The City University of New York, along with its officials and employees; Baruch College, as well as its officials and employees; and the State of New York, as an Additional Insured for claims that may arise from any of the operations under this Sublicense. Coverage shall be at least as broad as the most recent edition of ISO Forms CG 20 26 and CG 20 37. "Blanket" or other forms are also acceptable if they provide the City, together with its officials and employees; The City University of New York, along with its officials and employees; Baruch College, as well as its officials and employees; and the State of New York, with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37.

2. Workers' Compensation insurance, Employers' Liability insurance, and Disability and Paid Family Leave Benefits insurance: in accordance with the law on behalf of, or with regard to, all employees involved in SUBLICENSEE's operations under this License, and such insurance shall comply with the laws of the State of New York.
3. Automobile Liability Insurance (if applicable): Commercial Automobile Liability insurance in the amount of at least ____ Million Dollars (\$_____) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned (if any), nonowned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA 00 01. If vehicles are used for transporting hazardous materials, such Commercial 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.
4. Property Insurance (if applicable): to maintain "all risk" commercial property insurance (on a special perils form covering all buildings, structures, equipment and fixtures relating to the Subconcession for which the City has an insurable interest ("Subconcession Structures"), whether existing at the beginning of this License or built at any time before its expiration or termination. Such insurance shall provide full Replacement Cost coverage for the Subconcession 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 SUBLICENSEE as Named Insured and The City University of New York, along with its officials and employees; Baruch College, as well as its officials and employees, the City of New York along with its officials and employees, and the State of New York as Additional Insured and Loss

Payee as its interests may appear.

5. Liquor Liability Insurance (if applicable): In the event SUBLICENSEE is permitted to serve alcohol in the Subconcession area, SUBLICENSEE shall carry liquor law liability insurance in an amount not less than ____ Million Dollars (\$_____) per occurrence, and name The City University of New York, along with its officials and employees; Baruch College, as well as its officials and employees; the City of New York, including its officials and employees; and the State of New York, as Additional Insured. Such insurance shall be effective prior to the commencement of any such service of alcohol and continue throughout such service of alcohol.

C. General Requirements for Insurance Coverage and Policies

1. Policies of insurance required under this Section shall be provided by companies that may lawfully issue such policies and have an A.M. Best rating of at least A-7 or a Standard and Poor's rating of at least A, a Moody's Investor's Service rating of at least A3, a Fitch Rating rating of at least A-, or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department.
2. With the exception of coverage required by the Workers' Compensation Law, policies of insurance required under this Section shall be primary and non-contributing to any insurance or self-insurance maintained by the City.
3. Whenever this Section 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 alternative form or endorsement contained in SUBLICENSEE's policy provides coverage at least as broad as the specified form.
4. There shall be no self-insurance program (including a self-insured retention in excess of \$10,000) with regard to any insurance required under this Section unless approved in writing by the City. 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, SUBLICENSEE shall ensure that any such self-insurance program provides the College and City with all rights that would be provided by traditional insurance under this Section, including but not limited the defense and indemnification obligations that insurers are required to undertake in liability policies. If the City and College authorizes a self-insured retention, the SUBLICENSEE must allow the City and College to pay all or part of the self-insured retention upon the SUBLICENSEE's failure to pay. If the City and/or College pays any portion of such self-insured retention, the City and/or College may at its option withhold any monies so paid from any monies owing to SUBLICENSEE, whether under this Sublicense or otherwise, and/or may require SUBLICENSEE to pay such monies upon 30 days' notice.

5. The City and College reserve the right to increase the required limits of Commercial Property Insurance at the time it exercises its renewal rights under this Sublicense if the City and College determines that the existing limits do not adequately protect the City and College from financial risk due to potential claims for injury or property damage.
6. In the event SUBLICENSEE receives notice, from an insurance company or other person, that any insurance policy required under this Section shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, SUBLICENSEE shall immediately forward a copy of such notice to College at Baruch College, City University of New York, The Office of Legal Affairs and Labor Relations, 137 East 22nd Street, Room C-312, New York, NY 10010, DOT at 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, SUBLICENSEE shall ensure that there is no interruption in any of the insurance coverage required under this Section.
7. All required policies, except Employers' Liability and Disability and Paid Family Leave Benefits shall include a waiver of the right of subrogation with respect to all insureds and loss payees named therein.

D. Proof of Insurance

1. Certificates of Insurance for all insurance required in this Section must be submitted to and accepted by College and DOT prior to or upon execution of this License.
2. Within 10 days of award of this License or as otherwise specified by the DOT, and as required by N.Y. Workers' Compensation Law §§ 57 and 220(8), SUBLICENSEE shall submit proof of SUBLICENSEE's workers' compensation insurance and disability and paid family leave benefits insurance (or proof of a legal exemption) to College and DOT in a form acceptable to the New York State Workers' Compensation Board and the Certificate Holder shall be City of New York, c/o Department of Transportation General Counsel, 55 Water Street, 9th Floor, New York, NY 10041. ACORD forms are not acceptable proof of such insurance. The following forms are acceptable:
 - (a) Form C-105.2, *Certificate of Workers' Compensation Insurance*;
 - (b) Form U-26.3, *State Insurance Fund Certificate of Workers' Compensation Insurance*;
 - (c) Form SI-12, *Certificate of Workers' Compensation Self-Insurance*;
 - (d) Form GSI-105.2, *Certificate of Participation in Worker's Compensation Group Self-Insurance*;
 - (e) Form DB-120.1, *Certificate of Disability and Paid Family Leave Benefits Insurance*;

- (f) Form DB-155, *Certificate of Disability and Paid Family Leave Benefits Self-Insurance*;
 - (g) Form CE-200 – *Affidavit of Exemption*;
 - (h) Other forms approved by the New York State Workers' Compensation Board; or
 - (i) Other proof of insurance in a form acceptable to the City.
- 6. For all insurance required under this Section other than Workers Compensation, Employers' Liability, and Disability and Paid Family Leave Benefits, SUBLICENSEE shall submit one or more Certificates of Insurance. All such Certificates of Insurance shall: (i) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (ii) be accompanied by the provision(s) or endorsement(s) in SUBLICENSEE's policy/ies (including its general liability policy) by which the College and 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 Broker or Agent" in the form required by the DOT Commissioner or certified copies of all policies referenced in such Certificate of Insurance.
- 7. Certificates of Insurance confirming renewals of insurance shall be submitted to the DOT Commissioner prior to the expiration date of coverage of all policies required under this Concession. Such Certificates of Insurance shall comply with paragraphs (2) and (3) directly above.
- 8. Acceptance or approval by the DOT Commissioner of a Certificate of Insurance or any other matter does not waive SUBLICENSEE's obligation to ensure that insurance fully consistent with the requirements of this Section is secured and maintained, nor does it waive SUBLICENSEE's liability for its failure to do so.
- 9. SUBLICENSEE shall be obligated to provide the College and the City with a copy of any policy of insurance required under this Section upon request by DOT or the New York City Law Department.
- E. Miscellaneous
 - 1. SUBLICENSEE may satisfy its insurance obligations under this Section 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. SUBLICENSEE 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. Whenever notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Section, SUBLICENSEE shall

provide the insurer with timely notice thereof on behalf of College and the City. Such notice shall be given even where SUBLICENSEE may not be covered under such policy if this Sublicense requires that College and the City be an additional insured (for example, where one of SUBLICENSEE's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York, including its officials and employees, and The City University of New York, acting on behalf of Baruch College, including their respective officials and employees, as additional insured" (such notice shall also include the name of any other entity listed as an additional insured) and contain the following information to the extent known: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. SUBLICENSEE 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. If SUBLICENSEE fails to comply with the requirements of this paragraph, SUBLICENSEE shall indemnify College and the City, together with its officials and employees, and any other entity listed as an additional insured for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City together with its officials and employees, and any other entity listed as an additional insured.

4. SUBLICENSEE's failure to secure and maintain insurance in complete conformity with this Section, or to give the insurance carrier timely notice on behalf of College and the City, or to do anything else required by this Section shall constitute a material breach of this Sublicense. Such breach shall not be waived or otherwise excused by any action or inaction by College and the City at any time.
5. Insurance coverage in the minimum amounts provided for in this Section shall not relieve SUBLICENSEE of any liability under this Sublicense, nor shall it preclude College and the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Sublicense 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 Section, SUBLICENSEE shall at all times fully cooperate with College and 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 and Paid Family Leave Benefits Insurance, or Commercial Automobile Insurance, SUBLICENSEE waives all rights against the City, including its officials and employees, and College,

including its officials and employees, for any damages or losses that are covered under any insurance required under this Section (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of SUBLICENSEE and/or its employees, agents, or servants of its contractors or subcontractors.

8. SUBLICENSEE shall require its construction contractors that perform construction on the Plaza to maintain Commercial General Liability Insurance in accordance with this Section and such insurance shall include the City, including its officials and employees, as an additional insured with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37. In the event SUBLICENSEE requires any other entity, by contract or otherwise, to procure insurance with regard to any operations under this Sublicense and requires such entity to name The City University of New York, along with its officials and employees; Baruch College, as well as its officials and employees; and the State of New York as an additional insured under such insurance, SUBLICENSEE shall ensure that such entity also names the City of New York, including its officials and employees, as an additional insured (with coverage for Commercial General Liability insurance at least as broad as ISO form CG 20 26). Such coverage as an additional insured shall not require privity of contract between the City, including its officials and employees, and the named insured.

IX. INDEMNIFICATION

- A. SUBLICENSEE shall take all reasonable precautions to protect the safety of its employees, agents, servants, invitees, contractors, and subcontractors while they are involved in the operations under this Sublicense. SUBLICENSEE shall take all reasonable precautions to protect the persons and property of the [PARTNER NAME], City or others from damage, loss, injury resulting from any and all operations under this Sublicense.
- B. To the fullest extent permitted by law, SUBLICENSEE shall, indemnify, defend and hold The City University of New York, along with its officials and employees; Baruch College, as well as its officials and employees; the City of New York, including its officials and employees; and the State of New York (the "Indemnitees"), 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) relating to or arising out of, or alleged (by a person other than the Indemnitees) to relate to or arise out of the SUBLICENSEE's, its employees', agents', servants', invitees', contractors' and subcontractors' operations under this Agreement to the extent resulting from its or their: (i) negligence or failure to comply with any of the provisions of this Sublicense or of any applicable federal, state, or local laws, rules or regulations; or (ii) infringement, violation, or unauthorized use of

any copyright, trade secret, trademark or patent or any other property or personal right of any third party.

- C. Insofar as the facts or law relating to any of the foregoing would preclude the Indemnitees from being completely indemnified by SUBLICENSEE, the Indemnitees shall be partially indemnified by SUBLICENSEE to the fullest extent permitted by law.
- D. SUBLICENSEE's obligation to defend, indemnify and hold the Indemnitees harmless shall not be (i) limited in any way by SUBLICENSEE's obligations to obtain and maintain insurance under this Sublicense, nor (ii) adversely affected by any failure on the part of the Indemnitees' to avail themselves of the benefits of such insurance.

X. ASSIGNMENT

A. No assignment, sale, mortgage or transfer of any interest of this Sublicense by SUBLICENSEE, in whole or in part, will be effective unless it is consented to, in writing, by College and DOT, which consent shall not be unreasonably withheld, nor shall this Sublicense be transferred by operation of law, it being the purpose and spirit of this Sublicense to grant this privilege solely to SUBLICENSEE.

B. Failure of SUBLICENSEE to obtain any required consent to any assignment shall be grounds for termination for cause, at College's option. If so terminated, College and the City shall thereupon be relieved and discharged from any further liability and obligation to SUBLICENSEE, its assignees or transferees. In such case, all monies that may become due under this Sublicense shall be forfeited to College and/or the City, except so much thereof as may be necessary to pay SUBLICENSEE's employees.

C. This Sublicense may be assigned by the City to any corporation, agency or instrumentality having authority to accept such assignment.

XI. ALTERATIONS [IF APPLICABLE]

A. SUBLICENSEE shall not make any alterations to the Subconcession, Subconcession area, or Licensed Plaza without the prior written approval of College and DOT. Such approval or denial shall be provided within a reasonable time. "Alteration" shall have the following meaning:

- (1) any restoration, rehabilitation, modification, renovation or major improvement to the Subconcession, Subconcession area, or Licensed Plaza;
- (2) any work or construction which would or might affect in any manner, or have substantial impact upon the exterior structure, character, appearance, horticulture or design of any portion of the Subconcession, Subconcession area, or Licensed Plaza;
- (3) any work, excluding ordinary maintenance and repair, affecting the

plumbing, heating, electrical, mechanical, ventilating, or other systems of the Subconcession, Subconcession area or Licensed Plaza;

(4) removal of perimeter planters on the Licensed Plaza;(5) affixing or installing any equipment to the walls or any other area of the Subconcession, Subconcession area, or Licensed Plaza.

B. Upon installation of any Alteration(s), title to all improvements and Alteration(s) shall vest in and thereafter belong to the City at the City's option, which may be exercised at any time after the substantial completion of the capital improvements and Alteration(s). Such title may only vest in the City upon payment of the fair market value of the capital improvements and Alteration(s) by the City to SUBLICENSEE. To the extent the City chooses not to exercise its option with respect to any of the capital improvements and Alteration(s), it shall be the responsibility of SUBLICENSEE to remove such items after the expiration or termination of this License and restore the Subconcession, Subconcession area, or Licensed Plaza to its original state, normal wear and tear excepted and to the reasonable satisfaction of DOT at the sole cost and expense of SUBLICENSEE.

XII. NOTICE

A. All notices from SUBLICENSEE to the College shall be in writing and delivered to the attention of Baruch College, City University of New York, The Office of Legal Affairs and Labor Relations, 137 East 22nd Street, Room C-312, New York, NY 10010. All notices from [PARTNER NAME] to SUBLICENSEE shall be dispatched in the same manner, and delivered to the attention of SUBLICENSEE NAME at or such other address as may be modified from time to time. Additionally, electronic mail notification will be acceptable.

XIII. TERMINATION

A. College and DOT shall have the right to terminate this Sublicense in whole or in part:

- (1) Under any right to terminate as specified in any Section of this Sublicense.
- (2) If College and DOT determine that SUBLICENSEE failed to comply with any of the terms and conditions of this Sublicense.
- (3) Upon SUBLICENSEE becoming insolvent
- (4) Upon the commencement of any proceeding under the Bankruptcy Act, by or against SUBLICENSEE, either voluntary or involuntary.
- (5) Upon College's reasonable determination that termination is in the best

interest of the College.

(6) Upon DOT's reasonable determination that termination is in the best interest of the City.

- B. College shall give SUBLICENSEE written notice of any termination of this Sublicense specifying therein the applicable provisions of this Section and the effective date thereof, which shall not be less than twenty-five (25) days from the date of receipt of written notice by SUBLICENSEE.
- C. College and DOT shall first give written notice to SUBLICENSEE outlining in reasonable detail, the alleged deficiencies. If the deficiencies are not cured by SUBLICENSEE within a reasonable time or if SUBLICENSEE fails to undertake reasonable measures to cure such alleged deficiency (if no time is specified), which shall in no event be less than ten (10) days except in cases of emergency (as determined by College and DOT), the failure to cure the deficiencies shall result in immediate termination of this Sublicense.
- D. College and DOT shall provide written notice of such termination to SUBLICENSEE, and this Sublicense shall terminate effective twenty-five (25) days from the date such notice is received by SUBLICENSEE.
- E. SUBLICENSEE shall be held responsible for all property belonging to College DOT and the City upon termination of this Sublicense. Upon such termination SUBLICENSEE shall quit the Subconcession, Subconcession area, and Licensed Plaza and surrender all such property therein that belongs to the City (i.e. Moveable Street Furniture, planters, etc.) in good, clean, and orderly condition, ordinary wear and tear excepted. SUBLICENSEE shall be permitted to remove the Subconcession.
- F. Upon termination of this Sublicense, SUBLICENSEE shall comply with the following close-out procedures, including but not limited to:
 - (1) Furnishing within thirty (30) days an inventory to College and DOT of all equipment, appurtenances and property purchased through or provided under this Sublicense, and carrying out any College and DOT directives concerning the disposition thereof.
 - (2) Not incurring or paying any further obligation pursuant to this Sublicense beyond the termination date. Any obligation necessarily incurred by SUBLICENSEE on account of this Sublicense prior to receipt of notice of termination and falling due after such date shall be paid by College or DOT, if such obligation was required by College or DOT in accordance with the terms of this Sublicense. SUBLICENSEE shall be solely responsible for any obligations that are not specifically incurred on account of this Sublicense. In no event shall the term "obligation", as used herein, be construed as including any lease agreement, oral or written, entered into

between SUBLICENSEE and its landlord.

(3) Turn over to College and DOT or its designees all books, records, documents and materials specifically relating to this Sublicense.

(4) Submit, within ninety (90) days, a final statement and report relating to the Sublicense. The report shall be made by a certified public accountant or a licensed public accountant.

G. Notwithstanding any other provisions of this Sublicense, SUBLICENSEE shall not be relieved of liability to College and the City for damages sustained by [PARTNER NAME] and the City by virtue of SUBLICENSEE's breach of this Sublicense.

H. The rights and remedies of College and the City provided in this Section shall not be exclusive and are in addition to all other rights and remedies provided by law or under this Sublicense. In addition, nothing contained in this Section shall be deemed or imply or be construed to represent an exclusive enumeration of circumstances under which College and DOT may terminate this Sublicense.

XIV. COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS

- A. SUBLICENSEE shall faithfully perform and carry out the provisions of this Sublicense and cause its agents, employees, and invitees to perform and carry out the provisions of this Sublicense. SUBLICENSEE shall comply with all federal, state, and local laws, rules, regulations, and DOT specifications, standards, and policies applicable to the Subconcession and Subconcession area, and SUBLICENSEE's use and occupation thereof, including but not limited to the provisions of the New York State Labor Law regarding gratuities.
- B. With respect to services provided under this License, SUBLICENSEE shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, partnership status, marital status, disability, presence of a service animal, race, color, national origin, alienage, citizenship status, or military status, or any other class of individuals protected from discrimination in public accommodations by City, State or Federal laws, rules or regulations. SUBLICENSEE shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.
- C. This Sublicense is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 *et seq.* ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. PLAZA PARTNER shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this License. This includes providing safe and accessible opportunities for everyone. To the extent possible, SUBLICENSEE is encouraged to exceed all applicable accessibility requirements for

people with disabilities.

XV. REPRESENTATIONS, WARRANTIES AND COVENANTS

A. SUBLICENSEE makes the following representations and warranties:

(1) SUBLICENSEE is a _____ duly organized, validly existing, and in good standing under the laws of the State of New York, and has all requisite power and authority to execute, deliver and perform this Sublicense.

(2) This Sublicense has been duly authorized by all necessary corporate action on the part of SUBLICENSEE has been duly executed and delivered by SUBLICENSEE, and assuming due execution and delivery by College, constitutes a legal, valid, binding and enforceable obligation of SUBLICENSEE.

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

(4) SUBLICENSEE has neither been asked to pay, offered to pay, nor paid any illegal consideration, whether monetary or otherwise, in connection with obtaining this Sublicense.

(5) SUBLICENSEE has not employed any person to solicit or procure this Sublicense, and has not made and shall not make any payment of any commission, percentage, brokerage, contingent fee or any other compensation in connection with obtaining this Sublicense.

B. SUBLICENSEE covenants and agrees that for so long as this Sublicense is in effect it shall maintain its corporate existence under the laws of the State of New York as a corporation.

C. College represents and warrants that this Sublicense has been duly authorized by all necessary action on the part of College has been duly executed and delivered by College and assuming due execution and delivery by SUBLICENSEE, constitutes a legal, valid, binding and enforceable obligation of College.

XVI. CONFLICT OF INTEREST

A. SUBLICENSEE 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. SUBLICENSEE further represents and warrants that in the performance of this Sublicense no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City, DOT or [LICENSEE NAME] shall participate in any decision relating to this Sublicense which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this Sublicense or in the proceeds thereof.

XVII. FEDERAL EMPLOYER IDENTIFICATION NUMBER

A. SUBLICENSEE represents that it is not in arrears to the City upon any debt, contract or taxes and is not a defaulter as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of SUBLICENSEE. The Federal Employer Identification Number of SUBLICENSEE is [EIN#].

XVIII. RESERVATION OF RIGHTS AND INTERESTS

A. The parties to this Sublicense will give each other timely written notice in advance of all press conferences, public ceremonies, or other public or planned news events relating to the subject of this Sublicense. Any statement or release made to the public relating to the subject of this Sublicense must be approved in advance by College and DOT.

XIX. CHOICE OF LAW/CONSENT TO JURISDICTION AND VENUE

A. This Sublicense shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of SUBLICENSEE and shall be governed by and construed in accordance with the internal laws of the State of New York. Any and all claims asserted by or against College and the City arising under this Sublicense or related hereto shall be heard and determined either in the courts of the United States ("Federal Courts") located within New York City 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 Sublicense and intent, it is understood that:

- (1) If College or the City initiates any action arising out of this Sublicense against SUBLICENSEE in Federal Court or in New York State Court, service of process may be made on SUBLICENSEE either by personal service upon an officer or authorized agent of SUBLICENSEE wherever SUBLICENSEE may be found, or by registered mail addressed to SUBLICENSEE at the address set forth in this Sublicense, or to such other address as SUBLICENSEE may provide to College, DOT or the City in writing; and
- (2) With respect to any action arising out of this Sublicense in New York

State Courts, SUBLICENSEE expressly waives and relinquishes any rights it might otherwise have to move to dismiss on the ground of forum non conveniens, to remove the action to Federal Court; and to move for change of venue to a New York State Court located outside of New York County.

(3) With respect to any action arising out of this Sublicense in Federal Court located in New York City, SUBLICENSEE expressly waives and relinquishes any right it might otherwise have to move for a transfer of the action to a Federal Court outside of New York City.

(4) If SUBLICENSEE commences any action arising out of this Sublicense against College and the City in a court located other than in the County, City and State of New York, upon request of the City, SUBLICENSEE shall consent to a transfer of the action to a court of competent jurisdiction located in the County, City and State of New York, or if the court where the action is commenced cannot or will not transfer the action, SUBLICENSEE shall consent to the dismissal of such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction within New York City.

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

XX. CLAIMS AND ACTIONS THEREON

- A. No action at law or proceeding in equity against College or the City shall lie or be maintained upon any claim based upon this Sublicense or arising out of this Sublicense or in any way connected with this Sublicense unless SUBLICENSEE shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.
- B. No action shall lie or be maintained against the College or City by SUBLICENSEE upon any claims based upon this Sublicense unless such action shall be commenced within six months of the termination or conclusion of this Sublicense or within six months after the accrual of the cause of action, whichever first occurs.
- C. In the event any claim is made or any action brought in any way relating to this Sublicense herein, SUBLICENSEE shall diligently render to College the City without additional compensation any and all assistance which College the City may require of SUBLICENSEE.

XXI. CLAIM AGAINST OFFICERS OR EMPLOYEES

No claim whatsoever shall be made by SUBLICENSEE against any officer, agent, employee or volunteer of the College or City for, or on account of, anything done or omitted in connection with this Sublicense.

XXII. TRADEMARK

- A. The City is the trademark owner of various marks and has licensed the use of those trademarks for use on certain designated merchandise. If SUBLICENSEE sells merchandise that uses the City's trademarks, they shall purchase such merchandise from authorized SUBLICENSEEs of the City of New York. The knowing sale of counterfeit or unlicensed merchandise at the Subconcession, Subconcession area, or Licensed Plaza will result in the immediate termination of this Sublicense.
- B. Nothing in this Sublicense confers a right for SUBLICENSEE to use any of CUNY/College marks, logos and other graphical images in connection with this Agreement.

XXIII. INFRINGEMENTS

- A. SUBLICENSEE shall be liable to College and City and hereby agrees to indemnify and hold College and City harmless for any damage or loss or expense sustained by College and City from any infringement by SUBLICENSEE of any copyright, trademark, or patent rights of design, systems, drawings, graphs, charts, specifications or printed matter furnished or used by SUBLICENSEE in the performance of this Sublicense.

XXIV. ANTI-TRUST

- A. SUBLICENSEE hereby assigns, sells, and transfers to the City all right title and interest in and to any claims and causes of action arising under the anti-trust laws of the State of New York or of the United States relating to the particular services purchased or procured by the City under this Sublicense.

XXV. EMINENT DOMAIN AND PUBLIC USE

- A. In the event that the Licensed Plaza or any part thereof is required for a public use or condemned for a public use, whether by DOT or any other agency of government, SUBLICENSEE waives any and all claims to an award for its Sublicense or other damage by reason of such requirement or condemnation, including but not limited to awards for fixtures and moving expenses.

XXVI. DEVELOPMENT PURPOSES

- A. In the event that the Licensed Plaza or any part thereof is required by DOT or any other agency of government for development purposes, construction, repairs or other work, SUBLICENSEE waives any and all claims to an award under this Sublicense or other damages by reason of such requirement or work, including but not limited to awards for fixtures. SUBLICENSEE also agrees that this Sublicense shall terminate with regard to the affected area(s) and SUBLICENSEE shall vacate the affected

area(s) upon twenty-five (25) days' written notice from College or DOT.

XXVII. SEVERABILITY

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

XXVIII. ALL LEGAL PROVISIONS DEEMED INCLUDED

- A. It is the intent and understanding of the parties to this Sublicense that each and every provision of law required to be inserted in this Sublicense 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 Sublicense 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.

XXIX. MODIFICATION

- A. No waiver or modification of any provision of this Sublicense will be effective unless it is in writing and signed by duly authorized representatives of College and SUBLICENSEE.

XXX. INDEPENDENT STATUS OF SUBLICENSEE

- A. SUBLICENSEE is not an employee of the College and is not an employee of the City and in accordance with such independent status neither SUBLICENSEE nor its employees or agents will hold themselves out as, nor claim to be officers, employees, or agents of the College or 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 College or of the City, including but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage or employee retirement membership or credit.

SCHEDULE A

[Plaza Concession Fees for Commercial/Promotional Plaza Events]

Event Size	Small	Medium	Large
Fee per Event Day	\$2,000	\$9,000	\$19,000

APPENDIX A

[Standard Clauses for New York State Contracts]

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.**

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STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, “the contract” or “this contract”) agree to be bound by the following clauses which are hereby made a part of the contract (the word “Contractor” herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State’s previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller’s approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor’s business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State’s prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER’S APPROVAL. In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller’s approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller’s approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

4. WORKERS’ COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers’ Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor’s employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in

accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records

must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "(a), (b) and (c)" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not

apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this

law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business and Technology Development
625 Broadway
Albany, New York 12245
Telephone: 518-292-5100

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue 33rd Floor
New York, NY 10017
646-846-7364
email: mwbebusinessdev@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a “procurement contract” as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <https://ogs.ny.gov/iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 1)

RESOLVED, that the Franchise and Concession Review Committee ("FCRC") authorizes the New York City Department of Transportation ("DOT") to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into an agreement ("Agreement") with the City University of NY Senior Colleges (also known as The City University of New York on behalf of Baruch College) ("Concessionaire") for the operation and management of the pedestrian plaza located on East 25th Street between Lexington and Third Avenues in Manhattan, New York (the "Plaza"); and maintenance and/or repair of certain amenities installed within the Plaza, including through City-approved plaza events, sponsorships, gifts, and subconcession(s), including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Plaza. Subconcessions would be awarded in the basic form of a Request for Proposals or Request for Bids, subject to DOT's prior written approval of both solicitation and award. The Agreement will provide for one (1) five-year term, commencing upon written Notice to Proceed, which may be renewed for up to two (2) additional five-year terms, exercisable upon mutual consent of both parties. The Concessionaire will be required to invest any revenue generated this concession into the maintenance and/or repair of certain amenities within the Plaza; and reasonable administrative costs, as such costs relate to the Plaza.

**THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON**

3/12/2025

Signed: _____

Title: City Chief Procurement Officer

Date: _____

Rule 1-16: Different Procedure

Concession Agreement Recommendation For Award Memorandum Cover Sheet

Concession Title Union Square Plaza Concession ID 2025Con06

Description See additional info form Agency Department of Transportation ("DOT")

☒ Additional information has been attached to this document (please use the "Additional Information Form" available on BuyWise)

Recommended Concessionaire

Name Union Square Partnership District Management Association, Inc. Telephone (212) 460-1200
Address 200 Park Avenue South, Suite 1320 ☒ EIN or ☐ SSN # 13-3202710
New York, New York 10003 ☒ Not-for-Profit Organization ☐ Certified M/WBE by SBS

Recommended Concession Agreement Term

Initial Term NTP to 10 years Concession Site(s) ☒ Yes ☐ No
Renewal Option(s) 5 years to (years 11 to 15) Address See additional info form
5 years to (years 16 to 20)
Total Potential Term 20 years
☐ >20 years – FCRC unanimously approved term on / / Borough MN Community Board 2/5
Block# Lot#

Recommended Annual Revenue (Check all that apply)

☐ Annual Fee(s) \$
☐ Gross Receipts %
☐ The Greater of Annual Minimum Fee(s) of
\$ vs % of Gross Receipts
☒ Other See additional info form

Selection Procedure Requirements

Please select the appropriate Different Procedure method justification below:

- ☐ Sole Source
☐ Amendment or extension to an existing concession agreement
☐ Not-for-Profit concession agreement
☒ Other (Please specify)

DOT Plaza Program. FCRC approved different selection procedure on 05/13/2020.

Award is a Major Concession

- ☐ Yes – Award was approved pursuant to Sections 197-c and 197-d of the NYC Charter as follows:
☐ CPC approved on / /
☐ City Council approved on / /
☐ N/A
☒ No

Negotiation Requirements

Below, please describe the nature of negotiations conducted, including with respect to the amount of revenue offered:

See additional info form

Award Requirements

The agency determined that the award of this concession is in the best interest of the City because:

Since the concession will not yield a profit to Concessionaire, it is in the City's best interest to enter into a license agreement with the Concessionaire because this not-for-profit organization's mission is to improve and enhance the neighborhood in which the Licensed Plaza is located. Concessionaire was created and funded by property owners directly adjacent to the Licensed Plaza. This organization represents the neighborhood that it will serve and has a vested interest in the Licensed Plaza. Concessionaire has over thirty years of relevant experience performing the activities necessary to operate, manage, and maintain public spaces, including managing streetscape, subcontracting maintenance services to reliable vendors, and involving the community and other public stakeholders in managing public spaces.

Rule 1-16: Different Procedure

Concession Agreement Recommendation For Award Memorandum Cover Sheet

Public Hearing Requirements

(Only applicable for significant concessions)

☒ [IF REQUIRED] a public hearing was conducted on: 03 / 10 / 25

Subject concession is a (check one): ☐ **Citywide** or ☒ **NOT Citywide** concession and Agency hereby certifies that a notice summarizing the terms and conditions of the proposed concession, and the time, date and location of the public hearing was published once in the City Record and given to all affected CB-BP and the Committee Members on 02 / 21 / 2025 (not less than 15 days prior to the hearing date). In addition, if you have posted this notice publicly elsewhere, please describe below:

☐ Subject concession is non-significant. No public hearing is required

FCRC Approval

☐ FCRC approved this concession agreement on 03 / 12 / 25 (date of the FCRC public meeting)

Votes in favor: ____ Votes against: ____

OR

☐ The concession was not subject to approval of the FCRC because it has a term of less than 30 days and is not subject to renewal

Law Department approved concession agreement on: ____/____/____

Authorized Signatures

Agency Staff

This is to certify that the information presented herein is accurate and that I find the proposed concessionaire to be responsible and approve of the award of the subject concession agreement

Signature _____

Name Michelle Craven

Title Associate Deputy Commissioner for Cityscape and Franchises Date _____

Certificate of Procedural Requisites

This is to certify that the agency has complied with the prescribed procedural requisites for award of the subject concession agreement

Signature _____ Date _____

City Chief Procurement Officer

For Agency Use With Concession Forms

Concession Title	Union Square Plaza	Concession ID	2025Con06
Description	See below	Agency	Department of Transportation ("DOT")

To supplement Recommendation For Award Memorandum Cover Sheet

Description:

For the operation and management of a pedestrian plaza which is located on Broadway between East 18th Street and East 19th; Broadway between East 17th Street and East 18th Street; East 17th Street between Broadway and Park Avenue South; Union Square West between East 16th Street and East 17th Street; Union Square West between East 14th Street and East 15th Street; East 14th Street between University Place and Broadway; and University Place between East 13th Street and East 14th Street in Manhattan, New York ("Licensed Plaza"), and maintenance and/or repair of certain amenities installed within the Licensed Plaza, including through City-approved plaza events, sponsorships, gifts, and subconcessions.

Recommended Annual Revenue:

Checked box for Other: The Concessionaire will be required to invest any revenue generated by this concession into the maintenance and/or repair of certain amenities installed within the Licensed Plaza; and reasonable administrative costs, as such costs relate to the Licensed Plaza

Negotiation Requirements:

The License would permit Union Square Partnership District Management Association, Inc. ("Concessionaire") to provide for to provide for the operation and management of the Licensed Plaza ,and maintenance and/or repair of certain amenities installed within the Licensed Plaza, including through City-approved plaza events, sponsorships, gifts, and subconcession(s), including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by the Concessionaire in the basic form of Request for Proposals or Request for Bids, subject to DOT's prior written approval of both solicitation and award. The Concessionaire will be required to invest any revenue generated this concession into the maintenance and/or repair of certain amenities within the Licensed Plaza; and reasonable administrative costs, as such costs relate to the Licensed Plaza.

NOTICE OF PUBLIC HEARING

To: Mark Levine, Manhattan Borough President
Bradley Sherburne, Chair, Manhattan CB 5 and Susan Kent, Chair,
Manhattan CB 2

From: Michelle Craven, Associate Deputy Commissioner for Cityscape and
Franchises

Subject: Notice of Joint Public Hearing: 3/10/2025; For the operation and
management of a pedestrian plaza which is located on Broadway between
East 18th Street and East 19th Street; Broadway between East 17th Street
and East 18th Street; East 17th Street between Broadway and Park Avenue
South; Union Square West between East 16th Street and East 17th Street;
Union Square West between East 14th Street and East 15th Street; East
14th Street between University Place and Broadway; and University Place
between East 13th Street and East 14th Street in Manhattan, New York
("Licensed Plaza"), and maintenance and/or repair of certain amenities
installed within the Licensed Plaza, including through City-approved plaza
events, sponsorships, gifts, and subconcessions.

Date: 2/21/2025

NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review
Committee and Department of Transportation ("DOT") to be held on 3/10/2025, at 2
Lafayette Street, Room 1412, New York, NY 10007 commencing at 2:30pm relative to:

INTENT TO AWARD as a concession a License Agreement ("License") to Union
Square Partnership District Management Association, Inc. for the operation and
management of the Licensed Plaza and maintenance and/or repair of certain amenities
installed within the Licensed Plaza, including through City-approved plaza events,
sponsorships, gifts, and subconcessions.

The License provides for one 10-year term, commencing upon written Notice to
Proceed, which may be renewed for up two additional five-year terms, exercisable at
the sole discretion of DOT.

Compensation to the City will be as follows: The Concessionaire will be required to
invest any revenue generated by this concession into the maintenance and/or repair of

certain amenities within the Licensed Plaza; and reasonable administrative costs, as such costs relate to the Licensed Plaza.

Written testimony may be submitted in advance of the hearing electronically to fcrc@mocs.nyc.gov. All written testimony can be submitted up until the close of the public hearing and will be distributed to the FCRC after the hearing.

A draft copy of the agreement may be obtained at no cost by any (or all) of the following ways:

1. Submit a written request to DOT at concessions@dot.nyc.gov from 2/21/2025 through 3/10/2025.
2. Submit a written request by mail to Department of Transportation, 55 Water Street, 9th Floor, New York, NY 10038. Written requests must be received by 3/3/2025. For mail-in requests, please include your name, return address, and Union Square Plaza Concession/2025Con06.

The agenda and related documentation for the hearing will be posted on the MOCS website at <https://www.nyc.gov/site/mocs/opportunities/franchises-concessions.page>

For further information on accessibility or to make a request for accommodations, such as sign language interpretation services, please contact the Mayor's Office of Contract Services (MOCS) via e-mail at DisabilityAffairs@mocs.nyc.gov or via phone at (212) 298-0800. Any person requiring reasonable accommodation for the public hearing should contact MOCS at least five (5) business days in advance of the hearing to ensure availability.

THIS LICENSE, made as of _____, 20__ between and among the City of New York (the "City"), a municipal corporation of the State of New York, acting by and through the New York City Department of Transportation ("DOT"), and Union Square Partnership District Management Association, Inc. ("PLAZA PARTNER"), a New York not-for-profit corporation.

WITNESSETH

WHEREAS, DOT is charged with the responsibility for the construction, maintenance and repair of streets pursuant to Section 2903 of the New York City Charter; and

WHEREAS, PLAZA PARTNER was formed in 1984 to improve and enhance the Union Square area in the borough of Manhattan, City and State of New York ("Union Square Area"), including but not limited to the improvement and maintenance of public space therein; and

WHEREAS, PLAZA PARTNER applied to DOT's plaza program in 2024 and proposed a site for a pedestrian plaza. DOT selected the site, which is located on Broadway between East 18th Street and East 19th Street; Broadway between East 17th Street and East 18th Street; East 17th Street between Broadway and Park Avenue South; Union Square West between East 16th Street and East 17th Street; Union Square West between East 14th Street and East 15th Street; East 14th Street between University Place and Broadway; and University Place between East 13th Street and East 14th Street in Manhattan, New York ("Licensed Plaza"). The Licensed Plaza consists of 7 separate plaza blocks as identified and illustrated in **Exhibit A**; and

WHEREAS, DOT has jurisdiction over the Licensed Plaza and designated the Licensed Plaza as a DOT Pedestrian Plaza pursuant to Section 19-157 of the New York City Administrative Code; and

WHEREAS, the City, at its sole cost and expense, designed and constructed the Licensed Plaza, which includes the installation of certain amenities within the Licensed Plaza, as more particularly described in **Exhibit B**; and

WHEREAS, the City desires to encourage the participation of interested organizations in providing supplemental services, including maintenance and public programming, for the benefit of the public; and

WHEREAS, PLAZA PARTNER has assisted DOT to maintain and/or repair certain amenities within certain portions of the Licensed Plaza since 2009; and

WHEREAS, DOT has expanded the pedestrian plaza areas in 2019 and again in 2024 to encompass the entirety of the Licensed Plaza; and

WHEREAS, PLAZA PARTNER desires to operate and manage the entirety of the Licensed Plaza, and assist DOT to maintain and/or repair the amenities listed in **Exhibit B** that are installed within the Licensed Plaza for the benefit of the public as specifically set forth in this License; and

WHEREAS, PLAZA PARTNER has strong relationships with local businesses, community boards and other local organizations, providing meaningful input on the programs and operation of the Union Square Area; and

WHEREAS, DOT recognizes the PLAZA PARTNER will be able to significantly assist DOT's plaza program; and

WHEREAS, the Franchise and Concession Review Committee ("FCRC") authorized DOT to enter into a License Agreement with PLAZA PARTNER for the operation and management of the Licensed Plaza; and maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza, including through City-approved plaza events, sponsorships, gifts, and subconcession(s), including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise ("Subconcession(s)" as described in Section 7 herein) within the Licensed Plaza.

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

1. SCOPE OF LICENSE

A. DOT hereby grants to PLAZA PARTNER and PLAZA PARTNER hereby accepts from DOT this non-exclusive License to operate and manage the Licensed Plaza; and maintain and/or repair the amenities listed in Exhibit B that are installed within the Licensed Plaza as specifically set forth in this License (any reference to the Licensed Plaza herein shall include the Subconcession(s), unless otherwise stated). Notwithstanding the foregoing sentence, DOT will not grant a concession License to any other party to operate and manage the Licensed Plaza; and maintain and/or repair the amenities listed in Exhibit B that are installed within the Licensed Plaza while this License is in effect. PLAZA PARTNER shall provide, or cause to be provided, services for the maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza (which may be amended from time to time upon mutual consent of the parties) as specifically set forth in this License (collectively the "Services") and as more specifically described in Section 3 below. Services shall not include any capital improvements or Alterations as described in Section 14 below.

B. As more particularly set forth in this License, PLAZA PARTNER shall be permitted to:

- (1) manage and operate a Subconcession(s) pursuant to Section 7 herein;
- (2) hold Plaza Events at the Licensed Plaza pursuant to Section 8 herein; and
- (3) accept gifts and sponsorships pursuant to Section 9 herein.

C. As more fully provided in Section 5 below, any revenue received from the management and operation of the Licensed Plaza shall be used by PLAZA PARTNER for Services at the Licensed Plaza.

D. PLAZA PARTNER shall, or shall require its subconcessionaire(s) to obtain any and all approvals, permits, and other licenses required by federal, state and City laws, rules, regulations and orders which are or may become necessary for the operation and management of the Licensed Plaza; and maintenance and/or repair of the amenities listed in Exhibit B that are installed within the Licensed Plaza, in accordance with the terms of this License. Whenever any act, consent, approval or permission is required of the City, DOT or the DOT Commissioner under this License, the same shall be valid only if it is, in each instance, in writing and signed by the DOT Commissioner or his/her duly authorized representative, and such approval or permission shall not be unreasonably delayed. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon the City, DOT, the DOT Commissioner or their agents, unless the same is, in each instance, in writing and duly signed by the DOT Commissioner or his/her duly authorized representative.

E. It is expressly understood that no land, building, space, improvement, or equipment is leased to PLAZA PARTNER, but that during the term of this License, as defined herein, PLAZA PARTNER and its subconcessionaire(s) shall have the non-exclusive use of the Licensed Plaza for the purpose herein provided. Except as herein provided, PLAZA PARTNER and its subconcessionaire(s) have the right to occupy and operate the Licensed Plaza only so long as each and every term and condition in this License is properly complied with and so long as this License is not terminated by DOT in accordance with this License.

2. TERM

A. The term of this License ("Term") shall be ten (10) years, commencing upon written Notice to Proceed ("Commencement Date"). This License may be renewed for up to two (2) additional five-year terms, to be exercised at the sole discretion of DOT subject to termination and revocation as hereinafter provided. DOT shall provide PLAZA PARTNER with sixty (60) days' advance written notice of its intent to renew.

B. Notwithstanding any other termination provision of this License, this License is terminable at will any time by DOT upon twenty-five (25) days written notice to PLAZA PARTNER.

3. SERVICES

A. PLAZA PARTNER shall provide, or cause to be provided the Services at the Licensed Plaza for the benefit of the public. PLAZA PARTNER shall only be required to provide the maintenance and/or repair as expressly set forth in this License for the amenities described below and in **Exhibit B**, which may be amended from time to time upon mutual consent of the parties. PLAZA PARTNER shall not be required to repair any amenity that is listed in **Exhibit B** as "DOT Standard." However, amenities identified as "DOT Standard" in **Exhibit B** must be maintained as reasonably necessary. For the avoidance of doubt, PLAZA PARTNER shall not be required to maintain and/or repair any amenity within the Licensed Plaza not listed in **Exhibit B**.

(1) For the purposes of this License, the term “maintain” shall mean cleaning, sweeping, trash removal, snow and ice removal in accordance with the snow map illustrated in **Exhibit C**, landscaping, and graffiti removal, which shall be performed during the PLAZA PARTNER’s hours of operation.

(2) For the purposes of this License, the term “repair” shall mean fixing an amenity with the purpose of returning it to a good condition, which shall be performed during the PLAZA PARTNER’s hours of operation. This shall not include any capital improvements, which are permanent improvements that add value to the Licensed Plaza, prolong the useful life of the Licensed Plaza, or adapt the Licensed Plaza to new uses.

(3) For the purposes of this License, the term “good condition” shall mean an amenity that is fully functioning, safe, clean, and attractive.

(4) For the purposes of this License, the PLAZA PARTNER shall not be responsible for maintaining or repairing the existing known infrastructure listed in **Exhibit B-1** as City, Public, Metropolitan Transportation Authority (MTA) and Utility Infrastructure. PLAZA PARTNER shall not be responsible for maintaining or repairing any City, Public, MTA and Utility Infrastructure not listed in **Exhibit B-1** that is newly identified or installed during the Term of this License. For avoidance of doubt, the City shall retain responsibility for the maintenance and repair of any item listed in **Exhibit B-1** as City infrastructure. Nothing contained herein shall be construed as shifting such responsibility to the PLAZA PARTNER.

B. PLAZA PARTNER shall provide or cause to be provided the maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically required by this Section to the reasonable satisfaction of DOT.

(1) Maintenance:

(a) Dirt, litter and obstructions shall be removed, and trash and leaves collected and removed so as to maintain the Licensed Plaza as reasonably necessary.

(b) All walkways, sidewalks and all other amenities and facilities in the Licensed Plaza, as listed in Exhibit B, shall be routinely maintained as reasonably necessary.

(c) Graffiti shall be regularly painted over or removed, within a reasonable and timely manner after its appearance on any surface.

(d) Surface drains and surface gratings shall be maintained regularly to prevent clogging.

(e) Planters and planting beds shall be free of litter and debris.

(f) Any umbrellas, moveable tables and chairs (“Moveable Street Furniture”) shall be maintained as reasonably necessary.

(g) All amenities listed in **Exhibit B**, as may be amended from time to time upon mutual consent of the parties, shall be maintained as reasonably necessary.

(h) Perimeter planters used to delineate traffic shall not be moved without DOT's prior written approval. Such approval or denial shall not be unreasonably delayed. If a perimeter planter is moved by a third party, PLAZA PARTNER shall endeavour to return the perimeter planter(s) to its original position as soon as practicable and thereafter shall immediately notify DOT; provided, however, that PLAZA PARTNER's indemnification under Section 12(C)(6) shall be in no way limited thereby.

(i) Snow and ice shall be removed from all walkways within a reasonable period of time in accordance with the snow map illustrated in **Exhibit C**. If necessary, Moveable Street Furniture shall be removed from the Licensed Plaza due to such snow and/or ice conditions.

(j) Sand or snow melting agent shall be spread as needed to minimize slippery conditions which may arise from the thawing and refreezing of snow and/or ice in accordance with the snow map illustrated in **Exhibit C**.

(k) Signs shall be posted throughout the Licensed Plaza cautioning users of any dangerous conditions due to snow and/or ice. If necessary, the Licensed Plaza may be closed due to such snow and/or ice conditions.

(l) Water all trees, shrubs, plantings and grass-covered areas as necessary to maintain such vegetation in a healthy condition.

(m) Remove or destroy any weeds from paving blocks, pavement, and concrete areas.

(n) Seasonal or annual pruning of shrubs and plantings.

(o) To the extent that PLAZA PARTNER applies pesticides to the Licensed Plaza, PLAZA PARTNER or any subcontractor, shall comply with Title 17 of Chapter 12 of the New York City Administrative Code.

(2) Repair:

(a) Benches or other seating: Replace broken or missing bench slats and paint benches, as needed. Repair damaged benches or other seating listed in **Exhibit B** as needed within a reasonable time.

(b) Moveable Street Furniture: All Moveable Street Furniture listed in **Exhibit B** shall be repaired as needed within a reasonable time.

(c) Facilities/Structures: All facilities, structures, equipment, subconcession structures, and subconcession areas listed in **Exhibit B** shall be repaired as needed within a reasonable time.

(d) Painting: All amenities listed in **Exhibit B** with painted surfaces shall be painted as needed. Surfaces shall be scraped free of rust or other extraneous matter and painted to match the existing color.

(e) Planters: All planters listed in **Exhibit B** shall be repaired as needed within a reasonable time.

(f) Plantings: Re-seed and/or re-sod grass-covered areas as needed. Seasonal or annual planting of varied plant life (excluding trees), including some flowering plants, such that at no time are planters or planting beds empty of plant life.

(g) Other Amenities: All other amenities listed in **Exhibit B**, as may be amended from time to time upon mutual consent of the parties, except any amenity listed in **Exhibit B** as “DOT Standard” shall be repaired as needed within a reasonable time.

(h) In the event that any of the amenities listed in **Exhibit B** are subject to construction warranties, DOT shall use good faith efforts to provide PLAZA PARTNER with copies of such applicable construction warranties and facilitate discussions between the appropriate parties.

(i) PLAZA PARTNER shall not be required to repair and/or replace any amenity that is listed in **Exhibit B** as “DOT Standard”. However, amenities identified as “DOT Standard” in **Exhibit B** must be maintained as reasonably necessary.

(j) For the avoidance of doubt, the City shall retain responsibility for the repair and replacement of any amenity that is listed in **Exhibit B** as “DOT Standard” and for any City infrastructure. Nothing contained herein shall be construed as shifting such responsibility to the PLAZA PARTNER.

(k) For the avoidance of doubt and notwithstanding anything to the contrary, the parties further acknowledge that PLAZA PARTNER shall not be responsible, or bear any repair or other obligations or liabilities, for any damage in or to the Licensed Plaza to the extent caused by the City, another governmental entity or public authority, a utility company or other permitted third-party (such as providers of sewer, water, gas, heat, electricity, cable, broadband, and telephone), except when such permitted third party is acting at the direction of the PLAZA PARTNER or its contractors, subcontractors or agents or subconcessionaire(s) or subconcessionaire(s)’ contractors, subcontractors or agents.

C. The public shall have free and open access to the seating areas within the Licensed Plaza unless otherwise precluded by a DOT-approved Plaza Event as set forth in Section 8 of this License, other City-approved events, or a DOT-approved subconcession agreement.

D. PLAZA PARTNER shall not allow its employees, agents, contractors and subconcessionaire(s) to emit loud noise, smoke, vapor or offensive odor from the Licensed Plaza.

E. Advertising (other than in a form identifying PLAZA PARTNER and its subconcessionaire(s) with approval from DOT) is strictly prohibited. Sponsor recognition may be permitted subject to DOT approval. Such approval or denial shall not be unreasonably delayed.

F. DOT makes no representations regarding the adequacy of utilities currently in place at the Licensed Plaza. DOT makes no representation regarding the availability of electricity, water or other utilities at the Licensed Plaza or that any entity can or will make such services available. PLAZA PARTNER, at its sole cost and expense, shall provide for all lighting, electrical and water connections and other utility services at the Licensed Plaza to conduct its operations. PLAZA PARTNER shall pay all charges for sewer, water, gas, heat, electricity, cable, broadband, and telephone used by its employees, agents, contractors and subconcessionaire(s) at the Licensed Plaza and shall procure at PLAZA PARTNER's own cost and expense all meters, permits, approvals and licenses necessary to effectuate the requirements of this Section. PLAZA PARTNER shall be responsible for the installation of all necessary water, gas, heat, electricity, cable, broadband, and telephone connections. The PLAZA PARTNER shall not accept any money, commission, premium, bonus or other consideration from any person for the use or sale of utility services, except for reimbursements for utilized utility services for Plaza Events and Subconcessions. PLAZA PARTNER shall not tap into DOT's electricity without prior DOT written approval. If generators are used, PLAZA PARTNER shall provide whatever is necessary under 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 City directives and restrictions.

G. PLAZA PARTNER shall prepare and provide to DOT reports of any accidents or other incidents, if known, occurring at the Licensed Plaza, including the Subconcession(s), on a regular basis and in a format reasonably acceptable to DOT.

(1) PLAZA PARTNER and its subconcessionaire(s) shall promptly notify DOT, in writing, of any claim for injury, death, property damage or theft which may be asserted against PLAZA PARTNER or its subconcessionaire(s) with respect to the Licensed Plaza and the Subconcession(s).

(2) PLAZA PARTNER and its subconcessionaire(s) shall promptly notify DOT, in writing, of any unusual conditions that may develop in the course of the operation of the Subconcession(s) such as, but not limited to, fire, flood, casualty and substantial damage of any kind and PLAZA PARTNER shall also notify DOT to the extent it is aware of any such unusual conditions.

(3) PLAZA PARTNER shall, with respect to the operation and management of the Licensed Plaza and maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License, designate a person to handle all claims for loss or damage including all insured claims for loss or damages. PLAZA

PARTNER shall require its subconcessionaire(s), with respect to the operation and management of the Subconcession(s), to designate a person to handle all claims for loss or damage including all insured claims for loss or damages. PLAZA PARTNER shall provide DOT with the name, telephone number and address of each such person, within thirty (30) days of the date of this License and any subconcession agreement(s).

H. PLAZA PARTNER shall periodically inspect the Licensed Plaza for hazardous conditions and shall, without delay upon learning of the condition, report and cause to be repaired any portion or feature of the Licensed Plaza for which PLAZA PARTNER has repair responsibility under this License that exhibits defects or hazardous conditions, and shall immediately institute appropriate measures to protect the public from harm, including but not limited to the posting of warning signs and temporary barriers. With respect to any portion or feature of the Licensed Plaza for which PLAZA PARTNER does not have repair responsibility under this License, PLAZA PARTNER shall, without delay upon learning of the condition, report the need for repairs to DOT and immediately institute appropriate measures to protect the public from harm, including but not limited to the posting of warning signs and temporary barriers.

4. BUDGET

A. On or before April 1st of each year the License is in effect, PLAZA PARTNER shall submit to DOT for review and approval its annual budget relating to the operation and management of the Licensed Plaza; and maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License. For accounting purposes, the fiscal year shall run from July 1st to June 30th. Notwithstanding the above, the Licensed Plaza budget for fiscal year 2025 shall be submitted within thirty (30) days of the Commencement Date.

B. The PLAZA PARTNER Licensed Plaza budget shall set forth in reasonable detail the amounts proposed to be allocated for the operation and management of the Licensed Plaza; maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License; and reasonable administrative costs, including but not limited to insurance costs, a list of all personnel salaries or a portion thereof, reflecting their work performed as it relates to the Licensed Plaza.

C. The PLAZA PARTNER Licensed Plaza budget shall not be final until DOT provides written approval. Such approval or denial shall occur within 30 days from the date the budget is submitted. However, DOT will endeavor to respond within 10 business days from the date the budget is submitted.

D. Upon DOT's request, PLAZA PARTNER shall furnish DOT with bills, invoices, labor time books and such other supporting documents or other data as DOT deems necessary.

5. REVENUE

A. PLAZA PARTNER shall open and/or continue to maintain an account or sub account, accounted for separately and apart from all other funds, in a bank located within the City

of New York, insured by the Federal Deposit Insurance Corporation (“Special Account”). There shall be deposited in the Special Account all revenues collected in connection with or resulting from the rights and privileges granted to PLAZA PARTNER under this License, including:

- (1) any funds collected for Services under Section 3;
 - (2) any funds collected under a Subconcession described in Sections 6 and 7;
 - (3) any funds collected for Plaza Events under Section 8; and
 - (4) any funds collected for sponsorships under Section 9
- (collectively referred to herein as “Revenue”).

In addition to any Revenue generated in the form of monetary receipts, Revenue shall be deemed to include the fair market value of any non-monetary consideration in the form of materials, services or other benefits, tangible or intangible, or in the nature of barter PLAZA PARTNER may receive.

(1) In the event that the non-monetary consideration received is from a sponsor of a sponsored event and is solely for such event, the value of such non-monetary consideration shall not be considered Revenue provided it is not useable in the performance of any of the Services. For example, if such non-monetary consideration is a tent for an event, it shall not count as Revenue; if such non-monetary consideration is landscape maintenance, it shall count as Revenue. Notwithstanding the foregoing, the value of such non-monetary consideration shall be accounted for in all financial reports, audits, statements, records and accounts as required under the provisions of this License.

(2) In the event that any other non-monetary considerations are received, PLAZA PARTNER may submit a request to DOT for the exclusion of such other non-monetary consideration from the Revenue. Such case by case approval or denial shall be at DOT’s sole discretion and shall not be unreasonably delayed. Any other PLAZA PARTNER funds not directly generated as a result of the operation and management of the Licensed Plaza, including but not limited to general sponsorships, but used for the benefit of the City and Licensed Plaza shall be considered Revenue.

(3) PLAZA PARTNER shall not divert or recharacterize revenue that would otherwise have been considered Revenue for the purposes of this License.

B. PLAZA PARTNER may withdraw and use Revenue from the Special Account to expend for non-capital ordinary and necessary expenses directly attributable to PLAZA PARTNER's operation of the Licensed Plaza, including reasonable administrative costs and operating expenses for programming, operating, managing, maintaining and repairing the Licensed Plaza and as described in Sections 1 and 3.

C. No withdrawals shall be made from the Special Account other than as provided in this License.

D. The administration of the Special Account is subject to the inspection and audit record keeping provisions set out in Section 10.

E. Revenue does not include funds collected or received by PLAZA PARTNER (such as grants, donations, bequests and contributions) other than in the course of PLAZA PARTNER’s

use or operation of the Licensed Plaza. Applicable law governs PLAZA PARTNER's use of such other revenues.

F. Subject to paragraph (G) below, in no event shall the total annual Revenue from managing and operating the Licensed Plaza during the Term of the License exceed the cost of providing the Services and reasonable administrative costs.

G. At the end of each fiscal year in which the License is in effect, provided that there are no outstanding accounts payables for the fiscal year, any unexpended Revenue will be deposited into a segregated interest bearing accrual fund ("Accrual Fund"). PLAZA PARTNER may use funds in the Accrual Fund for any shortfall in Revenue needed to provide the Services set forth herein in the year(s) subsequent to its accrual. If at any time during the Term of this License, the Accrual Fund contains an amount that is more than three times the DOT-approved Licensed Plaza budget for the current year, the excess amount of the funds in the Accrual Fund shall be used to provide any Services in the Licensed Plaza. At the end of the Term of this License or if this License is terminated, the balance, including all accrued interest, if any, of funds in the Accrual Fund shall be used to provide any Services.

6. SUBCONCESSION(S)

A. PLAZA PARTNER may, subject to DOT's prior written approval, enter into a subconcession agreement(s) for the management and operation of the Subconcession(s), which shall be located in the area described in **Exhibit A**. Such subconcessionaire(s) shall not be related to or affiliated with PLAZA PARTNER.

B. The subconcession agreement(s) shall be subject to the terms and conditions of this License, and PLAZA PARTNER shall require said subconcessionaire(s) to acknowledge in writing that it received a copy of this License and that it is bound by same.

C. PLAZA PARTNER must issue a public solicitation in the basic form of a Request for Proposals ("RFP") or a Request for Bids ("RFB") approved by DOT to select the entity/entities to operate and manage the Subconcession(s). A minimum of three RFP or RFB submissions must be received to select a subconcessionaire(s), unless DOT agrees to less. This RFP or RFB shall be advertised in the City Record and other appropriate publication(s) approved by DOT. DOT, at its sole option, may be on the RFP evaluation committee.

D. The selection of the entity/entities to operate and manage the Subconcession(s) will be subject to DOT's prior written approval. Such approval or denial shall not be unreasonably delayed. The PLAZA PARTNER shall ensure that the subconcessionaire(s) complete and submit an online Procurement and Sourcing Solutions Portal (PASSPort) Vendor and Principle Questionnaires (formerly known as Vendor Information Exchange System (VENDEX) forms) to the Mayor's Office of Contract Services if the aggregate value of City contracts, franchises and concessions awarded that subconcessionaire, including this one, during the immediately preceding twelve-month period equals or exceeds \$100,000 ("Threshold"). Each subconcession agreement(s)

shall contain provisions specified in Section 13(B)(5) herein, provided however that such provisions shall pertain to subconcessionaire(s) instead of subcontractor(s).

E. The terms and conditions of the subconcession agreement(s) shall be subject to DOT's approval. Two (2) copies of the proposed subconcession agreement shall be submitted to DOT with PLAZA PARTNER's written request for approval.

F. (1) PLAZA PARTNER shall require its subconcessionaire(s) and any of subconcessionaire(s)'s contractors, subcontractors and agents, and PLAZA PARTNER's contractors, subcontractors and agents that perform operations involving the Licensed Plaza to obtain insurance coverage in accordance with the terms and conditions set forth in Section 11 herein.

(2) PLAZA PARTNER shall require its subconcessionaire(s) and any of subconcessionaire(s)'s contractors, subcontractors and agents, and PLAZA PARTNER's contractors, subcontractors and agents to defend, indemnify and hold the City, and its officials and employees harmless as set forth herein. Any subconcession agreement(s) and/or other agreements entered into on or after the Commencement Date of this License that involve operations in the Licensed Plaza shall include the following, provided that the terms "SUBLICENSEE" and "PLAZA PARTNER" shall be replaced with the name of or the defined term for the applicable indemnifying entity and PLAZA PARTNER, respectively:

(a) SUBLICENSEE shall take all reasonable precautions to protect the safety of its employees, agents, servants, invitees, contractors, and subcontractors while they are involved in the operations under this Agreement. SUBLICENSEE shall take all reasonable precautions to protect the persons and property of the PLAZA PARTNER, City or others from damage, loss, injury resulting from any and all operations under this Agreement.

(b) To the fullest extent permitted by law, SUBLICENSEE shall, indemnify, defend and hold the PLAZA PARTNER, the City and their respective employees and agents (the "Indemnitees"), 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) relating to or arising out of, or alleged (by a person other than the Indemnitees) to relate to or arise out of the SUBLICENSEE's, its employees', agents', servants', invitees', contractors' and subcontractors' operations under this Agreement to the extent resulting from its or their: (i) negligence or failure to comply with any of the provisions of this Agreement or of any applicable federal, state, or local laws, rules or regulations; or (ii) infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party.

(c) Insofar as the facts or law relating to any of the foregoing would preclude the Indemnitees from being completely indemnified by SUBLICENSEE, the Indemnitees shall be partially indemnified by SUBLICENSEE to the fullest extent permitted by law.

(d) SUBLICENSEE's obligation to defend, indemnify and hold the Indemnitees harmless shall not be (i) limited in any way by SUBLICENSEE's obligations to obtain and maintain

insurance under this Agreement, nor (ii) adversely affected by any failure on the part of the Indemnitees' to avail themselves of the benefits of such insurance.

G. The subconcession agreement(s) may not be assigned without the prior written approval of DOT. Such approval or denial shall not be unreasonably delayed. Any subsequent subconcession agreements will be subject to the terms and conditions set forth in this License.

7. OPERATION OF THE SUBCONCESSION(S)

A. PLAZA PARTNER shall provide for the operation and management of the Subconcession(s) through a subconcession agreement(s) and require its subconcessionaire(s), at the subconcessionaire(s)' sole cost and expense, to operate the Subconcession(s) in such manner as DOT shall reasonably prescribe and as permitted by the laws, rules, regulations and orders of government agencies having jurisdiction thereof. PLAZA PARTNER and its subconcessionaire(s) shall accept the Licensed Plaza in its "as-is" condition. PLAZA PARTNER shall require that its subconcessionaire(s) provide the necessary number of personnel having the requisite skills together with the necessary personal equipment and consumable supplies and shall perform the following services at the Licensed Plaza:

(1) Operate the Subconcession(s) as provided herein; and

(2) Continuously perform such ongoing and preventive maintenance activities necessary to maintain the Subconcession(s), consistent with Section 3 of this License, and with prevailing professional and industry or trade standards.

B. PLAZA PARTNER shall require its subconcessionaire(s) to submit its proposed hours of operation, a menu (if applicable) and price list, for PLAZA PARTNER's approval. The information submitted to and approved by PLAZA PARTNER by its subconcessionaire(s) shall be provided to DOT within a reasonable time thereafter. However, DOT reserves the right to review and approve such hours of operation, menu (if applicable), and price list at its discretion.

C. PLAZA PARTNER shall or shall require its subconcessionaire(s), at the subconcessionaire(s)'s sole cost and expense, to obtain all licenses and permits that may be required to operate the Subconcession(s) in accordance with applicable rules, laws and regulations.

D. PLAZA PARTNER shall require its subconcessionaire(s), at the subconcessionaire(s)' sole cost and expense, to print, frame, and prominently display the current approved schedule of operating days, hours and prices.

E. On or before the thirtieth (30th) day following the end of each fiscal year, PLAZA PARTNER shall require that its subconcessionaire(s) submit to DOT a statement of Subconcession Revenue (as defined below in Section 7.E(3) and (4)), signed and verified by an officer of subconcessionaire(s), reporting any Subconcession Revenue generated from the Subconcession(s) during the preceding twelve (12) month period. Notwithstanding the foregoing, PLAZA PARTNER shall require its subconcessionaire(s) to submit to PLAZA PARTNER such statement of Subconcession Revenue on a monthly basis.

(1) PLAZA PARTNER shall also require that its subconcessionaire(s) submit a report of Subconcession Revenue for the period since the prior 12-month report on or before the thirtieth (30th) day following the termination of this License or the subconcession agreement(s), or June 30th, whichever is sooner. The obligation to submit a final report of Subconcession Revenue shall survive the termination of this License or the subconcession agreement(s). These reports submitted to PLAZA PARTNER by its subconcessionaire(s) shall be provided to DOT within a reasonable time thereafter.

(2) PLAZA PARTNER shall require that its subconcessionaire(s) indicate on its statement of Subconcession Revenue whether or not these amounts are inclusive of sales tax collected.

(3) PLAZA PARTNER shall require in the subconcession agreement(s) that “Subconcession Revenue” shall include without limitation all funds received by subconcessionaire(s), without deduction or set-off of any kind, from the sale of food and beverages, wares, merchandise or services of any kind from the Subconcession(s), provided that Subconcession Revenue shall exclude the amount of any federal, state or City taxes which may now or hereafter be imposed upon or be required to be collected and paid by subconcessionaire(s) as against its sales. All sales made or services rendered by subconcessionaire(s) from the Subconcession(s) shall be construed as made and completed therein even though payment therefore may be made at some other place. In addition to any Subconcession Revenue generated in the form of monetary receipts, Subconcesion shall be deemed to include the fair market value of any non-monetary consideration in the form of materials, services or other benefits, tangible or intangible, or in the nature of barter the subconcessionaire(s) may receive.

(4) Subconcession Revenue shall include sales made for cash or credit (credit sales shall be included in Subconcession Revenue as of the date of the sale) regardless of whether the sales are paid or uncollected, it being the intention and agreement of the parties that all sums due to be received by subconcessionaire(s) from all sources from the operation of the Subconcession(s) shall be included in Subconcession Revenue.

F. PLAZA PARTNER shall require its subconcessionaire(s) to operate its Subconcession(s) in such a manner as to maintain the highest New York City Department of Health and Mental Hygiene (“DOHMH”) inspection rating.

(1) PLAZA PARTNER shall require its subconcessionaire(s), if it is selling food to the public, to obtain any and all approvals and other permits required by Federal, State and City laws, rules, regulations and orders to sell food to the public. In furtherance of the foregoing, any staff assigned by the subconcessionaire to sell food and beverages to the public must possess all Federal, State, and City authorizations and possess, and at all times display, appropriate DOHMH permits. Any person selling food to the public without all necessary permits may be subject to fines and/or confiscation of goods.

(2) PLAZA PARTNER shall require its subconsessionaire(s) to not use in its operations any polystyrene packing or food containers pursuant to Local Law 142 of 2013.

G. PLAZA PARTNER shall require that its subconcessionaire(s) employ an operations manager ("Manager") with appropriate qualifications to manage operations at the Subconcession(s) in a manner that is reasonably satisfactory to DOT. The Manager must be available by telephone during all hours of operation, and PLAZA PARTNER shall continuously notify DOT of a 24-hour cellular telephone number through which DOT may contact the Manager in the event of an emergency. PLAZA PARTNER shall require that its subconcessionaire(s) replace any Manager, employee, subcontractor whenever reasonably demanded by DOT.

H. PLAZA PARTNER shall require its subconcessionaire(s) to provide equipment, which will provide security for all monies received. PLAZA PARTNER shall require that its subconcessionaire(s) provide for the transfer of all monies collected to the subconcessionaire(s)' banking institution. PLAZA PARTNER shall require that its subconcessionaire(s) bear the loss of any lost, stolen, misappropriated or counterfeit monies derived from operations under this License.

I. PLAZA PARTNER shall require that its subconcessionaire(s), at its sole cost and expense, provide, hire, train, supervise, and be responsible for the acts of all personnel necessary for the proper operation of this License, including but not limited to:

- (1) Collect and safeguard all monies generated under this License;
- (2) Maintain the Subconcession(s) in accordance with this License;
- (3) Conduct and supervise the provision of qualified Subconcession(s) personnel and cashier(s); and
- (4) Secure the Subconcession(s).

J. PLAZA PARTNER shall require that its subconcessionaire(s), at the subconcessionaire(s)' sole cost and expense, obtain sound permits and provide any lighting, which it determines may be necessary to operate the Subconcession(s).

K. PLAZA PARTNER shall require that its subconcessionaire(s), in operating the Subconcession(s), maintain the sound level of all events and activities at an appropriate level to prevent an unreasonable nuisance to neighbors living and working near the Subconcession(s).

L. Installation of additional fixed lighting or fixed sound equipment by either PLAZA PARTNER or its subconcessionaire(s) on the Subconcession(s) shall require the prior written approval of DOT. Such approval or denial will not be unreasonably delayed.

M. PLAZA PARTNER shall require that its subconcessionaire(s) provide access to the Subconcession(s) to people with disabilities as required by law. This accessibility shall be clearly indicated by signs.

N. PLAZA PARTNER shall require its subconcessionaire(s), at its sole cost and expense, to provide a twenty-four (24) hour per day security system at the Subconcession(s), if appropriate, which shall be either an electronic security system, or a twenty-four hour unarmed guard, or both. PLAZA PARTNER shall require that its subconcessionaire(s) be responsible for securing the Subconcession(s) and any other equipment used immediately upon closing each day in a manner reasonably approved by DOT.

O. DOT shall have the right to reasonably approve the days and times on which deliveries to PLAZA PARTNER's subconcessionaire(s) may be made. Such approval or denial will not be unreasonably delayed.

P. It is expressly understood that if PLAZA PARTNER or its subconcessionaire(s) contemplates placing any signs off-site that advertise the Subconcession(s), such as on nearby highways or streets, it shall be PLAZA PARTNER's or its subconcessionaire(s)'s responsibility to obtain any necessary approvals or permits from any governmental agency having jurisdiction over such highways, streets or locations. The design and content of all such signs are subject to DOT's prior written approval. Such approval or denial will not be unreasonably delayed.

Q. The siting of the Subconcession(s) shall be arranged so that pedestrian traffic and the site lines of motorists are not unreasonably inhibited.

R. The sale of cigarettes, cigars, or any tobacco product is strictly prohibited. Additionally, the sale of electronic cigarettes and non-tobacco smoking products are strictly prohibited.

S. PLAZA PARTNER may permit its subconcessionaire(s) to sell alcoholic beverages only with the appropriate license from the State Liquor Authority ("SLA"). Such alcoholic beverages shall be served in recyclable cups and be consumed only within the boundaries of the Licensed Plaza, as permitted by the SLA.

T. No trucks or storage containers may be stationed or parked at the Subconcession(s) or Licensed Plaza, unless otherwise approved in writing by DOT. Additionally, PLAZA PARTNER shall not use or permit the storage of any illuminating oils, oil lamps, turpentine, benzene, naphtha, or similar substances or explosives of any kind (excluding fuel for generators). DOT shall cooperate with PLAZA PARTNER so that any unauthorized trucks, including food trucks, or unauthorized storage containers that are stationed or parked at the Subconcession(s) or Licensed Plaza by any third-party are removed.

U. PLAZA PARTNER shall require its subconcessionaire(s) to maintain trash receptacles and separate receptacles for recyclable materials and comply with all recycling regulations at its sole cost and expense, and arrange for the removal, by a duly licensed private carter, of all refuse relating to the Subconcession(s), including but not limited to trash, boxes and trade waste.

V. (1) PLAZA PARTNER, may, or may cause its subconcessionaire(s) at its or the subconcessionaire(s) sole cost and expense, to design, fabricate, construct and install the Subconcession(s) and/or any subconcession structure subject to DOT's prior written approval.

PLAZA PARTNER shall not apply any Revenue to any such design, fabrication, construction, and installation of any Subconcession(s) and/or subconcession structure.

(2) Upon installation, title to any improvements, equipment, and fixtures made to the Subconcession(s) and/or any subconcession structure shall vest in and thereafter belong to the City at the City's option, which may be exercised at any time after the substantial completion of the installation, affixing, or placement of such improvements, equipment, and fixtures. Such title may only vest in the City upon payment for the fair market value of the improvements, equipment, and fixtures made to the Subconcession(s) and/or subconcession structure by the City to PLAZA PARTNER. To the extent the City chooses not to exercise its option with respect to any of the improvements, equipment and fixtures made to the Subconcession(s) and/or any subconcession structure, PLAZA PARTNER shall, or shall cause its subconcessionaire(s) to remove such items after the expiration or termination of this License and restore the Licensed Plaza to its original state, normal wear and tear excepted and to the reasonable satisfaction of DOT at the sole cost and expense of PLAZA PARTNER or its subconcessionaire(s).

(3) PLAZA PARTNER shall use its best efforts to minimize the extent to which the public use of the Licensed Plaza is disrupted in connection with its construction, installation, operation, management, maintenance and/or repair activities at the Licensed Plaza.

(4) PLAZA PARTNER shall or shall cause its subconcessionaire(s) to pay all applicable fees and shall submit to DOT and all other governmental agencies having jurisdiction, for prior approval, all plans, specifications, schematics, working and mechanical drawings which shall be signed and sealed by a New York State Registered Architect or Licensed Professional Engineer. All plans, specifications, schematics, and working and mechanical drawings shall be in such detail as DOT shall require. All work shall be undertaken in accordance with the plans, specifications, schematics, and working and mechanical drawings approved in writing in advance by DOT.

(5) PLAZA PARTNER shall or shall cause its subconcessionaire(s) to apply for and obtain all applicable licenses and permits prior to the commencement of any work. Further, all designs will require prior approval from DOT and any other agencies having jurisdiction, including but not limited to the Public Design Commission of the City of New York.

(6) During the term of this License, PLAZA PARTNER shall or shall cause its subconcessionaire(s) to be responsible for the protection of the Subconcession(s) and/or any subconcession structure, whether or not construction is complete, against any damage, loss or injury. In the event of such damage, loss or injury, PLAZA PARTNER shall, or shall cause its subconcessionaire(s) to promptly repair the Subconcession(s) and/or any subconcession structure at the sole cost and expense of PLAZA PARTNER or its subconcessionaire(s).

(7) PLAZA PARTNER shall or shall cause its subconcessionaire(s) to construct the Subconcession(s) in accordance with all federal, state, and City laws, rules, regulations, orders, and industry standards, and with materials as set forth in the approved plans, specifications, schematics, working and mechanical drawings. All equipment and materials installed shall be new, free of defects, of the best grade quality, suitable for the purpose intended

and furnished in ample quantities to prevent delays. PLAZA PARTNER shall, or shall cause its subconcessionaire(s) to obtain all manufacturers' warranties and guarantees for all such equipment and materials, as applicable.

(8) 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 License 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.

(9) PLAZA PARTNER shall provide written notice to DOT when the Subconcession(s) and any subconcession structure is substantially completed, and DOT shall inspect the Subconcession(s) and/or any subconcession structure within a reasonable time after receipt of such notice from PLAZA PARTNER. After such inspection, DOT and PLAZA PARTNER shall jointly develop a single final "punch list" incorporating all findings from such inspection concerning all work not completed to the satisfaction of DOT. PLAZA PARTNER shall proceed with diligence to complete all "punch list" items within a reasonable time as determined by DOT.

(10) In the event that PLAZA PARTNER fails to comply with any phase of the construction of the Subconcession(s) and/or any subconcession structure for a period of thirty days following written notice to cure, DOT may terminate this License by giving ten days written notice of termination.

(11) PLAZA PARTNER shall provide DOT with discharges for any and all liens which may be levied against the Subconcession(s) and/or any subconcession structure during construction of such improvements. PLAZA PARTNER shall, or shall cause its subconcessionaire(s) to use its best efforts to discharge such liens within thirty business days of receipt of lien by PLAZA PARTNER.

(12) PLAZA PARTNER shall promptly repair, or may cause its subconcessionaire(s) to repair at its or the subconcessionaire(s) sole cost and expense, as DOT reasonably may determine, defects of materials, workmanship or design which may appear or to which damages may occur because of such defects, during the one year period subsequent to the date of the final completion of the Subconcession(s) and/or any subconcession structure.

(13) PLAZA PARTNER shall keep DOT fully informed of PLAZA PARTNER's progress in the construction of the Subconcession(s) and/or any subconcession structure.

(14) All risks of construction of the Subconcession(s) and/or any subconcession structure are hereby expressly assumed by PLAZA PARTNER except as may be specifically provided otherwise herein. The Subconcession(s) and any subconcession structure will be designed, constructed, maintained, secured and insured entirely at PLAZA PARTNER's or its

subconcessionaire(s)' expense without reimbursement by DOT or credit or offset of any kind for cost overruns or otherwise, and PLAZA PARTNER shall pay, or may cause its subconcessionaire(s) to pay all municipal fees and impositions in connection therewith.

W. Upon DOT's prior written approval, PLAZA PARTNER may use DOT's Standard Plaza Kiosk (as approved by the New York City Public Design Commission and as more particularly described in **Exhibit D**) to operate the Subconcession(s). Such approval or denial shall not be unreasonably delayed. PLAZA PARTNER, at its sole cost and expense, shall furnish all interior fixtures and equipment for the operation of the Subconcession(s). PLAZA PARTNER shall not apply any Revenue to any such interior fixtures and equipment. Ownership title of the Standard Plaza Kiosk belongs to and shall remain with the City throughout the Term.

X. The City shall own any copyrights, trademarks, logos and brands developed in association with the management and operation of the Subconcession(s) by PLAZA PARTNER and its subconcessionaire(s), that include the name of the Licensed Plaza or is directly associated with the Licensed Plaza. However, the City shall not own:

- (1) any portion of a name that consists of the name, portrait or signature of a living or deceased individual; or
- (2) a restaurant identifier or trade name that is not otherwise associated with the Licensed Plaza.

Y. Smoking of cigarettes or any other tobacco product is strictly prohibited at the Licensed Plaza in accordance with Local Law 11 of 2011. Using electronic cigarettes is also prohibited at the Licensed Plaza in accordance with Local Law 152 of 2013. Using non-tobacco smoking products is also prohibited at the Licensed Plaza in accordance with Local Law 187 of 2017.

8. PLAZA EVENTS

A. The Licensed Plaza may be used for Plaza Events (as defined in section 1-01 of Title 50 of the Rules of the City of New York), subject to the terms and conditions set forth herein.

B. PLAZA PARTNER shall submit an application to the Street Activity Permit Office ("SAPO") within the City's Office of Citywide Event Coordination and Management ("CECM") for any proposed Plaza Events to be held at the Licensed Plaza by the PLAZA PARTNER pursuant to SAPO's applicable rules.

C. PLAZA PARTNER may hold Plaza Events at the Licensed Plaza subject to:

- (1) an acknowledgment by DOT to SAPO that PLAZA PARTNER is the Plaza Partner as defined in section 1-01 of Title 50 of the Rules of the City of New York;
- (2) the City's right to use the Licensed Plaza for its own Plaza Events or programming or authorize others to use the Licensed Plaza;

(3) PLAZA PARTNER obtaining any necessary City authorization, approvals, permits, and compliance with other processes that may be necessary;

(4) If applicable, PLAZA PARTNER shall be responsible for the payment of all SAPO permit fees in connection with its own Plaza Events at the Licensed Plaza;

(5) all Plaza Events shall be open to the public and at no cost; and

(6) PLAZA PARTNER understands that the Licensed Plaza is public property and that activities at the Licensed Plaza are subject to the First Amendment of the U.S. Constitution and Article I of the New York State Constitution. Therefore: (a) PLAZA PARTNER acknowledges that First Amendment activities may be permitted by SAPO for the Licensed Plaza; and (b) PLAZA PARTNER shall refer to SAPO applications made to PLAZA PARTNER for any activity on the Licensed Plaza that may be protected by the First Amendment.

D. The City may use the Licensed Plaza for special events, including, but not limited to exhibits, art programs, and other free cultural events open to the public. If DOT or any other agency of the City intends to utilize the Licensed Plaza for any event, it shall coordinate such use with PLAZA PARTNER and shall use reasonable efforts to provide PLAZA PARTNER with thirty (30) days prior written notice of such event.

E. PLAZA PARTNER shall pay for, or cause to be paid any and all fees or royalties to ASCAP, BMI or such entities as may be required for any music or music programming during its Plaza Events, and DOT shall pay for any such fees or royalties relating to DOT's events.

F. Any sign posted by PLAZA PARTNER or its subconcessionaire(s) at the Licensed Plaza in connection with a Plaza Event, shall be appropriately located, and shall state that the Licensed Plaza is a New York City municipal concession operated by PLAZA PARTNER.

G. In addition to the SAPO permit fee collected by CECM, PLAZA PARTNER may collect a concession fee from the event sponsor or holder for any Commercial/Promotional events (as defined in section 1-01 of Title 50 of the Rules of the City of New York) held at the Licensed Plaza. These fees shall be included as part of PLAZA PARTNER's Revenue pursuant to Section 5 of this License. Such fees shall be set forth in attached **Schedule A**, which may be amended from time to time upon mutual consent of the parties, and shall be posted on SAPO's website.

9. SPONSORSHIPS AND GIFTS

A. Sponsorships

(1) DOT may, in its discretion, permit PLAZA PARTNER to accept sponsorships solely for the benefit of the City and the Licensed Plaza. However, under no circumstances are tobacco, e-cigarette, non-tobacco smoking products, or alcohol sponsorships permitted. As set forth in Section 5, such sponsorships shall be considered Revenue. Sponsorships generated for the general benefit of the PLAZA PARTNER shall not be subject to DOT approval and shall not be considered Revenue. However, if portions of such general sponsorships are for the benefit of the City and Licensed Plaza, those portions thereof shall be included in the Revenue and shall be

subject to the provisions of this subsection. Any such sponsorships shall be restricted in size, quantity and location as deemed appropriate by DOT.

(2) All sponsorships benefiting the City and the Licensed Plaza must be approved by DOT prior to their acceptance by PLAZA PARTNER. Additionally, PLAZA PARTNER must obtain DOT's prior written approval before entering into any sponsorship agreements (if any) where the sponsorship benefits the City and the Licensed Plaza. Such approval or denial shall not be unreasonably delayed. PLAZA PARTNER shall provide DOT with no less than thirty (30) days (or such lesser period as shall be acceptable to DOT) prior written notice of any such proposed sponsorships.

B. Gifts

(1) DOT may, in its discretion, permit PLAZA PARTNER to accept gifts solely for the benefit of the City and the Licensed Plaza. For purposes of this License, such gifts shall not be considered Revenue. Gifts obtained for the general benefit of the PLAZA PARTNER shall not be subject to DOT approval. However, if portions of such general gifts are for the benefit of the City and Licensed Plaza, those portions thereof shall be subject to the provisions of this subsection.

(2) All gifts benefiting the City and the Licensed Plaza must be approved by DOT prior to their acceptance by PLAZA PARTNER. Additionally, PLAZA PARTNER must obtain DOT's prior written approval before entering into any gift agreements (if any) where the gift benefits the City and the Licensed Plaza. Such approval or denial shall not be unreasonably delayed. PLAZA PARTNER shall provide DOT with no less than thirty (30) days (or such lesser period as shall be acceptable to DOT) prior written notice of any such proposed gift.

(3) PLAZA PARTNER shall prepare and provide to DOT quarterly reports detailing any such gifts benefiting the City and the Licensed Plaza, in a format reasonably acceptable to DOT.

C. The parties hereto agree that no writing, posters, plaques or banners shall be placed at the Licensed Plaza at any time, without DOT's prior written approval. Such approval or denial shall not be unreasonably delayed. It is expressly agreed that commemorative plaques and banners shall be erected in conformance with all applicable rules.

D. PLAZA PARTNER shall not place or allow the placement of any notice or sign in or on the Licensed Plaza without DOT's written approval. Such approval or denial shall not be unreasonably delayed. PLAZA PARTNER, upon twenty-four (24) hours' notice, shall remove any and all unauthorized notice or signage placed in or on the Licensed Plaza. In the case of PLAZA PARTNER's failure to remove any such notice or signage, DOT may remove such notice or signage at PLAZA PARTNER's cost for such removal.

E. For the avoidance of doubt, sponsorships and gifts as contemplated in this Section are not considered Plaza Events and are not subject to SAPO's rules.

10. INSPECTION AND AUDIT OF RECORDS

A. PLAZA PARTNER agrees that it shall comply with all of the provisions set forth in this Section, and with respect to the operations of the Subconcession(s), it shall incorporate such provisions, appropriately modified to apply to the subconcessionaire(s), into any subconcession agreement(s).

B. PLAZA PARTNER shall establish and maintain accurate records and accounts, in a manner satisfactory to DOT, which sufficiently and properly reflect all Revenue and direct and indirect costs of any nature resulting from PLAZA PARTNER's operations pursuant to this License, and set forth, in a manner satisfactory to DOT, its expenditures in any way connected to the Services under this License. Such records and accounts shall conform to generally accepted accounting principles.

C. PLAZA PARTNER shall establish and maintain accurate records and accounts, in a manner satisfactory to DOT, which sufficiently and properly reflect all activities concerning the Accrual Fund subject to section 5(G) above.

D. PLAZA PARTNER will provide notice to DOT of all meetings, hearings, and proceedings of PLAZA PARTNER's Board of Directors related to the operation and management of the Licensed Plaza; maintenance and/or repair of the amenities listed in Exhibit B that are installed within the Licensed Plaza as specifically set forth in this License, and will make available for consultation any of its officers and employees whose work relates to the performance of this License. PLAZA PARTNER also will make available, at its principal place of business, for audit, inspection, or removal of copies by DOT, the Comptroller of the City of New York ("Comptroller"), and/or by a DOT-authorized independent auditor, PLAZA PARTNER's books and records relating to the performance of this License, including, but not limited to:

- (1) all fiscal records, including books, accounts, and canceled checks;
- (2) internal and external audits completed within the last three fiscal years;
- (3) minutes of meetings of the Board of Directors;
- (4) reports of accidents and other incidents;
- (5) programs, research, and other reports and publications in connection with PLAZA PARTNER's responsibilities in the Licensed Plaza pursuant to this License; and
- (6) records of PLAZA PARTNER sponsored programs, and any other matters relating to the performance of and compliance with this License, or with any laws or regulations governing the conduct of PLAZA PARTNER under this License.

E. PLAZA PARTNER shall furnish to DOT a detailed audited and certified financial statement of PLAZA PARTNER related to the operation and management of the Licensed Plaza; and the maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License for each fiscal year during the Term of this License and any renewals thereof. Such statements shall include in reasonable detail the amounts

allocated for the operation and management of the Licensed Plaza; and the maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License, including but not limited to the Services described herein and reasonable administrative costs, including but not limited to insurance costs, and a list of all personnel salaries or a portion thereof, reflecting their work performed as it relates to the Licensed Plaza. Such statements shall be prepared by an independent certified public accountant retained at the sole cost and expense of PLAZA PARTNER. Such annual statement shall be submitted to DOT no later than 180 days after the close of each fiscal year. Copies of sale tax reports, if any, shall be submitted whenever requested by DOT. In addition, PLAZA PARTNER shall provide DOT within thirty (30) days of execution, any required tax filings with the Internal Revenue Service (such as the Form 990 and any successor form) and any required financial reports with the New York State Department of Law (such as annual report to be filed with the Charities Bureau or any successor report). Finally, PLAZA PARTNER shall prepare and provide to DOT any other reports as requested by DOT and/or pursuant to this License.

(1) Notwithstanding the above, for each fiscal year in which PLAZA PARTNER generates less than \$150,000 in Revenue, PLAZA PARTNER, may, in lieu of the audited and certified financial statement related to the operation and management of the Licensed Plaza and the maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License for each fiscal year during the Term of this License and any renewals thereof, furnish to DOT a reviewed financial statement of PLAZA PARTNER related to the operation and management of the Licensed Plaza and the maintenance and/or repair of amenities listed in Exhibit B that are installed within the Licensed Plaza as specifically set forth in this License for each fiscal year during the Term of this License and any renewals thereof. Such statements shall include in reasonable detail the amounts allocated for the operation and management of the Licensed Plaza; and the maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License, including but not limited to the Services described herein and reasonable administrative costs, including but not limited to insurance costs, and a list of all personnel salaries or a portion thereof, reflecting their work performed as it relates to the Licensed Plaza. Such review shall be conducted by an independent certified public accountant at the sole cost and expense of PLAZA PARTNER. Such annual statement shall be submitted to DOT no later than 180 days after the close of each fiscal year.

F. PLAZA PARTNER shall 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 PLAZA PARTNER, including Revenue and Accrual Fund (if applicable). Such books and records maintained pursuant to this License shall be conveniently segregated from other business matters of PLAZA PARTNER and shall include, but not be limited to:

- (1) all federal, state and local tax returns and schedules of PLAZA PARTNER;
- (2) records of daily bank deposits of the entire receipts from transactions in, at, on or from the Licensed Plaza, whether maintained in hard copy or in electronic form;
- (3) sales slips, daily dated cash register receipts, sales books; and

(4) duplicate bank deposit slips and bank statements, whether maintained in hard copy or in electronic form.

G. PLAZA PARTNER shall submit to DOT reports, including but not limited to the monthly Revenue, the Accrual Fund (if applicable), monthly reconciliation reports demonstrating the difference between the Revenue and the DOT-approved budgeted expenses, and operational status reports in a form acceptable to DOT, within 10 business days of the end of each quarter during the Term of the License. Notwithstanding the above, however, DOT reserves the right to reasonably request PLAZA PARTNER to submit to DOT any other reports and/or information.

H. PLAZA PARTNER shall use such accounting and internal control methods and procedures and keep such additional books and records as may be reasonably prescribed by DOT or the Comptroller, and DOT and/or the Comptroller shall have the right to examine the recordkeeping procedures of PLAZA PARTNER prior to the commencement of the term of this License, and at any time thereafter, in order to assure that the procedures are adequate to reveal the true, correct and entire business conducted by PLAZA PARTNER.

I. The failure or refusal of PLAZA PARTNER to furnish any of the statements required to be furnished under this Section within thirty (30) days after its due date, the failure or refusal of PLAZA PARTNER to maintain adequate internal controls or to keep any of the records as required by this Section after written prior notice from DOT or the Comptroller or the existence of any unexplained discrepancy in the amount of fees required to be expended hereunder, as disclosed by audit conducted by DOT or the Comptroller, the results of which are provided by written notice to PLAZA PARTNER in each instance, of more than five percent (5%) in any two (2) out of three (3) consecutive months or more than ten percent in one month, shall be presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder, which shall entitle DOT, at its option, to terminate this License.

J. PLAZA PARTNER shall and shall require its subconcessionaire(s) to retain all books, records, documents and other evidence relevant to this License for six (6) fiscal years after the expiration or termination of this License. City, State and federal auditors shall have full access to and the right to examine any of said materials during this period. In addition, if any litigation, claim, or audit concerning this License has commenced before the expiration of such six-year period, the books, records, documents, and other evidence must be retained until the completion of such litigation, claim or audit. Any books, records, documents or other evidence that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, documents, or other evidence that are created in the regular course of business as paper copy may be retained in an electronic format provided that they satisfy the requirements of N.Y. Civil Practice law and Rules ("CPLR") 4539(b), including the requirement that the reproduction is created in a manner "which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes." Furthermore, PLAZA PARTNER agrees to waive any objection to the admissibility of any such books, records, documents, or other evidence on the grounds that such documents do not satisfy CPLR 4539(b).

K. Notwithstanding anything else to the contrary contained in this License, the parties acknowledge and agree that the powers, duties and obligations of the Comptroller, pursuant to the provisions of the New York City Charter, shall not be diminished, compromised or abridged in any way.

L. This Section shall survive the expiration or earlier termination of this License.

11. INSURANCE

A. PLAZA PARTNER's Obligation to Insure

(1) Upon written Notice to Proceed through the date of expiration or termination of this License, PLAZA PARTNER shall ensure that the types of insurance indicated in this Section, with the exception of Liquor Law Liability Insurance, are obtained and remain in force, and that such insurance adheres to all requirements herein. PLAZA PARTNER shall ensure that Liquor Law Liability Insurance adheres to all requirements herein and is in effect prior to the commencement of any service of alcohol and continue throughout such service of alcohol.

(2) PLAZA PARTNER is authorized to undertake or maintain operations under this License only during the effective period of all required coverage.

B. Commercial General Liability Insurance

(1) PLAZA PARTNER shall maintain Commercial General Liability insurance in the amount of at least Three Million Dollars (\$3,000,000) per occurrence for bodily injury (including death) and property damage, One Million Dollars (\$1,000,000) for personal and advertising injury, and Two Million Dollars (\$2,000,000) products completed operations. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Licensed Plaza and such per-location aggregate shall be at least Five Million Dollars (\$5,000,000). However, with the permission of DOT, the requirement that the aggregate limit apply on a per-location basis may be omitted, provided that the aggregate limit shall be at least Ten Million Dollars (\$10,000,000). All self-insured retentions for such coverage must be disclosed to the City and DOT must approve any self-insured retention exceeding \$10,000 or self-insurance for such coverage. PLAZA PARTNER shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Section, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies. This insurance shall protect the insureds from claims that may arise from any of the operations under this License. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 00 01, shall contain no exclusions other than as approved by the DOT Commissioner, and shall be "occurrence" based rather than "claims-made."

(2) Such Commercial General Liability insurance shall list the City, together with its officials and employees, as an Additional Insured ("Additional Insured") for claims that may arise from any of the operations under this License. Coverage shall be at least as broad as

the most recent edition of ISO Forms CG 20 26 and CG 20 37. "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 Forms CG 20 26 and CG 20 37.

(3) The Commercial General Liability policy must not limit (whether by exception, exclusion, endorsement, script or other modification) any of the following coverage attributes, subject to the terms under the ISO coverage form CG 00 01 required above:

(a) Contractual liability coverage insuring the contractual obligations of the insureds;

(b) Employers' liability coverage for liability assumed by the Licensee under an "insured contract";

(c) Coverage for claims arising under New York Labor Law; and

(d) The applicability of Commercial General Liability coverage to the Additional Insured in respect of liability arising out of any of the following claims: (i) claims against the Additional Insured by employees of a PLAZA PARTNER or employees of the entity required to maintain the insurance hereunder; or (ii) claims against the Additional Insured by any general contractor, construction manager, contractor, architect or engineer or by the employees of any of the foregoing; or (iii) claims against the Additional Insured arising out of any work performed by a general contractor, construction manager, contractor, architect or engineer.

C. Workers' Compensation, Employers' Liability, and Disability and Paid Family Leave Benefits Insurance

(1) PLAZA PARTNER shall maintain and shall cause its subconcessionaire or others to maintain Workers' Compensation insurance, Employers' Liability insurance, and Disability and Paid Family Leave Benefits insurance in accordance with the law on behalf of, or with regard to, all employees involved in the PLAZA PARTNER's operations under this License, and such insurance shall comply with the laws of the State of New York.

D. Commercial Automobile Liability Insurance

(1) With regard to all operations under this License, PLAZA PARTNER 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 (if any), non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA 00 01.

(2) If vehicles are used for transporting hazardous materials, such Commercial 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.

E. Reserved.

F. Reserved.

G. Liquor Law Liability Insurance

(1) In the event PLAZA PARTNER shall serve alcohol, or shall permit a subconcessionaire or others to serve alcohol on the Licensed Plaza, PLAZA PARTNER shall carry or cause the subconcessionaire or others to carry liquor law liability insurance in an amount not less than Five Million Dollars (\$5,000,000) per occurrence, and name PLAZA PARTNER and the City as additional insured. Such insurance shall be effective prior to the commencement of any such service of alcohol and continue throughout such service of alcohol.

H. General Requirements for Insurance Coverage and Policies

(1) Policies of insurance required under this Section shall be provided by companies that may lawfully issue such policies and have an A.M. Best rating of at least A-7 or a Standard and Poor's rating of at least A, a Moody's Investor's Service rating of at least A3, a Fitch Rating rating of at least A-, or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department.

(2) With the exception of coverage required by the Workers' Compensation Law, policies of insurance required under this Section shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

(3) Whenever this Section 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 alternative form or endorsement contained in PLAZA PARTNER's policy provides coverage at least as broad as the specified form.

(4) There shall be no self-insurance program (including a self-insured retention in excess of \$10,000) with regard to any insurance required under this Section unless approved in writing by the DOT 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, PLAZA PARTNER shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Section, including but not limited the defense and indemnification obligations that insurers are required to undertake in liability policies. If the Commissioner authorizes a self-insured retention, the PLAZA PARTNER must allow the City to pay all or part of the self-insured retention upon the PLAZA PARTNER's failure to pay. If the City pays any portion of such self-insured retention, the City may at its option withhold any monies so paid from any monies owing to PLAZA PARTNER, whether under this License or otherwise, and/or may require PLAZA PARTNER to pay such monies upon 30 days' notice.

(5) The City reserves the right to increase the required limits of Commercial Property Insurance at the time it exercises its renewal rights under Section 2(A) above if the Commissioner determines that the existing limits do not adequately protect the City from financial risk due to potential claims for injury or property damage.

(6) In the event PLAZA PARTNER receives notice, from an insurance company or other person, that any insurance policy required under this Section shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, PLAZA PARTNER shall immediately forward a copy of such notice to both the DOT Commissioner, 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, PLAZA PARTNER shall ensure that there is no interruption in any of the insurance coverage required under this Section.

(7) All required policies, except Employers' Liability and Disability and Paid Family Leave Benefits shall include a waiver of the right of subrogation with respect to all insureds and loss payees named therein.

I. Proof of Insurance

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

(2) Within 10 days of award of this License or as otherwise specified by the DOT, and as required by N.Y. Workers' Compensation Law §§ 57 and 220(8), PLAZA PARTNER shall submit proof of PLAZA PARTNER's workers' compensation insurance and disability and paid family leave benefits insurance (or proof of a legal exemption) to DOT in a form acceptable to the New York State Workers' Compensation Board and the Certificate Holder shall be City of New York, c/o Department of Transportation General Counsel, 55 Water Street, 9th Floor, New York, NY 10041. ACORD forms are not acceptable proof of such insurance. The following forms are acceptable:

- (a) Form C-105.2, *Certificate of Workers' Compensation Insurance*;
- (b) Form U-26.3, *State Insurance Fund Certificate of Workers' Compensation Insurance*;
- (c) Form SI-12, *Certificate of Workers' Compensation Self-Insurance*;
- (d) Form GSI-105.2, *Certificate of Participation in Worker's Compensation Group Self-Insurance*;
- (e) Form DB-120.1, *Certificate of Disability and Paid Family Leave Benefits Insurance*;
- (f) Form DB-155, *Certificate of Disability and Paid Family Leave Benefits Self-Insurance*;
- (g) Form CE-200 – *Affidavit of Exemption*;
- (h) Other forms approved by the New York State Workers' Compensation Board; or
- (i) Other proof of insurance in a form acceptable to the City.

(3) For all insurance required under this Section other than Workers Compensation, Employers' Liability, and Disability and Paid Family Leave Benefits, PLAZA PARTNER shall submit one or more Certificates of Insurance. All such Certificates of Insurance shall: (i) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (ii) be accompanied by the provision(s) or endorsement(s) in PLAZA

PARTNER'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 Broker or Agent" in the form required by the DOT Commissioner 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 DOT Commissioner prior to the expiration date of coverage of all policies required under this Concession. Such Certificates of Insurance shall comply with paragraphs (2) and (3) directly above.

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

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

J. Miscellaneous

(1) PLAZA PARTNER may satisfy its insurance obligations under this Section 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) PLAZA PARTNER 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) Whenever notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Section, PLAZA PARTNER shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where PLAZA PARTNER may not be covered under such policy if this License requires that the City be an additional insured (for example, where one of PLAZA PARTNER's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York, including its officials and employees, as additional insured" (such notice shall also include the name of any other entity listed as an additional insured) and contain the following information to the extent known: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. PLAZA PARTNER 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. If PLAZA PARTNER fails to comply with the requirements of this paragraph, PLAZA PARTNER shall indemnify the City, together with its officials and employees, and any other entity listed as an additional insured for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of

coverage citing late notice by or on behalf of the City together with its officials and employees, and any other entity listed as an additional insured.

(4) PLAZA PARTNER's failure to secure and maintain insurance in complete conformity with this Section, or to give the insurance carrier timely notice on behalf of the City, or to do anything else required by this Section shall constitute a material breach of this License. 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 Section shall not relieve PLAZA PARTNER of any liability under this License, 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 License 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 Section, PLAZA PARTNER 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 and Paid Family Leave Benefits Insurance, or Commercial Automobile Insurance, PLAZA PARTNER 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 Section (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of PLAZA PARTNER and/or its employees, agents, or servants of its contractors or subcontractors, except for those damages or losses for which the City has an obligation to indemnify, defend and hold the PLAZA PARTNER harmless under Section 12(C).

(8) PLAZA PARTNER shall require its construction contractors that perform construction on the Licensed Plaza to maintain Commercial General Liability Insurance in accordance with this Section and such insurance shall include the City, including its officials and employees, as an additional insured with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37. In the event PLAZA PARTNER requires any other entity, by contract or otherwise, to procure insurance with regard to any operations under this License and requires such entity to name PLAZA PARTNER as an additional insured under such insurance, PLAZA PARTNER shall ensure that such entity also names the City, including its officials and employees, as an additional insured (with coverage for Commercial General Liability insurance at least as broad as ISO form CG 20 26). Such coverage as an additional insured shall not require privity of contract between the City, including its officials and employees, and the named insured.

In the event PLAZA PARTNER receives notice, from an insurance company or other person, that any insurance policy required under this Section shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, PLAZA PARTNER shall immediately forward a copy of such notice to both the DOT Commissioner, 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, PLAZA PARTNER shall ensure that there is no interruption in any of the insurance coverage required under this Section.

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

A. PLAZA PARTNER Responsibilities

(1) PLAZA PARTNER shall take all reasonable precautions to protect the safety of its employees, agents, servants, invitees, subconcessionaire(s), contractors, and subcontractors while they are involved in the operations under this License.

(2) PLAZA PARTNER shall take 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 License.

(3) PLAZA PARTNER shall use the Licensed Plaza in compliance with, and shall not cause or permit the Licensed Plaza 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 PLAZA PARTNER or the Licensed Plaza (collectively “Environmental Laws”). Except as may be agreed by the City as part of this License, PLAZA PARTNER shall not cause or permit, or allow any of the PLAZA PARTNER’s personnel to cause or permit, any Hazardous Materials to be brought upon, store, used generated, treated or disposed of on the Licensed Plaza. 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. PLAZA PARTNER Indemnification

(1) Notwithstanding any other provisions of this License, the maximum amount for which the PLAZA PARTNER is liable per policy year for third party bodily injury (including death) and property damage caused by the PLAZA PARTNER’s operations under this License shall not exceed the Commercial General Liability limits required in Section 11(B)(1) above, (“Limitation of Liability”). The Limitation of Liability shall not apply to PLAZA PARTNER’s contractors, subcontractors or agents or subconcessionaire(s) or any of subconcessionaire(s)’s contractors, subcontractors or agents.

(2) Subject to the Limitation of Liability but notwithstanding any other provisions of the License, PLAZA PARTNER shall indemnify, defend and hold the City and its officials and employees (“Indemnified Parties”) 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) (hereinafter called “Liabilities”), relating to or arising out of, or alleged (by a person other than the City) to relate to or arise out of the following:

(a) PLAZA PARTNER’s or any subconcessionaire(s)’s or any of their respective employees’, servants’, contractors’, subcontractors’ or agents’ negligence or failure to

comply with any of the requirements of this License, including PLAZA PARTNER's maintenance and/or repair obligations set forth in Section 3 herein;

(b) PLAZA PARTNER's or any subconcessionaire(s)'s or any of their respective employees', servants', contractors', subcontractors' or agents' failure to comply with any applicable federal, state, or local laws, rules or regulations; and

(c) PLAZA PARTNER's or any subconcessionaire(s)'s or any of their respective employees', servants', contractors', subcontractors' or agents' infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party.

(3) Insofar as the facts or law relating to any of the foregoing would preclude the Indemnified Parties from being completely indemnified by PLAZA PARTNER, the Indemnified Parties shall be partially indemnified by PLAZA PARTNER to the fullest extent permitted by law.

(4) Upon receipt by any Indemnified Party of actual notice of a claim to which such Indemnified Party is entitled to indemnification in accordance with this Section, DOT shall give prompt written notice of such claim to PLAZA PARTNER. PLAZA PARTNER shall assume and prosecute the defense of such claim at the sole cost and expense of PLAZA PARTNER. PLAZA PARTNER may settle any such claim in its discretion without consent of DOT and the Corporation Counsel only if (i) the sole relief under the settlement is monetary damages, (ii) the PLAZA PARTNER indemnifies the Indemnified Parties for the full amount of the settlement, (iii) the settlement involves no admission by the Indemnified Parties or finding of guilt and (iv) such settlement includes an unconditional release of the Indemnified Party. Any other settlement of a claim shall require consent from DOT and the Corporation Counsel.

(5) PLAZA PARTNER's obligation to defend, indemnify and hold the Indemnified Parties harmless shall not be (i) limited in any way by PLAZA PARTNER's obligations to obtain and maintain insurance under this License except as expressly provided in Section 12(B)(1), nor (ii) be adversely affected by any failure on the part of an Indemnified Party to avail themselves of the benefits of such insurance.

C. City Indemnification

(1) To the fullest extent permitted by law, the City shall, or shall cause its contractors, licensees, or permittees to indemnify, defend and hold the PLAZA PARTNER harmless against any and all Liabilities to third parties for injury, including death, or property damage to the extent arising out of the DOT Standard amenities listed in **Exhibit B**, except to the extent of PLAZA PARTNER's negligence.

(2) To the fullest extent permitted by law, the City shall, or shall cause its contractors, licensees, or permittees to indemnify, defend and hold the PLAZA PARTNER harmless against any and all Liabilities to third parties for injury, including death, or property damage to the extent arising out of any Plaza Events not sponsored by the PLAZA PARTNER.

(3) To the fullest extent permitted by law, the City shall or shall cause its contractors, licensees, or permittees, including utilities and the MTA, when contracting with the City, to list the PLAZA PARTNER as additional insured and indemnify, defend and hold the PLAZA PARTNER harmless against any and all Liabilities to third parties for injury, including death, or property damage to the extent arising out of their presence, operations or work in and around the Licensed Plaza. The City will contractually require this obligation from City contractors with presence, operations or doing work in these areas. For the sake of clarity, the infrastructure identified in Exhibit B-1 are deemed to be outside the scope of PLAZA PARTNER's responsibilities under this License.

(4) To the fullest extent permitted by law, the City shall, or shall cause its contractors, licensee, or permittees to indemnify defend and hold the PLAZA PARTNER harmless against any and all Liabilities to third parties for injury, including death, or property damage to the extent arising out of: (i) the design and construction of the Licensed Plaza; (ii) any subsurface structural conditions at the Licensed Plaza; (iii) the negligence of the Indemnified Parties except for any negligence imputed to the Indemnified Parties arising from the negligence of PLAZA PARTNER; and (iv) any other cause outside the scope of PLAZA PARTNER's responsibilities under this License, including any Force Majeure Events as defined in Section 19(F).

(5) To the fullest extent permitted by law, the City shall or shall cause its contractors, licensees, or permittees to indemnify defend and hold the PLAZA PARTNER harmless against any and all Liabilities to third parties for injury, including death, or property damage to the extent arising out of any City infrastructure, amenity, item or equipment not identified in **Exhibit B** that is located in or around the Licensed Plaza.

(6) To the fullest extent permitted by law, the City shall or shall cause its contractors, licensees, or permittees to indemnify defend and hold the PLAZA PARTNER harmless against any and all Liabilities to third parties for injury, including death, or property damage to the extent arising out of security elements within and around the Licensed Plaza (including placement or failure to place such security elements), such as bollards, perimeter planters, and barricades, except where explicitly agreed to in **Exhibit B**. The PLAZA PARTNER is only responsible for cleaning the security elements but not the structural integrity or repair or placement of such security elements. Provided however that this indemnification shall not apply to barricades placed by the PLAZA PARTNER or its contractors, subcontractors, permittees or subconcessionaires, or any Liabilities caused by the PLAZA PARTNER's actions, except to the extent that such placement or actions were at the direction of the City or described in Section 3(B)(1)(h).

(7) The PLAZA PARTNER is only responsible for snow removal to the extent set forth in the agreement herein (if applicable).

(8) Upon receipt by PLAZA PARTNER of actual notice of any Liabilities to which PLAZA PARTNER is entitled to indemnification in accordance with this Section, PLAZA PARTNER shall give prompt written notice of such Liabilities to the City. Such notice shall be presented to the New York City Law Department, 100 Church Street, NY, NY 10007 attention: Tort Division. The City shall assume and prosecute the defense of such Liabilities at its sole cost and expense. The City may settle any such Liabilities in its discretion without PLAZA PARTNER's consent only if (i) the sole relief under the settlement is monetary damages, (ii) the

City indemnifies PLAZA PARTNER for the full amount of the settlement (iii) the settlement involves no admission by PLAZA PARTNER or finding of guilt and (iv) such settlement includes an unconditional release of PLAZA PARTNER. Any other settlement of Liabilities shall require consent from PLAZA PARTNER. The parties shall follow the procedure set forth in **Exhibit F**.

13. ASSIGNMENT

A. No assignment, sale, mortgage or transfer of any interest of this License by PLAZA PARTNER, in whole or in part, will be effective unless it is agreed to, in writing, by DOT and signed by the DOT Commissioner, or his/her designee, nor shall this License be transferred by operation of law, it being the purpose and spirit of this License to grant this privilege solely to PLAZA PARTNER.

B. Except for the subcontracts for supplemental services let pursuant to the processes set forth in PLAZA PARTNER's contract with the New York City Department of Small Business Services that are for district-wide services, PLAZA PARTNER shall not enter into any subcontracts where the aggregate value per annum is \$20,000 or above for the performance of its obligations, in whole or in part, under this License as referenced in Section 3 herein without DOT's prior written approval, including a favorable responsibility determination. Such approval or denial shall not be unreasonably delayed. Two (2) copies of each such proposed subcontract shall be submitted to DOT with PLAZA PARTNER's written request for approval. Such approval or denial shall not be unreasonably delayed. The PLAZA PARTNER shall ensure that the subcontractor(s) complete and submit an online Procurement and Sourcing Solutions Portal (PASSPort) Vendor and Principle Questionnaires (formerly known as Vendor Information Exchange System (VENDEX) forms) to the Mayor's Office of Contract Services if the aggregate value of City contracts, franchises and concessions awarded that subcontractor, including this one, during the immediately preceding twelve-month period equals or exceeds the Threshold. All subcontracts shall contain provisions specifying:

(1) that work performed by the subcontractor must be in accordance with the terms of the License between DOT and PLAZA PARTNER;

(2) that nothing contained in such agreement shall impair the rights of DOT;

(3) that nothing contained herein, or under the License between DOT and PLAZA PARTNER, shall create any contractual relation between the subcontractor and DOT;

(4) that PLAZA PARTNER is fully responsible to DOT for the acts and omissions of the subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it; and

(5) (a) that the subcontractor is not in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the City, unless such default or breach has been waived in writing by the City;

(b) that the subcontractor has not been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) fiscal years;

(c) that the subcontractor has not been convicted of a felony in the past ten (10) fiscal years;

(d) that the subcontractor has not received formal written notice from a federal, state or local governmental agency or body that such person is currently under investigation for a felony criminal offense; and/or

(e) that the subcontractor has not received notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in court or other appropriate forum.

C. Failure of PLAZA PARTNER to obtain any required consent to any assignment shall be grounds for termination for cause, at DOT's option. If so terminated, the City shall thereupon be relieved and discharged from any further liability and obligation to PLAZA PARTNER, its assignees or transferees. In such case, all monies that may become due under the License shall be forfeited to the City.

D. This License may be assigned by the City to any corporation, agency or instrumentality having authority to accept such assignment.

14. CAPITAL IMPROVEMENTS AND ALTERATIONS

A. PLAZA PARTNER may, at its sole cost and expense, make or permit the subconcessionaire(s) to make capital improvements to the Licensed Plaza by installing other amenities in addition to those already installed and listed in **Exhibit B** upon DOT's prior written approval. PLAZA PARTNER shall not apply any Revenue to any such capital improvements, however, PLAZA PARTNER may apply gifts as contemplated in Section 9(B) to any such capital improvements. If the PLAZA PARTNER plans to capitally improve the Licensed Plaza, PLAZA PARTNER shall submit to DOT such plans for its prior written approval. Such approval or denial shall not be unreasonably delayed. The capital improvement plans shall include a detailed description of the proposed improvements, a cost breakdown, drawings/schematics of the proposed improvements and any other documentation that DOT requests relevant to the proposed improvements.

B. PLAZA PARTNER may, at its sole cost and expense, make or permit the subconcessionaire(s) to make alterations to the Licensed Plaza as described below. PLAZA PARTNER shall not apply any Revenue to any such alterations, however, PLAZA PARTNER may apply gifts as contemplated in Section 9(B) to any such alterations.

C. PLAZA PARTNER shall not make, or permit the subconcessionaire(s) to make, any alterations to the Licensed Plaza without the prior written approval of DOT. "Alteration" shall have the following meaning:

(1) any restoration, rehabilitation, modification, renovation or major improvement to the Licensed Plaza;

(2) any work or construction which would or might affect in any manner, or have substantial impact upon the exterior structure, character, appearance, horticulture or design of any portion of the Licensed Plaza, including adjacent areas and Subconcession(s);

(3) any work, excluding maintenance and repair, affecting the Licensed Plaza's plumbing, heating, electrical, mechanical, ventilating, or other systems;

(4) removal of perimeter planters on the Licensed Plaza;

(5) affixing or installing any equipment to the walls or any other area of the Licensed Plaza.

D. Upon installation of any such capital improvements and Alteration(s), title to all improvements and Alteration(s) shall vest in and thereafter belong to the City at the City's option, which may be exercised at any time after the substantial completion of the capital improvements and Alteration(s). Such title may only vest in the City upon payment of the fair market value of the capital improvements and Alteration(s) by the City to PLAZA PARTNER. To the extent the City chooses not to exercise its option with respect to any of the capital improvements and Alteration(s), it shall be the responsibility of PLAZA PARTNER to remove such items after the expiration or termination of this License and restore the Licensed Plaza to its original state, normal wear and tear excepted and to the reasonable satisfaction of DOT at the sole cost and expense of PLAZA PARTNER.

E. DOT may, in its sole judgment, make additions, alterations, repairs, decorations or improvements to the Licensed Plaza at DOT's and the City's expense, but nothing contained herein shall be deemed to obligate or require DOT to make any additions, alterations, repairs, decorations, or improvements, nor shall this provision in any way affect or impair PLAZA PARTNER's obligations in any respect. DOT will coordinate with PLAZA PARTNER and provide reasonable notice to PLAZA PARTNER of any such additions, alterations, repairs, decorations or improvements. DOT will use reasonable efforts to schedule any such alteration, additions, decorations, repairs, or improvements to be made by DOT at such times as will cause the least interference with PLAZA PARTNER's operations.

15. INSPECTION AT SITE

DOT shall have the right at all times to have representatives of the City and/or the State or federal government present at the Licensed Plaza for any purpose.

16. PERSONNEL

A. The parties agree that PLAZA PARTNER is an independent contractor and not an employee, subsidiary, affiliate, division, department, agency, office, or unit of the City. Accordingly, PLAZA PARTNER and its employees, officers, and agents shall not, by reason of this License or any performance pursuant to or in connection with this License, assert the existence of any relationship or status on the part of PLAZA PARTNER, with respect to the City, that differs from or is inconsistent with that of an independent contractor.

B. All persons who are employed by PLAZA PARTNER and all PLAZA PARTNER's subconcessionaire(s) and subcontractor(s) (including without limitation, consultants and independent contractors) that are retained to perform services under or in connection with this License are neither employees of the City nor under contract with the City. PLAZA PARTNER, and not the City, is responsible for their work, direction, compensation, and personal conduct while PLAZA PARTNER is engaged under this License. Nothing in this License, and no entity or person's performance pursuant to or in connection with this License, shall create any relationship between the City and PLAZA PARTNER's employees, agents, subconcessionaire(s), or subconcessionaire(s) employees or agents subcontractors, or subcontractor's employees or agents (including without limitation, a contractual relationship, employer-employee relationship, or quasi-employer/quasi-employee relationship) or impose any liability or duty on the City (i) for or on account of the acts, omissions, liabilities, rights or obligations of PLAZA PARTNER, its employees or agents, its subcontractors, or its subcontractor's employees or agents (including without limitation, obligations set forth in any collective bargaining agreement), its subconcessionaire(s), or its subconcessionaire(s) employees or agents; or (ii) for taxes of any nature; or (iii) for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of PLAZA PARTNER or any other entity (including without limitation, Workers' Compensation coverage, Employers' Liability coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage, employee health and welfare benefits or employee retirement benefits, membership or credit). PLAZA PARTNER and its employees, officers, and agents shall not, by reason of this License or any performance pursuant to or in connection with this License, (i) hold themselves out as, or claim to be, officials or employees of the City, including any department, agency, office, or unit of the City, or (ii) make or support in any way on behalf of or for the benefit of PLAZA PARTNER, its employees, officers, or agents any demand, application, or claim upon or against the City for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of PLAZA PARTNER or any other entity. Except as specifically stated in this License, nothing in the License and no performance pursuant to or in connection with the License shall impose any liability or duty on the City to any person or entity whatsoever.

C. To the extent required by law, PLAZA PARTNER shall not unlawfully discriminate against any employee or applicant for employment because of actual or perceived age, religion, religious practice, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, familial status, partnership status, marital status, caregiver status, pregnancy, childbirth or related medical condition, disability, presence of a service animal, predisposing genetic characteristics, race, color, national origin (including ancestry), alienage, citizenship status, political activities or recreational activities as defined in N.Y. Labor Law 201-d, arrest or conviction record, credit history, military status, uniformed service, unemployment status, salary history, or any other protected class of individuals as defined by City, State or Federal laws, rules or regulations. PLAZA PARTNER shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities, due to pregnancy, childbirth, or a related medical condition, due to status as a victim of domestic violence, stalking, or sex offenses, or due to religion.

17. INVESTIGATIONS CLAUSE

A. The parties to this License 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) DOT 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 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 License, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, 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 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 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 License, the Commissioner or agency head may in his or her sole discretion terminate this License upon not less than three days written notice in the event PLAZA PARTNER fails promptly to report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this License by PLAZA PARTNER, or affecting the performance of this contract.

18. NOTICE

All notices, except those related to Sections 11(J)(3) and 12(C)(5) above, from PLAZA PARTNER to DOT shall be in writing and delivered to the attention of the Director of Public Space, New York City Department of Transportation, 55 Water Street, 6th Floor, New York, NY 10041, or such other address as DOT may designate, with copies sent to DOT's General Counsel at same address. All notices from DOT to PLAZA PARTNER shall be dispatched in the same manner, and delivered to PLAZA PARTNER 200 Park Avenue South, Suite 1320, New York, NY 10003, or such other address as may be notified from time to time.

19. TERMINATION

A. PLAZA PARTNER shall have the right to terminate this License in whole or in part and it shall provide DOT with no less than six month written notice.

B. DOT shall have the right to terminate this License in whole or in part:

(1) Under any right to terminate as specified in any Section of this License.

(2) If DOT determines that PLAZA PARTNER or subconcessionaire(s) failed to comply with any of the terms and conditions of this License, including PLAZA PARTNER's or subconcessionaire(s)' failure to perform services at the required standards set forth in Sections 1, 3, 6, 7, 8, and 14 of this License.

(3) Upon PLAZA PARTNER becoming insolvent.

(4) Upon the commencement of any proceeding under the Bankruptcy Act, by or against PLAZA PARTNER, either voluntary or involuntary.

(5) Upon DOT's determination that this License should be terminated without cause.

C. DOT shall give PLAZA PARTNER written notice of any termination of the License specifying therein the applicable provisions of subsection B of this Section and the effective date thereof, which shall not be less than twenty-five (25) days from the date of receipt of written notice by PLAZA PARTNER.

D. With regard to paragraph B(2) of this Section, DOT shall first give written notice to PLAZA PARTNER outlining in reasonable detail, the alleged deficiencies. If the deficiencies are not cured by PLAZA PARTNER within a reasonable time (if no time is specified), or in the time specified in DOT's notice, either of which shall in no event be less than ten (10) days except in cases of emergency (as determined by DOT), the failure to cure the deficiencies shall result in immediate termination of this License.

E. With regard to paragraph B(5) of this Section, DOT shall provide written notice of such termination to PLAZA PARTNER, and this License shall terminate effective twenty-five (25) days from the date such notice is received by PLAZA PARTNER.

F. Force Majeure Event

(1) Subject to the remaining paragraphs of this Section 19(F), if PLAZA PARTNER is prevented, hindered or delayed in or from performing any of its obligations under this License by a Force Majeure Event (as defined below), PLAZA PARTNER shall not be in breach of this License or otherwise liable for any such failure or delay in the performance of the Services. The time for performance of such Services shall be extended commensurate with the nature of the Force Majeure Event.

(2) "Force Majeure Event" means any circumstance beyond PLAZA PARTNER's reasonable control and without PLAZA PARTNER's fault or negligence affecting the Licensed Plaza or a substantial portion thereof including:

- (a) acts of God, hurricane, tornado, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom; and
- (e) collapse of buildings, fire, explosion, or citywide blackout.

(3) If PLAZA PARTNER is prevented, hindered or delayed in or from performing any of its obligations under this License by a Force Majeure Event, PLAZA PARTNER shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event, notify DOT of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this License;
- (b) use all reasonable endeavors to mitigate the effects of the Force Majeure Event on the performance of the Services under this License; and

(c) resume performance of the Services as soon as reasonably practicable after the removal of the Force Majeure Event.

(4) If the Force Majeure Event prevents, hinders or delays PLAZA PARTNER's performance of the Services for a continuous period of more than thirty-five (35) days, DOT may terminate this License by giving PLAZA PARTNER twenty-five (25) days' written notice.

G. Upon expiration or sooner termination of this License by DOT, all rights of PLAZA PARTNER herein shall be forfeited without claim for loss, damages, refund of investment or any other payment whatsoever against the City, except as provided herein.

H. Upon such termination PLAZA PARTNER shall quit the Licensed Plaza and surrender all City property therein in good, clean, and orderly condition, ordinary wear and tear excepted.

I. PLAZA PARTNER agrees that upon expiration, or sooner termination of this License, it shall immediately cease all operations and cause any subconcessionaire(s) to cease all operations pursuant to this License and shall vacate and cause any subconcessionaire(s) to vacate the Licensed Plaza without any further notice by the City and without resort to any judicial proceeding by the City. Upon the expiration, or sooner termination of this License, City reserves the right to take immediate possession of the Licensed Plaza.

J. PLAZA PARTNER shall, or shall cause its subconcessionaire(s), on or prior to the expiration or sooner termination of this License, remove all personal possessions from the Licensed Plaza. PLAZA PARTNER acknowledges that any personal property remaining on the Licensed Plaza after the expiration, or sooner termination of this License, is intended by PLAZA PARTNER to be abandoned. PLAZA PARTNER shall remain liable to the City for any damages, including the cost of removal or disposal of property, should PLAZA PARTNER and/or its subconcessionaire(s) fail to remove all possessions from the Licensed Plaza on or before the expiration or termination date. PLAZA PARTNER shall pay any damages promptly upon the City's demand.

K. Upon termination of this License, PLAZA PARTNER shall comply with DOT close-out procedures, including but not limited to:

(1) Furnishing within thirty (30) days an inventory to DOT of all equipment, appurtenances and property purchased through or provided under this License, and carrying out any DOT directive concerning the disposition thereof.

(2) Not incurring or paying any further obligation pursuant to this License beyond the termination date. Any obligation necessarily incurred by PLAZA PARTNER on account of this License prior to receipt of notice of termination and falling due after such date shall be paid by DOT, if such obligation was required by DOT in accordance with the terms of this License. PLAZA PARTNER shall be solely responsible for any obligations that are not

specifically incurred on account of this License. In no event shall the term “obligation”, as used herein, be construed as including any lease agreement, oral or written, entered into between PLAZA PARTNER and its landlord.

(3) Turn over to DOT or its designees all books, records, documents and materials specifically relating to this License.

(4) Submit, within ninety (90) days, a final statement and report relating to the License. The report shall be made by a certified public accountant or a licensed public accountant.

L. PLAZA PARTNER 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 License is terminated by DOT sooner than the fixed term because the Licensed Plaza is required for any public purpose, or because the License was terminated or revoked for any reason as provided herein.

M. This License may be suspended for any reason with written notice from DOT. Such suspension shall be immediately effective upon the mailing, e-mail or hand delivery thereof. In the event of such notice of suspension, PLAZA PARTNER shall not operate. In the event that PLAZA PARTNER’s operation is disrupted due to construction in the immediate area where the Licensed Plaza is located, this License may be suspended, at DOT’s option. DOT shall endeavor to keep any suspensions as limited as is reasonably practical to minimize disruptions of PLAZA PARTNER’s and Subconcessionaire’s operations.

N. Notwithstanding any other provisions of this License, PLAZA PARTNER shall not be relieved of liability to the City for damages sustained by the City by virtue of PLAZA PARTNER’s breach of the License.

O. The rights and remedies of the City provided in this Section shall not be exclusive and are in addition to all other rights and remedies provided by law or under this License. In addition, nothing contained in this Section shall be deemed or imply or be construed to represent an exclusive enumeration of circumstances under which DOT may terminate this License.

20. COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS

A. PLAZA PARTNER shall faithfully perform and carry out the provisions of this License and cause its subconcessionaire(s), agents, employees, and invitees to perform and carry out the provisions of this License. PLAZA PARTNER shall comply with and shall cause its subconcessionaire(s) to comply with all federal, state, and local laws, rules, regulations, and DOT specifications, standards, and policies applicable to the Licensed Plaza and PLAZA PARTNER’s use and occupation thereof, including but not limited to the provisions of the New York State Labor Law regarding gratuities.

B. PLAZA PARTNER shall comply with the Earned Sick Time Act, also known as the Paid Sick Leave Law, as a concessionaire of the City of New York as set forth in the Paid Sick Leave Law Concession Rider set forth in **Exhibit E**.

C. With respect to services provided under this License, PLAZA PARTNER shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, partnership status, marital status, disability, presence of a service animal, race, color, national origin, alienage, citizenship status, or military status, or any other class of individuals protected from discrimination in public accommodations by City, State or Federal laws, rules or regulations. PLAZA PARTNER shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

D. This License is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 *et seq.* (“ADA”) and regulations promulgated pursuant thereto, see 28 CFR Part 35. PLAZA PARTNER shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this License. This includes providing safe and accessible opportunities for everyone. To the extent possible, PLAZA PARTNER is encouraged to exceed all applicable accessibility requirements for people with disabilities.

21. REPRESENTATIONS, WARRANTIES AND COVENANTS

A. PLAZA PARTNER makes the following representations and warranties:

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

(2) This License has been duly authorized by all necessary corporate action on the part of PLAZA PARTNER has been duly executed and delivered by PLAZA PARTNER, and assuming due execution and delivery by DOT, constitutes a legal, valid, binding and enforceable obligation of PLAZA PARTNER.

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

(4) The PLAZA PARTNER has neither been asked to pay, offered to pay, nor paid any illegal consideration, whether monetary or otherwise, in connection with obtaining this License.

(5) The PLAZA PARTNER represents and warrants that, with respect to securing or soliciting this License, PLAZA PARTNER is in compliance with the requirements of the New York State Lobbying Law (Legislative Law §§ 1-a *et seq.*). PLAZA PARTNER makes such representation and warranty to induce the City to enter into this License and the City relies upon such representation and warranty in the execution of this License. For any breach or violation of the representation and warranty set forth in this paragraph, the Commissioner shall have the right to annul this License without liability; and PLAZA PARTNER shall not make claim for, or be entitled to recover, any sum or sums due under this License. The rights and remedies of the City provided in this Section are not exclusive and are in addition to all other rights and remedies allowed by Law or under this License.

B. PLAZA PARTNER covenants and agrees that for so long as this License is in effect it shall maintain its corporate existence under the laws of the State of New York as a not-for-profit corporation, and shall maintain its tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

C. City hereby represents and warrants that this License has been duly authorized by all necessary action on the part of the City, has been duly executed and delivered by the City and assuming due execution and delivery by PLAZA PARTNER, and registration with the Comptroller, constitutes a legal, valid, binding and enforceable obligation of the City.

22. CONFLICT OF INTEREST

PLAZA PARTNER 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. PLAZA PARTNER further represents and warrants that in the performance of this License no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this License 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 License or in the proceeds thereof.

23. NO LEASE

It is expressly understood that the City has title to the Licensed Plaza and that no land, building, space, or equipment is leased to PLAZA PARTNER, but that during the term of this License, PLAZA PARTNER shall be allowed the use of the Licensed Plaza only as herein provided.

24. FEDERAL EMPLOYER IDENTIFICATION NUMBER

PLAZA PARTNER represents that it is not in arrears to the City upon any debt, contract or taxes and is not a defaulter as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of PLAZA PARTNER to receive

a license or public contracts. The Federal Employer Identification Number of PLAZA PARTNER is 13-3202710.

25. RESERVATION OF RIGHTS AND INTERESTS

A. The parties to this License will give each other timely written notice in advance of all press conferences, public ceremonies, or other public or planned news events relating to the subject of this License.

B. Any statement or release made to the public relating to the subject of this License must be approved in advance by DOT. PLAZA PARTNER will conspicuously acknowledge the involvement of DOT in any such statement or release. If DOT finds that any release, advertisement, or statement made to the public relating to the programs and activities offered in the Licensed Plaza is incorrect or unacceptable, PLAZA PARTNER and DOT agree in good faith to make such release, advertisement or statement accurate and acceptable to both parties.

C. If PLAZA PARTNER publishes a work discussing any aspect of performance of any service covered by this License, PLAZA PARTNER will acknowledge therein the involvement, if any, of the City, when appropriate, and the City will have a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and authorize others to use such publication.

26. WAIVER OF JURY TRIAL

PLAZA PARTNER hereby expressly waives all rights to trial by jury in any lawsuit or summary proceeding hereafter instituted by the City against PLAZA PARTNER or any counterclaim or cause of action directly or indirectly arising out of the terms, covenants or conditions of this License with regard to any matter whatsoever in any way connected with this License including, but not limited to, the relationship between the City and PLAZA PARTNER. This provision relating to the waiver of jury trial rights shall survive the expiration or termination of this License or any terms hereof.

27. CHOICE OF LAW/CONSENT TO JURISDICTION AND VENUE

A. This License shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of PLAZA PARTNER and shall be governed by and construed in accordance with the internal laws of the State of New York. Any and all claims asserted by or against the City arising under this License or related hereto shall be heard and determined either in the courts of the United States ("Federal Courts") located within New York City 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 License and intent, it is understood that:

(1) If the City initiates any action arising out of this License against PLAZA PARTNER in Federal Court or in New York State Court, service of process may be made on PLAZA PARTNER either by personal service upon an officer or authorized agent of PLAZA PARTNER, wherever PLAZA PARTNER may be found, or by registered mail addressed to

PLAZA PARTNER at the address set forth in this License, or to such other address as PLAZA PARTNER may provide to DOT or the City in writing; and

(2) With respect to any action arising out of this License between the City and PLAZA PARTNER in New York State Courts, PLAZA PARTNER expressly waives and relinquishes any rights it might otherwise have to move to dismiss on the ground of forum non conveniens, to remove the action to Federal Court; and to move for change of venue to a New York State Court located outside of New York County.

(3) With respect to any action arising out of this License between the City and PLAZA PARTNER in Federal Court located in New York City, PLAZA PARTNER expressly waives and relinquishes any right it might otherwise have to move for a transfer of the action to a Federal Court outside of New York City.

(4) If PLAZA PARTNER commences any action arising out of this License against the City in a court located other than in the County, City and State of New York, upon request of the City, PLAZA PARTNER shall consent to a transfer of the action to a court of competent jurisdiction located in the County, City and State of New York, or if the court where the action is commenced cannot or will not transfer the action, PLAZA PARTNER shall consent to the dismissal of such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction within New York City.

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

28. CLAIMS AND ACTIONS THEREON

A. No action at law or proceeding in equity against the City shall lie or be maintained upon any claim based upon this License or arising out of this License or in any way connected with this License unless PLAZA PARTNER shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.

B. No action shall lie or be maintained against the City by PLAZA PARTNER upon any claims based upon this License unless such action shall be commenced within six months after the date of filing with the Comptroller of the certificate for the final payment hereunder, or within six months of the termination or conclusion of this License, or within six months after the accrual of the cause of action, whichever first occurs.

C. In the event any claim is made or any action brought in any way relating to the License herein, PLAZA PARTNER shall diligently render to the City without additional compensation any and all assistance which the City may require of PLAZA PARTNER.

29. CLAIM AGAINST OFFICERS OR EMPLOYEES

No claim whatsoever shall be made by PLAZA PARTNER against any officer, agent, employee or volunteer of the City for, or on account of, anything done or omitted in connection with this License.

30. PARTICIPATION IN AN INTERNATIONAL BOYCOTT

A. PLAZA PARTNER agrees that neither PLAZA PARTNER nor any substantially owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.

B. Upon the final determination by the Commerce Department or any other agency of the United States as to conviction of PLAZA PARTNER or a substantially-owned affiliated company thereof, or participation in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, or the regulations promulgated thereunder, the Comptroller may, at his option, render, forfeit and void this License.

C. PLAZA PARTNER shall comply in all respects, with the provisions of §6-114 of the Administrative Code of the City of New York and the rules and regulations issued by the Comptroller thereunder.

31. TRADEMARK

The City is the trademark owner of various marks and has licensed the use of those trademarks for use on certain designated merchandise. If PLAZA PARTNER or its subconcessionaire(s) sells merchandise that uses the City's trademarks, they shall purchase such merchandise from authorized licensees of the City of New York. The knowing sale of counterfeit or unlicensed merchandise at the Licensed Plaza will result in the immediate termination of this License.

32. INFRINGEMENTS

PLAZA PARTNER shall be liable to the City and hereby agrees to indemnify and hold the City harmless for any damage or loss or expense sustained by the City from any infringement by PLAZA PARTNER of any copyright, trademark, or patent rights of design, systems, drawings, graphs, charts, specifications or printed matter furnished or used by PLAZA PARTNER in the performance of this License.

33. ANTI-TRUST

PLAZA PARTNER hereby assigns, sells, and transfers to the City all right title and interest in and to any claims and causes of action arising under the anti-trust laws of the State of New York or of the United States relating to the particular services purchased or procured by the City under this License.

34. EMINENT DOMAIN AND PUBLIC USE

In the event that the Licensed Plaza or any part thereof is required for a public use or condemned for a public use, whether by DOT or any other agency of government, PLAZA PARTNER waives any and all claims to an award for its License or other damage by reason of such requirement or condemnation, including but not limited to awards for fixtures and moving expenses. Notwithstanding the foregoing, DOT may, in its sole discretion and upon PLAZA PARTNER's request, use reasonable efforts to provide PLAZA PARTNER with a new location if relocation is feasible, or, alternatively, the License term may be tolled for the period of time during which the public work being performed causes an interruption to PLAZA PARTNER's business. In such case, the License term shall begin to run again as soon as the public work is completed and PLAZA PARTNER is able to resume its business.

35. DEVELOPMENT PURPOSES

In the event that the Licensed Plaza or any part thereof is required by DOT or any other agency of government for development purposes, construction, repairs or other work, PLAZA PARTNER waives any and all claims to an award under this License or other damages by reason of such requirement or work, including but not limited to awards for fixtures. PLAZA PARTNER also agrees that this License shall terminate with regard to the affected area(s) and PLAZA PARTNER shall vacate the affected area(s) upon twenty-five (25) days' written notice from DOT.

36. SEVERABILITY

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

37. ALL LEGAL PROVISIONS DEEMED INCLUDED

It is the intent and understanding of the parties to this License that each and every provision of law required to be inserted in the License 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 License 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.

38. MODIFICATION

No waiver or modification of any provision of this License will be effective unless it is in writing and signed by duly authorized representatives of DOT and PLAZA PARTNER.

39. ENTIRE AGREEMENT

This License 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 License shall be deemed to exist or to bind any of the parties hereto or to vary any of the terms contained herein.

40. COUNTERPARTS

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

NO FURTHER TEXT ON THIS PAGE

Agreed to this ____ day of _____, 20__:

By: _____

Michelle Craven
Associate Deputy Commissioner, Office of Cityscape and Franchises
New York City Department of Transportation

Dated:

By: _____

Julie Stein
Executive Director
Union Square Partnership District Management Association, Inc.

Dated:

Approved as to Form and Certified as to Legal Authority:

Acting Corporation Counsel

STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

On this day of , 20__ before me personally came Michelle Craven to me known, and known to be the Associate Deputy Commissioner, Office of Cityscape and Franchises for the New York City Department of Transportation, and the said person described in and who executed the forgoing instrument and she acknowledged that she executed the same in her official capacity and for the purpose mentioned therein.

Notary Public

STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

On this day of , 20__ before me personally came Julie Stein, who, being duly sworn by me did depose and say that s/he is the Executive Director of the Union Square Partnership District Management Association, Inc., the corporation described in and who executed the foregoing instrument and s/he acknowledged that s/he executed the same in his/her official capacity and for the purposes mentioned therein.

Notary Public

Exhibit A

[Map of Licensed Plaza, which includes total square footage]

Exhibit B

[List of Amenities (all quantities listed below are approximations)]

Broadway (18th – 19th Streets)

- DOT Standard asphalt paving with expoy gravel (2,620 square feet)
- DOT Standard granite blocks (6)
- DOT Standard moveable plastic planters (13)

Broadway (17th – 18th Streets)

- DOT Standard asphalt paving with expoy gravel (7,510 square feet)
- DOT Standard granite block (1)
- DOT Standard moveable plastic planters (22)
- Umbrellas (6)
- Moveable tables (40)
- Movable chairs (120)

17th Street (Broadway-Park Avenue South)

- DOT Standard asphalt paving with expoy gravel (4,010 square feet)
- DOT Standard granite blocks (3)
- DOT Standard moveable plastic planters (11)

Union Square West (16th-17th Streets)

- DOT Standard asphalt paving with expoy gravel (4,995 square feet)
- DOT Standard granite block (1)
- DOT Standard moveable plastic planters (5)

Union Square West (14th-15th Streets)

- DOT Standard granite block paving (3,730 square feet)
- DOT Standard moveable plastic planters (2)

14th Street (Union Square West - Broadway)

- DOT Standard asphalt paving with expoy gravel (7,991 square feet)
- DOT Standard moveable plastic planters (5)

University Place (13th Street – 14th Street)

- DOT Standard asphalt paving with expoy gravel (2,142 square feet)
- DOT Standard moveable plastic planters (14)

Exhibit B-1

[List of City, Public and Utility Infrastructure (all quantities listed below are approximations)]

Broadway (18th – 19th Streets)

- Citi Bike stations (1)
- Utility or City/ covers/manholes (6)

Broadway (17th – 18th Streets)

- Utility or City/ covers/manholes (19)

17th Street (Broadway-Park Avenue South)

- Citi Bike stations (1)
- DOT traffic signal pole (1)
- Utility or City covers/manholes (17)

Union Square West (16th-17th Streets)

- City Catch basin (1)
- Utility covers/manholes (7)

Union Square West (14th-15th Streets)

- Utility or City covers/manholes (7)

14th Street (Union Square West - Broadway)

- City Concrete planters (8)
- City Concrete blocks (11)
- City Catch basin (1)
- Utility or City covers/manholes (17)

University Place (13th Street – 14th Street)

- Citi Bike stations (1)
- City Catch basin (1)
- Utility or City covers/manholes (5)

Exhibit C
[Snow Removal Map]

Exhibit D
[PDC Approval of DOT Standard Plaza Kiosk]



December 11, 2017

CERTIFICATE

26412

RESOLVED That the Design Commission, having considered designs for the design of a prototypical kiosk for installation in plazas, citywide, submitted by the Department of Transportation, represented by exhibits 6816-GS, GT & GU of record in this matter, hereby gives to the same unanimous preliminary approval with the understanding that DOT will (1) consider solar tubes or photovoltaic panels to draw in additional light if the perforated screens are found to be insufficient for daylighting; (2) incorporate a standard location and size for information that will be on all kiosks, such as DOT's logo; (3) develop the signage guidelines to provide as much control as possible; and (4) return as soon as possible with an update on the Astor Place kiosks. The Commission urges DOT to (1) require maintenance partners to utilize this design in all plazas, except in unique site contexts, and (2) establish aesthetic guidelines for temporary kiosks. The Commission also notes that any kiosk or other structure remaining in-situ (with or without permanent footings) for longer than 365 days is subject to PDC review per the New York City Charter, Chapter 37, Section 854(g).

Preliminary approval is conditioned upon submission of this project for final review and approval before December 11, 2019.

A true copy of resolution adopted by
the Design Commission at its meeting
on December 11, 2017.



Justin Garrett Moore
Executive Director

Philip Aarons, Laurie Hawkinson, Susan Morgenthau, Signe Nielsen, Ethel Sheffer, Hank Willis Thomas, Mary Valverde, Commissioners

Exhibit E

[Paid Sick Leave Law Concession Rider]

A. *Introduction and General Provisions.*

1. The Earned Safe and Sick Time Act (“ESSTA”), codified at Title 20, Chapter 8 of the New York City Administrative Code, also known as the “Paid Safe and Sick Leave Law,” requires covered employees (as defined in Admin. Code § 20-912) in New York City (“City”) to be provided with paid safe and sick time. Concessionaires of the City or of other governmental entities may be required to provide safe and sick time pursuant to the ESSTA. The ESSTA is enforced by the City’s Department of Consumer and Worker Protection (“DCWP”), which has promulgated 6 RCNY §§ 7-101 and 201 *et seq.* (“DCWP Rules”).

2. The Concessionaire agrees to comply in all respects with the ESSTA and the DCWP 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 ESSTA in performance of this agreement may result in its termination.

3. The Concessionaire must notify (with a copy to DCWP at ComplianceMonitoring@dcwp.nyc.gov) the Concession Manager in writing within 10 days of receipt of a complaint (whether oral or written) or notice of investigation regarding the ESSTA involving the performance of this agreement. Additionally, the Concessionaire must cooperate with DCWP’s guidance and must comply with DCWP’s subpoenas, requests for information, and other document demands as set forth in the ESSTA and the DCWP Rules. More information is available at <https://www1.nyc.gov/site/dca/about/paid-sick-leave-what-employers-need-to-know.page>.

4. Upon conclusion of a DCWP investigation, Concessionaire will receive a findings letter detailing any employee relief and civil penalties owed. Pursuant to the findings, Concessionaire will have the opportunity to settle any violations and cure the breach of this agreement caused by failure to comply with the ESSTA either i) without a trial by entering into a consent order or ii) appearing before an impartial judge at the City’s administrative tribunal. In addition to and notwithstanding any other rights and remedies available to the City, non-payment of relief and penalties owed pursuant to a consent order or final adjudication within 30 days of such consent order or final adjudication may result in the termination of this agreement without further opportunity to settle or cure the violations.

5. The ESSTA is briefly summarized below for the convenience of the Concessionaire. The Concessionaire is advised to review the ESSTA and the DCWP Rules in their entirety. The Concessionaire may go to www.nyc.gov/PaidSickLeave for 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 ESSTA and the DCWP Rules. The

Concessionaire acknowledges that it is responsible for compliance with the ESSTA and the DCWP Rules notwithstanding any inconsistent language contained herein.

B. *Pursuant to the ESSTA and DCWP Rules: Applicability, Accrual, and Use.*

1. An employee who works within the City must be provided paid safe and sick time.¹ Employers with one hundred or more employees are required to provide 56 hours of safe and sick time for an employee each calendar year. Employers with fewer than one hundred employees are required to provide 40 hours of sick leave each calendar year. Employers must provide a minimum of one hour of safe and sick time for every 30 hours worked by an employee and compensation for such safe and sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage at the time the paid safe or sick time is taken. Employers are not discouraged or prohibited from providing more generous safe and sick time policies than what the ESSTA requires.

2. Employees have the right to determine how much safe and sick time they will use, provided that an employer may set a reasonable minimum increment for the use of safe and sick time not to exceed four hours per day. For the use of safe time or sick time beyond the set minimum increment, an employer may set fixed periods of up to thirty minutes beyond the minimum increment. In addition, an employee may carry over up to 40 or 56 hours of unused safe and sick time to the following calendar year, provided that no employer is required to carry over unused paid safe and sick time if the employee is paid for such unused safe and sick time and the employer provides the employee with at least the legally required amount of paid safe and sick time for such employee for the immediately subsequent calendar year on the first day of such calendar year.

3. An employee entitled to safe and sick time pursuant to the ESSTA may use safe and sick time for any of the following:

a. 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;

b. such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, the child or parent of an employee's spouse or domestic partner, any other individual related by blood to the employee, and any other individual whose close association with the employee is the equivalent of a family relationship) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;

c. closure of such employee's place of business by order of a public official due to a public health emergency;

d. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency; or

¹ Pursuant to the ESSTA, if fewer than five employees work for the same employer, and the employer had a net income of less than one million dollars during the previous tax year, such employer has the option of providing such employees uncompensated safe and sick time.

e. when the employee or a family member has been the victim of a family offense matter, sexual offense, stalking, or human trafficking:

1. to obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking;
2. to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future family offense matters, sexual offenses, stalking, or human trafficking;
3. to meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit;
4. to file a complaint or domestic incident report with law enforcement;
5. to meet with a district attorney's office;
6. to enroll children in a new school; or
7. to take other actions necessary to maintain, improve, or restore the physical, psychological, or economic, health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

4. An employer must not require an employee, as a condition of taking safe and sick time, to search for a replacement. However, where the employee's need for safe and sick time is foreseeable, an employer may require an employee to provide reasonable notice of the need to use safe and sick time. For an absence of more than three consecutive work days, an employer may require reasonable documentation that the use of safe and sick time was needed for a reason listed in Admin. Code § 20-914; and/or written confirmation that an employee used safe and sick time pursuant to the ESSTA. However, an employer may not require documentation specifying the nature of a medical condition, require disclosure of the details of a medical condition, or require disclosure of the details of a family offense matter, sexual offense, stalking, or human trafficking, as a condition of providing safe and sick time. Health information and information concerning family offenses, sexual offenses, stalking or human trafficking obtained solely due to an employee's use of safe and sick time pursuant to the ESSTA must be treated by the employer as confidential. An employer must reimburse an employee for all reasonable costs or expenses incurred in obtaining such documentation for the employer.

5. An employer must provide to all employees a written policy explaining its method of calculating sick time, policies regarding the use of safe and sick time (including any permissible discretionary conditions on use), and policies regarding carry-over of unused time at the end of the

year, among other topics. It must provide the policy to employees 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 safe and sick time to an employee because of non-compliance with such a policy.

6. An employer must provide a pay statement or other form of written documentation that informs the employee of the amount of safe/sick time accrued and used during the relevant pay period and the total balance of the employee's accrued safe/sick time available for use.

7. Safe and 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 safe and sick time was used.

C. *Exemptions and Exceptions.* Notwithstanding the above, the ESSTA does not apply to any of the following:

1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);

2. an employee covered by a valid collective bargaining agreement, if the provisions of the ESSTA are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the ESSTA for such employee;

3. 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 their own schedule, has the ability to reject or accept any assignment referred to them, and is paid an average hourly wage that is at least four times the federal minimum wage;

4. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;

5. 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

6. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.

D. *Retaliation Prohibited.* An employer shall not take any adverse action against an employee that penalizes the employee for, or is reasonably likely to deter the employee from or interfere with the employee exercising or attempting in good faith to exercise any right provided by the ESSTA. In addition, an employer shall not interfere with any investigation, proceeding, or hearing pursuant to the ESSTA.

E. *Notice of Rights.*

1. An employer must provide its employees with written notice of their rights pursuant to the ESSTA. Such notice must be in English and the primary language spoken by an employee,

provided that DCWP has made available a translation into such language. Downloadable notices are available on DCWP's website at <https://www1.nyc.gov/site/dca/about/Paid-Safe-Sick-Leave-Notice-of-Employee-Rights.page>. The notice must be provided to the employees by a method that reasonably ensures personal receipt by the employee.

2. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed \$50.00 for each employee who was not given appropriate notice.

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

G. *Enforcement and Penalties.*

1. Upon receiving a complaint alleging a violation of the ESSTA, DCWP must investigate such complaint. DCWP may also open an investigation to determine compliance with the ESSTA on its own initiative. Upon notification of a complaint or an investigation by DCWP, the employer must provide DCWP with a written response and any such other information as DCWP may request. If DCWP believes that a violation of the ESSTA has occurred, it has the right to issue a notice of violation to the employer .

2. DCWP has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, but is not limited to, treble damages for the wages that should have been paid; statutory damages for unlawful retaliation; and damages, including statutory damages, full compensation for wages and benefits lost, and reinstatement, for unlawful discharge. In addition, DCWP may impose on an employer found to have violated the ESSTA civil penalties not to exceed \$500.00 for a first violation, \$750.00 for a second violation within two years of the first violation, and \$1,000.00 for each succeeding violation within two years of the previous violation. When an employer has a policy or practice of not providing or refusing to allow the use of safe and sick time to its employees, DCWP may seek penalties and relief on a per employee basis.

3. Pursuant to Admin. Code § 20-924.2, (a) where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of the ESSTA, the Corporation Counsel may commence a civil action on behalf of the City in a court of competent jurisdiction by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief. Nothing in § 20-924.2 prohibits DCWP from exercising its authority under section 20-924 or the Charter, provided that a civil action pursuant to § 20-924.2 shall not have previously been commenced.

H. *More Generous Policies and Other Legal Requirements.* Nothing in the ESSTA is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous safe and 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 safe and sick time. The ESSTA provides minimum requirements pertaining to safe and 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 safe and sick leave or time, whether paid or unpaid, or that extends other protections to employees. The ESSTA may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

EXHIBIT F
[Tender Representation Process]

1. Upon receipt by PLAZA PARTNER of actual notice of any Liabilities to which PLAZA PARTNER is entitled to indemnification in accordance with Section 12(C), PLAZA PARTNER shall promptly notify the Law Department, the Chief Public Realm Officer, and DOT of its request to tender representation by email. PLAZA PARTNER shall include the following documents with its notice:
 - A. A formal tender letter on the tendering entity's letterhead naming each entity for which a defense is sought;
 - B. The Summons & Complaint as served on each entity;
 - C. A complete, fully executed, copy of the Agreement(s), Leases and/or Contracts, that provides for representation and indemnification;
 - D. Name and contact information of PLAZA PARTNER's insurance carrier claims adjuster;
 - E. Any other supporting documentation available, including accident reports, photographs, notices of claim, etc.
2. The Law Department will confirm receipt within 10 days of notification.
3. The Law Department will evaluate the request to tender representation. Within 30 days of the PLAZA PARTNER's notification, the Law Department will notify PLAZA PARTNER and their insurer of its determination, which may include acceptance of tender, declination of tender, or a statement that a determination cannot be made at this time.

SCHEDULE A

[Plaza Concession Fees for Commercial/Promotional Plaza Events]

Event Size	Small	Medium	Large
Fee per Event Day	\$4,000	\$10,000	\$30,000

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 2)

RESOLVED, that the Franchise and Concession Review Committee ("FCRC") authorizes the Department of Transportation ("DOT") to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into a License Agreement ("License") with Union Square Partnership District Management Association, Inc. ("Concessionaire") to provide for the operation and management of a pedestrian plaza which is located on Broadway between East 18th Street and East 19th Street; Broadway between East 17th Street and East 18th Street; East 17th Street between Broadway and Park Avenue South; Union Square West between East 16th Street and East 17th Street; Union Square West between East 14th Street and East 15th Street; East 14th Street between University Place and Broadway; and University Place between East 13th Street and East 14th Street in Manhattan, New York ("Licensed Plaza"), and maintenance and/or repair of certain amenities installed within the Licensed Plaza, including through City-approved plaza events, sponsorships, gifts, and subconcessions including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by the Concessionaire in the basic form of a Request for Proposals or Request for Bids, subject to DOT's prior written approval of both solicitation and award. The License provides for one (1) ten-year term, commencing upon written Notice to Proceed, which may be renewed for up to two (2) additional five-year terms, exercisable at the sole discretion of DOT. The Concessionaire will be required to invest any revenue generated by this concession into the maintenance and/or repair of certain amenities installed within the Licensed Plaza; and reasonable administrative costs, as such costs relate to the Licensed Plaza.

**THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON**

3/12/2025

Signed: _____

Title: Chief City Procurement Officer

Date: _____

Rule 1-16: Different Procedure

Concession Agreement Recommendation For Award Memorandum Cover Sheet

Concession Title Peter Minuit Plaza Snack Bar Concession Agreement **Concession ID** M5-PM-SB

Description Sole Source License Agreement for the operation and maintenance of a food and beverage concession in the Pavilion at Peter Minuit Plaza at the Battery, Manhattan. **Agency** NYC Department of Parks & Recreation

☒ Additional information has been attached to this document (please use the "Additional Information Form" available on BuyWise)

Recommended Concessionaire

Name The Battery Conservancy, Inc. Telephone 212-344-3491

Address 90 Broad Street, Suite 1503 ☒ EIN or ☐ SSN # 13-3769101

New York, NY 10004 ☒ Not-for-Profit Organization ☐ Certified M/WBE by SBS

Recommended Concession Agreement Term

Initial Term Notice to Proceed to 10 Years Concession Site(s) ☒ Yes ☐ No

Renewal Option(s) Notice to Proceed to 5 Years Address State Street, Whitehall Street & Battery Place

Notice to Proceed to 5 Years New York, NY 10004

Total Potential Term 20 years Borough Manhattan Community Board 1

☐ >20 years – FCRC unanimously approved term on / / Block# 3 Lot# 1

Recommended Annual Revenue

(Check all that apply)

- ☐ Annual Fee(s) \$
- ☐ Gross Receipts %
- ☐ The Greater of Annual Minimum Fee(s) of \$ vs % of Gross Receipts
- ☒ Other See Additional Information

Selection Procedure Requirements

Please select the appropriate Different Procedure method justification below:

- ☒ Sole Source
- ☐ Amendment or extension to an existing concession agreement
- ☐ Not-for-Profit concession agreement
- ☐ Other (Please specify)

Award is a Major Concession

- ☐ Yes – Award was approved pursuant to Sections 197-c and 197-d of the NYC Charter as follows:
- ☐ CPC approved on / /
- ☐ City Council approved on / /
- ☐ N/A
- ☒ No

Negotiation Requirements

Below, please describe the nature of negotiations conducted, including with respect to the amount of revenue offered:

The License will provide for one (1) ten (10)-year term with two (2) five (5)-year renewal options, provided that Parks has renewed its Maintenance and Operation Agreement with The Battery Conservancy, according to its terms. Compensation to the City will be as follows: All funds and fees from revenue generating activities will be used solely to offset costs associated with maintenance, improvement, and operation of the Licensed Premises. All such work will be under the supervision of Licensee.

Award Requirements

The agency determined that the award of this concession is in the best interest of the City because:

See Additional Information

Rule 1-16: Different Procedure

Concession Agreement Recommendation For Award Memorandum Cover Sheet

Public Hearing Requirements

(Only applicable for significant concessions)

☒ [IF REQUIRED] a public hearing was conducted on: 3 / 10 / 25

Subject concession is a (check one): ☐ **Citywide** or ☒ **NOT Citywide** concession and Agency hereby certifies that a notice summarizing the terms and conditions of the proposed concession, and the time, date and location of the public hearing was published once in the City Record and given to all affected CB-BP and the Committee Members on 2 / 21 / 25 (not less than 15 days prior to the hearing date). In addition, if you have posted this notice publicly elsewhere, please describe below:

☐ Subject concession is non-significant. No public hearing is required

FCRC Approval

☐ FCRC approved this concession agreement on 03 / 12 / 2025 (date of the FCRC public meeting)

Votes in favor: ____ Votes against: ____

OR

☐ The concession was not subject to approval of the FCRC because it has a term of less than 30 days and is not subject to renewal

Law Department approved concession agreement on: ____ / ____ / ____

Authorized Signatures

Agency Staff

This is to certify that the information presented herein is accurate and that I find the proposed concessionaire to be responsible and approve of the award of the subject concession agreement

Signature _____

Name _____

Title _____ Date _____

Certificate of Procedural Requisites

This is to certify that the agency has complied with the prescribed procedural requisites for award of the subject concession agreement

Signature _____ Date _____

City Chief Procurement Officer

For Agency Use With Concession Forms

Peter Minuit Plaza Snack Bar Concession Agreement

M5-PM-SB

Concession Title _____ **Concession ID** _____

Description Sole Source License Agreement for the operation and maintenance of a food and beverage concession in the Pavilion at Peter Minuit Plaza at the Battery, Manhattan. **Agency** NYC Department of Parks & Recreation

Recommended Annual Revenue:

All funds and fees from revenue generating activities will be used solely to offset costs associated with maintenance, improvement, and operation of the Licensed Premises, and including keeping and maintaining the Licensed Premises in good condition and repair, in accordance with the provisions of this License. All such work will be under the supervision of Licensee.

The agency determined that the award of this concession is in the best interest of the City because:

The Battery Conservancy ("TBC"), a not-for-profit organization, was formed in 1994 to promote and assist in the restoration, preservation, maintenance, programming, and operations of The Battery, as well as portions of Pier A's Harbor Park Visitor Center, and the Peter Minuit Plaza, which is adjacent to The Battery.

The positive transformation of The Battery over the past two decades is in large part a result of the successful partnership between Parks and TBC. TBC has been an effective advocate for The Battery and, through its fundraising efforts, has secured over \$78 million dollars of privately raised funds, leveraging \$109 million dollars in public funds for the benefit of The Battery. As the landscape of the park has been transformed, the horticulture improved and new recreation amenities, including SeaGlass Carousel, a renovated public restroom, the Battery Oval, the Battery Bikeway, the Battery Woodland, the Battery Urban Farm and Forest Farm, and several garden beds have been created, the maintenance needs of the park have increased significantly. TBC has assumed a growing role in the maintenance and operations of The Battery, funding additional gardeners, maintenance workers and seasonal staff to care for The Battery. Thanks, in large part, to the transformation of The Battery's spaces and amenities and its unique location connecting to all five boroughs, Liberty and Ellis Islands, The Battery has never been more popular. While limited to 25 acres, visitorship to the park has exploded over the past several years, with annual visitation reaching nearly 45 million people, roughly equivalent to Central Park. This level of foot traffic creates additional maintenance challenges for park management.

The partnership between TBC and Parks was memorialized in 2007, when TBC and Parks signed a License Agreement for the maintenance and operation of The Battery. A new agreement was then signed in 2024. Additionally, in 2006 and again in 2017, TBC and Parks entered into a Sole Source License Agreement to provide for the operation and maintenance of two (2) food service kiosks within the Bosque Gardens, and to provide for the operation and maintenance of the Bosque Gardens. Further, in 2013, TBC and Parks entered into a Sole Source License Agreement for the operation, maintenance, repair and improvement of SeaGlass at The Battery with ancillary food, beverage and merchandise concessions.

At the New Amsterdam Plein and Pavilion located at Peter Minuit Plaza ("Licensed Premises"), TBC and Parks commenced a Sole Source License Agreement in 2011 for the operation and maintenance of a food and beverage concession and to provide for the maintenance of the Licensed Premises. That agreement had an expiration date of February 25, 2017 with eight one-year renewal options, the last of which expires on February 25, 2025. As this is a seasonal concession, we anticipate this new agreement going into effect in the Spring of 2025, when seasonal operation is scheduled to begin. Should TBC and its sublicensee desire to commence seasonal operations prior to this Agreement being registered, Parks may issue a temporary permit for that time period.

The Licensed Premises enhances the economic activity of Lower Manhattan and the maintenance obligations through this Agreement have added to the overall beautification of the area. Parks anticipates that TBC will continue entering into sublicense agreements with third parties for the operation and maintenance of the food and beverage concession, as well as the maintenance of the Licensed Premises. Any sublicense agreements shall be subject to Parks' written approval.

It is anticipated that all gross receipts received by TBC will be used exclusively to provide for the maintenance and operation at the Licensed Premises in performing TBC's obligations and providing services required or permitted by this License.

TBC has extensive experience providing valuable public amenities and has been an excellent steward of The Battery including at the New Amsterdam Plein and Pavilion at Peter Minuit Plaza. Given TBC's demonstrated and firm commitment to maintaining and improving The Battery, and their increase in responsibilities and expenditures, Parks believes that it is in the best interest of the City to enter into a Sole Source License Agreement with TBC.



NYC Parks

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**City of New York
Parks & Recreation**

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New York, NY 10065
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NOTICE OF PUBLIC HEARING

To: Hon. Mark Levine, President of the Borough of Manhattan
Zach Bommer, District Manager, Manhattan Community Board 1

From: Phil Abramson, Director of Concessions Communications *PA*

Subject: Notice of Joint Public Hearing: 3/10/2025; Intent to Enter into a License Agreement with the Battery Conservancy, Inc. for the operation and maintenance of a food and beverage concession in the Pavilion at Peter Minuit Plaza at the Battery, Manhattan. M5-PM-SB.

Date: **2/21/2025**

NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and the New York City Department of Parks & Recreation ("Parks") to be held on 3/10/2025, at 2 Lafayette Street, Room 1412, in Manhattan, New York, NY 10007 commencing at 2:30 p.m. relative to:

INTENT TO AWARD as a concession a Sole Source License Agreement ("License") to The Battery Conservancy ("Licensee") for the operation and maintenance of a food and beverage concession in the New Amsterdam Pavilion at Peter Minuit Plaza at the Battery, Manhattan.

The License will provide for one (1) ten (10)-year term with two (2) five (5)-year renewal options, provided that Parks has renewed its Maintenance and Operation Agreement with Licensee, according to its terms.

Compensation to the City will be as follows: All funds and fees from revenue generating activities will be used solely to offset costs associated with maintenance, improvement, and operation of the Licensed Premises, and including keeping and maintaining the Licensed Premises in good condition and repair, in accordance with the provisions of this License. All such work will be under the supervision of Licensee.

Written testimony may be submitted in advance of the hearing electronically to fcrc@mocs.nyc.gov. All written testimony can be submitted up until the close of the public hearing and will be distributed to the FCRC after the hearing.

A draft copy of the agreement may be obtained at no cost by any (or all) of the following ways:

1. Submit a written request to NYC Parks at philip.abramson@parks.nyc.gov from 2/21/2025 through 3/10/2025.
2. Submit a written request by mail to NYC Parks, Revenue Division, 830 Fifth Avenue, Room 407, New York, NY 10065. Written requests must be received by 3/10/2025. For mail-in requests, please include your name, return address, and Concession # M5PM-SB.
3. Download from NYC Parks' website at <https://www.nycgovparks.org/opportunities/concessions/rfps-rfbs-rfeis> from 2/21/2025 through 3/10/2025.

The agenda and related documentation for the hearing will be posted on the MOCS website at <https://www.nyc.gov/site/mocs/opportunities/franchises-concessions.page>

For further information on accessibility or to make a request for accommodations, such as sign language interpretation services, please contact the Mayor's Office of Contract Services (MOCS) via e-mail at DisabilityAffairs@mocs.nyc.gov or via phone at (212) 298-0800. Any person requiring reasonable accommodation for the public hearing should contact MOCS at least five (5) business days in advance of the hearing to ensure availability.

LICENSE AGREEMENT

BETWEEN

THE BATTERY CONSERVANCY, INC.

AND

**CITY OF NEW YORK
DEPARTMENT OF PARKS & RECREATION**

**FOR OPERATION AND MAINTENANCE OF FOOD AND BEVERAGE CONCESSION
IN THE NEW AMSTERDAM PAVILION AT**

**PETER MINUIT PLAZA
THE BATTERY, MANHATTAN**

DATED: _____, 2025

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This **SOLE SOURCE LICENSE AGREEMENT** (“License Agreement” or “Agreement” or “License”) made this _____ day of _____, 2025, between the City of New York (the “City”), a municipal corporation of the State of New York (“State”) acting by and through the Department of Parks & Recreation (“Parks”), whose address is the Arsenal, 830 Fifth Avenue, New York, NY 10065, and The Battery Conservancy, Inc. (“TBC” or “Licensee”), a not-for-profit corporation whose address is 90 Broad Street, Suite 1503 New York, NY 10004.

W I T N E S S E T H:

WHEREAS, the Commissioner of Parks (“Commissioner”), pursuant to Section 533 of the New York City Charter, is charged with the responsibility to manage, maintain, and operate parks and recreational facilities under Parks’ jurisdiction, and has the authority to plan, develop, conduct and enter into arrangements with private organizations for their participation in the improvement of their community by undertaking the maintenance and operation of parks for the benefit of the public;

WHEREAS, the Commissioner has jurisdiction over The Battery, the park located between State Street, Whitehall Street, and Battery Place as well as Peter Minuit Plaza, which is adjacent to The Battery in Manhattan, New York;

WHEREAS, TBC was formed in 1994 to promote and assist in the restoration, preservation, maintenance, programming, and operations of The Battery and also to promote and assist in the restoration, preservation, programming and operations of Peter Minuit Plaza (or “Plaza”), which is adjacent to The Battery; and

WHEREAS, TBC has been an effective advocate for The Battery, and through its fundraising efforts has secured over \$78 million dollars of privately raised funds, which in turn has leveraged \$109 million dollars in public funds for the benefit of The Battery;

WHEREAS, in 2008 TBC and Parks effectively secured \$23 million dollars of funds for the reconstruction of the Peter Minuit Plaza, and TBC privately secured \$2.3 million dollars to fund the design, fabrication and installation of the architecturally significant structure designed by UN Studios for food service and information to be located in a 5,000 square foot area on the Plaza, which shall be known as New Amsterdam Plein and Pavilion (the “Pavilion”), and further, the Dutch government contributed a major grant to TBC as part of the NY400 celebration for the celebration of the 400th anniversary of Henry Hudson's arrival in New York Harbor and in honor of the enduring relationship between New York and the Netherlands;

WHEREAS, TBC allots a full 62% of its operating budget to the maintenance of The Battery and Plaza, which includes the purchasing of garbage removal materials and gardening equipment, and the hiring of consultants and contractors, as well as paying the salaries of full- and part-time gardeners and operations staff; and

WHEREAS, TBC and Parks have created an effective public-private partnership whereby TBC and Parks work together in connection to improving and administering The Battery and the Plaza, which was first memorialized in a license agreement dated February 26, 2007, and superseded with a

maintenance and operation (“M&O”) license agreement dated May 23, 2024, annexed hereto as **Exhibit A**; and

WHEREAS the Commissioner and TBC desire to ensure the best use of the Pavilion in providing services, including maintenance, recreational and educational programs and services, for the benefit of the public;

WHEREAS, the Pavilion enhances the economic activity of Lower Manhattan, and TBC's maintenance of the Pavilion adds to the beautification of Lower Manhattan; and

WHEREAS Parks sought approval of the Franchise and Concession Review Committee (“FCRC”), which has authorized Parks to use different procedures to enter into this License Agreement with Licensee;

WHEREAS, on July 10, 2024, the FCRC authorized Parks to enter into a Sole Source License Agreement with TBC, to provide for the operation and maintenance of a high-quality food and beverage concession in the Pavilion at the Plaza, as well as maintenance of the Plaza itself (collectively referred to as the "Licensed Premises") for the benefit of the public.

WHEREAS Parks and Licensee desire to enter into this License Agreement specifying rights and obligations with respect to the maintenance, operation, and management of the Licensed Premises.

NOW THEREFORE, in consideration of the promises and mutual covenants contained herein, the City and Licensee hereby do agree as follows:

ARTICLE 1: GRANT OF LICENSE

1.1 (a) Parks hereby grants to Licensee, and Licensee hereby accepts from Parks, this License to use, occupy, maintain, and operate the Licensed Premises as shown in **Exhibit B**, attached hereto, including for the operation and maintenance of a high-quality food and beverage concession in the Pavilion at the Plaza (“Concession”) for the benefit of the general public, in accordance with the terms and conditions set forth herein, and to the Commissioner’s satisfaction. Licensee may enter into a sublicense with third parties, in accordance with the terms and conditions set forth herein and in Article 24 to operate the Concession and maintain the Licensed Premises. All funds and fees from revenue generating activities will be used solely to offset costs associated with maintenance, improvement, and operation of the Licensed Premises, and including keeping and maintaining the Licensed Premises in good condition and repair, in accordance with the provisions of this License. All such work will be under the supervision of Licensee.

(b) Licensee shall obtain all applicable permits, approvals, and other licenses required by federal, State, and City laws, rules, regulations, and orders, which are or may become necessary to operate the Licensed Premises in accordance with the terms of this License.

1.2 No Lease. It is expressly understood that the City has title to the Licensed Premises and no land, building, space, improvement, or equipment is leased or otherwise conveyed to Licensee, but that during the Term of this License, Licensee and its sublicensee(s) shall have the use of the Licensed

Premises for the purposes herein provided. Licensee and sublicensee(s) have the right to occupy and operate the Licensed Premises during the Term of the License only so long as each and every term and condition in this License is strictly and properly complied with and so long as this License is not terminated by the Commissioner in accordance with this License.

1.3 Full and Free Access. Licensee shall, at all times, provide free access to the Concession and Licensed Premises to the Commissioner or the Commissioner's representatives and to other City, State, and federal officials having jurisdiction, for inspection and any other lawful purposes. The Commissioner, Commissioner's representatives, and such other officials, including the New York City Police Department ("NYPD") and the New York City Fire Department ("FDNY"), shall have the right to enter and be present at the Concession and Licensed Premises, and to observe Licensee's and sublicensee's operations.

ARTICLE 2: DEFINITIONS

2.1 As used throughout this License, the following terms shall have the meanings set forth below:

- (a)** "Alteration" means (excepting ordinary repair and maintenance):
 - (i)** any restoration (to original premises or in the event of fire or other cause), rehabilitation, modification, addition, or improvement to Licensed Premises; or
 - (ii)** any work affecting the plumbing, heating, electrical, water, mechanical, ventilating, or other systems of the Licensed Premises.
- (b)** "City" means the City of New York, its departments, and political subdivisions.
- (c)** "Commissioner" means the Commissioner of the New York City Department of Parks & Recreation or her designee.
- (d)** "Comptroller" means the Comptroller of the City of New York.
- (e)** "Excess Revenue(s)" means, for any Fiscal Year, the positive difference, if any, between Licensee's Gross Receipts for such Fiscal Year and expenses for such Fiscal Year.
- (f)** "Expendable Equipment" means all equipment and property of Licensee, other than Fixed and Additional Fixed Equipment.
- (g)** "Final Completion" or "Finally Complete" means that the construction of an improvement to the Licensed Premises has been completed to such an extent that the Commissioner certifies in writing that it has been finally completed and that no further work is required by Licensee pursuant to this License in connection with the construction of said improvement. Notwithstanding the issuance of any such certification, Licensee shall be liable for any claims related to such construction and shall be responsible for any other obligations (including maintenance, repair, and indemnity) set forth in this License Agreement.
- (h)** "Fiscal Year" means the period beginning each July 1 during the Term and ending June 30 of the following calendar year.

(i) “Fixed Equipment” means any property affixed in any way to the Licensed Premises existing at the time the Notice to Proceed is given, whose removal would damage the Licensed Premises.

(i) “Additional Fixed Equipment” means Fixed Equipment affixed to the Licensed Premises subsequent to the date that Notice to Proceed is given.

(ii) “Fixed and Additional Fixed Equipment” means Fixed Equipment and Additional Fixed Equipment jointly and severally.

(j) (i) “Gross Receipts” includes, without limitation, all funds or receipts of any kind received by Licensee from or in connection with its operations at the Licensed Premises, without deduction or set-off of any kind, from the sale or provision of food, beverages, merchandise, goods or services of any kind at the Licensed Premises, from the licensing of the Licensed Premises for private functions, and from any related services of any kind, provided that Gross Receipts shall exclude the amount of any federal, State or City sales taxes which may now or hereafter be imposed upon or be required to be collected and paid by Licensee. Gross Receipts shall include any orders placed or made at the Licensed Premises, although delivery of merchandise or services may be made outside, or away from the Licensed Premises, and shall include all receipts of Licensee for services to be rendered or orders taken at the Licensed Premises for services to be rendered by Licensee outside thereof. For example, if Licensee receives a \$1,000 deposit for services to be provided at a later date, the deposit must be reported at the time of payment, regardless of when the service is provided. All sales made or services rendered from the Licensed Premises shall be construed as made and completed therein even though payment therefor may be made at some other place and although delivery of merchandise sold, or services rendered upon the Licensed Premises may be made other than at the Licensed Premises.

(ii) Gross Receipts also includes all sales made by other operator(s) using the Licensed Premises under a properly authorized sublicense or subcontract agreement, provided that in the event that the use of vending machines on the Licensed Premises for the sale of food, drink, or other items is approved by Parks, only Licensee’s net receipts from such vending machines shall be included in Gross Receipts, and provided further that Gross Receipts shall include Licensee’s income from rental and sublicense or subcontracting fees and commissions Licensee receives in connection with income from short-term facility agreements, Special Events, and all services provided by Licensee’s subcontractors or sublicensees, unless otherwise approved in writing by Parks.

(iii) Gross Receipts shall include receipts received by Licensee from all sponsorships, whether in cash or as discounts against purchase price of materials, equipment, or commodities.

(iv) Gross Receipts shall include sales made for cash or credit (credit sales shall be included in Gross Receipts as of the date of the sale) regardless of whether the sales are paid or uncollected, it being the distinct intention and agreement of the parties that all sums received by Licensee shall be included in Gross Receipts, provided however that any gratuities transmitted by Licensee or any sublicensee directly or indirectly to employees shall not be included within Gross Receipts. For purposes of this subsection (iv):

(a) With respect to non-catered food and beverages service, a “Gratuity” shall mean a charge that: (i) is separately stated on the bill or invoice given to Licensee’s customer or otherwise proffered by the customer, (ii) is specifically designated as a gratuity, or purports to be a gratuity, and (iii) Licensee receives and pays over in total to its employees (other than management) who are primarily engaged

in the serving of food or beverage to guests, patrons or customers, including but not limited to, wait staff, bartenders, captains, bussing personnel and similar staff who are paid a cash wage as a “food service worker” pursuant to NY Labor Law Section 652(4). Licensee shall provide documentation reasonably satisfactory to Parks to prove that Gratuities were paid to employees in addition to their regular salaries and were otherwise in accordance with the foregoing provisions. Such documentation shall be signed and verified by an officer of Licensee. “Regular Salary” for purposes of this subsection shall mean the set hourly wage for the applicable employee.

(b) With respect to catered events, a “Gratuity” shall be an amount no greater than 20% of the catering food and beverage sales for the event, provided that such Gratuity is a charge that: (i) is separately stated on the bill or invoice given to Licensee’s customer, (ii) is specifically designated as a gratuity, or purports to be a gratuity, and (iii) is paid over by Licensee in total to its employees (other than management) who actually provide services at the event, and who are primarily engaged in the serving of food or beverages to guests, patrons or customers, including, but not limited to, wait staff, bartenders, captains, bussing personnel, and similar staff. Licensee shall provide documentation reasonably satisfactory to Parks to prove that Gratuities were paid to employees in addition to their regular salaries, and were otherwise in accordance with the foregoing provisions. “Regular Salary” for purposes of this subsection shall mean the set hourly wage for the applicable employee. Such documentation shall be signed and verified by an officer of Licensee.

(k) “Licensed Premises” means the area of the Plaza, including three of the four wings of the Pavilion so denoted and described in **Exhibit B** attached hereto, and shall include the structures, as well as any improvements constructed thereon, including without limitation, all buildings or structures, walkways, curbs, trees and landscaping. The fourth wing of the Pavilion as denoted in **Exhibit B** is not part of the Licensed Premises and is reserved by the City for other uses.

(l) “Licensee’s Special Events” means any private function or program (e.g. either arranged by Licensee or by reservation of all or part of the Licensed Premises through Licensee or sublicensee(s) by third parties) for a Parks appropriate purpose, and in accordance with 56 RCNY § 1-02, at the Licensed Premises, excluding “Parks’ Special Events” as defined in Article 11 of this License Agreement.

(m) “Substantial Completion” or “Substantially Complete” means, with respect to an improvement at the Licensed Premises, that the Commissioner certifies that an improvement to the Licensed Premises has been completed substantially in accordance with the plans, specifications, schematics, working and mechanical drawings approved by Parks, notwithstanding that minor work remains to be completed in accordance with work schedules provided for herein and/or set forth as a list of incomplete and outstanding items and that the improvement may be utilized by the public.

(n) “Year” or “Operating Year” means the period between the Commencement Date (or its anniversary in any year other than Year 1) and the day before the anniversary of such date in the immediately following calendar year.

ARTICLE 3: TERM AND TERMINATION

3.1 This License shall become effective upon Parks giving written notice to proceed (“Notice to Proceed”) to Licensee following registration with the Comptroller (“Commencement Date”) and, unless terminated sooner in accordance with this License Agreement, shall terminate ten (10) years from the Commencement Date, or the last day of any subsequent renewal periods that are exercised pursuant to this License (“Expiration Date”). The period between the Commencement Date and the Expiration Date, including any exercised renewal periods, shall be referred to as the “Term.” Parks, in its sole discretion, shall have the option to renew this License for up to two (2) additional five (5)-year periods, provided that Parks has renewed the May 23, 2024, M&O license agreement according to its terms, annexed hereto in **Exhibit A**. Notwithstanding the foregoing, in no event will the total length of the Term, including any renewal periods, exceed the term of the M&O license agreement, including any renewal periods. This License Agreement shall terminate upon the expiration or termination of the M&O license agreement.

3.2 Notwithstanding any language contained herein, this License is terminable at will by the Commissioner at any time. Such termination shall be effective after twenty-five (25) calendar days written notice is sent to Licensee. The Commissioner, the City, its employees, and agents shall not be liable for damages to Licensee in the event that this License is terminated by Commissioner as provided for herein.

3.3 Parks may terminate this License or any sublicense for cause as follows:

(a) Should Licensee breach or fail to comply with any of the provisions of this License or any federal, State or City law, rule, regulation or order affecting this License or the Licensed Premises with regard to any and all matters, Commissioner shall, in writing, order Licensee to remedy such breach or comply with such provision, law, rule, regulation or order, and in the event that Licensee fails to comply with such written notice or commence, in good faith and with due diligence, efforts to comply with such order within thirty (30) calendar days from the mailing, or e-mailing thereof, subject to unavoidable delays beyond the reasonable control of Licensee, as determined by the Commissioner, then this License shall immediately terminate. In the event such breach or failure to comply cannot be remedied within such thirty (30) day period due to reasons beyond Licensee’s control, as determined by the Commissioner, the cure period shall be extended for such period as may be reasonably necessary in the Commissioner’s judgment to cure such breach. If said breach or failure to comply is corrected, and a repeated violation of the same provision, law, rule, regulation or order follows thereafter, Commissioner, by notice in writing, may revoke and terminate this License, such revocation and termination to be immediately effective on the mailing or e-mailing thereof.

(b) The following shall constitute events of default for which this License may be terminated on a single (1) day’s written notice: the appointment of any receiver of Licensee’s assets; the making of a general assignment for the benefit of creditors; the occurrence of any act which operates to deprive Licensee permanently of the rights, powers and privileges necessary for the proper conduct and operation of this License; the levy of any attachment or execution which substantially interferes with Licensee’s operations under this License and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty (60) calendar days.

(c) Nothing contained in paragraphs (a) or (b) above shall be deemed to imply or be construed to represent an exclusive enumeration of circumstances under which Commissioner may terminate this License.

3.4 Upon expiration or sooner termination of this License by Commissioner, all rights of Licensee herein shall be forfeited without claim for loss, damages, refund of investment or any other payment whatsoever against the Commissioner, Parks, or City.

3.5 In the event the Commissioner terminates this License for reasons related to Section 3.3 above, any property of Licensee on the Licensed Premises may be held and used by the Commissioner in order to operate the Licensed Premises during the balance of the calendar year and may be held and used thereafter until all indebtedness of Licensee hereunder, at the time of termination of this License, is paid in full.

3.6 Licensee agrees that upon the expiration or sooner termination of this License, it shall immediately cease all operations pursuant to this License and shall vacate the Licensed Premises without any further notice by the City and without resort to any judicial proceeding by the City. Upon the expiration or sooner termination of this License, the City, in accordance with law, reserves the right to take immediate possession of the Licensed Premises.

3.7 Licensee shall, upon the expiration or sooner termination of this License, remove all personal possessions from the Licensed Premises and leave the Licensed Premises in as good or better condition as at the Commencement Date, reasonable wear and tear excepted. Licensee acknowledges that any personal property remaining on the Licensed Premises after the expiration or sooner termination of this License is intended by Licensee to be abandoned. Licensee shall remain liable to the City for any damages, including lost revenues and the cost of removal or disposal of property, should Licensee fail to remove all possessions from the Licensed Premises during the time prescribed in this Agreement.

3.8 If this License is terminated as provided herein, and/or upon the expiration of the License, Parks may, without notice, re-enter and repossess the Licensed Premises using such force for that purpose as may be necessary without being liable to indictment, prosecution, or damages therefor and may dispossess Licensee by summary proceedings or otherwise, without court order or other judicial approval.

3.9 If this Agreement is terminated as provided in Section 3.3 above, Parks may complete all repair, maintenance and construction work required to be performed by Licensee hereunder and may repair and alter any portion(s) of the Licensed Premises in such manner as Parks may deem necessary or advisable without relieving Licensee of any liability under this Agreement or otherwise affecting any such liability, and/or relicense the Licensed Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer period. Parks shall in no way be responsible or liable for any failure to relicense any portion(s) of the Licensed Premises or for any failure to collect any fees due on any such relicensing, and no such failure to relicense or to collect fees shall operate to relieve Licensee of any liability under this Agreement or to otherwise affect any such liability.

3.10 No receipt of monies by Parks from Licensee after the termination of this Agreement, or after the giving of any notice of the termination of this Agreement, shall reinstate, continue, or extend the Term or affect any notice theretofore given to Licensee, or operate as a waiver of Parks' right to recover possession of the Licensed Premises by proper remedy. After the service of notice to terminate this Agreement or the commencement of any suit or summary proceedings or after a final order or judgment for the possession of the Licensed Premises, Parks may demand, receive and collect any

monies due or thereafter falling due without in any manner affecting the notice, proceeding, order, suit or judgment, all such monies collected being deemed payments on account of the use and occupation of the Licensed Premises or, at the election of Parks, on account of Licensee's liability hereunder.

ARTICLE 4: OPERATIONS

4.1 (a) Licensee shall, at its sole cost and expense, (i) operate a high-quality food service facility Concession, and (ii) perform such ongoing and preventive maintenance activities necessary to maintain the Licensed Premises in good order and repair, for the benefit of the general public in accordance with the terms herein, in such manner as the Commissioner shall prescribe, and as permitted by, and in compliance with, all laws, rules, regulations and orders of government agencies having jurisdiction. Licensee accepts the Licensed Premises "as is." Licensee assumes all risk in the operation of this License.

(b) All services, items and merchandise and all rates, fees and prices, or changes thereto, to be charged by Licensee for any goods, rights, or services provided pursuant to the operation of this License are subject to prior written approval by Parks, in advance of each Operating Year during the Term of the License, which approval shall not be unreasonably withheld or delayed.

(c) Licensee shall maintain adequate inventory to ensure a constant supply of food and beverages at the Licensed Premises. Any staff assigned by Licensee to sell food and beverages to the public at the Licensed Premises must possess all required federal, State, and City authorizations and possess, and at all times display, appropriate New York City Department of Health and Mental Hygiene ("DOHMH") permits. Licensee may only operate the Licensed Premises if it has obtained the appropriate valid permits and authorizations required by DOHMH. At all times the Concession is operating, a staff person with a valid DOHMH food handler's license must be present. If Licensee operates without all necessary permits and licenses, it may be subject to fines and/or confiscation of merchandise.

(d) Licensee may place tables, chairs, and umbrellas at the Licensed Premises. The design, color, placement, and number of all tables, chairs, umbrellas at the Licensed Premises are subject to Parks' prior written approval. Licensee must ensure free and open public access to any outdoor seating areas, provided however that access to any outdoor seating area where alcoholic beverages are served may be restricted to comply with Section 18.2 of this License Agreement and the requirements of the New York State Liquor Authority or other agency having jurisdiction.

(e) Licensee may sell merchandise at the Licensed Premises. All merchandise, supplies, and equipment to be sold at the Licensed Premises and the proposed prices of those items are subject to Parks' prior written approval. With respect to the sale of merchandise at the Licensed Premises, Licensee recognizes that the City is the trademark owner of various marks and has licensed the use of those trademarks for use on certain designated merchandise. If Licensee wants to sell merchandise that uses the City's trademarks, Licensee must purchase that merchandise from authorized licensees of the City. Parks will not permit the sale of merchandise promoting musicians, entertainers, sports figures, cartoon characters, political movements, political figures, commercial products or non-park-related events. The knowing sale of counterfeit or unlicensed merchandise at the Licensed Premises will result in the immediate termination of this License Agreement and forfeiture of the Security Deposit.

4.2 Licensee may only operate when the park in which the Licensed Premises is located is open, and the Licensed Premises must close not later than 10 p.m. each day. Licensee shall operate the

Concession daily each Year, unless otherwise approved by Parks. The exact hours and days of operation of all operations at the Licensed Premises are subject to Parks' prior written approval. All services, menu items and merchandise and all rates, fees and prices to be charged by Licensee must also be approved in advance in writing by Parks. At its sole discretion, but based upon written request from Licensee, Parks may allow changes to Licensee's approved operating hours/schedule. If the request is granted by the Commissioner, Licensee will continue to be responsible for all other obligations under this License Agreement. Licensee shall, at its sole cost and expense, print, frame and prominently display in a place and manner designated by Commissioner, the approved schedule of operating days and hours and rates, fees and prices. Annexed hereto as **Exhibit C** is the Schedule of Approved Hours and Rates, Fees and Prices for the commencement of operations hereunder.

4.3 Licensee shall comply with all national safety guidelines and federal, State and City laws, rules and regulations related to the operation and maintenance of the Licensed Premises, including, but not limited to, any necessary licenses, permits and approvals from Parks, the New York City Department of Environmental Protection ("DEP"), the New York City Department of Sanitation ("DSNY"), New York City Department of Buildings ("DOB") and the New York City Department of Health and Mental Hygiene ("DOHMH"). Licensee shall at all times operate the Licensed Premises in accordance with the provisions of any and all required licenses or permits. Licensee shall, throughout each Operating Year during the Term, take all measures necessary to provide a safe environment for the public at the Licensed Premises.

4.4 Licensee at its sole cost and expense, shall obtain, possess, and display prominently at the Licensed Premises all approvals, permits, licenses, and certificates (including amendments thereto) that may be required for the operation and maintenance of the Licensed Premises in accordance with all applicable federal, State, and City laws, rules, and regulations. Licensee shall operate and occupy the Licensed Premises in accordance with all applicable law and shall, at its sole cost and expense, obtain all approvals, licenses, permits and certificates (including amendments thereto) that may be required to operate the Licensed Premises in accordance with applicable law, including any necessary Certificates of Operation, Place of Assembly and Certificate(s) of Occupancy. Licensee shall at all times operate the Licensed Premises in accordance with the provisions of any required licenses or permits. In the event that, at the Commencement Date or at any time during the Term, Licensee does not have a Certificate of Occupancy because one is not legally required, then Licensee shall obtain a "Letter of No Objection" from DOB. Furthermore, in the event that, at the Commencement Date, or at any time during the Term, Licensee does not have a Certificate of Occupancy, where required, and does not have a "Letter of No Objection," Licensee may conduct its operations in temporary structures that have been approved by Parks. Licensee shall obtain any necessary licenses and permits for such temporary structures before the commencement of operations. However, if in such situations Licensee nonetheless chooses not to conduct such operations in temporary structures, then such operations shall not take place unless and until Licensee has obtained the necessary Certificate(s) of Occupancy, if required, or "Letter(s) of No Objection," to the extent applicable and required by DOB.

4.5 An officer or member of Licensee shall personally operate this License or employ an operations manager at the Licensed Premises. A member of Licensee or manager must be available by telephone during all hours of operation, and Licensee shall continuously notify the Commissioner and the Parks Enforcement Patrol Communications Division of a 24-hour cellular telephone number through which

Parks may contact the manager or officer in the event of an emergency. Licensee shall replace any manager, officer, employee, subcontractor or sublicensee whenever requested by Commissioner.

4.6 Licensee shall comply with all laws, rules and regulations of appropriate agencies, specifically DEP regarding noise levels. Licensee shall be responsible for payment of any and all fees or royalties to the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), or such other entity as they may require for such music or music programming. Any musical programming or other types of entertainment must be approved in advance in writing by Parks. Outdoor amplified sound will not be permitted past 10:00 p.m. Any sound or music equipment shall be operated in accordance with the Rules of the City of New York, Title 56 RCNY §1-05(d), the Administrative Code of the City of New York, Title 24, Chapter 2, and only at times and at a sound level acceptable to the Commissioner. Amplified sound and music must not exceed the decibel level allowed by City noise regulations. Licensee must make every effort to ensure that any and all sounds and/or music from its operation of the Licensed Premises is in such a manner so as to avoid or minimize disturbance or discomfort to the surrounding community.

4.7 Licensee must provide Americans with Disabilities Act (“ADA”) accessibility throughout the Licensed Premises. Licensee shall also comply with all City, State, and federal requirements to provide safe and accessible opportunities for everyone, including persons with disabilities. Licensee is encouraged to exceed accessibility requirements whenever possible and not simply provide the minimum level required. Such accessibility shall be clearly indicated by signs and included in all of Licensee’s advertising.

ARTICLE 5: MAINTENANCE, SANITATION & REPAIR

5.1 Licensee shall provide or cause, at its sole cost and expense, to be provided the daily maintenance and repair of the Licensed Premises including, but not limited to, maintaining the Licensed Premises in a safe, clean, and orderly condition, in accordance with the standards set forth in this Section herein to the satisfaction of the Commissioner. Notwithstanding Licensee’s obligations to otherwise maintain and repair the Licensed Premises, Parks shall maintain and repair the Jewish Tercentenary Monument located within the Licensed Premises, as marked in **Exhibit B**, except that Licensee shall promptly report any graffiti, vandalism, and maintenance issues related to the monument to Parks. Any and all of Licensee’s maintenance and repair obligations shall be performed with high quality and worker-like manner and in accordance with the following standards:

- (a) cleaning and maintaining all walkways, sidewalks, passageways, curbs, and all pavements and structures, and facilities in the Licensed Premises, clean and free from garbage, leaves, debris, and other obstructions;
- (b) cleaning and maintaining all bathrooms in the Licensed Premises;
- (c) removing or painting over graffiti as appropriate to the nature of the surface and per Parks’ instruction, within forty-eight (48) hours of notice of such graffiti;
- (d) cleaning and preventing clogging of drains, trench drains, sewers and catch basins on the Licensed Premises; and
- (e) promptly notifying Parks of any damages to trees at the Licensed Premises, provided however, that Licensee shall not prune, cut down, replant, or remove any trees from the Licensed Premises, nor undertake any planting or landscaping without Parks’ prior written approval.

5.2 Licensee, at its sole cost and expense, shall repair any space within the Licensed Premises that is damaged by Licensee, its employees, agents, contractors, volunteers, invitees, or members of the public. All such damage shall be immediately reported to Parks. Parks must approve, in writing, any and all necessary repairs prior to commencement of the repair. Repairs include, but are not limited to:

- (a) Benches or other seating including movable tables and chairs
- (b) Pavements and crushed stone surfaces: All paved surfaces shall be maintained in a safe and attractive condition. Replacement materials shall match existing materials.
- (c) Painting: All items with painted surfaces shall be painted as needed. Surfaces shall be scraped free of rust and free of other extraneous matter and painted to match the existing color.

5.3 Licensee shall perform maintenance and repair activities to the satisfaction of the Commissioner, in order to achieve compliance with the ratings for all enumerated categories set forth in the Parks Inspection Program Manual, attached hereto as **Exhibit D**, and incorporated herein by reference. Parks reserves the right to extend the requirements of its existing rating system to the Licensed Premises. Licensee shall be required to perform said maintenance and repair activities to the satisfaction of the Commissioner regardless of the amount of Gross Receipts or revenue generated at the Licensed Premises.

5.4 Licensee shall, at its sole cost and expense, remove snow and ice from all walkways and paved surfaces at the Licensed Premises promptly after each snowfall or accumulation of ice. Sand and /or other approved plant-safe materials shall be spread as needed. In performing these duties, Licensee shall comply with all applicable federal, State, and City laws, rules, and regulations.

5.5 Licensee shall, at its own cost and expense, remove all rubbish generated by the operations under this License from the Licensed Premises and adjacent surrounding area. Licensee shall provide easily accessible Parks-approved waste and recycling receptacles, which shall be emptied as needed. All waste, garbage, refuse, rubbish, and litter collected at, and along the perimeter of, the Licensed Premises, without regard for its source, shall be collected, bagged, and recycled and removed from the Licensed Premises. In performing their duties under this Section, Licensee shall comply with all applicable federal, State, and City laws, rules, and regulations.

5.6 Licensee shall maintain and improve the landscaping at the Licensed Premises including, but not limited to, performing any seeding, trimming, pruning, planting, fertilization, terrain shaping, and soil improvements. Licensee shall also remove or destroy any weeds from paving blocks, pavement, cobbled arid concrete, and crushed stone areas. Licensee shall report dead and diseased trees to Parks and remove them upon Parks' request. In addition, Parks requires that any trees on the Licensed Premises be pruned as needed. Licensee must submit detailed plans to Parks of all horticultural and landscaping work to be performed. All landscaping and horticultural work to be performed at the Licensed Premises is subject to Parks' prior written approval. Licensee shall obtain all necessary permits, approvals, and authorizations from all federal, State, and City agencies having jurisdiction over the Licensed Premises before any work is performed, and such work shall be of a quality which meets Parks' standards.

5.7 Should the Commissioner decide that Licensee is not operating and maintaining the Licensed Premises in a satisfactory manner, the Commissioner may, in writing, order Licensee to improve operations or correct such conditions as Commissioner may reasonably deem unsatisfactory. In the

event that Licensee fails to comply with such written notice or fails to respond in a manner satisfactory to Commissioner within the timeframe set forth in said notice, subject to unavoidable delays beyond the reasonable control of Licensee, notwithstanding any other provisions herein, then Commissioner may terminate this License.

5.8 Licensee shall periodically inspect the Licensed Premises and shall promptly notify Parks of any known hazardous condition(s) and institute reasonable measures to protect the public from harm, including, but not limited to, the erection of warning signs and temporary barriers. Necessary repairs to remedy such unsafe or emergency condition(s) shall be made by Licensee or Parks, as the case may be, in accordance with the allocation of responsibility for minor and major repairs otherwise set forth in this Section. Should Commissioner, in Commissioner's sole judgment, decide that an unsafe or emergency condition exists on the Licensed Premises, Licensee, after receipt of written notification of such facts from Commissioner, shall have twenty-four (24) hours to correct such unsafe or emergency condition. During this period, the Commissioner may require a partial or complete suspension of use of the affected area. If Licensee believes that such unsafe or emergency condition cannot be corrected within said period of time, Licensee shall notify the Commissioner in writing and indicate the period within which such condition shall be corrected. The Commissioner, in Commissioner's sole discretion, may then extend such period of time in order to permit Licensee to cure under such terms and conditions as appropriate.

5.9 Licensee shall immediately notify Parks' personnel of any unusual conditions that may develop in the course of the operation of this License of which Licensee becomes aware, including but not limited to, injury, death, property damage, theft, fire, flood, casualty, and substantial damage of any character. Licensee shall prepare and provide to Parks reports of major accidents or unusual incidents occurring at the Licensed Premises in a format reasonably acceptable to the Commissioner. Licensee shall immediately notify Parks, in writing, of any claim for injury, death, property damage, or theft, which may be asserted against Licensee with respect to the Licensed Premises. Licensee shall also designate a person to handle all such claims, including all claims for loss or damage including all insured claims for loss or damage pertaining to the operations of the Licensed Premises, and Licensee shall notify Parks in writing as to said person's name and address.

5.10 This License may be suspended in full or in part upon written notice from Parks due to circumstances as determined by the Commissioner, including but not limited to, acts of God, future pandemics, epidemics, other states of emergency declared by the federal, State or City government, riots, civil commotion, strikes, fire or other casualty. Such suspension shall be immediately effective upon the mailing, e-mailing, or hand delivery thereof. In the event of such notice, Licensee shall cease operations to the extent required by the notice. Licensee may propose and submit for the Commissioner's approval a plan to equitably address the impact of the closure. The City and their officials, employees, and agents shall not be liable for damages to Licensee in the event that operations under this License are fully or partially suspended.

5.11 Licensee shall operate the Licensed Premises in accordance with all applicable FDNY Codes.

5.12 Notwithstanding anything to the contrary, Parks makes no representations that there is adequate storage space at the Licensed Premises. Licensee shall be responsible, at its sole cost and expense, for obtaining any additional storage space required for operation of the Concession granted

hereby. Licensee shall not store any equipment or supplies at the Licensed Premises without the prior written approval of Parks, which approval shall not be unreasonably withheld. No item shall be placed upon any public space, including the ground adjacent to the Licensed Premises without Parks' prior written approval, which shall not be unreasonably withheld or delayed. Licensee shall secure and store all outdoor equipment, if any, on a nightly basis and anytime its operations at the Licensed Premises are closed.

ARTICLE 6: ALTERATIONS

6.1 (a) Licensee may alter the Licensed Premises only in accordance with the requirements of subsection (b) of this Section. Alterations shall become property of the City, at its option, upon their attachment, installation, or affixing.

(b) In order to alter the Licensed Premises, Licensee must:

(i) obtain the Commissioner's written approval (which shall not be unreasonably withheld) for whatever designs, plans, specifications, cost estimates, agreements and contractual understandings may pertain to contemplated purchases and/or work;

(ii) ensure that work performed, and alterations made on the Licensed Premises are undertaken and completed in accordance with submissions approved pursuant to Section 6.1(b)(i), with high quality and worker-like manner, and within a reasonable time; and

(iii) notify the Commissioner of completion of, and making final payment for, any Alteration within ten (10) days after the occurrence of said completion or final payment.

(c) The Commissioner may, in her discretion and upon prior written notice to Licensee, make repairs, alterations, decorations, additions or improvements to the Licensed Premises at the City's expense, but nothing herein shall be deemed to obligate or require the Commissioner to make any repairs, alterations, decorations, additions, or improvements, nor shall this provision in any way affect or impair Licensee's obligation herein in any respect.

ARTICLE 7: CAPITAL IMPROVEMENTS

7.1 The City has final authority over all capital projects and programs except capital expenditures ("Capital Improvements") undertaken at the Licensed Premises, and Licensee has final authority over deciding the capital projects and programs for which it will raise money from private donors and/or expend its own funds.

7.2 Licensee and Parks shall annually coordinate the preparation of operating, expense, fundraising, and capital budgets, including any amendments, for the Licensed Premises. Additionally, Licensee and Parks shall review and consult with each other concerning operating assumptions, major fundraising projects, budget allocations, maintenance, operation, program priorities, requests for proposals, or expressions of interest.

7.3 Licensee shall regularly update Parks on any potential capital projects Licensee contemplates advancing, including, but not limited to, capital projects stemming from any master plan. Parks shall in good faith work with Licensee in order to seek City capital support for capital projects upon which the two parties agree.

7.4 If Licensee seeks to pursue a capital project within the Licensed Premises, Licensee shall, in writing, request the written approval of Parks and obtain the necessary permits and any additional City

approvals, permits, and authorizations, and shall comply with such other processes that may be necessary prior to the development and implementation of such project. Parks shall respond to such a request within thirty (30) calendar days after either receipt thereof or receipt of any additional information Parks requests. Licensee shall coordinate all activities related to such project with Parks.

7.5 Subject to all legal requirements including, but not limited to, written approval of Parks and of the New York City Office of Management and Budget (“OMB”) and in compliance with all applicable prevailing wage requirements, Licensee may enter into contracts for approved Parks capital projects and may supplement Parks and/or other public capital funds with Licensee funds for the development of such approved projects. Capital Improvements shall become the property of the City, at its option, upon their attachment, installation, or affixing.

7.6 To guarantee prompt payment of monies due to a contractor or its subcontractors and to all persons furnishing labor or materials to the contractor or its subcontractors in the prosecution of any Capital Improvement Project with an estimated cost exceeding two hundred fifty thousand dollars (\$250,000), Licensee shall post or cause to be posted a payment bond or other form of undertaking approved by Parks in the amount of one hundred percent (100%) of the cost of such Capital Improvement Project before commencing such work. Such bond or other undertaking shall be in a form acceptable to Parks. For purposes of this provision, a “Capital Improvement Project” shall mean a set of Capital Improvements that are reasonably related in time and purpose as determined by Parks in its sole discretion.

ARTICLE 8: FIXED AND EXPENDABLE EQUIPMENT

8.1 Licensee shall, at its sole cost and expense and to the reasonable satisfaction of the Commissioner, acquire, provide, replace, or repair, install or affix, if necessary, all equipment and materials necessary for the successful operation of this License, and put, keep, repair, preserve and maintain in good order all equipment found on, placed in, installed in or affixed to the Licensed Premises. Licensee shall be responsible for the regular maintenance and repair of Fixed and Additional Fixed Equipment on the Licensed Premises and for keeping such Fixed and Additional Fixed Equipment in good operating condition, normal wear and tear excepted.

8.2 At its option, the City has title to all Fixed Equipment on the Premises as of the Commencement Date on the Notice to Proceed. Title to any Additional Fixed Equipment and to all construction, renovation, or improvements made to the Licensed Premises shall vest in and belong to the City at the City'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 the City chooses not to exercise such option, Licensee shall, at the termination or expiration of this License, at the Licensee’s sole cost and expense and to the satisfaction of the Commissioner, be responsible for removing such equipment and restoring the Licensed Premises to Parks to a condition as good as or better than at the commencement of the Term.

8.3 Licensee shall supply, at its own cost and expense, all Expendable Equipment required for the proper operation of this License, and repair or replace same at its own cost and expense when reasonably requested by Commissioner. Licensee must acquire and use for the purpose intended any

Expendable Equipment that the Commissioner reasonably determines is necessary to the operation of this License.

8.4 Title to all Expendable Equipment obtained by Licensee shall remain with Licensee, and Licensee shall remove such equipment at the termination or expiration of this License. In the event that such equipment remains in the Licensed Premises following such termination or expiration, the Commissioner may treat such property as abandoned and charge all costs and expenses incurred in the removal thereof to Licensee.

8.5 Licensee acknowledges that it is acquiring this License to use the Licensed Premises and Fixed Equipment thereon solely in reliance on its own investigation, that no representations, warranties, or statements have been made by the City concerning the fitness thereof, and that by taking possession of the Licensed Premises and Fixed Equipment, Licensee accepts them in their present condition “as is.”

8.6 The equipment to be removed by Licensee pursuant to this Agreement shall be removed from the Licensed Premises in such a way as shall cause no damage to the Licensed Premises, ordinary wear and tear excepted. Notwithstanding its vacating and surrender of the Licensed Premises, Licensee shall remain liable to City for any damage it may have caused to the Licensed Premises.

ARTICLE 9: UTILITIES

9.1 Parks makes no representations regarding the adequacy of utilities currently in place at the Licensed Premises. Licensee shall, at its sole cost and expense, directly pay for all other utility costs associated with the operations of the Licensed Premises. Licensee, at its sole cost and expense, shall install or cause to be installed, and shall maintain, all utilities, service lines, meters, and supplies of power necessary for the proper operation of this License and shall pay all utility costs. Utilities, as described in this License, may include, but shall not be limited to, electricity, gas, heat, coolant, telephone, and all DEP water and sewer charges. Licensee shall not undertake the installation of any new utility lines without first having obtained all necessary permits and approvals from Parks and such other federal, State, or City agencies or entities as have jurisdiction over the operation of the Licensed Premises. Parks does not make representation or warranty that existing cables, lines, meters, or supplies of power are adequate for Licensee's needs or that any entity can or will make such service available. If requested, Parks shall use reasonable efforts to assist Licensee in obtaining utilities for the Licensed Premises. Licensee shall adhere to all DEP directives and restrictions regarding drought and water conservation issues during Term. Licensee is strictly prohibited from use of utilities used, operated, or owned by the City, unless otherwise approved in writing by Parks. In performing duties under this Section, the parties shall comply with all applicable federal, State, and City laws, rules, and regulations.

ARTICLE 10: PERSONNEL

10.1 All experts, consultants, volunteers, and employees employed by Licensee to perform work under this License are neither employees of the City nor under contract to the City, and Licensee alone is responsible for their work, direction, compensation, and personal conduct while engaged under this License. Nothing in this License shall impose any liability or duty on the City for acts, omissions, liabilities or obligations of Licensee or any person, firm, company, agency, association, corporation,

or organization engaged by Licensee as expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent or for taxes of any nature including but not limited to unemployment insurance, workers' compensation, disability benefits and social security.

10.2 Licensee shall notify Parks in writing within ten (10) calendar days after any appointments to or resignations from any officer, including, but not limited to, the position(s) of any Executive Officer, including the President and Vice President of Licensee. In addition, Licensee shall notify Parks in writing, within ten (10) calendar days after the occurrence, of any change in the individuals who serve as directors and officers of Licensee's Board of Trustees.

10.3 Licensee, at its sole cost and expense, shall provide, hire, train, supervise and be responsible for the acts of all personnel necessary for the proper operation of this License, including but not limited to:

- (a) collecting and safeguarding all monies generated under this License;
- (b) maintaining the Licensed Premises;
- (c) conducting and supervising all activities to be engaged in upon the Licensed Premises;
- (d) securing the Licensed Premises

10.4 Licensee shall comply with the Earned Safe and Sick Time Act, also known as the Paid Sick Leave Law, as a licensee of the City of New York as set forth in the NYC Earned Safe and Sick Time Act Contract Rider annexed hereto as **Exhibit E**.

ARTICLE 11: RESERVATION FOR SPECIAL EVENTS

11.1 (a) For the purposes of this Article, the term "Parks' Special Event(s)" shall mean any event at the Licensed Premises for which Parks has issued a Special Event Permit. Licensee shall cooperate with Parks in connection with Parks' Special Events and unanticipated events and emergencies at the Licensed Premises. Commissioner represents to Licensee that the Commissioner has not, as of the date hereof, granted to any other person or entity any license, permit, or right of possession or use which would prevent in any way Licensee from performing its obligations and realizing its rights under this License. It is expressly understood that this Article shall in no way limit Parks' right to sponsor or promote Parks' Special Events, as defined herein, at the Licensed Premises, or to enter into agreements with third parties to sponsor or promote such events, provided that Parks will use its reasonable efforts to ensure that such third parties will be responsible for maintenance and clean-up associated with any such Parks' Special Event.

(b) Parks, acting on behalf of the City, reserves the right to host a number of annual events at the Licensed Premises, including benefits, and other non-profit or public events, without cost to Parks (except as explicitly set forth herein). The dates of such events shall be agreed upon by both parties and shall be reserved in writing not less than one month in advance. During any such Parks' Special Event, Licensee shall be obligated to operate the entire Licensed Premises without cost to Parks; however, the City shall pay for Licensee's costs for food and beverage items or such other operational costs connected with Parks' Special Events. Such costs for Parks' Special Events must be reported to Parks, but may be excluded from calculation of Gross Receipts.

11.2 (a) Subject to prior written approval from Parks, Licensee may conduct Licensee's Special Events or programs (e.g., either arranged by Licensee or by reservation of all or part of the Licensed Premises through Licensee by third parties) at the Licensed Premises. Any ticketed events at the

Licensed Premises (including, but not limited to, payment of a fee at the door) also require prior written approval from Parks. Licensee shall submit to Parks for approval all plans for any Licensee's Special Events at the Licensed Premises. In no event shall the entire Licensed Premises be closed to conduct private activities during public hours of use except when such activities are specifically approved by Parks in advance in writing or sponsored by Parks, and such a closure has been announced to the public at least two (2) weeks in advance of such activities or events. Licensee must document each of Licensee's Special Events via signed sequentially pre-numbered contracts that capture event information, including the time and date of the event, the number of attendees and required payment. All revenue generated through such special events must be reported to Parks as Gross Receipts. Notwithstanding anything to the contrary in this Section, Parks reserves the right to review Licensee's use of the Licensed Premises for Licensee's Special Events and require that Licensee obtain Parks' prior written approval for all Licensee's Special Events, of any type, if, in the reasonable determination of the Commissioner, the nature and frequency of Licensee's Special Events constitutes an unreasonable limitation on the use and enjoyment of the Licensed Premises by the general public.

(b) All Licensee's Special Events on any portion of the Licensed Premises must be approved in advance in writing by the Commissioner or the Commissioner's designee, which approval shall not be unreasonably withheld or delayed. Licensee shall give the Commissioner at least thirty (30) calendar days (or such lesser period as approved by Parks) advance written notice of any tentatively scheduled Licensee's Special Event. Licensee's Special Events may not restrict public access to the Licensed Premises, unless otherwise approved in accordance with this Section.

(c) Licensee's right to hold Licensee's Special Events and to retain revenue through fees and other charges as described herein shall be subject to all City authorization, approvals, permits and compliance with other processes that may be necessary. Any such authorizations, approvals, permits shall not be unreasonably withheld or delayed.

(d) Licensee must account for any funds from Licensee's Special Events at the Licensed Premises under Article 13 (Revenues & Accounts) of this Agreement. Licensee must account for any funds from services, any donations, grants, proceeds, and funds collected from Licensee's Special Events in compliance with Article 13 (Revenues & Accounts) of this License Agreement. All donations, proceeds, grants, and funds shall be used solely for the operation, maintenance, use, and repair of the Licensed Premises.

(e) All Licensee's Special Events at the Licensed Premises must comply with Parks' rules and regulations, including, but not limited to, obtaining ancillary permits where applicable. Licensee is responsible for securing all ancillary permits required by outside agency regulations, including but not limited to, NYPD Amplified Sound permits, DOB structural or temporary place of assembly permits, DOHMH permits and FDNY permits. Licensee shall at all times operate the Licensed Premises in accordance with the provisions of any and all required licenses or permits.

(f) Any sound or music equipment shall be operated in accordance with the Rules of the City of New York, Title 56 RCNY §1-05(d), the Administrative Code of the City of New York, Title 24, Chapter 2, and only at times and at a sound level acceptable to the Commissioner. Licensee must make every effort to ensure that any and all sounds and/or music from its operation of the Licensed Premises do not disturb or discomfort the surrounding community. Amplified sound and music must not exceed the decibel level allowed by City noise regulations.

(g) Licensee shall be responsible for payment of all fees or royalties to ASCAP, BMI or such other entities as may be required for any music or music programming during Licensee's Special Events.

(h) Licensee shall provide, at its sole cost and expense, all staff, equipment, furniture, materials and supplies necessary for the administration and operation of Licensee's Special Events.

ARTICLE 12: INTELLECTUAL PROPERTY

12.1 (a) Except as described in subparagraph (b) below, all intellectual property rights in the Licensed Premises' name, signage, structures, historical location, monuments, or other items or material that depict, are sited in, or refer to the Licensed Premises and any other names, trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property (i) developed or designed by the City or its employees, contractors, or others on the City's behalf, or (ii) in the case of trademarks, used by the City in commerce unless Licensee is a prior user of any trademark in commerce are the property of the City ("City IP"). To the extent that Licensee uses any City IP in the course of performing its activities ("Licensee Activities"), Licensee shall obtain Parks' prior written permission and approval for this use. In the event that Parks grants permission for Licensee to use the City IP for non-commercial purposes, then Parks grants and will grant a non-exclusive, royalty-free, worldwide, non-transferrable and non-sublicensable license to Licensee to make non-commercial use of, display and maintain City IP for Licensee's activities in support of the Licensed Premises. To the extent that Parks' prior permission and approval had already been obtained to use City IP, it will be continued as previously agreed upon, subject to the use and monetary restrictions contained in this subparagraph (a).

(b) Any and all trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property rights that Licensee has or acquires that meet the following requirements ("Licensee Specific IP") are the property of Licensee: such intellectual property (i) was created by or on behalf of Licensee, its employees, contractors, or others, other than at the City's or Parks' specific direction, and (ii) includes no City IP (as defined in subparagraph (a) above) unless Parks grants prior written permission and approval for the use of City IP for use within Licensee's Specific IP. Licensee Specific IP shall be used exclusively in connection with Licensee's activities, as shall Licensee's ability to use any City IP that is incorporated into Licensee Specific IP with the City's permission. Any revenue that Licensee derives from the use, licensing, or other exploitation of Licensee Specific IP shall be used during the Term of this Agreement exclusively in connection with Licensee activities, but this restriction shall terminate on the expiration or termination of this Agreement. Licensee in this Agreement grants a non-exclusive, royalty-free, worldwide, non-transferrable and non-sublicenseable license to the City and Parks to make use of, display and maintain Licensee Specific IP. Parks shall make no commercial use of Licensee Specific IP (e.g., merchandise sales, licensing or other use intended to generate, or that does generate, revenue) without Licensee's prior written approval.

(c) All goodwill associated with the City IP, or Licensee Specific IP shall be the exclusive property of its respective owner and neither party shall take any actions inconsistent with such rights. Each party recognizes and acknowledges that the City IP and Licensee Specific IP are the exclusive property of the other and they communicate in the public, worldwide, a reputation for high standards of quality and services, which reputation and goodwill have been and continue to be unique to the owner. Each party further recognizes and acknowledges that all trademarks, service marks, trade names and service names included in the City IP and Licensee Specific IP have acquired secondary meaning in the mind of the public. Neither the City IP, nor Licensee Specific IP shall be used in connection with any illegal, illicit, or immoral purpose or activity, or in any manner that could be inconsistent with, or damaging to the owner's name and reputation. Either party shall have the right

to terminate this Agreement, upon written notice, if any part of the City IP or Licensee Specific IP is used by the other party in connection with any illegal, illicit, or immoral purpose or activity. If any of the City IP or Licensee Specific IP is used by the other party in any way that, in the reasonable judgment of the owner, is inconsistent with or damaging to the owner's name or reputation, the owner shall notify the other party in writing and, before exercising the right of termination provided for in this subparagraph (c), shall provide three (3) business days following receipt of such notice to the other party to immediately cease and halt all such uses.

(d) During the Term, each party may make only the uses described in subparagraphs (a) and (b) above. Each party acknowledges and agrees that all use of and goodwill in the City IP or Licensee Specific IP shall inure to the benefit of its owner. Neither the City nor Licensee shall acquire any rights in Licensee Specific IP or City IP, respectively, by virtue of any use it makes of it or any portion of it.

(e) The parties shall not use the name or logos of the other party, its subsidiaries or affiliates in any sales or marketing publication or advertisement without prior full disclosure of such use and the written consent of the other party, such consent not to be unreasonably withheld or delayed.

(f) All provisions of this Article 12 will survive any termination of this Agreement except as otherwise set forth in this Article.

ARTICLE 13: REVENUES & ACCOUNTS

13.1 (a) Licensee shall maintain, and shall cause any sublicensee to maintain, a revenue control system to ensure the accurate and complete recording of all revenues, in a form and manner acceptable to the City. This revenue control system must maintain detailed sales information from each sales transaction. Specifically, sales information must be recorded electronically, via a computerized point-of-sale system, and must include, but is not limited to, details on each sales transaction, the item(s) sold, time, date of sale and price of the item sold. Regarding Licensee's Special Events, Licensee must also document each of Licensee's Special Events via signed sequentially pre-numbered contracts that capture event information, including the time and date of the event, the number of attendees and required payment. Licensee shall ensure that all transactions and deposits related to this Concession's generated revenue are appropriately marked and identified, and further, Licensee shall make documentation of such transactions and deposits available to Parks upon written request. Additionally, all books and records maintained pursuant to this License Agreement shall be conveniently segregated from other business matters of Licensee and shall include, but not be limited to: all federal, State and local tax returns and schedules of Licensee; records of daily bank deposits of the entire receipts from transactions in, at, on or from the Licensed Premises; sales slips, daily dated cash register receipts, and sales books; and duplicate bank deposit slips and bank statements. All accounting and internal control related records shall be maintained for a minimum of ten (10) years after the date of creation of the record.

(b) Licensee shall provide equipment which will provide security for all monies received. Licensee shall provide for the transfer of all monies collected to Licensee's banking institution(s). Licensee shall bear the loss of any lost, stolen, misappropriated or counterfeit monies derived from operations under this License.

(c) Licensee and any sublicensee shall open and/or continue to maintain an account or sub-account, accounted for separately and apart from all other funds, at a bank located within the City of New York, insured by the Federal Deposit Insurance Corporation ("Special Account"). There shall be

deposited in the Special Account all revenues (“Operating Revenues”) collected in connection with or resulting from the rights and privileges granted to Licensee hereunder. Licensee may withdraw Operating Revenues from the Special Account to expend for ordinary and necessary expenses directly attributable to Licensee’s operation of the Licensed Premises, including programming expenses and operating, managing, maintaining, and repairing the Licensed Premises consistent with this License. No withdrawals shall be made from the Special Account other than as provided for in this License. The administration of the Special Account is subject to the inspection and audit record keeping provisions set out in Articles 13 to 17 herein. Operating Revenues do not include funds collected or received by Licensee (such as grants, donations, bequests, and contributions) other than in the course of Licensee’s use or operation of the Licensed Premises. Licensee’s use of such other revenues is governed by applicable law.

ARTICLE 14: FINANCIAL RECORDS AND REPORTS

14.1 (a) Licensee will use all Gross Receipts and Operating Revenues, including Excess Revenue (as defined in Section 2.1(e)), exclusively to provide for the management, maintenance, operation, and programming at the License Premises.

(b) On or before the thirtieth (30th) calendar day following the end of each quarter of each Operating Year, Licensee shall submit to Parks, in a form satisfactory to Parks, a statement of Gross Receipts, signed and verified by an officer of Licensee, reporting any Gross Receipts generated from operations under this License Agreement. Licensee shall indicate on its statement of Gross Receipts whether or not these amounts are inclusive of sales tax collected.

(c) Licensee is solely responsible for the payment of all federal, State, and local taxes applicable to the operation of the Licensed Premises. With the exception of federal, State and City sales tax, no such applicable taxes, including but not limited to the New York City Commercial Rent Tax, may be deducted from Gross Receipts.

14.2 On or before the sixtieth (60th) calendar day following the end of each Operating Year, Licensee shall submit to Parks, in a form satisfactory to Parks, a detailed income and expense statement pertaining to operations under this License for the preceding period of July 1st to June 30th, signed and verified by an officer of Licensee.

14.3 Licensee shall account for any Excess Revenue for any Fiscal Year and any disbursements therefrom in a report to Parks in a clearly identifiable manner. Any Excess Revenue shall be used exclusively to pay: (i) accumulated expenses incurred in the prior Fiscal Year that exceeded Gross Receipts for that Fiscal Year; or (ii) expenses incurred in any subsequent Fiscal Year, subject to submission to Parks of the report described in this Section.

ARTICLE 15: RIGHT TO AUDIT

15.1 Parks, the Comptroller, and other duly authorized representatives of the City shall have the right to examine or audit the records, books of account and data of Licensee and any sublicensee for the purpose of examination, audit, review or any purpose they deem necessary. Licensee and any sublicensee shall also permit the inspection by Parks, the Comptroller, or other duly authorized representatives of the City of any equipment used by Licensee and any sublicensee, including, but not limited to, point-of-sale systems, and all reports or data generated from or by the point-of-sale system, cash registers and recording machines, and all reports or data generated from or by the equipment.

Licensee shall cooperate fully and assist Parks, the Comptroller, or any other duly authorized representative of the City in any examination or audit thereof. In the event that Licensee's books and records, including supporting documentation, are situated at a location fifty (50) miles or more from the City, the records must be brought to the City for examination and audit, or Licensee must pay the food, board, and travel costs incidental to two (2) auditors conducting such examination or audit at said location.

15.2 Licensee's failure or refusal to permit Parks, the Comptroller, or any other duly authorized City representative to audit and examine Licensee's records, books of account and data, or the interference in any way by Licensee in such an audit or examination, is presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder which shall entitle Parks to terminate this License following the giving of notice and expiration of applicable cure periods.

15.3 Notwithstanding the foregoing, both parties acknowledge and agree that the Comptroller's powers, duties, and obligations under the New York City Charter shall not be diminished, compromised, or abridged in any way.

ARTICLE 16: RETENTION OF RECORDS

16.1 Licensee agrees to retain all books, records, and other documents relevant to each Year covered by this Agreement for ten (10) years after the termination of this Agreement. City, State, and federal auditors shall have full access to and the right to examine any of said materials during this period, upon reasonable prior notice.

ARTICLE 17: INSPECTIONS AND AUDITS

17.1 Licensee shall make available, upon reasonable prior notice, at its principal place of business, for audit, inspection or removal of copies by Parks, the Comptroller, and a Parks-authorized independent auditor, Licensee's books and records relating to the performance of this Agreement, including, but not limited to, the following:

- (a) Revenue and expenditures, annual budget, bi-weekly payroll recap, fringe benefits, books, accounts, canceled checks, and all other fiscal records;
- (b) Staff and salary roster, including salary changes and adjustments;
- (c) Internal and external audits completed within the last three (3) years;
- (d) Minutes of meetings of the Board of Directors;
- (e) Programs, research, and other reports and publications in connection with Licensee's responsibilities at the Licensed Premises pursuant to this Agreement; and
- (f) Registration and attendance records of Licensee's sponsored programs and any other matters relating to the performance of and compliance with this Agreement, or with any laws or regulations governing Licensee's conduct under this Agreement.

17.2 Licensee shall establish and maintain accurate records and documents that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this License and any revenue generated pursuant to this Agreement. Such records and documents shall conform to generally accepted accounting principles ("GAAP").

17.3 Licensee shall use accounting and internal control methods and procedures and keep additional books and records as may be reasonably prescribed by Parks or the Comptroller. Parks or the Comptroller shall have the right to examine Licensee's record keeping procedures before the commencement of the Term, and at any other subsequent time to assure that the procedures are adequate to reveal the true, correct and entire business conducted by Licensee.

17.4 Licensee's failure or refusal to furnish any of the statements required to be furnished under this Article within thirty (30) calendar days after its due date, the failure or refusal to maintain adequate internal controls or to keep any of the records required by this Paragraph after receiving Parks' or the Comptroller's prior written notice, or the existence of any unexplained discrepancy, as disclosed by audit conducted by Parks or the Comptroller, the results of which are provided by written notice to Licensee in each instance, shall be presumed to be a failure to substantially comply with the terms and conditions of this License and a default under this Agreement, which shall entitle Parks, at its option, to terminate this License.

17.5 Licensee shall make available to the Comptroller, and Parks' auditor, on demand, all books, records, documents, and correspondence pertaining to the License Agreement, for the purpose of examination, audit, review, or any purpose deemed necessary by the Comptroller and Parks.

17.6 The parties acknowledge and agree that the Comptroller's powers, duties and obligations under the New York City Charter shall not be diminished, compromised or abridged in any way.

ARTICLE 18: PROHIBITIONS ON USE

18.1 Nuisance and Waste. Licensee shall not create, nor allow to be created, any nuisance or danger to the public safety or public property in, on or about the Licensed Premises and shall not commit or cause any waste, damage, disfigurement, or injury to the Licensed Premises.

18.2 Smoking, Alcohol, Packaging

(a) Under no circumstances may Licensee sell or cause to be sold on or about the Licensed Premises cigarettes, cigars, electronic cigarettes or other tobacco products and non-tobacco smoking products. No signs or any other kind of advertising for tobacco products, non-tobacco smoking products, or electronic cigarettes shall be permitted at the Licensed Premises. Smoking of any tobacco product, non-tobacco smoking product, use of electronic cigarettes, and the presence of firearms are strictly prohibited at the Licensed Premises. Licensee shall adhere to and enforce this policy.

(b) Licensee may not place advertisements for alcohol at the Licensed Premises but Licensee may display signage approved by Parks setting forth its offerings of alcoholic beverages. Service of alcohol at the Licensed Premises is strictly prohibited without Parks' prior written approval and the appropriate license(s) from the State Liquor Authority (SLA) and all other agencies having jurisdiction, as applicable. Alcohol is permitted at the Licensed Premises pursuant to Section 4.1 of this License Agreement, and/or with prior written approval from Parks. Licensee must make all efforts to keep alcohol consumption discreet.

(c) Licensee shall not use, in its operations, any polystyrene packaging or food containers. Additionally, Licensee is prohibited from selling any beverages in glass bottles. All beverages must be in non-glass, shatterproof containers, except when table service or catered events are approved by Parks. Licensee shall not, in its operations, sell single-use rigid plastic bottles containing a beverage

with a capacity of twenty-one (21) fluid ounces or less. Plastic bottle alternatives, such as aluminum or boxed containers, are permitted.

18.3 No Combustibles and Inflammables. Except for properly stored fuels in accordance with FDNY regulations, Licensee shall not use or permit the storage of any kerosene, illuminating oils, candles, oil lamps, turpentine, benzene, naphtha, or other similar substances or explosives of any kind or any other substance or thing prohibited in the standard policies of fire insurance companies in the State of New York

18.4 Licensee shall adhere to and enforce the prohibitions contained in this Article 18.

ARTICLE 19: SECURITY

19.1 Pursuant to a plan approved in writing by Parks, Licensee shall, at its sole cost and expense, be responsible for all security for the Pavilion year-round and shall provide a 24-hour-a-day security system at the Concession. Licensee shall secure the Concession and any equipment every evening . Licensee shall be responsible for providing or causing there to be provided appropriate security for any Licensee Special Events or activities undertaken pursuant to this License. Licensee, at its own expense, may install locks, door controls, security cameras, intercom system and/or alarm systems for the Concession provided that all keys and/or codes for such locks and systems are provided to Parks.

19.2 The City shall not be responsible for any loss or damage to any property of Licensee or any other person that is used or stored at the Licensed Premises.

19.3 Licensee shall be responsible for securing all entrances and exits of the Concession at all times.

ARTICLE 20: SIGNAGE

20.1 The design and placement of all signage, including signage that includes Licensee's name, trade name(s) and/or logos, is subject to Parks' prior written approval.

20.2 Licensee shall display signs needed to guide and inform the public as to the name, location, purpose, hours of operation, and any related fees for the use of the Licensed Premises. Signs shall be maintained in good condition and repair and shall also include the Parks logo following the design guidelines set by Parks, unless Parks otherwise approves in writing, and may indicate that Licensee, in cooperation with Parks, maintains the Licensed Premises through a License Agreement.

20.3 Licensee, at its sole cost and expense, shall post throughout the Licensed Premises such signs as may be necessary to direct patrons to its services and facilities. The signs shall include the necessary wording and arrows to appropriately direct patrons. Licensee shall obtain necessary approvals or permits from any governmental agency having jurisdiction over any nearby highways, streets, or other specified location contemplated for the placement of any signs off-site of the Licensed Premises.

20.4 Licensee shall maintain all graphics in a first-class condition, and promptly clean all vandalized or damaged signs or replace such vandalized or damaged signs with new signs that match other installed signs. An overall signage plan for the Licensed Premises is subject to the written approval of

Commissioner or Commissioner's designee. Signage at the entrances and elsewhere where mutually agreed by Licensee and the Commissioner, shall acknowledge Parks.

20.5 Any and all signage is subject to Parks' prior written approval, and subject, as required, to approval by DOB and PDC. Signage shall comply with ADA standards. The design, placement, content of all signage, including signage which includes Licensee's name, trade name(s) and/or logo(s), as well as the amount of signage placed and/or installed is subject to Parks' prior written approval.

ARTICLE 21: APPROVALS

21.1 Licensee is solely responsible for obtaining all government approvals, permits and licenses required by federal, State and City laws, regulations, rules, and orders to fulfill this License. Parks shall provide Licensee with reasonable cooperation in obtaining the necessary approvals, permits, and licenses.

21.2 Whenever any act, consent, approval, or permission is required of the City or the Commissioner under this License, the same shall be valid only if it is, in each instance, in writing and signed by the Commissioner or her duly authorized representative; provided that, in each case, such act, consent, approval, or permission shall not be unreasonably withheld or delayed. 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 her duly authorized representative.

ARTICLE 22: SPONSORSHIPS, PUBLICATIONS, ADVERTISING AND PUBLICITY

22.1 Licensee must obtain Parks' prior written approval before entering into any marketing plan or sponsorship agreement and must account for any funds from these agreements under Article 13 (Revenues & Accounts) of this Agreement. If Licensee breaches this provision, the City shall take any action that the City may deem necessary to protect the City's interests. Licensee shall not accept sponsorship of or on behalf in any kind of alcohol, firearms, tobacco products, non-tobacco smoking products, or electronic cigarettes. The display, placement, advertising, or promotion of alcohol, firearms, cigars, cigarettes, tobacco products, non-tobacco smoking product and electronic cigarettes is strictly prohibited.

22.2 Licensee may establish programs or brochures for activities at the Licensed Premises, subject to Parks' prior approval. Licensee shall have the right to print or to arrange for the printing of programs or brochures containing promotional matter for the Licensee's programs and sponsorship acknowledgments, except for promotional matter and sponsorship acknowledgments that, in the Commissioner's sole discretion, are indecent, in obvious bad taste, demonstrate a lack of respect for public morals or conduct, or adversely affects the reputation of the Licensed Premises, Parks, or the City. The Commissioner shall have prior approval as to design and distribution of all promotional materials and sponsorship acknowledgments. All requests for consent by Licensee shall be directed to Parks' Chief Marketing and Development Officer (or any successor thereto, or any other person as the Commissioner may designate).

22.3 (a) Licensee shall obtain the Commissioner's prior written approval for any advertisement or promotional material concerning the Licensed Premises.

(b) If in the Commissioner's discretion any release, advertisement, or statement made to the public relating to Licensee's services at the Licensed Premises is incorrect or unacceptable for any reason, Licensee agrees to alter or cease such release, advertisement, or statement as directed by the Commissioner in writing.

(c) Revenue from sponsorships shall be included in Gross Receipts, whether in cash or as discounts against purchase price of materials, equipment, or commodities.

ARTICLE 23: DONOR RECOGNITION

23.1 Licensee may propose donor recognition agreements for Parks' approval. All forms of recognition are subject to Parks' prior written approval (which shall not be unreasonably withheld or delayed), including approval over the size, quantity, and term, and are subject to applicable laws, rules, and regulations. All revenues from donor recognition shall be restricted for the maintenance and operation of the Licensed Premises, accounted for separately and apart from all other funds as required by Article 13 (Revenues & Accounts) of this Agreement.

ARTICLE 24: TRANSFERS, ASSIGNMENTS, AND SUBLICENSES

24.1 (a) Licensee shall not sell, transfer, assign, mortgage, sublicense or encumber any interest provided for herein, ten percent (10%) or more of the shares of or interest in Licensee, or consent, allow or permit any other person or party to use any part of the Licensed Premises, buildings, space or facilities covered by this License, nor shall this License be transferred by operation of law, unless approved in advance in writing by Commissioner, it being the purpose of this Agreement to grant this License solely to Licensee herein named. Should Licensee choose to assign or sublicense the management and operation of any element of the Licensed Premises to another party, Licensee shall seek the approval of the Commissioner by submitting a written request including proposed sublicense/assignment documents as provided herein.

(b) The term "assignment" shall be deemed to include any direct or indirect assignment, sublet, sale, pledge, mortgage, transfer of or change in ten percent (10%) or more in the stock or voting control of or interest in Licensee, including any transfer by operation of law. No sale or transfer of the stock of or interest in Licensee or its nominee may be made under any circumstance if such sale or transfer will result in a change of control of Licensee violative of the intent of this Article.

24.2 No assignment or other transfer of any interest in this Agreement shall be permitted that, alone or in combination with other prior or simultaneous transfers or assignments, would have the effect of changing the ownership or control, whether direct or indirect, of ten percent (10%) or more of the stock or voting control of Licensee in the Licensed Premises without the prior written consent of Commissioner. Licensee shall present to the Commissioner the assignment agreement for approval, together with any and all information as may be required by the City for such approval, including a statement prepared by a certified public accountant indicating that the proposed assignee or sublicensee has a financial net worth acceptable to the Commissioner together with a certification that it shall provide management control acceptable to the Commissioner for the management and operation of the Licensed Premises. The constraints contained herein are intended to assure the City that the Licensed Premises are operated by persons, firms and corporations that are experienced and reputable operators and are not intended to diminish Licensee's interest in the Licensed Premises.

24.3 In the event that Parks authorizes Licensee to enter into a sublicense for operations at the Licensed Premises, the terms and conditions of any such sublicense, including payment to the City, shall be subject to the prior written approval of Parks. Any such sublicense that is authorized hereunder shall be subject and subordinate to the terms and conditions of this License, and Licensee shall require the sublicensee to acknowledge in writing that it received a copy of this License and that it is bound by same. All provisions of this License applicable to Licensee with respect to the operation and maintenance of the Licensed Premises shall be equally applicable to any sublicensee. All sublicensees shall be subject to the same internal control requirements as Licensee. Licensee shall require any sublicensee to agree in writing that it will comply with Parks' directives and the provisions of this License applicable to Licensee with respect to the operation and maintenance of the Licensed Premises, including, but not limited to, obtaining insurance required of Licensee under this License Agreement and indemnifying the City as set forth in Articles 29 and 30 herein, and shall be responsible for assuring such compliance. If any sublicensee does not comply with this License insofar as applicable to it, Parks may direct Licensee to terminate that sublicensee's operations. No sublicense may be assigned without the prior written consent of Parks. Any subsequent sublicense agreement(s) shall be subject to the terms and conditions as set forth in this License. The Commissioner may request any additional information deemed necessary, and Licensee shall promptly comply with such requests.

24.4 Licensee shall issue a solicitation in the basic form of a request for proposals ("RFP"), with terms and conditions approved by Parks, to select a sublicensee, subject to Parks' approval. This RFP shall be advertised in the City Record and other appropriate publication(s) approved by Parks. Parks shall require Licensee to conduct background check of the selected sublicensee in accordance with Parks' usual procedures and requirements, and subject to Parks' approval. Parks' disapproval of the successful proposer shall be deemed reasonable if the successful proposer fails the background check. Should Licensee request, and Parks grant, approval for a different sublicensee to take over the operation of the Concession, Licensee shall solicit for interest through a new RFP process as described in this Article and any proposed sublicensee selected through this process is subject to Parks' approval. Any subsequent sublicense agreement will also be subject to the terms and conditions set forth in this License.

24.5 Licensee and proposed assignee, transferee, and sublicensee shall comply with all applicable PASSPort procedures in connection with any such assignment/transfer.

24.6 No consent to or approval of any assignment, transfer, or sublicense granted pursuant to this Article 24 shall constitute consent to or approval of any subsequent assignment or sublicense. Failure to comply with this provision shall cause the immediate termination of this License.

ARTICLE 25: PARKS CONSTRUCTION

25.1 Parks reserves the right to perform construction or maintenance work at the Licensed Premises deemed necessary by the Commissioner in the Commissioner's sole discretion, at any time during the Term. Licensee agrees to cooperate with Parks and to accommodate by providing public and construction access through the Licensed Premises. Parks shall use its best efforts to give Licensee at least fourteen (14) calendar days prior written notice of such work and not interfere substantially with Licensee's operations or use of the Licensed Premises. Parks may temporarily close

part or all of the Licensed Premises for a Parks purpose, as determined by the Commissioner. Licensee shall be responsible for the security of all Licensee's property prior to Parks' construction work. Parks shall be solely responsible for claims, damages, or injury resulting from its work hereunder, except to the extent such claims, damages and injury are caused by the negligence or intentional tortious acts or omissions of Licensee and/or its sublicensee.

ARTICLE 26: COMPLIANCE WITH LAWS

26.1 Licensee shall comply and cause its employees, agents, sublicensees, and volunteers 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 federal, State or City agency or governmental entity having jurisdiction over operations of the License and the Licensed Premises and/or Licensee's use and occupation thereof.

26.2 Licensee shall not use or allow the Licensed Premises, or any portion thereof to be used or occupied for any unlawful purpose or in any manner violative of a certificate pertaining to occupancy or use during the Term of this License.

ARTICLE 27: NON-DISCRIMINATION

27.1 Licensee shall not unlawfully discriminate against any employee, applicant for employment, volunteer, youth apprentice, or patron because of race, creed, color, national origin, age, sex, handicap, marital status, or sexual orientation. Licensee shall comply with the Americans with Disabilities Act ("ADA") and regulations pertaining hereto as applicable. Any violation of this Section 27.1 shall be a material breach of this License.

27.2 All advertising for employment shall indicate that Licensee is an Equal Opportunity Employer.

ARTICLE 28: NO WAIVER OF RIGHTS

28.1 No acceptance by Commissioner 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 the Commissioner to terminate this License. No waiver by the Commissioner of any default on the part of Licensee in the performance of any of the terms and conditions herein shall be construed to be a waiver of any other or subsequent default in the performance of any of the said terms and conditions.

ARTICLE 29: INDEMNIFICATION

29.1 Licensee Responsibility

(a) Licensee shall be solely responsible for the safety and protection of its employees, agents, servants, volunteers, sublicensees, contractors, and subcontractors, and for the safety and protection of the employees, agents, or servants of its contractors, sublicensees, or subcontractors.

(b) Licensee 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 License.

(c) Licensee 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 License, whether or not due to the negligence of Licensee, including but not limited to injuries or damages resulting from the acts or omissions of any of its employees, agents, servants, volunteers, sublicensees, contractors, subcontractors, or any other person.

(d) Licensee shall use the Licensed Premises in compliance with, and shall not cause or permit the Licensed Premises to be used in violation of, any and all federal, State or City 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 Licensee or the Licensed Premises (collectively "Environmental Laws"). Except as may be agreed by the City as part of this License, Licensee shall not cause or permit or allow any of Licensee's personnel to cause or permit, any Hazardous Materials to be brought upon, stored, used generated, treated or disposed of on the Licensed Premises. As used herein, "Hazardous Materials" means any chemical, substance or material that is now, or becomes in the future, listed, defined or regulated in any manner by any Environmental Laws based upon, directly or indirectly, its properties or effects.

29.2 Indemnification and Related Obligations

(a) **Indemnification by TBC.** To the fullest extent permitted by law, TBC shall indemnify, defend and hold the City and its officials and employees (a "City Indemnified Party") harmless against any and all claims and demands of third parties for injury, including death, or property damage arising out of TBC's operations under this License Agreement ("City Claims"), and all liens, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, reasonable attorneys' fees and disbursements) arising from any City Claims (together with City Claims, "City Liabilities"), arising out of or related to any of TBC's operations under this License and/or TBC's respective employees, agents, servants, contractors or subcontractor's failure to comply with the law or any of the requirements of this License; provided, however, that the foregoing indemnification shall exclude City Liabilities to visitors to the Licensed Premises where such City Liabilities do not arise out of or are not related to specific TBC actions or conduct, or actions or conduct of TBC's respective employees, agents, servants, contractors or subcontractors. Insofar as the facts or law relating to any of the foregoing would preclude a City Indemnified Party from being completely indemnified by Licensee, the City Indemnified Party shall be partially indemnified by TBC to the fullest extent permitted by law. TBC's obligation to defend, indemnify and hold the City and its officials and employees harmless shall not be (i) limited in any way by TBC's obligation to obtain and maintain insurance under this License, 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.

(b) **Indemnification by City.** To the fullest extent permitted by law, the City shall indemnify, defend and hold TBC and its trustees, directors and employees (a "TBC Indemnified Party") harmless against any and all claims and demands of third parties for injury, including death, or property damage arising out of the City's operations in the Licensed Premises ("TBC Claims"), and all liens, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, reasonable attorneys' fees and disbursements) arising from any TBC Claims (together with TBC Claims, "TBC Liabilities"), arising out of or related to any of the City's operations in the Licensed Premises and/or the City or its respective employees, agents,

servants, contractors or subcontractor's failure to comply with the law or any of the requirements of this License. Insofar as the facts or law relating to any of the foregoing would preclude a TBC Indemnified Party from being completely indemnified by City, the TBC Indemnified Party shall be partially indemnified by City to the fullest extent permitted by law. With respect to the City's defense obligations hereunder, TBC consents to having any such defense provided by the New York City Law Department.

(c) **Indemnification by sublicensee(s).** Notwithstanding the foregoing, if TBC sublicenses this License Agreement to a third party, then to the fullest extent permitted by law, the sublicensee(s) shall indemnify, defend and hold TBC and the City, and their 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 License (regardless of whether or not the sublicensee itself has been negligent) and/or the sublicensee's failure to comply with the law or any of the requirements of this License. Insofar as the facts or law relating to any of the foregoing would preclude TBC and the City, or their officials and employees from being completely indemnified by the sublicensee, TBC and the City, and their officials and employees shall be partially indemnified by the sublicensee(s) to the fullest extent permitted by law. Sublicensee's obligation to defend, indemnify and hold TBC and the City and their officials and employees harmless shall not be (i) limited in any way by sublicensee's obligation to obtain and maintain insurance under this License, nor (ii) adversely affected by any failure on the part of TBC or the City or their officials and employees to avail themselves of the benefits of such insurance.

ARTICLE 30: INSURANCE

30.1 Licensee's Obligation to Insure

(a) From the date this License is executed through the date of its expiration or termination, the Licensee shall ensure that the types of insurance indicated in this Article are obtained and remain in force, and that such insurance adheres to all requirements herein. Licensee agrees that it shall, and with respect to the maintenance and operations of the Concession and Licensed Premises, require any sublicensee(s) and/or any other subcontractor(s) who perform work for Licensee pursuant to this License and in connection with Licensee's responsibilities in the Licensed Premises to comply with all the provisions set forth in this Article. The City may require other types of insurance and/or higher liability limits and other terms if, in the opinion of the Commissioner, Licensee's operations warrant it.

(b) Licensee is authorized to undertake or maintain operations under this License only during the effective period of all required coverage.

30.2 Commercial General Liability Insurance

(a) Licensee shall maintain Commercial General Liability insurance in the amount of at least Two Million Dollars (\$2,000,000) per occurrence for bodily injury (including death) and property damage and Two Million Dollars (\$2,000,000) for personal and advertising injury. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Licensed Premises and such per-location aggregate shall be at least Five Million Dollars

(\$5,000,000). This insurance shall protect the insureds from claims that may arise from any of the operations under this License. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 00 01, 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.”

(b) The 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 Agreement. Coverage shall be at least as broad as the most recent edition of ISO Form CG 20 26 and CG 20 37, and the limits for the City shall be no lower than Licensee’s. “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 20 26 and CG 20 37.

30.3 Workers’ Compensation Insurance, Employers Liability, and Disability Benefits Insurance Licensee shall maintain Workers’ Compensation insurance, Employers Liability insurance, and Disability Benefits insurance on behalf of, or with regard to, all employees involved in the Licensee’s operations under this License, and such insurance shall comply with the laws of the State of New York.

30.4 Commercial Automobile Liability Insurance With regard to all operations under this Agreement or any approved sublicense in which automobiles are used, if any, Licensee shall maintain or cause to be maintained Commercial Automobile Liability insurance in the amount of at least \$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 most recent edition of ISO Form CA 00 01. If vehicles are used for transporting hazardous materials, such Commercial 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.

30.5 Property Insurance

(a) Licensee shall maintain comprehensive, broad-form property insurance (such as an “All Risk” policy) covering all buildings, structures, equipment and fixtures on the Licensed Premises (“Concession Structures”), whether existing at the beginning of this License or built at any time before its expiration or termination. Such insurance shall provide full Replacement Cost coverage for the Concession 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 Licensee as Named Insured and the City as Additional Insured and Loss Payee as its interests may appear.

(b) This Section 30.5 does not require coverage for damage caused by flooding.

(c) The limit of such property insurance shall be no less than the full Replacement Cost of all Concession 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 Concession Structures.

(d) In the event of any loss to any of the Concession Structures, Licensee 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 Concession Structure that the City owns or in which the City has an interest, Licensee 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.

30.6 Liquor Law Liability Insurance In the event Licensee or any sublicensee or contractor shall serve alcohol on the Premises, Licensee shall carry or cause to be carried liquor-law liability insurance in an amount not less than Three Million Dollars (\$3,000,000) per occurrence, and name the City, together with its officials and employees, as additional insured. Such insurance shall be effective prior to the commencement of any such service of alcohol and continue throughout such service. The Commissioner may increase or decrease the limit(s) if the Commissioner reasonably believes that the nature of such operations merits an increase or decrease.

30.7 General Requirements for Insurance Coverage and Policies

(a) 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.

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

(c) 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 Licensee can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

(d) 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, Licensee 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.

(e) 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 Licensee under all primary, excess and umbrella policies covering operations under this License.

(f) All required policies, except for Workers' Compensation insurance, Employers

Liability insurance, and Disability Benefits 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, City of New York Department of Parks and Recreation, Arsenal, 830 Fifth Avenue, New York, NY 10065, 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 thirty (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.

(g) All required policies, except Workers' Compensation, Employers Liability, Disability Benefits shall include a waiver of the right of subrogation with respect to all insureds and loss payees named therein.

30.8 Proof of Insurance

(a) 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 License.

(b) For Workers' Compensation, Employers Liability Insurance, Disability Benefits insurance policies, the Licensee 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 and disability benefits insurance.

(c) For all insurance required under this Article other than Workers Compensation, Employers Liability and Disability Benefits, Licensee 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 Licensee'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 Broker or Agent" in the form required by the Commissioner, attached hereto as **Exhibit F**, or certified copies of all policies referenced in such Certificate of Insurance.

(d) 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 License. Such Certificates of Insurance shall comply with subsections (b) and (c) directly above.

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

(f) Licensee 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.

30.9 Miscellaneous

(a) Licensee 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.

(b) Licensee shall require its construction contractors that perform construction on the Licensed Premises to maintain Commercial General Liability Insurance in accordance with Section 30.2, and such insurance shall include the City, including its officials and employees, as an Additional Insured with coverage at least as broad as ISO Forms CG 20 26 and 20 37. In the event Licensee requires any other entity, by contract or otherwise, to procure insurance with regard to any operations under this License and requires such entity to name Licensee as an Additional Insured under such insurance, Licensee shall ensure that such entity also name the City, including its officials and employees, as an Additional Insured (with coverage for Commercial General Liability Insurance at least as broad as ISO form CG 20 26).

(c) Licensee 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.

(d) Where notice of loss, damage, occurrence, accident, claim, or suit is required under a policy maintained in accordance with this Article, Licensee shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this License (including notice to Commercial General Liability insurance carriers for events relating to Licensee's own employees) in the time required by the insurance policy. 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 Licensee 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.

(e) Licensee'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 License. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

(f) Insurance coverage in the minimum amounts provided for in this Article shall not relieve Licensee of any liability under this License, 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 License or the law.

(g) 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, Licensee shall at all times fully cooperate with the City with regard to such potential or actual claim.

(h) Apart from damages or losses covered by Workers' Compensation Insurance, Employers Liability Insurance, Disability Benefits Insurance, or Commercial Automobile Insurance, Licensee 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 Licensee and/or its employees, agents, or servants of its contractors or subcontractors.

(i) In the event Licensee 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, Licensee shall immediately forward a copy of such notice to both the Commissioner, City of New York Department of Parks and Recreation,

Arsenal, 830 Fifth Avenue, New York, NY 10065, 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, Licensee shall ensure that there is no interruption in any of the insurance coverage required under this Article.

ARTICLE 31: WAIVER OF COMPENSATION

31.1 Licensee hereby expressly waives any and all claims for compensation for any and all loss or damage sustained by reason of any defects, including, but not limited to, deficiency or impairment of the water supply system, gas mains, electrical apparatus or wires furnished for the Licensed Premises, or by reason of any loss of any gas supply, water supply, heat or current which may occur from time to time, or for any loss resulting from fire, water, windstorm, tornado, explosion, civil commotion, strike or riot, and Licensee hereby expressly releases and discharges Commissioner, her agents, and City from any and all demands, claims, actions, and causes of action arising from any of the causes described aforesaid.

31.2 Licensee further 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 License is terminated by the Commissioner sooner than the fixed Term because the Licensed Premises are required for any park or other public purpose, or because the License was terminated or revoked for any reason as provided herein.

ARTICLE 32: INVESTIGATIONS

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

(b) (i) 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, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York; or

(ii) 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 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:

(1) The Commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license

shall convene a hearing, upon not less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of any person to testify.

(2) If any non-governmental party to the hearing requests an adjournment, the Commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Section 32.1 (d) below without the City incurring any penalty or damages for delay or otherwise.

(c) The penalties which may attach after the Commissioner or agency head's final determination may include but shall not exceed:

(i) The disqualification for a period not to exceed five (5) years from the date of an adverse determination of any person or 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

(ii) The cancellation or termination of any and all existing City contracts, leases, permits, or licenses that the refusal to testify concerns and that have not been assigned as permitted under this License, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

(d) The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Section 32.1(d) (i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in Sections 32.1(d) (iii) and (iv) below in addition to any other information that may be relevant and appropriate.

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

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

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

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

(e) (i) 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.

(ii) 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.

(iii) 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.

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

(f) In addition to and notwithstanding any other provision of this License, the Commissioner or agency head may in his or her sole discretion terminate this Agreement upon not less than three (3) days written notice in the event Licensee fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment, or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose that may be related to the procurement or obtaining of this agreement by Licensee, or affecting the performance or this Agreement.

ARTICLE 33: CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

33.1 This Agreement shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of Licensee, and shall be governed by and construed in accordance with the laws of the State of New York.

33.2 Any and all claims asserted by or against the City arising under this License 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 Agreement and its intent, Licensee agrees:

(a) If the City initiates any action against Licensee in Federal Courts or in New York State Courts, service of process may be made on Licensee either in person, wherever such Licensee may be found, or by registered mail addressed to Licensee at its address set forth in this License, or to such other address as Licensee may provide to the City in writing; and

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

33.3 With respect to any action between the City and Licensee in Federal Courts located in New York City, Licensee 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.

33.4 If Licensee 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, Licensee 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, Licensee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

ARTICLE 34: WAIVER OF TRIAL BY JURY

34.1 (a) Licensee hereby waives trial by jury in any action, proceeding, or counterclaim brought by the City against Licensee in any matter related to this License.

(b) No action at law or proceeding in equity against the City shall lie or be maintained upon any claim based upon this Agreement or arising out of this Agreement or in any way connected with this Agreement unless Licensee shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.

(c) No action shall lie or be maintained against the City by Licensee upon any claims based upon this License unless such action shall be commenced within six (6) months of the termination or conclusion of this License, or within six (6) months after the accrual of the cause of action, whichever first occurs.

(d) In the event any claim is made, or any action brought in any way relating to this Agreement herein other than an action or proceeding in which Licensee and the City are adverse parties, Licensee shall diligently render to the City without additional compensation any and all reasonable assistance that the City may reasonably require of Licensee.

ARTICLE 35: CUMULATIVE REMEDIES - NO WAIVER

35.1 The specific remedies to which the City may resort under the terms of this License 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 other 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 License, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenants or option.

ARTICLE 36: INDEPENDENT STATUS OF LICENSEE

36.1 Licensee is not an employee of the City and in accordance with such independent status neither Licensee nor its employees or agents will hold themselves out as, nor claim to be officers, employees, or agents 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.

36.2 All experts, independent contractors, consultants, specialists, trainees, servants, agents, and employees of Licensee who are employed by Licensee to perform work under this License are neither employees of the City nor are they under contract with the City, and Licensee alone is responsible for their work, direction, compensation and personal conduct while engaged under this License. Nothing in this License shall impose any liability or duty on the City for acts, omissions, liabilities or obligations of Licensee or any person, firm, company, agency, association, corporation or organization engaged by Licensee as expert, consultant, independent contractor, specialist, trainee, employee,

servant, or agent or for taxes of any nature including but not limited to unemployment insurance, workers' compensation, disability benefits and social security.

ARTICLE 37: CONFLICT OF INTEREST

37.1 Licensee represents and warrants that neither it nor any of its directors, officers, members, partners or employees, trustees, 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. Licensee further represents and warrants that in the performance of this License no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or part, from the City treasury, shall participate in any decision relating to this License which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly, interested nor shall any such person have any interest, direct or indirect, in this License or in the proceeds thereof.

ARTICLE 38: PROCUREMENT OF AGREEMENT

38.1 Licensee represents and warrants that no person or selling agency has been employed or retained to solicit or secure this License upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee, or any other compensation. Licensee 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. Licensee makes such representations and warranties to induce the City to enter into this License and the City relies upon such representations and warranties in the execution hereof.

38.2 For a breach or violation of such representations or warranties, the Commissioner shall have the right to annul this License without liability, entitling the City to recover all monies paid hereunder, if any, and Licensee shall not make any claim for, or be entitled to recover, any sum or sums due under this License. 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 by law or pursuant to this License.

ARTICLE 39: NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

39.1 No claim whatsoever shall be made by Licensee against any officer, agent or employee, of the City for, or on account of, anything done or omitted in connection with this Agreement.

ARTICLE 40: ALL LEGAL PROVISIONS DEEMED INCLUDED

40.1 Each and every provision of law required to be inserted in this License shall be and is deemed inserted herein, whether or not actually inserted.

ARTICLE 41: SEVERABILITY: INVALIDITY OF PARTICULAR PROVISIONS

41.1 If any term or provision of this License or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such term or provision to persons or circumstances other than those as to which it is

held invalid or unenforceable, shall not be affected thereby, and each term and provision of this License shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE 42: JUDICIAL INTERPRETATION

42.1 Should any provision of this License 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 License and that legal counsel was consulted by each responsible party before the execution of this License.

ARTICLE 43: MODIFICATION OF AGREEMENT

43.1 This License constitutes the whole of the agreement between the Parties hereto, and no other representation made heretofore shall be binding upon the Parties hereto. This License may be modified from time to time by agreement in writing, but no modification of this License shall be in effect until such modification has been agreed to in writing and duly executed by the party or parties affected by said modification.

ARTICLE 44: NOTICES

44.1 Where provision is made herein for notice or other communication to be given in writing, the same shall be given by hand delivery or by mailing a copy of such notice or other communication by certified mail, return receipt requested, addressed to Commissioner or to the attention of Licensee at their respective addresses provided at the beginning of this License, or to any other address that Licensee shall have filed with the Commissioner. Notices may also be given by electronic mail to the electronic mail addresses for each party provided at the beginning of this License.

ARTICLE 45: LICENSEE ORGANIZATION, POWER AND AUTHORITY

45.1 Licensee and the individual executing this License on behalf of Licensee each represents and warrants that Licensee is a not-for-profit corporation duly organized, validly existing and in good standing under the laws of the State of New York and has the power and authority to enter into this License and perform its obligations hereunder. This is a continuing representation and warranty.

ARTICLE 46: MISCELLANEOUS

46.1 The headings of articles, sections and paragraphs are inserted for convenience only and shall not be deemed to constitute part of this License or to affect the construction thereof. The use in this License of singular, plural, feminine, masculine, and neuter pronouns shall include the others as the context may require.

ARTICLE 47: ENTIRE AGREEMENT

47.1 This License constitutes the entire agreement between the parties and cannot be changed, modified or terminated orally, but only by an instrument in writing executed by the Commissioner and Licensee.

ARTICLE 48: COUNTERPARTS

48.1 This License may be executed in counterparts, each of which shall be an original and all of which counterparts taken together shall constitute one and the same License.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this License to be signed and sealed on the day and year first above written.

**NEW YORK CITY DEPARTMENT
OF PARKS & RECREATION**

THE BATTERY CONSERVANCY, INC.

By: _____

Name:

Title:

By: _____

Name:

Title:

APPROVED AS TO FORM AND CERTIFIED AS TO LEGAL AUTHORITY

Acting Corporation Counsel

Date

COUNTY OF NEW YORK)

On this ____ day of _____, 2025, before me personally came _____ to me known and known to me to be the _____ for the New York City Department of Parks & Recreation, and the said person described in and who executed the foregoing instrument, and s/he acknowledged that s/he executed the same in her/his official capacity and for the purpose mentioned therein.

Notary Public

COUNTY OF _____)

On this ____ day of _____, 2025, before me personally came _____, who being duly sworn by me did depose and say that s/he is the _____ of The Battery Conservancy, Inc. and that s/he executed the foregoing instrument in her/his official capacity and for the purposes mentioned therein.

Notary Public

EXHIBIT A: MAY 23, 2024, LICENSE AGREEMENT

EXHIBIT B: LICENSED PREMISES



*The fourth wing of the Pavilion as noted directly below is not part of the Licensed Premises and is reserved by the City for other uses.

**Licensee shall maintain a circular area with a radius of at least fifteen (15) feet, or as otherwise approved by Parks, from the outer edge of the granite base of the Jewish Tercentenary Monument free and clear of furnishings, storage, and equipment including, but not limited to, tables, chairs, umbrellas, menu boards, and decorative lighting.

Architectural floor plan of a mobile office unit, showing various functional areas and equipment. The plan includes a kitchen area with a sink, stove, and refrigerator, a seating area with a table and chairs, and a sleeping area with a bed. The unit is equipped with a mobile cooling unit, a water heater, and a hot water heater. The plan also shows the location of a mobile office unit, a mobile office unit, and a mobile office unit. The plan is labeled with various dimensions and notes, including "Potential Area for Mobile Cooling Unit (20' x 42' x 39' or 30' x 44' x 50') Remove one RF", "Water Meter with Access Panel", "Vertically Sliding Panels", "Sliding Track for Operable Glass", "Transaction Counter @ 34' A.F.F.", "Pick-Up Counter @ 30' A.F.F.", "Safety Glass Facade (Typ.)", "WC Vent Above", "Roof Drain Above", "Kitchen Vent Above (Plenum Space)", "Heating Display Revision", "Electrical Panel", "Water Filter", "Hot Water Heater Mounted to Ceiling", "Point of Sale @ 36' A.F.F. Transaction @ 34' A.F.F.", "Counter Panels Upward (Typ.)", "Seating Element @ 18'", "Information Counter @ 38' A.F.F.", "Transaction Counter @ 34' A.F.F.", "Glass Perforated for Voice Transmission", "Potential Location of Mobile Cooling Unit (15' x 17' x 33') (Located underneath storage counter & shelving)", and "Not in Contract". A north arrow is located in the bottom right corner.

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EXHIBIT C: SCHEDULE OF APPROVED HOURS AND RATES, FEES, AND PRICES

EXHIBIT D: PARKS INSPECTION (PIP) MANUAL

EXHIBIT E: NYC EARNED SAFE AND SICK TIME ACT CONTRACT RIDER

A. *Introduction and General Provisions.*

1. The Earned Safe and Sick Time Act (“ESSTA”), codified at Title 20, Chapter 8 of the New York City Administrative Code, also known as the “Paid Safe and Sick Leave Law,” requires covered employees (as defined in Admin. Code § 20-912) in New York City (“City”) to be provided with paid safe and sick time. Licensees of the City or of other governmental entities may be required to provide safe and sick time pursuant to the ESSTA. The ESSTA is enforced by the City’s Department of Consumer and Worker Protection (“DCWP”), which has promulgated 6 RCNY §§ 7-101 and 201 et seq. (“DCWP Rules”).

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

3. The Licensee must notify (with a copy to DCWP at ComplianceMonitoring@dcwp.nyc.gov) the Concession Manager in writing within 10 days of receipt of a complaint (whether oral or written) or notice of investigation regarding the ESSTA involving the performance of this agreement. Additionally, the Licensee must cooperate with DCWP’s guidance and must comply with DCWP’s subpoenas, requests for information, and other document demands as set forth in the ESSTA and the DCWP Rules. More information is available at <https://www1.nyc.gov/site/dca/about/paid-sick-leave-what-employers-need-to-know.page>.

4. Upon conclusion of a DCWP investigation, Licensee will receive a findings letter detailing any employee relief and civil penalties owed. Pursuant to the findings, Licensee will have the opportunity to settle any violations and cure the breach of this agreement caused by failure to comply with the ESSTA either i) without a trial by entering into a consent order or ii) appearing before an impartial judge at the City’s administrative tribunal. In addition to and notwithstanding any other rights and remedies available to the City, non-payment of relief and penalties owed pursuant to a consent order or final adjudication within 30 days of such consent order or final adjudication may result in the termination of this agreement without further opportunity to settle or cure the violations.

5. The ESSTA is briefly summarized below for the convenience of the Licensee. The Licensee is advised to review the ESSTA and the DCWP Rules in their entirety. The Licensee may go to www.nyc.gov/PaidSickLeave for 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 Licensee can get more information about how to comply with the ESSTA and the DCWP Rules. The Licensee acknowledges that it is responsible for compliance with the ESSTA and the DCWP Rules notwithstanding any inconsistent language contained herein.

B. *Pursuant to the ESSTA and DCWP Rules: Applicability, Accrual, and Use.*

1. An employee who works within the City must be provided paid safe and sick time.¹ Employers with one hundred or more employees are required to provide 56 hours of safe and sick time for an employee each calendar year. Employers with fewer than one hundred employees are required to provide 40 hours of sick leave each calendar year. Employers must provide a minimum of one hour of safe and sick time for every 30 hours worked by an employee and compensation for such safe and sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage at the time the paid safe or sick time is taken. Employers are not discouraged or prohibited from providing more generous safe and sick time policies than what the ESSTA requires.

¹ Pursuant to the ESSTA, if fewer than five employees work for the same employer, and the employer had a net income of less than one million dollars during the previous tax year, such employer has the option of providing such employees uncompensated safe and sick time.

2. Employees have the right to determine how much safe and sick time they will use, provided that an employer may set a reasonable minimum increment for the use of safe and sick time not to exceed four hours per day. For the use of safe time or sick time beyond the set minimum increment, an employer may set fixed periods of up to thirty minutes beyond the minimum increment. In addition, an employee may carry over up to 40 or 56 hours of unused safe and sick time to the following calendar year, provided that no employer is required to carry over unused paid safe and sick time if the employee is paid for such unused safe and sick time and the employer provides the employee with at least the legally required amount of paid safe and sick time for such employee for the immediately subsequent calendar year on the first day of such calendar year.

3. An employee entitled to safe and sick time pursuant to the ESSTA may use safe and sick time for any of the following:

a. 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;

b. such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, the child or parent of an employee's spouse or domestic partner, any other individual related by blood to the employee, and any other individual whose close association with the employee is the equivalent of a family relationship) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;

c. closure of such employee's place of business by order of a public official due to a public health emergency;

d. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency; or

e. when the employee or a family member has been the victim of a family offense matter, sexual offense, stalking, or human trafficking:

1. to obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking;

2. to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future family offense matters, sexual offenses, stalking, or human trafficking;

3. to meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit;

4. to file a complaint or domestic incident report with law enforcement;

5. to meet with a district attorney's office;

6. to enroll children in a new school; or

7. to take other actions necessary to maintain, improve, or restore the physical, psychological, or economic, health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

4. An employer must not require an employee, as a condition of taking safe and sick time, to search for a replacement. However, where the employee's need for safe and sick time is foreseeable, an employer may require an employee to provide reasonable notice of the need to use safe and sick time. For an absence of more than three consecutive work days, an employer may require reasonable

documentation that the use of safe and sick time was needed for a reason listed in Admin. Code § 20-914; and/or written confirmation that an employee used safe and sick time pursuant to the ESSTA. However, an employer may not require documentation specifying the nature of a medical condition, require disclosure of the details of a medical condition, or require disclosure of the details of a family offense matter, sexual offense, stalking, or human trafficking, as a condition of providing safe and sick time. Health information and information concerning family offenses, sexual offenses, stalking or human trafficking obtained solely due to an employee's use of safe and sick time pursuant to the ESSTA must be treated by the employer as confidential. An employer must reimburse an employee for all reasonable costs or expenses incurred in obtaining such documentation for the employer.

5. An employer must provide to all employees a written policy explaining its method of calculating sick time, policies regarding the use of safe and sick time (including any permissible discretionary conditions on use), and policies regarding carry-over of unused time at the end of the year, among other topics. It must provide the policy to employees 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 safe and sick time to an employee because of non-compliance with such a policy.

6. An employer must provide a pay statement or other form of written documentation that informs the employee of the amount of safe/sick time accrued and used during the relevant pay period and the total balance of the employee's accrued safe/sick time available for use.

7. Safe and 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 safe and sick time was used.

C. *Exemptions and Exceptions.* Notwithstanding the above, the ESSTA does not apply to any of the following:

1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);

2. an employee covered by a valid collective bargaining agreement, if the provisions of the ESSTA are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the ESSTA for such employee;

3. 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 their own schedule, has the ability to reject or accept any assignment referred to them, and is paid an average hourly wage that is at least four times the federal minimum wage;

4. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;

5. 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

6. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.

D. *Retaliation Prohibited.* An employer shall not take any adverse action against an employee that penalizes the employee for, or is reasonably likely to deter the employee from or interfere with the employee exercising or attempting in good faith to exercise any right provided by the ESSTA. In addition, an employer shall not interfere with any investigation, proceeding, or hearing pursuant to the ESSTA.

E. *Notice of Rights.*

1. An employer must provide its employees with written notice of their rights pursuant to the ESSTA. Such notice must be in English and the primary language spoken by an employee, provided that DCWP has made available a translation into such language. Downloadable notices are available on DCWP's website at <https://www1.nyc.gov/site/dca/about/Paid-Safe-Sick-Leave-Notice-of-Employee-Rights.page>. The notice must be provided to the employees by a method that reasonably ensures personal receipt by the employee.

2. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed \$50.00 for each employee who was not given appropriate notice.

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

G. *Enforcement and Penalties.*

1. Upon receiving a complaint alleging a violation of the ESSTA, DCWP must investigate such complaint. DCWP may also open an investigation to determine compliance with the ESSTA on its own initiative. Upon notification of a complaint or an investigation by DCWP, the employer must provide DCWP with a written response and any such other information as DCWP may request. If DCWP believes that a violation of the ESSTA has occurred, it has the right to issue a notice of violation to the employer.

2. DCWP has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, but is not limited to, treble damages for the wages that should have been paid; statutory damages for unlawful retaliation; and damages, including statutory damages, full compensation for wages and benefits lost, and reinstatement, for unlawful discharge. In addition, DCWP may impose on an employer found to have violated the ESSTA civil penalties not to exceed \$500.00 for a first violation, \$750.00 for a second violation within two years of the first violation, and \$1,000.00 for each succeeding violation within two years of the previous violation. When an employer has a policy or practice of not providing or refusing to allow the use of safe and sick time to its employees, DCWP may seek penalties and relief on a per employee basis.

3. Pursuant to Admin. Code § 20-924.2, (a) where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of the ESSTA, the Corporation Counsel may commence a civil action on behalf of the City in a court of competent jurisdiction by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief. Nothing in § 20-924.2 prohibits DCWP from exercising its authority under section 20-924 or the Charter, provided that a civil action pursuant to § 20-924.2 shall not have previously been commenced.

H. *More Generous Policies and Other Legal Requirements.* Nothing in the ESSTA is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous safe and 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 safe and sick time. The ESSTA provides minimum requirements pertaining to safe and 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 safe and sick leave or time, whether paid or unpaid, or that extends other protections to employees. The ESSTA may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

EXHIBIT F: CERTIFICATION BY INSURANCE BROKER OR AGENT

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 _____



NYC Parks

David Cerron
Assistant Commissioner
Business Development &
Special Events

T 212.360.3457

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**City of New York
Parks & Recreation**

The Arsenal
Central Park
New York, NY 10065
www.nyc.gov/parks

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 3)

RESOLVED, that the Franchise and Concession Review Committee ("FCRC") authorizes the New York City Department of Parks & Recreation to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into a Sole Source License Agreement with The Battery Conservancy ("Licensee") for the operation and maintenance of a food and beverage concession in the New Amsterdam Pavilion at Peter Minuit Plaza at the Battery, Manhattan. The agreement will provide for one (1) ten (10)-year term with two (2) five (5)-year renewal options, provided that Parks has renewed its Maintenance and Operation Agreement with Licensee, according to its terms. All funds and fees from revenue generating activities will be used solely to offset costs associated with maintenance, improvement, and operation of the Licensed Premises, and including keeping and maintaining the Licensed Premises in good condition and repair, in accordance with the provisions of this License.

**THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON**

3/12/2025

Signed: _____

Title: City Chief Procurement Officer

Date: _____

Rule 1-16: Different Procedure

Concession Agreement Recommendation For Award Memorandum Cover Sheet

Concession Title Father Duffy Square License Agreement Concession ID M93-O

Description Concession for the maintenance and operation of Father Duffy Square in Manhattan, including the collection of special event concession fees. Agency NYC Department of Parks & Recreation

☒ Additional information has been attached to this document (please use the "Additional Information Form" available on BuyWise)

Recommended Concessionaire

Name Times Square District Management Association, Inc. Telephone 212-452-5236
Address 1560 Broadway, Suite 1001 ☒ EIN or ☐ SSN # 13-3627527
New York, NY 10036 ☒ Not-for-Profit Organization ☐ Certified M/WBE by SBS

Recommended Concession Agreement Term

Initial Term Notice to Proceed to 10 Years Concession Site(s) ☒ Yes ☐ No
Renewal Option(s) Notice to Proceed to 5 Years Address Intersection of Broadway,
Notice to Proceed to 5 Years 7 Ave, W 46 St, W 47 St
Total Potential Term 20 years Borough Manhattan Community Board 5
☐ >20 years – FCRC unanimously approved term on ___/___/___ Block# 1018 Lot# 65

Recommended Annual Revenue (Check all that apply)

☐ Annual Fee(s) \$ _____
☐ Gross Receipts _____ %
☐ The Greater of Annual Minimum Fee(s) of
\$ _____ vs _____ % of Gross Receipts
☒ Other See Additional Information

Selection Procedure Requirements

Please select the appropriate Different Procedure method justification below:

- ☒ Sole Source
- ☐ Amendment or extension to an existing concession agreement
- ☐ Not-for-Profit concession agreement
- ☐ Other (Please specify)

Award is a Major Concession

☐ Yes – Award was approved pursuant to Sections 197-c and 197-d of the NYC Charter as follows:
☐ CPC approved on ___/___/___
☐ City Council approved on ___/___/___
☐ N/A
☒ No

Negotiation Requirements

Below, please describe the nature of negotiations conducted, including with respect to the amount of revenue offered:

The License will provide for one (1) ten (10)-year term with two (2) five (5)-year renewal options.
Licensee may collect sixty percent (60%) of the Special Event concession fees ("Fees") from third parties under Section 2-10 of Parks Rules and Regulations.
Licensee shall use all Fees it collects to offset Licensee's costs of providing maintenance and operation services under this License Agreement.

Award Requirements

The agency determined that the award of this concession is in the best interest of the City because:

See Additional Information

Rule 1-16: Different Procedure

Concession Agreement Recommendation For Award Memorandum Cover Sheet

Public Hearing Requirements

(Only applicable for significant concessions)

☒ [IF REQUIRED] a public hearing was conducted on: 3 / 10 / 25

Subject concession is a (check one): ☐ **Citywide** or ☒ **NOT Citywide** concession and Agency hereby certifies that a notice summarizing the terms and conditions of the proposed concession, and the time, date and location of the public hearing was published once in the City Record and given to all affected CB-BP and the Committee Members on 2 / 21 / 25 (not less than 15 days prior to the hearing date). In addition, if you have posted this notice publicly elsewhere, please describe below:

☐ Subject concession is non-significant. No public hearing is required

FCRC Approval

☐ FCRC approved this concession agreement on 03 / 12 / 2025 (date of the FCRC public meeting)

Votes in favor: ____ Votes against: ____

OR

☐ The concession was not subject to approval of the FCRC because it has a term of less than 30 days and is not subject to renewal

Law Department approved concession agreement on: ____/____/____

Authorized Signatures

Agency Staff

This is to certify that the information presented herein is accurate and that I find the proposed concessionaire to be responsible and approve of the award of the subject concession agreement

Signature _____

Name _____

Title _____ Date _____

Certificate of Procedural Requisites

This is to certify that the agency has complied with the prescribed procedural requisites for award of the subject concession agreement

Signature _____ Date _____

City Chief Procurement Officer

For Agency Use With Concession Forms

Father Duffy Square License Agreement

M93-O

Concession Title _____ **Concession ID** _____**Description** Concession for the maintenance and operation of Father Duffy Square in Manhattan, including the collection of special event concession fees. **Agency** NYC Department of Parks & Recreation**Recommended Annual Revenue:**

Licensee may collect sixty percent (60%) of the Special Event concession fees ("Fees") from third parties under Section 2-10 of Parks Rules and Regulations. Licensee shall use all Fees it collects to offset Licensee's costs of providing maintenance and operation services under this License Agreement. The remaining forty percent (40%) of the Fees will be remitted to Parks.

The agency determined that the award of this concession is in the best interest of the City because:

The Times Square District Management Association, Inc. ("the Alliance"), founded in 1992, works to improve and promote Times Square. It cultivates the creativity, energy and edge that have made the area an icon of entertainment, culture and urban life for more than a century. The Alliance is a 501(c)3 not-for-profit organization, accepts tax-deductible contributions, and is governed by a large, voluntary Board of Directors.

In addition to providing core neighborhood services with its Public Safety Officers and Sanitation Associates, the Alliance promotes local businesses; encourages economic development and public improvements; co-coordinates numerous major events in Times Square; and advocates on behalf of its constituents with respect to a host of public policy, planning and quality-of-life issues. The Alliance's district covers most of the territory from 40th Street to 53rd Street between 6th and 8th Avenues, as well as Restaurant Row (46th Street between 8th and 9th Avenue).

The Alliance entered into Maintenance and Operations Agreements with Parks in 2006 and again in 2016 for Father Duffy Square, a Parks property located between West 46th Street, West 47th Street, 7th Avenue and Broadway ("the Agreement"). The Agreement includes provisions for the Alliance to perform maintenance of the Public Stairs, the Statuary, and the Plaza, for the accommodation, enjoyment and convenience of the public.

The Agreement also contains a revenue sharing provision regarding Special Events that take place at Father Duffy Square. Such events, operated or sponsored by third parties, generate special event concession fees ("fees") for the use of this public space. The Agreement stipulates that the Alliance may collect sixty (60) percent of the fees. The fees are used to offset a portion of the Alliance's costs for providing maintenance and operation services at Father Duffy Square. The revenue from the remaining forty (40) percent of the Fees will be collected by Parks.

This new Sole Source License Agreement with the Alliance continues to allow the Alliance to collect special event concession fees, the proceeds of which will continue to be used to offset a portion of the Alliance's costs contemplated under such agreement, including the maintenance and operation of Father Duffy Square.

Given the Alliance's demonstrated and firm commitment to maintaining and improving Father Duffy Square, Parks believes that it is in the best interest of the City to enter into a new Sole Source License Agreement with the Alliance.

Responsibility Determination:**Record of Satisfactory Performance**

Please describe the basis for your determination that the proposed concessionaire has a satisfactory record of performance:

The Times Square District Management Association, Inc. ("the Alliance"), founded in 1992, works to improve and promote Times Square. It cultivates the creativity, energy and edge that have made the area an icon of entertainment, culture and urban life for more than a century. The Alliance is a 501(c)3 not-for-profit organization, accepts tax-deductible contributions, and is governed by a voluntary Board of Directors.

In addition to providing core neighborhood services with its Public Safety Officers and Sanitation Associates, the Alliance promotes local businesses; encourages economic development and public improvements; co-coordinates numerous major events in Times Square; and advocates on behalf of its constituents with respect to a host of public policy, planning and quality-of-life issues. The Alliance's district covers most of the territory from 40th Street to 53rd Street between 6th and 8th Avenues, as well as Restaurant Row (46th Street between 8th and 9th Avenue).



NYC Parks

David Cerron
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**City of New York
Parks & Recreation**

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New York, NY 10065
www.nyc.gov/parks

NOTICE OF PUBLIC HEARING

To: Hon. Mark Levine, President of the Borough of Manhattan
Marisa Maack, District Manager, Manhattan Community Board 5

From: Phil Abramson, Director of Concessions Communications *PA*

Subject: Notice of Joint Public Hearing: 3/10/2025; Intent to Enter into a License Agreement for the Maintenance and Operation of Father Duffy Square to the Times Square District Management Association, Inc.; M93-O.

Date: **2/21/2025**

NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and the New York City Department of Parks & Recreation ("Parks") to be held on 3/10/2025, at 2 Lafayette Street, Room 1412, in Manhattan, New York, NY 10007 commencing at 2:30 p.m. relative to:

INTENT TO AWARD as a concession a Sole Source License Agreement ("License") to the Times Square District Management Association, Inc. ("Licensee") for the maintenance and operation of Father Duffy Square in Manhattan, including the collection of special event concession fees.

The License will provide for one (1) ten (10)-year term with two (2) five (5)-year renewal options.

Compensation to the City will be as follows: Licensee may collect sixty percent (60%) of the Special Event concession fees ("Fees") from third parties under Section 2-10 of Parks Rules and Regulations. Licensee shall use all fees it collects to offset Licensee's costs of providing maintenance and operation services under this License Agreement. The remaining forty percent (40%) of the Fees is to be collected by Parks.

Written testimony may be submitted in advance of the hearing electronically to fcrc@mocs.nyc.gov. All written testimony can be submitted up until the close of the public hearing and will be distributed to the FCRC after the hearing.

A draft copy of the agreement may be obtained at no cost by any (or all) of the following ways:

1. Submit a written request to NYC Parks at philip.abramson@parks.nyc.gov from 2/21/2025 through 3/10/2025.
2. Submit a written request by mail to NYC Parks, Revenue Division, 830 Fifth Avenue, Room 407, New York, NY 10065. Written requests must be received by 3/10/2025. For mail-in requests, please include your name, return address, and Concession # M93-O.
3. Download from NYC Parks' website at <https://www.nycgovparks.org/opportunities/concessions/rfps-rfbs-rfeis> from 2/21/2025 through 3/10/2025.

The agenda and related documentation for the hearing will be posted on the MOCS website at <https://www.nyc.gov/site/mocs/opportunities/franchises-concessions.page>

For further information on accessibility or to make a request for accommodations, such as sign language interpretation services, please contact the Mayor's Office of Contract Services (MOCS) via e-mail at DisabilityAffairs@mocs.nyc.gov or via phone at (212) 298-0800. Any person requiring reasonable accommodation for the public hearing should contact MOCS at least five (5) business days in advance of the hearing to ensure availability.

LICENSE AGREEMENT

BETWEEN

TIMES SQUARE DISTRICT MANAGEMENT ASSOCIATION, INC.

AND

**NEW YORK CITY
DEPARTMENT OF PARKS & RECREATION**

FOR THE MAINTENANCE AND OPERATION OF FATHER DUFFY SQUARE

MANHATTAN, NEW YORK

DATED: _____, 2025

NYLD's Approval No.: _____

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THIS LICENSE AGREEMENT (“License Agreement” or “License” or “Agreement”) made this _____ day of _____, 2025 between the City of New York (the “City”), a municipal corporation of the State of New York acting by and through the New York City Department of Parks & Recreation (“Parks”), whose address is The Arsenal, 830 Fifth Avenue, New York, NY 10065, and Times Square District Management Association, Inc. d/b/a Times Square Alliance (the “Licensee” or “Alliance”), a Not-for Profit Corporation with its place of business at 1560 Broadway, New York, NY 10036.

WITNESSETH:

WHEREAS, New York City Charter § 533 (the “Charter”) charges the Commissioner of Parks (the “Commissioner”) with the duty to manage, care, maintain, and operate City parks, squares, buildings, structures, and recreation facilities under Parks’ jurisdiction, for the beneficial use of the people of the City, and the duty to plan, develop, conduct, and enter into arrangements on Parks’ behalf for the public’s benefit; and

WHEREAS, the City desires to encourage interested not-for-profit corporations to provide supplemental services, including maintenance and recreational, cultural, and educational programs for the public’s benefit; and

WHEREAS, the Commissioner has determined that arrangements with interested not-for-profit corporations are necessary and appropriate for the public’s benefit; and

WHEREAS, Father Duffy Square, located between West 46th and West 47th Streets and 7th Avenue and Broadway in the Borough of Manhattan, is property under Parks jurisdiction and control and is the site of a discount theater ticket booth and related signage (the “TKTS Ticket Booth”), the management and operation of which is subject to a license agreement between Parks and the Theatre Development Fund (“TDF”) dated January 6, 2006, as same may have been subsequently modified by the parties thereto (the “Ticket Stand License”);

WHEREAS, the Commissioner desires to provide for the maintenance of the Licensed Premises, as hereinafter defined and described in the attached Exhibit A, including the Public Stairs, the Statuary, and the Plaza during the Term of this License Agreement for the accommodation, enjoyment, and convenience of the public; and

WHEREAS, the Alliance is the district management association for the Times Square Business Improvement District (“District”), with a mission, inter alia, for improving and enhancing public spaces within the District; and

WHEREAS, under a Management and Operation Agreement dated November 16, 2015 Parks and the Alliance, the Alliance has maintained and operated the Licensed Premises; and

WHEREAS, Parks and the Alliance have collectively created an effective public-private partnership and complement each other’s efforts to improve and administer the Licensed Premises; and

WHEREAS, Parks and the Alliance desire that their coordinated efforts continue to serve the best interests of the public and enter into a License Agreement specifying rights and obligations with respect to the maintenance of the Licensed Premises, including the Statuary, Plaza, and the Public Stairs each as defined in Section 3.1 herein; and

WHEREAS, on July 10, 2024 the Franchise and Concession Review Committee ("FCRC"), authorized Parks to use a different procedure to enter into this Sole Source License Agreement with the Alliance.

NOW THEREFORE, in consideration of the promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1: GRANT OF LICENSE

1.1 Commissioner hereby grants to Licensee and Licensee hereby accepts from Commissioner, this non-exclusive License to maintain and operate the Licensed Premises as shown on Exhibit A, including the Statuary, Plaza, and the Public Stairs, but excluding the TKTS Ticket Booth, for the public's benefit and best interest, in accordance with the terms herein and to the reasonable satisfaction of the Commissioner. Licensee shall only have rights and obligations as set forth in this License Agreement.

1.2 Licensee shall obtain any and all approvals, permits, and other licenses required by Federal, New York State ("State"), and City laws, rules, regulations, and orders which are or may become necessary to operate and maintain the Licensed Premises under the terms of this License Agreement. To comply with this License Agreement, Licensee must fulfill all of the obligations in this Agreement. Failure to fulfill any of the obligations in this Agreement for any reason may, subject to notice and a reasonable opportunity to cure, if applicable, be deemed a default by the Commissioner. Any act, consent, approval, or permission required of the City, Parks, or the Commissioner under this License shall be valid only if it is, in each instance, in writing and signed by the Commissioner or Commissioner's duly authorized representative. Any variance, alteration, amendment, or modification of this instrument shall only be valid or binding upon the City, Parks, the Commissioner, or their agents if it is in each instance in writing and duly signed by the Commissioner or Commissioner's duly authorized representative.

ARTICLE 2: NO LEASE

2.1 It is expressly understood that the City has title to the Licensed Premises and no land, building, space, improvement, or equipment is leased to the Licensee. During the Term of this License as herein defined, Licensee shall have the use of the Licensed Premises for the purposes herein provided. Except as herein provided, Licensee has the right to occupy the Licensed Premises, and maintain the Statuary, the Plaza, and the Public Stairs only so long as each and every term and condition in the License Agreement is strictly complied with and so long as the Commissioner does not terminate this License Agreement. Licensee shall be deemed non-compliant following Licensee's failure to comply with the written notice set forth in Section 4.3 of this License Agreement.

2.2 Licensee shall at all times provide free access to the Licensed Premises to the Commissioner or Commissioner's representatives and to other City, State, and Federal officials having jurisdiction for inspection and any other lawful purposes. Commissioner, Commissioner's representatives, and such other officials shall have the right to enter and be present at the Premises to observe Licensee's operations.

ARTICLE 3: DEFINITIONS

3.1 As used throughout this License Agreement, the following terms shall have the meanings set forth below:

(a) "Alterations" shall mean:

(i) Any restoration, rehabilitation, modification, renovation, or improvement to the Licensed Premises;

(ii) Any work or construction which would or might affect in any manner, or have any impact whatsoever upon the character, appearance, or design of any portion of the Licensed Premises or its adjacent areas;

(iii) Any work, excluding ordinary maintenance and repair, affecting the plumbing, heating, electrical, mechanical, ventilating, or other systems of the Licensed Premises or any major component of such systems;

(iv) Affixing or installing any equipment to any area of the Licensed Premises; and

(v) Any major landscaping that includes planting or removal of trees, flowers, or shrubbery on the Licensed Premises.

(b) "City" shall mean the City of New York, its departments and political subdivisions.

(c) "Commissioner" shall mean the Commissioner of the New York City Department of Parks & Recreation or the Commissioner's designee.

(d) "Comptroller" shall mean the Comptroller of the City of New York.

(e) "Improvements" shall mean the TKTS Ticket Booth as defined below, the Plaza as defined below, the Public Stairs as defined below, and the Statuary as defined below, at Father Duffy Square. Improvements shall not include routine maintenance and repairs required to be performed in the normal course of business to the Licensed Premises.

(f) "Licensed Premises" shall mean the area so denoted as Father Duffy Square described in Exhibit A attached hereto and shall include within such area (i) the street level plazas

with new pavement (the “Plaza”), (ii) amphitheater-style seating on top of the TKTS Ticket Booth (defined below) (the “Public Stairs”), (iii) existing statuary (the “Statuary”). The Licensed Premises shall specifically exclude the TKTS building and related signage (the “Ticket Booth”).

(g) “Parks” shall mean the New York City Department of Parks & Recreation.

(h) “Special Events” shall mean any event for which Parks has issued a Special Event Permit.

(i) “Year” or “Operating Year” shall both refer to the period between the Commencement Date in any calendar year and the day before the anniversary of the Commencement Date in the following calendar year.

ARTICLE 4: TERM OF THE LICENSE

4.1 The term (“Term”) of this Agreement shall be ten (10) years and shall commence on Parks giving written Notice to Proceed to Licensee following registration with the Comptroller (the “Commencement Date”) and shall terminate on the tenth (10th) anniversary of this date (the “Expiration Date”), unless otherwise terminated sooner pursuant to the terms of this Agreement. Upon not less than one (1) year’s written notice from Licensee to Parks prior to the Expiration Date, this Agreement may be renewed, at the discretion of the Parties hereto, for two (2) additional five (5) year terms (“Renewal Term”). Such renewal shall be subject to the same terms and conditions contained herein. In no event shall the Concession become effective prior to registration with the Comptroller.

4.2 Notwithstanding any language contained herein, this License is terminable at will by the Commissioner, in whole or in part, at any time. Such termination shall be effective after twenty-five (25) days written notice is sent to Licensee. The Commissioner, the City, Parks, its employees and agents shall not be liable for damages to Licensee if Commissioner terminates this License Agreement as provided for herein. In the event such notice is not given, this License Agreement shall terminate as described in Section 4.1 above.

4.3 Should Licensee breach or fail to comply with any of the provisions of this License Agreement, any Federal, State, or local law, rule, regulation, or order affecting this License Agreement or the maintenance of the Statuary, the Plaza, and the Public Stairs with regard to any and all matters, Commissioner may in writing order Licensee to remedy such breach or to comply with such provision, law, rule, regulation, or order. In the event that Licensee fails to comply with such written notice or commence, in good faith and with due diligence, efforts to comply with such order within fifteen (15) days from the mailing thereof, subject to unavoidable delays beyond reasonable control of Licensee, then this License Agreement shall immediately terminate thereafter. If said breach or failure to comply is material, and a repeated violation of the same provision, law, rule, regulation, or order follows thereafter, Commissioner, by notice in writing, may revoke and terminate this License Agreement, such revocation and termination to be immediately effective on the mailing thereof.

4.4 Nothing contained in this Article shall be deemed to imply or be construed to represent an exclusive enumeration of the circumstances under which Commissioner may terminate this License Agreement.

4.5 Upon expiration or sooner termination of this License Agreement by Commissioner, all rights of Licensee herein shall be forfeited without claim for loss, damages, refund of investment, or any other payment whatsoever against Commissioner, Parks, or the City.

4.6 Licensee agrees that upon the Expiration Date or sooner termination of this License Agreement, it shall immediately cease all activity pursuant to this License Agreement and shall promptly vacated the Licensed Premises without any further notice by the City and without resort to any judicial proceeding by or against the City.

4.7 Licensee shall, on or prior to the expiration or sooner termination of this License Agreement, remove all its personal property from the Licensed Premises. Licensee acknowledges that any personal property remaining on the Licensed Premises after the expiration or sooner termination of this License Agreement is intended by Licensee to be abandoned. Licensee shall remain liable to the City for any direct damages, including the cost of removal or disposal of such personal property should Licensee fail to remove all its personal property from the Licensed Premises on or before the Expiration Date or termination date of this License Agreement.

4.8 If the Licensed Premises shall cease to be under Parks' jurisdiction and, instead, be transferred to another City agency, then this License Agreement shall terminate upon twenty-five (25) days' written notice to Licensee.

ARTICLE 5: MAINTENANCE, OPERATIONS AND REPAIR

5.1 (a) Licensee shall provide, or cause to be provided, services for the repair, maintenance, and improvement of the Licensed Premises, including the Statuary, Plaza, and the public Stairs, but excluding the TKTS Ticket Booth, to the Commissioner's reasonable satisfaction. Such services shall include keeping and maintaining the Statuary, the Plaza, and the Public Stairs in good condition and repair, all in accordance with the provisions of this License Agreement. All such work will be under the supervision of the Vice President of Operations for the Alliance. Notwithstanding anything to the contrary in this License Agreement, the Licensee shall not be responsible for repairing structural damage caused by TDF, Parks, another agency of the City, Special Events and demonstrations permitted by Parks, a utility company, a break in a water main, sewer, or steam line, flooding, fire, or other emergencies or catastrophes except as provided by the Licensee's indemnification requirements set forth in Article 21 herein.

(b) Licensee shall maintain or cause to be maintained the Licensed Premises, including the Statuary, the Plaza, and the Public Stairs, but excluding the TKTS Ticket Booth, for the accommodation of the public in such manner as the Commissioner shall prescribe and as permitted by the laws, rules, regulations, and orders of government agencies having jurisdiction. Licensee accepts the Licensed Premises in its "as-is" condition as of the date hereof and agrees to obtain necessary permits and approvals related to all operations at and maintenance of the Licensed Premises.

5.2 Licensee shall comply with the rating standards for all applicable enumerated categories described in Parks' Inspection Program Manual ("PIP"), attached in Exhibit B, to the extent such standards and categories apply to those areas of the Licensed Premises that the Licensee is responsible for as described in this Article 5. Parks reserves the right in the future to extend the requirements of its existing rating system to the Licensed Premises.

5.3 Licensee at its sole cost and expense shall render the following services in the Licensed Premises (excluding the TKTS Ticket Booth):

(a) Cleaning:

(i) Dirt, litter, and obstructions shall be removed as needed, and trash and leaves collected and removed as needed to maintain the Plaza and Public Stairs in a clean, neat, and good condition.

(ii) All walkways, sidewalks, and all other improvements and facilities of the Plaza and Public Stairs shall be routinely cleaned and maintained to keep such improvements and facilities in a clean, neat, and good condition.

(iii) Graffiti shall be regularly painted over or removed, as appropriate to the nature of the surface.

(iv) Drains, sewers, and catch basins shall be cleaned regularly to prevent clogging.

(b) Snow Removal:

(i) Snow and ice shall be removed from all walkways and paved surfaces in accordance with the City of New York Administrative Code § 16-123.

(c) Landscape Maintenance:

(i) All trees, shrubs, plantings, and grass-covered areas shall be watered as necessary to maintain such vegetation in a healthy condition.

(ii) Any weeds shall be removed or destroyed from paving blocks, pavement, cobbled and concrete areas.

(d) Repairs, which shall include but not be limited to the following:

(i) Benches or other seating: except for those benches on sidewalks, broken or missing bench slats shall be replaced and benches shall be painted as needed.

(ii) Pavements: All paved surfaces shall be maintained in a safe and attractive condition. To the extent feasible, replacement materials shall match existing materials.

(iii) Painting: All items with painted surfaces shall be painted as needed. Surfaces shall be scraped free of rust or other extraneous matter and painted to match the existing color.

(e) Statuary. The Statuary shall be maintained on a periodic basis in accordance with the methods and standards as established in consultation with Parks' Arts and Antiquities Division.

(f) As provided below and in accordance with current practices, City employees may provide services in connection with such repairs in coordination with the Vice President of Operations for the Alliance. The Alliance shall provide, at its expense, appropriate materials required for the completion of such repairs.

(i) Use of City Employees. Subject to applicable laws, rules, regulations, and contractual provisions, nothing contained in this License Agreement shall preclude City employees from performing services required by Licensee. City employees, as well as Licensee's employees, will work in coordination with the Vice President of Operations for the Alliance, who reports to the President of the Alliance and the Parks Borough Chief of Operations.

(ii) Use of City Equipment. Licensee agrees, under supervision of the Parks' Borough Chief of Operations, to exercise reasonable care in the use, operation, and custody of City property, including property and equipment owned or leased by the City, used in the performance of services set forth in this License Agreement.

(g) Public Stairs. The Public Stairs shall be maintained in a safe and attractive condition. To the extent feasible, replacement materials shall match existing materials.

5.4 Licensee shall provide an adequate number of staff members possessing the requisite qualifications to conduct all of its maintenance responsibilities with respect to the Statuary, Plaza, and the Public Stairs, and as the Commissioner shall reasonably approve.

5.5 An employee, officer, member, or a manager of the Licensee must be available by telephone during all hours of operation of the Licensed Premises, and Licensee shall continuously notify Commissioner and the Parks Enforcement Patrol Communications Division of a 24-hour email address or cellular telephone number through which Parks may contact the employee, officer, member, or manager in the event of an emergency. Licensee shall replace any manager, officer, employee, member, subcontractor, or sublicensee whenever reasonably requested by Commissioner.

5.6 Installation of additional fixed lighting or fixed sound equipment by the Licensee on the Licensed Premises shall require the Commissioner's prior written approval, which shall not be unreasonably withheld, conditioned, or delayed.

5.7 Licensee shall provide Americans with Disabilities Act ("ADA") accessibility if and to the extent required by the ADA throughout the Licensed Premises (excluding the TKTS Ticket

Booth), including, but not limited to, installing ramps as needed and providing ADA signage. Licensee shall comply with all City, State, and Federal requirements to provide safe and accessible recreational opportunities for everyone, including persons with disabilities. Licensee is encouraged to exceed accessibility requirements whenever possible and not simply provide the minimum level required.

5.8 Licensee shall prepare and provide to Parks operational status reports and reports of major accidents or unusual incidents occurring on the Licensed Premises, on a regular basis and in a format acceptable to the Commissioner. In addition, Licensee shall immediately, or within twenty-four (24) hours of becoming aware, notify Parks, in writing, of any claim for injury, death, property damage, or theft which shall be asserted against Licensee with respect to the Licensed Premises. Licensee shall also designate a person to handle all such claims, including all insured claims for loss or damage pertaining to the operations of the Licensed Premises, and Licensee shall notify Parks in writing as to said person's name and address.

5.9 Licensee shall promptly notify Commissioner of any unusual conditions that may develop in the course of the operation of this License such as, but not limited to, fire, flood, casualty, and substantial damage of any character.

5.10 Licensee shall maintain close liaison with the Parks Enforcement Patrol ("PEP") and New York City Police Department ("NYPD"). Licensee shall cooperate with all efforts to enforce Parks Rules and Regulations at the Licensed Premises and adjacent areas. Licensee shall use its best efforts to prevent illegal activity on the Licensed Premises, but it is acknowledged that Licensee has no enforcement authority.

5.11 The design, placement, and content of all signage, including signage which includes Licensee's name, trade name(s), or logo(s), placed on or about the Licensed Premises, is subject to Parks' prior written approval. Signage shall also comply with ADA standards. All advertising utilized at the Licensed Premises is subject to Parks' prior written approval. Licensee shall not advertise any product brands without Parks' prior written approval. Licensee is prohibited from displaying, placing, or permitting the display or placement of advertisements in the Licensed Premises without the prior written approval of Parks. Licensee shall be prohibited displaying, placing, or permitting the display or placement of advertising matter which contains tobacco, non-tobacco smoking product, electronic cigarette, or alcoholic beverage advertising, which is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11. Licensee has no responsibility or liability with respect to TDF's signage. Any prohibited material displayed or placed shall be immediately removed by the Licensee upon notice from Parks at Licensee's sole cost and expense.

5.12 Notwithstanding Licensee's obligation to maintain, or cause to be maintained, the Statuary, Plaza, and Public Stairs as described herein, Licensee's right to receive revenues derived at the Licensed Premises shall be subject to any additional City authorization, approvals, permits, and compliance with other processes which may be necessary, including without limitation, any necessary approval by the Franchise and Concession Review Committee ("FCRC"). The Commissioner and Parks hereby agree to reasonably assist Licensee in obtaining, maintaining, and

renewing any such additional approvals, permits, authorizations, and compliance with other processes relating to the services described herein.

5.13 Licensee and Parks acknowledge that all management and operational and other obligations at the TKTS Ticket Booth shall lie with TDF pursuant to the Ticket Stand License.

5.14 Should the Commissioner decide that Licensee is not maintaining or operating or causing to be maintained or operated the Licensed Premises (other than the TKTS Ticket Booth) in a reasonably satisfactory manner, the Commissioner may, in writing, order Licensee to improve operations or correct such conditions as Commissioner may deem reasonably unsatisfactory. In the event that Licensee fails to comply with such written notice or fails to respond in a manner reasonably satisfactory to Commissioner, in the Commissioner's reasonable discretion, within the timeframe set forth in said notice, subject to unavoidable delays beyond the reasonable control of Licensee notwithstanding any other provisions herein, then Commissioner may terminate this License.

5.15 Hazardous Conditions and Emergency Operations (excluding TKTS Ticket Booth):

(a) Licensee shall assist Parks with periodic inspections of the Licensed Premises, and shall promptly notify Parks of any known hazardous condition(s). Licensee shall, whenever feasible, institute reasonable measures to protect the public from harm from such known hazardous condition(s), including, but not limited to installing warning signs and temporary barriers. Licensee will promptly advise Parks whether the Licensee is able to perform the necessary work to correct the hazard, or whether the Licensee is unable to perform such work.

(b) Should Commissioner, in Commissioner's sole judgment, decide that an unsafe or emergency condition exists on the Licensed Premises, Licensee, after written notification, shall have twenty-four (24) hours to correct such unsafe or emergency condition, or advise Parks that the Licensee is unable to perform such work. During this period, the Commissioner may require a partial or complete suspension of use of the affected area. If Licensee believes that such unsafe or emergency condition cannot be remedied within the specified timeframe, the Licensee shall notify the Commissioner in writing and indicate the amount of time needed to correct such condition. The Commissioner, in Commissioner's sole discretion, may extend such period-of-time to permit Licensee to cure the unsafe or emergency condition, under such terms and conditions as appropriate, such consent not to be unreasonably withheld or delayed. In the case of unsafe or emergency conditions arising from terrorism, crime, or utilities, the Licensee shall coordinate correcting such unsafe or emergency condition with the relevant City agency or the Metropolitan Transportation Authority ("MTA") and Parks.

ARTICLE 6: RECORDS AND AUDITS

6.1 Licensee will establish and maintain accurate records and accounts, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this License and any revenue generated pursuant to this Agreement. Such records and accounts shall confirm to generally accepted accounting principles ("GAAP").

6.2 Licensee will provide notice to the Commissioner of all meetings, hearings, and proceedings of Licensee's Board of Directors, and will make available for consultation any of its officers and employees whose work relates to the performance of this License. Licensee will also make available, upon reasonable prior notice, at its principal place of business, for audit, inspection, or removal of copies by Parks, the Comptroller, and a Parks-authorized independent auditor, Licensee's books and records relating to the performance of this Agreement, including, but not limited to, the following:

(a) Revenue and expenditures, annual budget, bi-weekly payroll recap, fringe benefits, books, accounts, canceled checks, and all other fiscal records;

(b) Staff and salary roster, including salary changes and adjustments;

(c) Internal and external audits completed within the last three (3) years;

(d) Minutes of meetings of the Board of Directors;

(e) Programs, research, and other reports and publications in connection with Licensee's responsibilities at the Licensed Premises pursuant to this Agreement; and

(f) Registration and attendance records of Licensee's sponsored programs and any other matters relating to the performance of and compliance with this Agreement, or with any laws or regulations governing the Licensee's conduct under this Agreement.

6.3 (a) Financial Statement: Licensee shall furnish to the Commissioner or Commissioner's designee an annual report in conformance with GAAP and its tax return for each fiscal year during the Term and any renewal thereof including but not limited to the Licensee's 990 fillings. Such statements shall include the salaries of all paid staff. Such statements shall, if they involve amounts over ten thousand dollars (\$10,000.00), be prepared by an independent Certified Public Accountant retained at the cost and expense of the Licensee. Such annual statement shall be submitted to the Commissioner or Commissioner's designee no later than ninety (90) days after the close of each year of the Term of this Agreement.

(b) Licensee shall furnish to Parks a copy of Licensee's Form 990, as filed with the Internal Revenue Service. Such Form 990 shall be submitted to the Commissioner no later than the final filing deadline as mandated by the Internal Revenue Service during the Term and any renewal thereof of this Agreement.

6.4 Monthly Operations Report: The Licensee shall furnish to Parks a monthly report to be submitted within seven (7) days of the previous month's end. The report shall include, but not be limited to, operations activities (repairs, maintenance, etc.), capital projects and alterations, upcoming public programs and events, future and ongoing initiatives, personnel, incidents or unusual activity, inquiries or publications from press and media, and other relevant information that should be reported to Parks.

6.5 LL28 Report: Pursuant to the amendment to Local Law 28 of 2008 as codified in the Administrative Code Title 18 § 18-134, the form of which is in Exhibit C, the Licensee shall provide to Parks, in a form acceptable to Parks, data concerning any funds that the Licensee has expended at the Premises for the preceding period of July 1st to June 30th no later than October 31st each year. All information furnished to Parks shall be accurate and correct in all material respects and sufficient to give Parks a true and accurate picture of the funds expended by the Licensee at the Premises.

6.6 Annual Operating Budget and Operating Plan: Prior to the start of each fiscal year, Licensee will submit to the Commissioner or Commissioner's designee for review and written approval, its park operations budget and capital budget, which shall include all costs associated with the Licensed Premises' maintenance and operations. The Licensee shall describe in reasonable detail the amounts proposed to be allocated, but not limited, to general maintenance, public art, public programs, concessions and communications, including salaries and benefits of any employee primarily engaged in those activities.

6.7 Licensee's failure or refusal to furnish any of the statements required to be furnished under this Article within thirty (30) days after its due date, the failure or refusal to maintain adequate internal controls or to keep any of the records required by this Article after receiving Parks' or the Comptroller's prior written notice, or the existence of any unexplained discrepancy, as disclosed by audit conducted by Parks or the Comptroller, the results of which are provided by written notice to Licensee in each instance, shall be presumed to be a failure to substantially comply with the terms and conditions of this License and a default under this Agreement, which shall entitle Parks, at its option, to terminate this License.

6.8 Notwithstanding the foregoing, the parties acknowledge and agree that the Comptroller's powers, duties, and obligations under the Charter provisions shall not be diminished, compromised, or abridged in any way.

ARTICLE 7: REVENUES & ACCOUNTS

7.1 Licensee shall open and/or continue to maintain an account or sub-account, accounted for separately and apart from all other funds, in a bank located within the City of New York, insured by the Federal Deposit Insurance Corporation ("Special Account"). There shall be deposited in the Special Account all revenues ("Operating Revenues") collected in connection with or resulting from the rights and privileges granted to Licensee including any funds collected under a marketing or sponsorship or donor recognition agreement described in Articles 10 and 20. Licensee may withdraw Operating Revenues from the Special Account to expend for ordinary and necessary expenses directly attributable to Licensee's operation of the Licensed Premises, including expenses for programming, operating, managing, maintaining, and repairing the Licensed Premises and as described in Article 5. No withdrawals shall be made from the Special Account other than as provided in this Agreement. The administration of the Special Account is subject to the inspection and audit record keeping provisions set out in Article 6. Operating Revenues do not include funds collected or received by Licensee (such as grants, donations, bequests and contributions) other than in the course of Licensee's use or

operation of the Licensed Premises. Applicable law governs Licensee's use of such other revenues.

ARTICLE 8: INTENTIONALLY OMITTED

ARTICLE 9: REVENUE GENERATING ACTIVITIES

9.1 Licensee's right to receive any revenues derived from within the Licensed Premises shall be subject to the Commissioner's review and approval any and all City authorization, approvals, permits, and compliance with other processes which may be necessary, including without limitation, any necessary approval by the FCRC. Revenue generating activities shall include, but not be limited to, sales of any goods or services and fundraising activities for any purpose. The Commissioner must expressly authorize each specific revenue generating activity at the Licensed Premises in writing. In addition to obtaining the Commissioner's written approval, Licensee must also obtain a permit from Parks' Revenue Division prior to selling or bartering any items as the Licensed Premises. Notwithstanding anything to the contrary, Parks shall not charge Licensee a fee for Parks-approved fundraising events or civic events celebrating Times Square organized and held by Licensee (excluding functions, events, or programs for which all or part of the Licensed Premises is reserved through Licensee by a third party). For the purposes of this Section, a civic event shall mean an event sponsored by the Licensee that is open to the public and does not have a fundraising component, but that includes an artistic, cultural, or educational component that supports Licensee's mission and celebrates Times Square.

9.2 It is expressly understood that Licensee shall use all revenues generated pursuant to this Article only for the operation and maintenance of the Premises in accordance with the terms herein. All revenue generated in accordance with this Article shall be subjected to the provisions of Article 7 herein. Licensee shall provide Parks with an annual audited financial statement of such revenues and related expenditures made during the previous year in a form acceptable to Parks. Such statement shall be provided to Parks by the end of the calendar year.

ARTICLE 10: SPONSORSHIP AGREEMENTS, PUBLICATIONS, ADVERTISING, AND PUBLICITY

10.1 Licensee must obtain Parks' prior written approval before entering into any marketing or sponsorship agreement regarding the Licensed Premises and must account for any funds from these agreements under Article 7 of this Agreement. If Licensee breaches this provision, the City shall take any action that the City may deem necessary to protect the City's interests.

10.2 Smoking of any tobacco products or non-tobacco smoking products and use of electronic cigarettes are strictly prohibited at the Licensed Premises. The display, placement or promotion of any tobacco products, non-tobacco smoking products, or electronic cigarettes shall not be permitted at the Licensed Premises. Licensee shall not accept sponsorships of any kind for the Licensed Premises on behalf of any tobacco products, non-tobacco smoking products, or electronic cigarettes. Licensee shall follow and comply with these policies.

ARTICLE 11: USE OF NAME & LOGO

11.1 (a) Except as described in subparagraph (b) below, all intellectual property rights in the Licensed Premises' name, signage, structures, historical location, monuments, or other items or material that depict, are sited in, or refer to the Licensed Premises and any other names, trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property (i) developed or designed by the City or its employees, contractors, or others on the City's behalf, or (ii) in the case of trademarks, used by the City in commerce unless Licensee is a prior user of any trademark in commerce ("City IP") are the property of the City. To the extent that Licensee uses any City IP in the course of performing its non-profit activities ("Licensee Activities"), Licensee shall obtain Parks' prior written permission and approval for this use. In the event that Parks grants permission for the Licensee to use the City IP for non-commercial purposes, then Parks grants and will grant a non-exclusive, royalty-free, worldwide, non-transferrable and non-sublicensable license to Licensee to make non-commercial use of, display and maintain City IP for the Licensee's Activities in support of the Licensed Premises. To the extent that Parks' prior permission and approval had already been obtained to use City IP, it will be continued as previously agreed upon, subject to the use and monetary restrictions contained in this subparagraph (a).

(b) City IP shall not be used in connection with any illegal, illicit or immoral purpose or activity, or in any manner, which could be inconsistent with, or damaging to the City's name and reputation. Parks shall have the right to terminate this Agreement, upon written notice, if any part of the City IP is used by Licensee in connection with any illegal, illicit, or immoral purpose or activity. If any of the City IP is used by the other party in any way which, in the reasonable judgment of the owner, is inconsistent with or damaging to the City's name or reputation, Parks shall notify Licensee in writing and, before exercising the right of termination provided for in this subparagraph (b), shall provide three (3) business days following receipt of such notice to the Licensee to immediately cease and halt all such uses.

ARTICLE 12: COMPLIANCE WITH APPLICABLE STATUTES & REGULATIONS

12.1 Licensee shall faithfully perform and carry out the provisions of this License Agreement and cause its agents, employees, and invitees to conform to all rules, regulations, and orders prescribed as of this date or which may in this Agreement be reasonably prescribed by the Commissioner or Commissioner's designee, provided Commissioner or Commissioner's designee shall use reasonable efforts to give Licensee notice of any rules, regulations, or orders prescribed by Parks, and comply with all laws, regulations, rules, and orders of any kind whatsoever and of any agency or entity of government whatsoever applicable to the Licensed Premises including Licensee's use and occupation. This provision includes, but is not limited to, the Parks Rules and Regulations as set forth in 56 RCNY §1-01 et seq., New York City Administrative Code §18-137, the New York State Not-for-Profit Corporation Law, applicable tax and labor laws relating to non-discrimination in employment, and laws protecting youths from child abuse and maltreatment.

ARTICLE 13: ALTERATIONS BY LICENSEE

13.1 Licensee may alter Licensed Premises only in accordance with the requirements of this Article. Alterations shall become the City's property, at its option, upon their attachment, installation or affixing.

13.2 To alter the Licensed Premises, Licensee must:

(a) Obtain the Commissioner's or Commissioner's designee's prior approval for all designs, plans, specifications, cost estimates, agreements, and contractual understandings relating to contemplated purchases and/or work;

(b) Ensure that work performed and alterations made on the Licensed Premises are undertaken and completed according to submissions approved under Subparagraph (13.2)(a) above, in a good and workmanlike manner, and within a reasonable time;

(c) Notify the Commissioner or Commissioner's designee of the completion and the date of final payment for Alteration(s) within ten (10) days after the completion or final payment;

(d) Comply with existing City and Parks procedures, as may be amended from time to time during the Term and Renewal Term(s), for review of landscape redesign, renovation, and rehabilitation projects in the Licensed Premises.

13.3 In order to guarantee prompt payment of moneys due to a contractor or to contractor's subcontractors and to all persons furnishing labor and materials to the contractor or subcontractor in the prosecution of any alteration with an estimated cost exceeding two hundred fifty thousand dollars (\$250,000.00), Licensee, or a contractor engaged by Licensee, will be required to post a payment bond or other form of undertaking approved by Parks for one hundred percent (100%) of the cost of such Alteration(s). To the extent that an Alteration is funded in whole or in part through a separate contract with the State or City, Licensee will comply with the terms of this contract regarding payment bonds for the work to be performed, including any requirements to obtain a payment bond under State Finance Law § 137 or § 5 of the Lien Law, as applicable.

13.4 All alterations to the Licenses Premises undertaken by the Licensee, its agents, employees, or contractors shall be at the Licensee's sole cost and expense (other than any agreed contribution from the City, and contributions from other public or private sector partners or donors) and this work shall not commence until the Licensee obtains the Commissioner's prior written approval, or Commissioner's designee, and any City or other governmental authorizations, permits, and approvals that may be required.

ARTICLE 14: CONSTRUCTION OR OTHER WORK BY PARKS

14.1 Parks reserves the right to make additions, alterations, repairs, decorations, or improvements or perform maintenance or safety work deemed necessary by Commissioner in the Commissioner's sole reasonable discretion at or throughout the Licensed Premises at any time during the Term. Parks shall not be obligated or required to make any additions, alterations, repairs, decorations, or improvements or perform any maintenance or safety work, nor shall this provision in any way affect or impair Licensee's obligations in any respect. Licensee agrees to cooperate with Parks to accommodate any such work by Parks and provide public and

construction access through the Licensed Premises as deemed necessary by the Commissioner. Parks shall use reasonable efforts to give Licensee at least fourteen (14) days' notice of any such work and not to interfere substantially with Licensee's or TDF's operations or use of the Licensed Premises. Parks shall use reasonable efforts to perform such work in a way which minimizes interference with Licensee's and TDF's operation at the Licensed Premises. Parks may temporarily close part or all of the Licensed Premises for a Parks purpose as determined by the Commissioner. Licensee shall be responsible for security of all Licensee's property on the Licensed Premises at all times. Parks shall be solely responsible for claims, damages, or injury resulting from its work hereunder, except to the extent such claims, damages, and injury are caused by the negligence or willful misconduct of Licensee.

ARTICLE 15: ASSIGNMENTS & SUBLICENSES

15.1 (a) Licensee shall not sell, assign, sublicense, mortgage, or otherwise transfer any interest provided for, or consent, allow, or permit any other person or party to use any part of the Licensed Premises, except as provided or reasonably approved in writing by the Commissioner or Commissioner's designee, nor shall this License be transferred by operation of law, it being the purpose and spirit of this License to grant this privilege solely to Licensee.

(b) No assignment of this License by the Licensee, in whole or in part, will be effective unless it is agreed to, in writing, by Parks and signed by a duly authorized representative of Parks.

(c) As used in this Article, the term "assignment" shall be deemed to include any direct or indirect assignment, sublet, sale, pledge, mortgage, transfer of, or change in more than ten percent (10%) in stock or voting control of the Licensee, including any transfer by operation of law. No sale or transfer of the stock owned by Licensee or its nominee may be made under any circumstance if such sale will result in a change of control violative of the intent of this Article.

15.2 (a) Any sublicense, as authorized under this Agreement, shall be subject and subordinate to the terms and conditions of this License and Licensee shall require its sublicensee to acknowledge in writing that it received a copy of this License and that it is bound by its terms. All provisions of this License applicable to Licensee with respect to the operation, management, and maintenance of the Premises shall be equally applicable to any sublicensee.

(b) Licensee shall require any sublicensee to agree in writing that it will comply with the directives and provisions of this License that are applicable to Licensee with respect to the operation, management, and maintenance of the Premises, including, but not limited to, obtaining the required insurance coverages in Article 22 and indemnification in Article 21 of this Agreement, and shall be responsible for assuring such compliance.

(c) If any Sublicensee does not comply with this License insofar as applicable to it, Parks may direct Licensee to terminate that sublicensee's operations. No sublicense may be assigned without the Parks' prior written consent. Any subsequent sublicense agreement(s) will be subject to the terms and conditions in this License.

(d) Notwithstanding the foregoing, Licensee may contract for the maintenance and repair of the Licensed Premises, including the Statuary, the Plaza, and the Public Stairs directly with a third party contractor or contractors without such contract being deemed an assignment or sublicense of Licensee's obligations hereunder, provided such contractors procures insurance in the type and amounts as specified in Article 22 herein, naming the City, their agents and employees as additional insureds and such contractor agrees to indemnify the City, its agents and employees, as specified in Article 21 herein.

15.3 No consent to or approval of any assignment or sublicense granted pursuant to this Article shall constitute consent to or approval of any subsequent assignment or sublicense. Failure to comply with this provision shall cause the immediate termination of this License Agreement.

ARTICLE 16: PROHIBITIONS OF USE

16.1 Nuisance and Waste: Licensee shall not create or suffer to be created any nuisance or danger to the public safety or public property in, on, or about the Licensed Premises and shall not commit or cause any waste, damage, disfigurement, or injury to the Licensed Premises.

16.2 Smoking, Alcohol, Firearms, Packaging:

(a) No drugs or alcohol may be grown, produced, used, consumed, stored, sold, or distributed at the Licensed Premises.

(b) Smoking of any tobacco product, non-tobacco smoking product, use of electronic cigarettes, and the presence of firearms are strictly prohibited at the Licensed Premises. Licensee shall adhere to this policy.

(c) Licensee shall not use, in its operations, any polystyrene packaging or food containers. Additionally, Licensee is prohibited from selling any beverages in glass bottles. All beverages must be in non-glass, shatterproof containers. Licensee shall not, in its operations, sell single-use rigid plastic bottles containing a beverage with a capacity of twenty-one (21) fluid ounces or less. Plastic bottle alternatives, such as aluminum or boxed containers, are permitted.

16.3 No Combustibles and Inflammables: Except for properly stored fuels in accordance with the Fire Department of the City of New York ("FDNY") regulations, or other properly stored solvents necessary for the maintenance of the Premises, Licensee shall not use or permit the storage of any illuminating oils, candles, oil lamps, turpentine, benzene, naphtha, or other similar substances or explosives of any kind or any other substance or thing prohibited in the standard policies of fire insurance companies in the State of New York.

16.4 Licensee shall not use or grant permission to others to use the Licensed Premises, or any portion, for any unlawful purpose or in violation of any existing certificate of occupancy or the provisions on the use of the Licensed Premises as set forth in this License.

ARTICLE 17: NO DISCRIMINATION

17.1 Licensee shall not unlawfully discriminate against any employee, applicant for employment, or patron because of race, creed, color, national origin, age, sex, disability, marital status or sexual orientation. Licensee shall comply with the ADA and regulations as applicable. Any violation of this Article shall be a material breach of this License.

17.2 All advertising for employment shall indicate the Licensee is an Equal Opportunity Employer.

ARTICLE 18: RETENTION OF RECORDS

18.1 Licensee agrees to retain all books, records, and other documents relevant to this Agreement for six (6) years after the final payment or termination of this Agreement, whichever it later. City, State, and Federal auditors shall have full access to and the right to examine any of these materials during this period, upon reasonable prior notice. Notwithstanding the foregoing, the Parties acknowledge and agree that the New York City Comptroller's ("Comptroller") powers, duties, and obligations under the Charter shall not be diminished, compromised, or abridged in any way.

ARTICLE 19: PERSONNEL

19.1 All experts, independent contractors, servants, agents, specialists, trainees, consultants, volunteers, and employees of the Licensee who are employed by Licensee to perform work under this License are neither employees of the City nor under contract with the City, and Licensee alone is responsible for their work, direction, compensation, and personal conduct while engaged under this License. Nothing in this License shall impose any liability or duty on the City for acts, omissions, liabilities, or obligations of Licensee or any person, firm, company, agency, association, corporation, or organization engaged by Licensee as expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent or for taxes of any nature including but not limited to unemployment insurance, workers' compensation, disability benefits, and social security. Nothing included in this Article or in any other provision of this License Agreement shall be construed to impose any liability or duty upon Parks or the City to the persons, firms, or corporations employed or engaged by Licensee as employees, servants, agents, consultants, specialists, trainees, volunteers, experts, or independent contractors or in any other capacity whatsoever or to render Parks or the City liable to any persons, firms, corporations, associations or to any government for the acts, omissions, liabilities, obligations, and/or taxes of any nature, including, but not limited to, unemployment insurance of Licensee or its consultants, experts, employees, servants, agents, volunteers, specialists, trainees, or independent contractors. Nothing in this Article shall limit the indemnification provisions enumerated herein.

19.2 (a) Licensee will notify Parks, in writing, within thirty (30) days after any appointments to or resignations from any office, including, but not limited to, the position(s) of any Executive Officer, including the President and Vice President of the Licensee. In addition, Licensee will notify Parks in writing, within ten (10) days after the occurrence, of any change in the individuals who serve as directors and officers of Licensee's Board of Directors.

(b) The manager of the Licensed Premises for Licensee shall be subject to Parks'

reasonable approval.

(c) All supervisory personnel at the Licensed Premises shall be subject to Parks' reasonable approval.

19.3 Licensee, at its sole cost and expense, shall provide, hire, train, supervise, and be responsible for the acts of all personnel necessary for the proper operation of this License, including but not limited to:

(a) collecting and safeguarding all monies generated under this License;

(b) maintaining the Licensed Premises; and

(c) conducting and supervising all activities to be engaged in upon the Licensed Premises.

19.4 As a Licensee of the City, Licensee is required to comply with the Earned Safe and Sick Time Act, also known as the Paid Safe and Sick Leave Law attached in Exhibit D.

ARTICLE 20: EVENTS

20.1 Parks agrees to use reasonable efforts to notify and consult with Licensee at least fourteen (14) days in advance of any Special Event (as defined in 56 RCNY § 1-02 of Parks' Rules and Regulations) scheduled at the Licensed Premises. It is expressly understood that this Article 20 shall in no way limit Parks' right to itself sponsor or promote Special Events, as defined herein, at the Licensed Premises, or to enter in agreements with third parties to sponsor or promote such events.

(a) In connection with any Special Event at the Licensed Premises, Parks agrees:

(i) to notify any third-party operator or sponsor of Special Events of Licensee's access rights to the Licensed Premises and to provide same with the name and telephone number of Licensee's Manager;

(ii) to use its reasonable efforts to ensure that such third parties will be responsible for maintenance, repairs, and clean-up associated with any Special Event;

(iii) that Licensee may collect sixty percent (60%) of the Special Event concession fees ("Fees") from third parties under Section 2-10 of Parks Rules and Regulations. For example when the Fees charges are Ten Thousand Dollars (\$10,000), Licensee shall collect Six Thousand Dollars (\$6,000) and Parks shall collect Four Thousand Dollars (\$4,000). These payments must be issued in two separate checks;

(b) Licensee shall use all Fees it collects to offset Licensee's costs of providing maintenance and operation services under this License Agreement.

(c) Should the management of Special Events at the Licensed Premises be performed by a City agency other than Parks including, but not limited to, the Mayor's Street Activity Permit Office, and fees for Special Events at the Licensed Premises would no longer be payable to Parks, then Section 20.1(a) shall no longer be applicable.

20.2 Licensee must provide Parks with written notice in advance of all press conferences, public ceremonies, or other public or planned news events relating to the subject of this License Agreement. In any statement, publication or press release made to the public relating to the subject of this License Agreement, Licensee will clearly identify Parks and prominently feature Parks' name and logo. Parks and Licensee agree to communicate and coordinate regarding press releases, statements or any advertising materials concerning the Licensed Premises. If the Commissioner reasonably finds that any release, advertisement, or statement made to the public relating to the programs and activities offered in the Licensed Premises is incorrect or unacceptable, Licensee and the Commissioner agree in good faith to make such release, advertisement, or statement accurate and acceptable to both parties.

20.3 If Licensee publishes a work discussing any aspect of performance of any service covered by this License Agreement, Licensee will acknowledge therein the involvement, if any, of Parks, when appropriate, and Parks will have a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use and authorize other to use such publication.

20.4 Licensee shall not hold any private or public function at the Licensed Premises or use the Licensed Premises to hold fundraisers to benefit Licensee and/or Licensee's other efforts to support the area surrounding the Statuary, Plaza, and the Public Stairs without receiving Parks' prior written approval. In addition to the foregoing, Licensee's right to hold such a function or fundraiser is subject to any additional City authorization, approvals, permits, and compliance with other processes, which may be necessary, including without limitation, any necessary approval by the FCRC. Licensee shall not hold more than two (2) private functions/fundraisers, which shall be subject to Parks' prior written approval, at the Licensed Premises annually during times when public events are not scheduled, unless otherwise approved by Parks at Parks sole discretion. Any net proceeds from such functions/fundraisers shall be used solely to benefit the Licensed Premises

20.5 The Mayor's Office of Media and Entertainment ("MOME") may issue permits for filming on the Licensed Premises, as well as other commercial photography on the Licensed Premises. The terms of such permits shall be acceptable to Parks in consultation with Licensee.

ARTICLE 21: RESPONSIBILITY FOR SAFETY, INJURIES OR DAMAGE & INDEMNIFICATION

21.1 Licensee Responsibility

(a) The Licensee shall be solely responsible for the safety and protection of its employees, agents, servants, volunteers, sublicensees, contractors, and subcontractors, and for the safety and protection of the employees, agents, or servants of its contractors, sublicensees, or subcontractors.

(b) The Licensee 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 License, excluding the TKTS Ticket Booth.

(c) The Licensee shall be solely responsible for injuries, including death, to any and all persons and damage to any and all property arising out of or related to the operations under this License, whether or not due to the negligence of the Licensee, including but not limited to injuries or damages resulting from the acts or omissions of any of its employees, agents, servants, volunteers, sublicensees, contractors, subcontractors, or any other person.

(d) The Licensee shall use the Licensed Premises in compliance with, and shall not cause or permit the Licensed Premises to be used in violation of, any and all federal, state, or local environmental, health and 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 Licensee or the Licensed Premises (collectively, “Environmental Laws”). Except as may be agreed by the City as part of this License, Licensee shall not cause or permit, or allow any of the Licensee’s personnel to cause or permit, any Hazardous Materials to be brought upon, stored, used, generated, treated, or disposed of on the Licensed 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. Licensee has no responsibility or liability with respect to TKTS Ticket Booth.

21.2 Indemnification and Related Obligations

(a). Licensee Indemnification

(i) Notwithstanding any other provisions of this License, the maximum amount for which the Licensee is liable per policy year for third party bodily injury (including death) and property damage caused by the Licensee’s operations under this License shall not exceed the Commercial General Liability limits required in Article 22 below, (“Limitation of Liability”). The Limitation of Liability shall not apply to Licensee’s contractors, subcontractors or agents.

(ii) Subject to the Limitation of Liability but notwithstanding any other provisions of the License, Licensee shall indemnify, defend and hold the City and its officials and employees (“Indemnified Parties”) 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) (hereinafter called “Liabilities”), relating to or arising out of, or alleged (by a person other than the City) to relate to or arise out of the following:

(1) Licensee’s or any sublicensee(s)’s or any of their respective employees’, servants’, contractors’, subcontractors’ or agents’ negligence or failure to comply with any of the requirements of this License, including Licensee’s maintenance and/or repair obligations set forth in Article 5 herein;

(2) Licensee's or any sublicensee(s)'s or any of their employees', servants', contractors', subcontractors' or agents' failure to comply with any applicable federal, state, or local laws, rules or regulations; and

(3) Licensee's or any sublicensee(s)'s or any of their employees', servants', contractors', subcontractors' or agents' infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party.

(iii) Insofar as the facts or law relating to any of the foregoing would preclude the Indemnified Parties from being completely indemnified by Licensee, the Indemnified Parties shall be partially indemnified by Licensee to the fullest extent permitted by law.

(iv) Upon receipt by any Indemnified Party of actual notice of a claim to which such Indemnified Party is entitled to indemnification in accordance with this Section, Parks shall give prompt written notice of such claim to Licensee. Licensee shall assume and prosecute the defense of such claim at the sole cost and expense of Licensee. Licensee may settle any such claim in its discretion without consent of Parks and the Corporation Counsel only if (i) the sole relief under the settlement is monetary damages, (ii) the Licensee indemnifies the Indemnified Parties for the full amount of the settlement, (iii) the settlement involves no admission by the Indemnified Parties or finding of guilt and (iv) such settlement includes an unconditional release of the Indemnified Party. Any other settlement of a claim shall require consent from Parks and the Corporation Counsel.

(v) Licensee's obligation to defend, indemnify and hold the Indemnified Parties harmless shall not be (i) limited in any way by Licensee's obligations to obtain and maintain insurance under this License except as expressly provided in Section 21.2.A.1, nor (ii) be adversely affected by any failure on the part of an Indemnified Party to avail themselves of the benefits of such insurance.

(b) City Indemnification

(i) To the fullest extent permitted by law, Parks shall, or shall cause its contractors, licensees, or permittees to indemnify, defend and hold the Licensee harmless against any and all Liabilities to third parties for injury, including death, or property damage to the extent arising out of any Special Events not sponsored by the Licensee.

(ii) To the fullest extent permitted by law, Parks shall or shall cause its contractors, licensees, or permittees, including utilities and the MTA, when contracting with Parks, to list the Licensee as additional insured and indemnify, defend and hold the Licensee harmless against any and all Liabilities to third parties for injury, including death, or property damage to the extent arising out of their presence, operations or work in and around the Licensed Premises. Parks will contractually require this obligation from Parks contractors with presence, operations or doing work in the Licensed Premises.

(iii) To the fullest extent permitted by law, Parks shall, or shall cause its contractors, licensee, or permittees to indemnify defend and hold the Licensee harmless against any and all Liabilities to third parties for injury, including death, or property damage to the extent arising out of: (i) any subsurface conditions at the Licensed Premises, such as utilities and subways; (ii) the negligence of the Indemnified Parties except for any negligence imputed to the Indemnified Parties arising from the negligence of Licensee; and (iii) any other cause outside the scope of Licensee's responsibilities under this License, including any events of force majeure.

(iv) To the fullest extent permitted by law, Parks shall or shall cause its contractors, licensees, or permittees to indemnify defend and hold the Licensee harmless against any and all Liabilities to third parties for injury, including death, or property damage to the extent arising out of any City infrastructure, amenity, item or equipment other than the Public Stairs, Plaza or Statuary that is located in or around the Licensed Premises.

(v) The Licensee is only responsible for snow removal to the extent set forth in this License.

(vi) Licensee is not responsible for injury, including death, or property damage to the extent arising out of the TKTS Ticket Booth, except to the extent arising from Licensee's negligence.

ARTICLE 22: INSURANCE

22.1 Licensee's Obligation to Insure:

(a) From the date this License is executed through the date of its expiration or termination, the Licensee shall ensure that the types of insurance indicated in this Article are obtained and remain in force, and that such insurance adheres to all requirements. The City may require other types of insurance and/or higher liability limits and other terms if, in the Commissioner's opinion, Licensee's operations warrant it.

(b) The Licensee is authorized to undertake or maintain operations under this License only during the effective period of all required coverage.

22.2 Commercial General Liability Insurance:

(a) The Licensee shall maintain Commercial General Liability insurance for three million dollars (\$3,000,000.00) per occurrence for bodily injury (including death) and property damage and one million dollars (\$1,000,000) per occurrence for personal and advertising injury. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Licensed Premises and such per-location aggregate shall be at least five million dollars (\$5,000,000). However, with the permission of Parks, the requirement that the aggregate limit apply on a per-location basis may be omitted, provided that the aggregate limit shall be at least ten million dollars (\$10,000,000). This insurance shall protect the insureds from

claims that may arise from any of the operations under this License. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 00 01, 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."

(b) 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 License. Coverage shall be at least as broad as the most recent editions of ISO Form CG 20 26 and CG 20 37. "Blanket" or other forms are acceptable if they provide the City, together with its officials and employees, with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37.

22.3 Workers Compensation Insurance, Employers Liability and Disability Benefits Insurance:

(a) The Licensee shall maintain and shall cause any sublicensee to maintain Workers' Compensation Insurance, Employers Liability Insurance, and Disability Benefits Insurance on behalf of, or with regard to, all employees involved in the Licensee's operations under this License, and such insurance shall comply with the laws of the State of New York.

22.4 Commercial Automobile Liability Insurance:

(a) With regard to all operations under this License, Licensee shall maintain or cause to be maintained Commercial Automobile Liability Insurance in the amount of at least one million dollars (\$1,000,000.00) each accident (combined single limit) for liability arising out of the ownership, maintenance, or use of any owned (if any), non-owned, or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA 00 01.

(b) If vehicles are used for transporting hazardous materials, such Commercial 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.

22.5 Property Insurance:

(a) The Licensee shall maintain comprehensive "All Risk" or "Special Perils" form property insurance covering all buildings, structures, equipment, and fixtures, excluding the Statuary, on the Licensed Premises, excluding the TKTS Ticket Booth ("License Structures), whether existing at the beginning of this License or built at any time before its expiration or termination. Such insurance shall provide full Replacement Cost coverage for the License 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 Licensee as Named Insured and the City as Additional Insurance and Loss Payee as their interests may appear. This Section does not require coverage for damage caused by flooding.

(b) The limit of such property insurance shall be no less than the full Replacement Cost of all License Structures, including, without limitation, the costs of post casualty debris removal and soft costs, to the extent 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 License Structures.

(c) In the event of any loss to any of the License Structures, Licensee 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 License Structure that the City owns or in which the City has an interest, the Licensee 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 adjustment for claims or, at the Commissioner’s discretion, allow the City itself to adjust such claim. Licensee’s liability for loss to any of the License Structures is limited to the amount paid under such property insurance.

22.6 General Requirements for Insurance Coverage and Policies:

(a) Policies of insurance required under this Paragraph 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.

(b) With the exception of coverage required by the Workers’ Compensation Law, policies of insurance required under this Article shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

(c) There shall be no self-insurance program 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, Licensee 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 to, the defense and indemnification obligations that insurers are required to undertake in liability policies.

(d) All required policies, except for Workers' Compensation Insurance, Employers Liability Insurance, and Disability Benefits 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, New York City Department of Parks & Recreation, 830 Fifth Avenue, New York, NY 10065, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New, York, NY 10007.** Such notice is to be sent at least thirty (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.

(e) All required policies, except Workers' Compensation Insurance, Employers Liability Insurance, and Disability Benefits Insurance, shall include a waiver of the right of subrogation with respect to all insureds and loss payees named therein.

22.7 Proof of Insurance:

(a) 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 License.

(b) For Workers' Compensation Insurance, Employers Liability Insurance, and Disability Benefits Insurance policies, the Licensee shall submit one of the following:

(i) C-105.2 Certificate of Worker's Compensation Insurance;

(ii) U-26.3 – State Insurance Fund Certificate of Workers' Compensation Insurance;

(iii) Request for WC/DB Exemption (Form CE-200);

(iv) Equivalent or successor forms used by the New York State Workers' Compensation Board; or,

(v) Other proof of insurance in a form acceptable to the City. ACORD forms are not acceptable proof of Workers' Compensation coverage.

(c) For all insurance required under this Article other than Workers' Compensation, Employers Liability, and Disability Benefits, the Licensee shall submit one or more Certificates of Insurance in a form acceptable to the Commissioner. All such Certificates of Insurance shall:

(i) Certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and

(ii) Be accompanied by the provision(s) or endorsement(s) in the Licensee'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 Broker or Agent" in the form annexed in Exhibit E or as otherwise required by the Commissioner or certified copies of all policies 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.

(d) Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner before the expiration date of coverage of all policies required under this License. Such Certificates of Insurance shall comply with subparagraphs (b) and (c) directly above.

(e) The Commissioner's acceptance or approval of a Certificate of Insurance or any other matter does not waive Licensee's obligation to ensure that insurance fully consistent with the requirements of this Paragraph is secured and maintained, nor does it waive Licensee's liability for its failure to do so.

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

22.8 Miscellaneous:

(a) The Licensee 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.

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

(c) Where notice of loss, damage, occurrence, accident, claim, or suit is required under a policy maintained in accordance with this Article, the Licensee shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this License, including notice to Commercial General Liability insurance carriers for events relating to the Licensee's own employees, no later than twenty (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 Licensee shall simultaneously send a copy of such notice to:

City of New York Law Department
c/o Insurance Claims Specialist
Affirmative Litigation Division
100 Church Street
New York, NY 10007

(d) The Licensee'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 License. Such breach shall not be waived or otherwise excused by the City's action or inaction at any time.

(e) Subject to Section 21.2(a)(i), insurance coverage in the minimum amounts provided for in this Article shall not relieve the Licensee of any liability under this License, 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 License or the law.

(f) 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 Paragraph, the Licensee shall at all times fully cooperate with the City with regard to such potential or actual claim.

(g) Subject to Section 21.2(b), and apart from damages or losses covered by Workers' Compensation Insurance, Employers Liability Insurance, Disability Benefits Insurance, or Commercial Automobile Insurance, the Licensee 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 Licensee and/or its employees, agents, servants of its contractors, or subcontractors.

(h) Licensee shall require its construction contractors that perform construction on the Licensed Premises to maintain Commercial General Liability Insurance in accordance with Section 22.2, and such insurance shall include the City, including its officials and employees, as an additional insured with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37. In the event Licensee requires any other entity, by contract or otherwise, to procure insurance with regard to any operations under this License Agreement and requires such entity to name Licensee as an Additional Insured under such insurance, Licensee shall ensure that such entity also names City, together with its officials and employees, as Additional Insureds (with coverage for Commercial General Liability Insurance) at least as broad as ISO form CG 20 26).

(i) If the Licensee 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 Licensee shall immediately forward a copy of such notice to both the Commissioner, New York City Department of Parks & Recreation, 830 Fifth Avenue, New York, NY 10065, and the New York City Comptroller, attn.: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, NY 10007. Notwithstanding the above, the Licensee shall ensure that there is no interruption in any of the insurance coverage required under this Article.

ARTICLE 23: INVESTIGATIONS

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

(b) If any person

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

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

The Commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days' written notice to the parties involved, to determine if any penalties should attach for the failure of any person to testify. If any non-governmental party to the hearing requests an adjournment, the Commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination under Section 23.1(c) below without the City incurring any penalty or damages for delay or otherwise.

(c) The penalties, which may attach after the Commissioner or agency head's final determination, may include but shall not exceed:

(i) The disqualification for a period not to exceed five (5) years from the date of an adverse determination of any person or entity of which the 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

(ii) The cancellation or termination of any and all existing City contracts, leases, permits, or licenses that the refusal to testify concerns and that have not been assigned as permitted under this License, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value before the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued before the cancellation or termination shall be paid by the City.

(d) The Commissioner or agency head shall consider and address in reaching a determination and in assessing an appropriate penalty the factors in Section 23.1(d)(i) and (ii) below. The Commissioner or agency head may also consider, if relevant and appropriate, the criteria established in Sections 23.1(d) (iii) and (iv) below in addition to any other information that may be relevant and appropriate.

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

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

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

(iv) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Section 23.1(c) above, provided that the party or entity has given actual notice to the Commissioner or agency head upon the acquisition of the interest, or at the hearing called for in Section 23.1(b) above gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potentially adverse impact a penalty will have on such person or entity.

(e) The following definitions apply within this provision of the Agreement:

(i) The term “license” or “permit” as used here shall be defined as a license, permit, franchise, or concession not granted as a matter of right.

(ii) The term “person” as used here 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.

(iii) The term “entity” as used here 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.

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

(f) In addition to and notwithstanding any other provision of this License, the Commissioner or agency head may in the Commissioner’s sole discretion terminate this

Agreement upon not less than three (3) days' written notice if Licensee fails to promptly report in writing to the City's Commissioner of Investigation, 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 of other person, firm, corporation, or entity for any purpose which may be related to the procurement or obtaining of this License Agreement by the Licensee, or affecting the performance or this License Agreement.

ARTICLE 24: CHOICE OF LAW; CONSENT TO JURISDICTION AND VENUE

24.1 This License Agreement shall be deemed to be executed in the City of New York, State of New York, regardless of Licensee's domicile, and shall be governed by and construed under the laws of the State of New York.

24.2 Any and all claims asserted by or against the City arising under this License 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 License Agreement and its intent, Licensee agrees:

(a) If the City initiates any action against the Licensee in Federal Court or in New York State Court, service of process may be made on the Licensee either in person, wherever such Licensee may be found, or by registered or certified mail or by a nationally recognized overnight delivery service addressed to the Licensee at its address set forth in this License, or to such other address as the Licensee may provide to the City in writing.

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

24.3 With respect to any action between the City and the Licensee in Federal Court located in New York City, the Licensee 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.

24.4 If the Licensee commences any action against the City in a court located other than in the City and State of New York, upon the City's request, the Licensee 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 Licensee shall consent to dismiss such action without prejudice and may later reinstitute the action in a court of competent jurisdiction in New York City.

ARTICLE 25: WAIVER OF JURY TRIAL

25.1 Licensee expressly waives all rights to trial by jury in any action, proceeding, counterclaim, or cause of action brought by the City against Licensee directly or indirectly arising out of the

terms, covenants, or conditions of this License or the use and occupation of the Premises or any matter whatsoever in any way connected with this License, including but not limited to, the relationship between the City or Licensee. The provision relating to waiver of jury trial shall survive the expiration or termination or any renewals of this License.

ARTICLE 26: INDEPENDENT STATUS OF LICENSEE

26.1 Licensee is not an employee of the City and in accordance with such independent status neither Licensee 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, 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.

ARTICLE 27: CONFLICT OF INTEREST

27.1 Licensee represents and warrants that neither it nor any of its officers, directors, 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 provided. Licensee further represents and warrants that in the performance of this Agreement, Licensee shall not employ any person having this interest or possible interest. No elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects a personal interest or the interest of any corporation, partnership, or association in which said person is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this Agreement or in its proceeds.

ARTICLE 28: ALL LEGAL PROVISIONS DEEMED INCLUDED

28.1 Each and every provision of law required to be inserted in this License shall be and is deemed inserted herein, whether or not actually inserted, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this License 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.

ARTICLE 29: SEVERABILITY

29.1 If any term or provision of this Agreement or the application thereof to any person or circumstances is, to any extent, invalid or unenforceable, the remainder of this License, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this License shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE 30: JUDICIAL INTERPRETATION

30.1 Should any provision of this License require judicial interpretation, it is agreed that the court interpreting or considering the provision shall not apply the presumption that the terms in this Agreement 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 have participated in the preparation of this License and that legal counsel was consulted by each responsible party before the execution of this License.

ARTICLE 31: INFRINGEMENTS

31.1 Licensee shall be liable to the City and hereby agrees to defend, indemnify, and hold the City harmless for any damage or loss or expense sustained by the City from any infringement by Licensee of any copyright, trademark, or patent rights of design, systems, drawings, graphs, charts, specifications, or printed matter furnished or used by Licensee in the performance of this Agreement.

ARTICLE 32: REPRESENTATIONS, WARRANTIES & COVENANTS

32.1 Licensee makes the following representations and warranties:

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

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

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

(d) In procuring this License Agreement, Licensee has neither been asked to pay, offered to pay nor paid any illegal consideration, whether monetary or otherwise.

(e) Licensee has not employed any person to solicit or procure this Agreement, and has not made and shall not make any payment of any commission, percentage, brokerage, contingent fee, or any other compensation in connection with the procurement of the Agreement.

32.2 Licensee covenants and agrees that during the Term and any renewal terms it shall maintain

its corporate existence under the State of New York laws as a not-for-profit corporation, and shall maintain its tax-exempt status under Section 501(c) (3) of the Internal Revenue Code of 1986, as amended.

ARTICLE 33: CLAIMS AND ACTIONS THEREON

33.1 No action at law or proceeding in equity against the City shall lie or be maintained upon any claim based upon this Agreement or arising out of this Agreement or in any way connected with this Agreement unless Licensee shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.

33.2 No action shall lie or be maintained against the City by Licensee upon any claims based upon this License unless such action shall be commenced within six (6) months of the termination or conclusion of this License, or within six (6) months after the accrual of the cause of action, whichever first occurs.

33.3 If any claim is made or any action brought in any way relating to this Agreement other than an action or proceeding in which Licensee and the City are adverse parties, Licensee shall diligently render to the City without additional compensation any and all assistance which the City may reasonably require of Licensee.

ARTICLE 34: WAIVER OF COMPENSATION

34.1 (a) Except for Parks' obligations under Section 21.2.(b), Licensee hereby expressly waives any and all claims for compensation for any and all loss or damage sustained by reason of any defects, including, but not limited to, deficiency or impairment of the water supply system, gas mains, electrical apparatus or wires furnished for the Licensed Premises, or by reason of any loss of any gas supply, water supply, heat or current which may occur from time to time, or for any loss resulting from fire, water, windstorm, tornado, explosion, civil commotion, strike or riot, and Licensee hereby expressly releases and discharges Commissioner, Commissioner's agents, and City from any and all demands, claims, actions, and causes of action arising from any of these causes.

(b) Licensee further expressly waives any and all claims for compensation, loss of profit, or refund of its investment, if any, or any other payment whatsoever, if this License is terminated by Commissioner sooner than the fixed term because the Licensed Premises are required for any park or other public purpose, or because the License was terminated or revoked for any reason as provided in this Agreement.

ARTICLE 35: NO CLAIMS AGAINST OFFICERS, AGENTS, OR EMPLOYEES

35.1 No claim whatsoever shall be made by Licensee against any officer, director, member, agent, employee, or volunteer of the City, nor shall any such officer, director, member, agent, employee, or volunteer have any personal liability for, or on account of, anything done or omitted in connection with this Agreement.

ARTICLE 36: MODIFICATION

36.1 This License may be modified from time to time by notice in writing duly executed by the parties hereto, but no modification of this License shall be effective unless it has been agreed to in writing and duly executed by the parties, and no other agreement, written or oral, regarding the subject matter of this License shall be deemed to exist or to bind any of the parties hereto.

36.2 Licensee shall have the right to terminate this License in whole or in part and it shall provide Parks with no less than one-year written notice.

ARTICLE 37: NOTICE

37.1 All notices from Licensee to Parks shall be in writing and delivered by mailing a copy of such notice by registered or certified mail, return receipt requested, to the attention of the **First Deputy Commissioner for Operations, New York City Department of Parks & Recreation, The Arsenal, Central Park, 830 Fifth Avenue, New York, NY 10065**, or such other address as Parks may designate, with copies sent to Parks' General Counsel at the same address. All notices from Parks to Licensee shall be dispatched in the same manner, and delivered to **Times Square Alliance, 1560 Broadway, Suite 1001, New York, NY 10036**, or such other address as may be notified from time to time.

ARTICLE 38: HEADINGS AND TABLE OF CONTENTS

38.1 The Article Headings and Table of Contents contained in this License are inserted for convenience only and shall not be deemed to constitute part of this License Agreement or to affect its construction. Unless the context requires otherwise, the use in this License Agreement of singular, plural, masculine, feminine and neuter pronouns shall include the others.

ARTICLE 39: THIRD PARTY BENEFICIARIES

39.1 This Agreement shall be binding upon and for the benefit of the parties and each of their respective successors and permitted assigns. The provisions of this Agreement shall be for the Parties' sole benefit and no other person or entity shall be a third-party beneficiary of this Agreement.

ARTICLE 40: COUNTERPARTS

40.1 This Agreement may be executed in counterparts, each of which shall be an original and all of which counterparts taken together shall constitute one and the same Agreement.

[SIGNATURE PAGE TO FOLLOW]

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the Parties have caused this License Agreement to be signed and sealed on the day and year first above written.

**NEW YORK CITY DEPARTMENT OF
PARKS & RECREATION**

**TIMES SQUARE DISTRICT
MANAGEMENT ASSOCIATION, INC.**

By: _____
Iris Rodriguez-Rosa,
First Deputy Commissioner

By: _____
Tom Harris
President

Dated: _____

Dated: _____

APPROVED AS TO FORM

Acting Corporation Counsel

Date

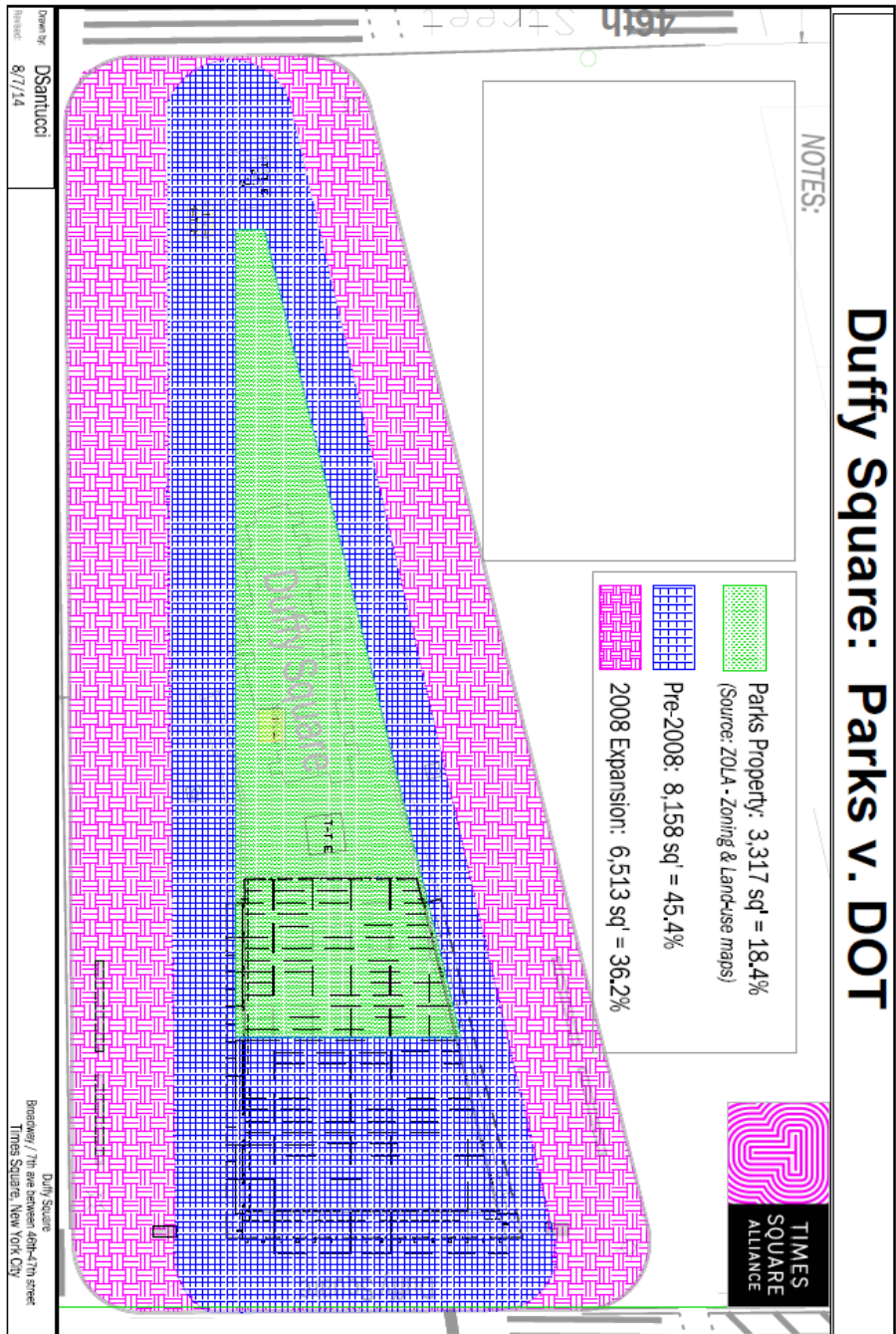
COUNTY OF NEW YORK)

COUNTY OF NEW YORK)

39

EXHIBIT A: LICENSED PREMISES MAP

- Note: The TKTS Ticket Booth located under the Public Stairs is not included within the Licensed Premises



NYC Planning: Zoning & Land Use Map



EXHIBIT B: PIP MANUAL

NYC Parks to attach

EXHIBIT C

FORM OF REPORT UNDER NYC ADMINISTRATIVE CODE § 18-134

Local Law 28 of 2008 Partnership Reporting Form						
Reporting Period: January 1 – December 31 Fiscal Year: XXXX						
Partner	Park Location	Borough	Fiscal Year- end	Total Spending - Maintenance and Operations	Total Spending - Program- ming	Total Spending - Capital

EXHIBIT D

NYC EARNED SAFE AND SICK TIME ACT CONTRACT RIDER

(To supersede Section 4.06 of the January 2018 Appendix A and Section 35.5 of the March 2017 Standard Construction Contract and to be attached to other City contracts and solicitations)

A. Introduction and General Provisions.

1. The Earned Safe and Sick Time Act (“ESSTA”), codified at Title 20, Chapter 8 of the New York City Administrative Code, also known as the “Paid Safe and Sick Leave Law,” requires covered employees (as defined in Admin. Code § 20-912) in New York City (“City”) to be provided with paid safe and sick time. Contractors of the City or of other governmental entities may be required to provide safe and sick time pursuant to the ESSTA. The ESSTA is enforced by the City’s Department of Consumer and Worker Protection (“DCWP”), which has promulgated 6 RCNY §§ 7-101 and 201 et seq. (“DCWP Rules”).

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

3. The Contractor must notify (with a copy to DCWP at ComplianceMonitoring@dcwp.nyc.gov) the Agency Chief Contracting Officer of the City Agency or other entity with whom it is contracting in writing within 10 days of receipt of a complaint (whether oral or written) or notice of investigation regarding the ESSTA involving the performance of this agreement. Additionally, the Contractor must cooperate with DCWP’s guidance and must comply with DCWP’s subpoenas, requests for information, and other document demands as set forth in the ESSTA and the DCWP Rules. More information is available at <https://www1.nyc.gov/site/dca/about/paid-sick-leave-what-employers-need-to-know.page>.

4. Upon conclusion of a DCWP investigation, Contractor will receive a findings letter detailing any employee relief and civil penalties owed. Pursuant to the findings, Contractor will have the opportunity to settle any violations and cure the breach of this agreement caused by failure to comply with the ESSTA either i) without a trial by entering into a consent order or ii) appearing before an impartial judge at the City’s administrative tribunal. In addition to and notwithstanding any other rights and remedies available to the City, non-payment of relief and penalties owed pursuant to a consent order or final adjudication within 30 days of such consent order or final adjudication may result in the termination of this agreement without further opportunity to settle or cure the violations.

5. The ESSTA is briefly summarized below for the convenience of the Contractor. The Contractor is advised to review the ESSTA and the DCWP Rules in their entirety. The Contractor may go to www.nyc.gov/PaidSickLeave for 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 Contractor can get more information about how to comply with the ESSTA and the DCWP Rules. The Contractor acknowledges that it is responsible for compliance

with the ESSTA and the DCWP Rules notwithstanding any inconsistent language contained herein.

B. *Pursuant to the ESSTA and DCWP Rules: Applicability, Accrual, and Use.*

1. An employee who works within the City must be provided paid safe and sick time.¹ Employers with one hundred or more employees are required to provide 56 hours of safe and sick time for an employee each calendar year. Employers with fewer than one hundred employees are required to provide 40 hours of sick leave each calendar year. Employers must provide a minimum of one hour of safe and sick time for every 30 hours worked by an employee and compensation for such safe and sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage at the time the paid safe or sick time is taken. Employers are not discouraged or prohibited from providing more generous safe and sick time policies than what the ESSTA requires.

2. Employees have the right to determine how much safe and sick time they will use, provided that an employer may set a reasonable minimum increment for the use of safe and sick time not to exceed four hours per day. For the use of safe time or sick time beyond the set minimum increment, an employer may set fixed periods of up to thirty minutes beyond the minimum increment. In addition, an employee may carry over up to 40 or 56 hours of unused safe and sick time to the following calendar year, provided that no employer is required to carry over unused paid safe and sick time if the employee is paid for such unused safe and sick time and the employer provides the employee with at least the legally required amount of paid safe and sick time for such employee for the immediately subsequent calendar year on the first day of such calendar year.

3. An employee entitled to safe and sick time pursuant to the ESSTA may use safe and sick time for any of the following:

a. 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;

b. such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, the child or parent of an employee's spouse or domestic partner, any other individual related by blood to the employee, and any other individual whose close association with the employee is the equivalent of a family relationship) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;

c. closure of such employee's place of business by order of a public official due to

¹ Pursuant to the ESSTA, if fewer than five employees work for the same employer, and the employer had a net income of less than one million dollars during the previous tax year, such employer has the option of providing such employees uncompensated safe and sick time.

a public health emergency;

d. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency; or

e. when the employee or a family member has been the victim of a family offense matter, sexual offense, stalking, or human trafficking:

1. to obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking;

2. to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future family offense matters, sexual offenses, stalking, or human trafficking;

3. to meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit;

4. to file a complaint or domestic incident report with law enforcement;

5. to meet with a district attorney's office;

6. to enroll children in a new school; or

7. to take other actions necessary to maintain, improve, or restore the physical, psychological, or economic, health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

4. An employer must not require an employee, as a condition of taking safe and sick time, to search for a replacement. However, where the employee's need for safe and sick time is foreseeable, an employer may require an employee to provide reasonable notice of the need to use safe and sick time. For an absence of more than three consecutive work days, an employer may require reasonable documentation that the use of safe and sick time was needed for a reason listed in Admin. Code § 20-914; and/or written confirmation that an employee used safe and sick time pursuant to the ESSTA. However, an employer may not require documentation specifying the nature of a medical condition, require disclosure of the details of a medical condition, or require disclosure of the details of a family offense matter, sexual offense, stalking, or human trafficking, as a condition of providing safe and sick time. Health information and information concerning family offenses, sexual offenses, stalking or human trafficking obtained solely due to an

employee's use of safe and sick time pursuant to the ESSTA must be treated by the employer as confidential. An employer must reimburse an employee for all reasonable costs or expenses incurred in obtaining such documentation for the employer.

5. An employer must provide to all employees a written policy explaining its method of calculating sick time, policies regarding the use of safe and sick time (including any permissible discretionary conditions on use), and policies regarding carry-over of unused time at the end of the year, among other topics. It must provide the policy to employees 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 safe and sick time to an employee because of non-compliance with such a policy.

6. An employer must provide a pay statement or other form of written documentation that informs the employee of the amount of safe/sick time accrued and used during the relevant pay period and the total balance of the employee's accrued safe/sick time available for use.

7. Safe and 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 safe and sick time was used.

C. *Exemptions and Exceptions.* Notwithstanding the above, the ESSTA does not apply to any of the following:

1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);

2. an employee covered by a valid collective bargaining agreement, if the provisions of the ESSTA are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the ESSTA for such employee;

3. 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 their own schedule, has the ability to reject or accept any assignment referred to them, and is paid an average hourly wage that is at least four times the federal minimum wage;

4. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;

5. 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

6. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.

D. *Retaliation Prohibited.* An employer shall not take any adverse action against an employee that penalizes the employee for, or is reasonably likely to deter the employee from or interfere with

the employee exercising or attempting in good faith to exercise any right provided by the ESSTA. In addition, an employer shall not interfere with any investigation, proceeding, or hearing pursuant to the ESSTA.

E. *Notice of Rights.*

1. An employer must provide its employees with written notice of their rights pursuant to the ESSTA. Such notice must be in English and the primary language spoken by an employee, provided that DCWP has made available a translation into such language. Downloadable notices are available on DCWP's website at <https://www1.nyc.gov/site/dca/about/Paid-Safe-Sick-Leave-Notice-of-Employee-Rights.page>. The notice must be provided to the employees by a method that reasonably ensures personal receipt by the employee.

2. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed \$50.00 for each employee who was not given appropriate notice.

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

G. *Enforcement and Penalties.*

1. Upon receiving a complaint alleging a violation of the ESSTA, DCWP must investigate such complaint. DCWP may also open an investigation to determine compliance with the ESSTA on its own initiative. Upon notification of a complaint or an investigation by DCWP, the employer must provide DCWP with a written response and any such other information as DCWP may request. If DCWP believes that a violation of the ESSTA has occurred, it has the right to issue a notice of violation to the employer.

2. DCWP has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, but is not limited to, treble damages for the wages that should have been paid; statutory damages for unlawful retaliation; and damages, including statutory damages, full compensation for wages and benefits lost, and reinstatement, for unlawful discharge. In addition, DCWP may impose on an employer found to have violated the ESSTA civil penalties not to exceed \$500.00 for a first violation, \$750.00 for a second violation within two years of the first violation, and \$1,000.00 for each succeeding violation within two years of the previous violation. When an employer has a policy or practice of not providing or refusing to allow the use of safe and sick time to its employees, DCWP may seek penalties and relief on a per employee basis.

3. Pursuant to Admin. Code § 20-924.2, (a) where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of the ESSTA, the Corporation Counsel may commence a civil action on behalf of the City in a court of competent jurisdiction by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief. Nothing in § 20-

924.2 prohibits DCWP from exercising its authority under section 20-924 or the Charter, provided that a civil action pursuant to § 20-924.2 shall not have previously been commenced.

H. *More Generous Policies and Other Legal Requirements.* Nothing in the ESSTA is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous safe and 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 safe and sick time. The ESSTA provides minimum requirements pertaining to safe and 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 safe and sick leave or time, whether paid or unpaid, or that extends other protections to employees. The ESSTA may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

EXHIBIT E

CERTIFICATES OF INSURANCE

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 _____



David Cerron
Assistant Commissioner
Business Development &
Special Events

T 212.360.3457

E david.cerron@parks.nyc.gov

**City of New York
Parks & Recreation**

The Arsenal
Central Park
New York, NY 10065
www.nyc.gov/parks

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 4)

RESOLVED, that the Franchise and Concession Review Committee ("FCRC") authorizes the New York City Department of Parks & Recreation to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into a Sole Source License Agreement with the Times Square District Management Association, Inc. ("Licensee") for the maintenance and operation of Father Duffy Square in Manhattan including the collection of special event concession fees. The agreement will provide for one (1) ten (10)-year term with two (2) five (5)-year renewal options. Licensee may collect sixty percent (60%) of the Special Event concession fees ("Fees") from third parties under Section 2-10 of Parks Rules and Regulations. Licensee shall use all fees it collects to offset Licensee's costs of providing maintenance and operation services under this License Agreement. The remaining forty percent (40%) of the Fees is to be collected by Parks.

**THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON**

3/12/2025

Signed: _____

Title: City Chief Procurement Officer

Date: _____



**Department of
Social Services**

Human Resources
Administration

Department of
Homeless Services

W-2-196
Rev. 10/23

Office of Contracts

Molly Wasow Park
Commissioner

Ann Marie Scalia
General Counsel

Vincent Pullo
Agency Chief Contracting
Officer

150 Greenwich Street
New York, NY 10007

929 221 6347 tel

pullov@dss.nyc.gov

MEMORANDUM

DATE: January 31, 2025

TO: The Honorable Antonio Reynoso, Brooklyn Borough President
Spencer Williams, Director of Land Use & Topography, and Brit Byrd, Senior Planner

Eric McClure, Chairperson, and Michael Racioppo, District Manager
Brooklyn Community Board 6

FROM: Vincent Pullo *Vincent Pullo*

**SUBJECT: Intent to Seek FCRC Approval to Negotiate a Sole Source License
Agreement with YMCA of Greater New York for Park Slope Armory**

In accordance with Section 1-16 of the Concession Rules of the City of New York, the New York City Department of Homeless Services ("DHS") is seeking Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a significant sole source concession agreement with the YMCA of Greater New York for the Operation, Management and Maintenance of the Park Slope Armory Indoor Athletic Facility and Community Center, located at 361 15th Street, Brooklyn, New York.

This concession has been determined not to be a major concession as defined in Chapter 7 of the Rules of the City Planning Commission.

If you have any questions or comments, please feel free to contact me at the number and/or e-mail above.

Thank you.

Rule 1-16: Different Procedure

Concession Agreement Pre-Solicitation Review Memorandum Cover Sheet

Concession Title Park Slope Armory License Agreement **Concession ID** 07125C001

Description License Agreement for the Operation, Management and Maintenance of the Park Slope Armory Indoor Athletic Facility and Community Center **Agency** NYC Department of Homeless Services ("DHS")

☒ Additional information has been attached to this document (please use the "Additional Information Form" available on BuyWise)

Proposed Concession Justification

The Agency has determined it is practicable or advantageous to use a Different Procedure over other methods because: YMCA has been continuously operating facility since 2009. See attached "Additional Information Form"

Indicate the Different Procedure utilized

☒ Sole Source ☐ Amendment
☐ Not-for-Profit Agreement
☐ Other _____

Proposed Concession Details

Concessionaire YMCA of Greater New York ☐ Not yet determined
EIN/TIN 13-1624228
Initial Term 10 Years
Renewal Option(s) One (1) Renewal up to 10 Years
Total Potential Term Up to 20 years
Concession Site(s) ☒ Yes ☐ No
Address 361 15th Street
Brooklyn, NY 11215
Borough Brooklyn Community Board 6
Block# 1102 Lot# 12

Proposed Concession Revenue

(Check all that apply)

☐ Annual Minimum Fee \$ _____
☐ Gross Receipts _____ %
☐ The Greater of Annual Minimum Fee(s) of \$ _____ vs _____ % of Gross Receipts
☒ Other Formula

Prior Concession Details

☐ N/A (No Prior Concession)

Concessionaire YMCA of Greater New York ☒ EIN or ☐ SSN # 13-1624228
Initial Term 05/27/09 to 5/27/19
Renewal Option(s) ___/___/___ to ___/___/___
Total Potential Term ___/___/___ to ___/___/___
Concession Site(s) ☒ Yes ☐ No
Address 361 15th Street
Brooklyn, NY 11215
Borough Brooklyn Community Board 6
Block# 1102 Lot# 12

Prior Concession Revenue

(Check all that apply)

☐ Annual Minimum Fee \$ _____
☐ Gross Receipts _____ %
☐ The Greater of Annual Minimum Fee(s) of \$ _____ vs _____ % of Gross Receipts
☒ Other Formula

Community Board / Borough President Notice Requirements (Check all that apply)

This is a Significant Concession ☒ Yes ☐ No

(if yes, please select all applicable boxes below)

☒ Total potential term \geq 10 years
☐ Projected annual income/value to City $>$ \$100,000
☐ Major Concession

This is a Major Concession ☐ Yes ☒ No

(if yes, please be aware the award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter)

☒ Agency notified affected Community Boards and Borough Presidents on 01/31/2025

Intent to Seek a Different Procedure

☒ Agency notified affected Community Boards and Borough Presidents on 01/31/2025 (at least 40 days prior to bringing the item to an FCRC meeting) that it intends to seek Committee approval of a Different Procedure. A copy of this notice has been provided to the Mayor's Office of Contract Services for distribution to the committee

Authorized Signatures

Agency Staff

This is to certify that the information presented herein is accurate

Signature Vincent Pullo

Name Vincent Pullo

Title Agency Chief Contracting Officer Date February 13, 2025

City Chief Procurement Officer

This is to certify that the agency's plan presented herein will comply with the prescribed procedural requisites for the award of the subject concession

Signature _____ City Chief Procurement Officer

Date _____

For Agency Use With Concession Forms

Park Slope Armory License Agreement

07125C001

Concession Title		Concession ID	
Description	License Agreement for the Operation, Management, and Maintenance of the Park Slope Armory Indoor Athletic Facility and Community Center.	Agency	NYC Department of Homeless Services ("DHS")

DHS is requesting approval to negotiate a sole source license agreement with the YMCA of Greater New York's ("YMCA") for the Operation, Management and Maintenance of the Park Slope Armory Indoor Athletic Facility and Community Center (the "License Agreement"). As discussed below, the YMCA is uniquely qualified to operate the license agreement that is not only cost neutral to the City, but allows the facility to maintain a reinvestment fund for future use.

The YMCA has operated the Park Slope Armory as an Indoor Athletic Facility and Community Center since 2009 and is seeking a new 10 year agreement with a 10 year renewal period, which would be based on similar terms. Subject to the terms of the prior License Agreement, the YMCA covers the cost to operate the facility. While the YMCA does not pay a concession fee or a percentage of gross receipts, the YMCA, per the License Agreement, is obligated to reinvest in the facility. DSS intends to re-negotiate the License Agreement's payment provision to ensure the facility's cost neutrality to the City, but reinforces the City's partnership with the YMCA. As part of the reinvestment fund, any excess revenues would be deposited in a separate interest bearing account that would be used for future operating and capital improvements. Note that DSS has a similar model when operating their Multi-service Centers.

Since assuming operating responsibility of the facility in 2009, the YMCA has built the Park Slope Armory into a highly impactful community center. At present, the facility serves over 10,000 community members annually, including almost 3,800 youth and teens. The facility has also served as a critical recreational resource for local schools, including PS 107 (who use the facility as a school gymnasium for four hour each day) and for the NYC Board of Elections (who work with the Y to host early voting at the site.) Note that the License Agreement will require similar accessibility for the community.

Given this notable impact, the YMCA's compliance with the existing License Agreement, the community's widespread support for the YMCA's continued operating of the facility, and the payment structure of the License Agreement, YMCA is the only source to provide this concession. Therefore, DHS is respectfully requesting approval to enter into sole source negotiations for a 10 year license agreement.

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 5)

RESOLVED, that the Franchise and Concession Review Committee ("FCRC") authorizes the New York City Department of Homeless Services (DHS) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a sole source License Agreement with the YMCA of Greater New York ("YMCA") for The Operation, Management and Maintenance of the Park Slope Armory Indoor Athletic Facility and Community Center.

BE IT FURTHER RESOLVED, that DHS shall submit the sole source agreement it proposes to enter into with the YMCA to the FCRC for approval.

**THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON**

3/12/2025

Signed: _____

Title: City Chief Procurement Officer

Date: _____

Rule 1-16: Different Procedure

Concession Agreement Recommendation For Award Memorandum Cover Sheet

Concession Title Gennaro Jewelers Inc. **Concession ID** NYCCO-2024-003

Description Non-Exclusive Use of City-Owned Trademarks on Merchandise **Agency** New York City Tourism + Conventions. on behalf of NYC Department of Small Business Services

☒ Additional information has been attached to this document (please use the "Additional Information Form" available on BuyWise)

Recommended Concessionaire

Name Gennaro Jewelers Inc. Telephone (516) 785-0134
Address 410 Bedford Avenue, Bellmore, New York, 11710 ☒ EIN or ☐ SSN # 11-2592876
☐ Not-for-Profit Organization ☐ Certified M/WBE by SBS

Recommended Concession Agreement Term

Initial Term Jan 1, 2025 to Dec 31, 2027 Concession Site(s) ☐ Yes ☒ No
Renewal Option(s) 1/1/2028 to 12/31/2029 Address _____
_____ to _____
Total Potential Term 5 years Borough _____ Community Board _____
☐ >20 years – FCRC unanimously approved term on ____/____/____ Block# _____ Lot# _____

Recommended Annual Revenue (Check all that apply)

☐ Annual Fee(s) \$ _____
☐ Gross Receipts _____ %
☐ The Greater of Annual Minimum Fee(s) of \$ _____ vs _____ % of Gross Receipts
☒ Other See additional Form

Selection Procedure Requirements

Please select the appropriate Different Procedure method justification below:

- ☒ Sole Source
- ☐ Amendment or extension to an existing concession agreement
- ☐ Not-for-Profit concession agreement
- ☐ Other (Please specify)

Award is a Major Concession

☐ Yes – Award was approved pursuant to Sections 197-c and 197-d of the NYC Charter as follows:
☐ CPC approved on ____/____/____
☐ City Council approved on ____/____/____
☐ N/A
☒ No

Negotiation Requirements

Below, please describe the nature of negotiations conducted, including with respect to the amount of revenue offered:

New York City Tourism + Conventions/ SBS negotiated with Gennaro Jewelers Inc, during the term Licensee shall pay to New York City Tourism + Conventions the higher of either the minimum fee of Ten Thousand Five hundred Dollars (\$10,500) vs. ten percent (10%) of net sales. Licensor shall have the option in its sole discretion of renewing this License Agreement on substantially the same terms and conditions for a period of Two (2) years.

Award Requirements

The agency determined that the award of this concession is in the best interest of the City because:

Please see additional information form.

Rule 1-16: Different Procedure

Concession Agreement Recommendation For Award Memorandum Cover Sheet

Public Hearing Requirements

(Only applicable for significant concessions)

☐ [IF REQUIRED] a public hearing was conducted on: ____/____/____

Subject concession is a (check one): ☐ **Citywide** or ☐ **NOT Citywide** concession and Agency hereby certifies that a notice summarizing the terms and conditions of the proposed concession, and the time, date and location of the public hearing was published once in the City Record and given to all affected CB-BP and the Committee Members on ____/____/____ (not less than 15 days prior to the hearing date). In addition, if you have posted this notice publicly elsewhere, please describe below:

☒ Subject concession is non-significant. No public hearing is required

FCRC Approval

☒ FCRC approved this concession agreement on 3 / 12 / 2025 (date of the FCRC public meeting)

Votes in favor: ____ Votes against: ____

OR

☐ The concession was not subject to approval of the FCRC because it has a term of less than 30 days and is not subject to renewal

Law Department approved concession agreement on: ____/____/____

Authorized Signatures

Agency Staff

This is to certify that the information presented herein is accurate and that I find the proposed concessionaire to be responsible and approve of the award of the subject concession agreement

Signature _____

Name _____

Title _____ Date _____

Certificate of Procedural Requisites

This is to certify that the agency has complied with the prescribed procedural requisites for award of the subject concession agreement

Signature _____ Date _____


City Chief Procurement Officer

For Agency Use With Concession Forms

Genarro Jewelers, Inc .

NYCCO-2024-003

Concession Title _____ **Concession ID** _____

Description Non-Exclusive Use of City-Owned Trademarks on Merchandise **Agency** New York City Tourism + Conventions. on behalf of NYC Department of Small Business Services 

During the term Licensee shall pay to New York City Tourism + Conventions the higher of either the minimum fee of Ten Thousand Five hundred Dollars (\$10,500) vs. ten percent (10%) of net sales. Licenser shall have the option in its sole discretion of renewing this License Agreement on substantially the same terms and conditions for a period of Two (2) years.

AWARD REQUIREMENT:(full)

The agency determined that the award of this concession is in the best interest of the City because Gennaro Jewelers, Inc. has a long-standing, successful track record as an authorized licensee of the City's Licensing Program since 2007. Over the years, Gennaro has demonstrated exceptional performance, producing high-quality merchandise that meets the City's specifications. Additionally, Gennaro has invested approximately \$90,000 in the development of unique molds and dies tailored to the City's trademarks, which are integral to the production of their jewelry and watches. Given that no other manufacturer has made similar investments in these molds and dies, it would be inefficient for the City to engage another manufacturer who would need to make a similar financial investment. Furthermore, Gennaro's products continue to meet consumer demand and remain a popular choice among the public and special groups such as current and former members of the NYPD. Therefore, continuing the relationship with Gennaro is in the City's best interest, as it ensures the use of existing assets while maintaining high-quality products for the public and preserving the integrity of the City's licensing program.

3. Record of Satisfactory Performance(FULL)

Gennaro Jewelers, Inc. has been an authorized licensee of the City's Licensing Program since 2007. Over this period, Gennaro has consistently adhered to the City's specifications and has demonstrated a strong track record of producing high-quality merchandise. They have developed over 50 unique molds and dies to the City's specifications, with significant financial investment in these molds. Their past performance has shown that they are a responsible and reliable licensee, and there have been no indications of performance issues.

LICENSE AGREEMENT

AGREEMENT made this _____ day of _____, 2025, by and between the City of New York (the “City” or “Licensor”), acting by and through the New York City Department of Small Business Services with its principal place of business located at 110 Williams Street, 2nd Floor, New York, NY 10038, and Gennaro Jewelers, Inc., a corporation organized and existing under the laws of the State of New York with its principal place of business located at 410 Bedford Avenue, Bellmore Village, NY 11710, (hereinafter “Licensee”).

IN CONSIDERATION OF the mutual promises, covenants and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION I (License)

Subject to the limitations, terms and conditions set forth herein, Licensor hereby grants to Licensee a limited, revocable non-exclusive license to use the trademarks and service marks listed in Exhibit 1 hereto (individually and/or collectively the “Property”) solely in the manner approved in advance in writing by Licensor during the Term in connection with the manufacture, advertising, promotion, sale, and offering for sale of the products (“Licensed Products”) listed in Exhibit 2 in the United States (including its territories and possessions) and Canada (“Territory”). Licensed Products listed in Exhibit 2 shall be sold only in the distribution channels defined in Exhibit 3.

The license granted herein shall be personal in nature, and it is expressly understood and agreed that Licensee has no right to sublicense, assign, convey or transfer in any manner to any other person or entity any rights granted to it hereunder. Any attempt by Licensee, or anyone acting on its behalf, to sublicense, assign, convey or otherwise transfer the license granted herein shall be null and void and shall be grounds for immediate termination of this License Agreement by the City. All sales of Licensed Products pursuant to this License Agreement shall be made by or through Licensee, who agrees to account to Licensor for all sales in the Territory. The City hereby appoints as its agent for all purposes under this License Agreement NYC & Company, Inc., a not-for-profit corporation organized and existing under the laws of the State of New York and having an address at 1 Rockefeller Plaza, 5th floor New York, NY 10020 (“NYC & Company”).

SECTION II (Express Conditions and Limitations)

The license granted herein is subject to the following express conditions and limitations:

(a) Licensee agrees to use the applicable trademark and copyright notices as directed by Licensor (™, ® or ©), as well as any additional notations directed by Licensor in connection with the first and most prominent usages of the Property on or in connection with all Licensed Products, hang tags, and packaging: “All New York City logos and marks depicted herein are the property of the City of New York and may not be reproduced without written consent. © 2025 (or other year of initial publication). City of New York. All rights reserved.” Licensee agrees to display the applicable notices and notations as directed by the City on all web sites, displays, advertising, sales brochures, and other promotional materials for each Licensed Product (hereinafter the “Promotional Materials”): “All New York City logos and marks depicted herein are the property of the City of New York and may not be used or reproduced without prior written consent. © 2025 (or other initial year of publication). City of New York. All rights reserved.” Any shortened version of such notices may be used only with the City’s prior written approval.

(b) Licensee agrees that it will not use the Property in any advertising, promotion, sale, or offering for sale of the Licensed Products except as depicted in Exhibit 2 hereto, or as approved by the City in advance in writing.

(c) Information labels which include the statements set forth in Exhibit 4, attached hereto and made a part hereof, shall be affixed to the Licensed Product, or to the packaging for the Licensed Product. The City may, from time to time after consultation with Licensee, amend the language of the labels upon written notice thereof to Licensee. Licensee shall purchase such hangtags, holograms and/or adhesive labels that identify and authenticate the Licensed Product ("Product Authentication Materials") as required by the City from the City's authorized supplier of Product Authentication Materials. Such Product Authentication Materials shall be displayed in connection with Licensed Products sold or offered for sale by Licensee in a form and location specified by the City.

(d) The Property shall not be used in connection with the trademarks, service marks, trade names, corporate names, or personal names of any third party, except with the prior written consent of the City.

(e) The Property shall not be used by Licensee or any entity or individual controlled directly or indirectly by Licensee as or as any part of its corporate name, trade name, fictitious name, "d/b/a," symbol, logo, or other identifier.

(f) The Licensed Product and Licensee's manufacture, sales, promotion, marketing and selling of the Licensed Product shall be in full compliance (at Licensee's sole cost and expense) with all applicable federal, state and local statutes, rules, regulations and orders. If Licensee is required to or chooses to recall or remove the Licensed Product to maintain conformity to any such statutes, rules, regulations or orders, Licensee shall bear all costs, expenses and charges caused by or related to such recall or modification.

(g) No license is granted hereunder for the use of the Property for any purpose other than upon or in connection with the Licensed Product. No license is granted hereunder for the manufacture, sale or distribution of Licensed Products to be used for publicity purposes, in combination sales, as giveaways, or to be disposed of under similar methods of merchandising. In the event that Licensee desires to sell Licensed Products for such purposes, Licensee acknowledges and agrees that it must first seek and obtain a separate license therefore from the City, and that the user thereof must also obtain a separate license from Licensor for such use of the Licensed Products. Licensee acknowledges that such separate license may be withheld for any reason.

(h) Licensee may manufacture, promote, advertise, sell, and offer for sale the Licensed Product only in the form approved by the City.

(i) Subject to the City's prior written approval in the City's sole discretion, Licensee agrees to adhere to such quality and ethical standards as may be provided by the City from time to time. The current quality control guidelines and ethical standards in effect are attached hereto as Exhibit 5 and 6.

(j) Subject to the City's prior written approval in the City's sole discretion, Licensee shall sell the Licensed Products in the Territory. The City may object to the continued sale of any Licensed Products that the City determines in its sole discretion to be inconsistent with the goodwill and reputation represented by the Property, or otherwise not in the best interests of the City.

(k) Licensee agrees and acknowledges that its license extends only to the Territory, and that it has no rights in the Property or to export, sell or authorize or permit the sale of any Licensed Products or other products or services bearing or otherwise associated with the Property outside the Territory, or any such proposed or potential sales that Licensee reasonably knows or should know would occur outside the Territory.

(l) Except to the extent that exclusive rights are explicitly granted hereunder, the parties agree and acknowledge that the City reserves the right to use itself or license to others the right to use the Property on any products or services, including those specifically defined as Licensed Products under this License Agreement.

(m) Co-Op Budget – Licensee will provide NYC & Company with a minimum of one hundred (100) units per year to be used, in their sole discretion, as promotional products.

SECTION III (Term)

This License Agreement shall become effective upon written notice from NYC & Company to Licensee (the "Effective Date"). The term (the "Initial Term") of this License Agreement shall commence January 1, 2025 and shall continue through December 31, 2027, unless sooner terminated pursuant to the terms and conditions of this License Agreement. Licensor shall have the option in its sole discretion of renewing this License Agreement on substantially the same terms and conditions for a period of Two (2) years (together with the Initial Term, the "Term"). Nothing herein shall be construed as obligating Licensor to exercise its renewal option.

SECTION IV (License Years)

For purposes of administering this License Agreement and of computing royalty payments owing from Licensee to the City hereunder, the term "License Year" shall apply to each calendar year during the Term.

SECTION V (Royalties)

In each License Year of this License Agreement, for Licensed Products bearing the Property, Licensee shall pay to NYC & Company for the license granted herein a royalty equal to ten percent (10%) of Net Sales. The term Net Sales means the gross invoice price billed to purchasers of Licensed Products (whether sold by Licensee or any person or entity acting on behalf of Licensee) less only promotional allowances, taxes, freight charges (if separately stated) and such other discounts as may be approved in writing by NYC & Company, and any actual and adequately documented returns. Net Sales shall include insurance proceeds received by Licensee in payment for Licensed Products. Licensed Products shall be considered sold (and therefore included in Net Sales and subject to royalty payments) when they are billed, invoiced, shipped, or paid for, whichever occurs first. No costs incurred in the manufacture, sale, offering for sale, promotion, advertisement, or shipment of the Licensed Products shall be deducted, nor shall deductions be made for cash, taxes, tariffs, freight, advertising, any other discounts or uncollectible accounts, or any other purpose. Sales of Licensed Product made other than in an arm's length transaction shall be deemed to have been made at the regular wholesale price for such Licensed Products.

SECTION VI (Guaranteed Minimum Royalty)

Notwithstanding any other royalty payment requirements of this License Agreement, including those set forth above, Licensee shall pay to NYC & Company a guaranteed minimum royalty ("Guaranteed Minimum Royalty") of ten thousand five hundred dollars (\$10,500) on or before December 31, 2027.

All Guaranteed Minimum Royalty payments shall be nonrefundable and shall be made whatever the Net Sales of the Licensed Products have been or are for any of the License Years, and shall be applied to and credited as advances against Licensee's liability for royalties for each License Year for which the License Agreement is in effect. No carry over of excess earned royalty (over the Guaranteed Minimum Royalty) or deficiency of earned royalty (under the Guaranteed Minimum Royalty) into subsequent license periods within the term shall be allowed.

SECTION VII

(Royalty Payments, Accounting and Statements)

Licensee shall furnish to NYC & Company the following no later than thirty (30) days after the end of each calendar quarter (beginning with the calendar quarter in which the initial shipment of Licensed Products covered by this License Agreement is made):

(a) complete and accurate statements in a format approved by NYC & Company and certified in writing to be accurate by an officer of Licensee, itemized by (a) product item number; (b) City Agency and/or specific trademark associated with such Agency (e.g., FDNY, NYPD) and showing the net number of units sold inclusive of returns, item description and Average Sales price of the Licensed Products sold by Licensee during the preceding quarter. Such statements shall be furnished to NYC & Company whether or not any Licensed Products have been sold during the preceding quarter; and

(b) payment of the earned royalty and/or guaranteed minimum royalty due from sales during the preceding quarter. In the event Licensee's earned royalty in a given quarter is less than the guaranteed minimum royalty, then payment shall include the difference between earned royalty and the guaranteed minimum royalty.

The receipt or acceptance by NYC & Company or the City of any statements furnished pursuant to this License Agreement or any royalties paid hereunder (or the cashing of any royalty checks paid hereunder) shall not preclude NYC & Company or the City from questioning the correctness of such statement or payment at any time. In the event any inconsistencies or mistakes are discovered in such statements or payments, they shall immediately be rectified and the appropriate payments made by Licensee. In the event of an overpayment by Licensee, Licensee may deduct such mutually verified overpayment from any earned royalty or guaranteed minimum royalty payment due with the next regular quarterly royalty statement and payment. In the event no further royalty payments would be forthcoming after discovery and mutual verification of the payment, then Licensee shall receive a refund of such overpayment within thirty (30) days after its written request for a refund is received by NYC & Company.

In the event that Licensee fails to make any payments, including, advances, guaranteed minimum royalty, earned royalty and audit findings, when such payments are due under this License Agreement, interest shall be charged at an annual rate of eighteen percent (18%), or the maximum rate allowed by law, whichever is lower. All payments made hereunder shall be in United States currency drawn on a United States bank. Licensee shall keep accurate books of account and records covering all transactions related to this License Agreement for at least six (6) years after termination of this License Agreement.

SECTION VIII

(Audit Rights)

The City or its authorized agent shall have the right during business hours upon forty-eight (48) hours' advance notice to examine and request copies of Licensee's books, records, and accounts and all other documents and materials in the possession or under the control of Licensee relating to the sale of the Licensed Product or this License Agreement to such extent as may be necessary to determine the accuracy or inaccuracy of any royalty statements submitted by Licensee to Licensor. Licensee shall segregate its records and agrees that such audit may be used as a basis for settlement of charges under this License Agreement. The City may also at any time select any independent accounting firm to review Licensee's books, records and accounts, and to check shipments and verify the account (hereinafter referred to as the "Audit"). In the event that the Audit reveals any underpayment by Licensee to Licensor, Licensee shall remit payment for the amount shown to be due within ten (10) days, of receipt of official audit report plus a late charge in the amount of eighteen percent (18%) per annum, or the maximum rate allowed by law whichever is lower, on all amounts shown to be owing by Licensee. In the event that the Audit determines that Licensee has underpaid by an amount equal to five percent (5%) or more of the total amount shown to be due to Licensor for the period audited, Licensee shall reimburse Licensor or its agent for all costs and expenses of the Audit. In addition, if the discrepancy is an amount equal to five percent (5%) or more and a discrepancy or underpayment of 5% or more had been found in at least one prior instance,

Licensor may terminate this License Agreement by giving Licensee notice within sixty (60) days after receipt of the audit report disclosing the discrepancy. Licensee shall retain all books of account and records relating to this License Agreement for at least six (6) years after the termination or expiration of this License Agreement, and any renewals thereof and Licensor's right to audit such records during the duration of this License Agreement and for six (6) years thereafter. The parties acknowledge and agree that the powers, duties, and obligations of the Comptroller of the City of New York pursuant to the provisions of the New York City Charter shall not be diminished, compromised, or abridged in any way.

SECTION IX (No Assignment)

This License Agreement is personal to Licensee and may not be assigned in whole or in part by Licensee without the prior written consent of the City, which may be withheld in the sole discretion of the City. Any attempted or purported assignment or other transfer, sublicense, mortgage or other encumbrance of this License Agreement by Licensee without the prior written approval of the City shall be null and void and grounds for immediate termination of this License Agreement by the City.

SECTION X (Trademark Ownership)

(a) Licensee agrees that by virtue of this License Agreement it does not and shall not claim any right, title, or interest in the Property or any part thereof (except the right to use them in accordance with this License Agreement), and that any and all uses thereof by Licensee shall inure to the benefit of the City. Licensee acknowledges the City's sole right, title, and interest in and to, and ownership of the Property and the validity of the trademarks and service marks that are part of the Property and the City's rights therein. Licensee agrees that it will not raise or cause to be raised any challenges, questions, or objections to the validity, registrability, or enforceability of the Property, to this License Agreement or to the validity of the Property and the City's rights therein, and shall not contest such right and title, nor do or permit to be done any act or omission which will in any way impair the rights of the City with respect to such Property. Any violation of this paragraph shall constitute an immediate breach of this License Agreement and cause for immediate termination by the City.

(b) Licensee agrees to reasonably assist the City in protecting the City's rights to the Property, including but not limited to reporting to the City any infringement or imitation of the Property of which Licensee becomes aware. The City shall have the sole right to determine whether to institute litigation with respect to such infringements, as well as the sole right to select counsel. The City may commence or prosecute any claims or suits for infringement of the Property in its own name or the name of Licensee or join Licensee as a party thereto. The City shall be entitled to keep the entire amount of any recovery. If the City brings an action against any infringement of the Property, Licensee shall cooperate with the City and lend whatever assistance is necessary, subject to being reimbursed for its reasonable and pre-approved out-of-pocket expenses.

(c) If claims are made against the City, NYC & Company, or Licensee with respect to the use of the Property in connection with the Licensed Products, then the parties agree to consult with each other on a suitable course of action. In no event shall Licensee, without the prior written consent of the City, have the right to acknowledge the validity of the claim of such party, to obtain or seek a license from such party, or to take any other action which might impair the ability of the City to defend or otherwise contest the claim of such party. The City shall have the right to participate at its own expense in the defense of any claims or suit instituted against Licensee with respect to the use by Licensee of the Property.

(d) Licensee agrees to make modifications requested by the City in Licensee's use of the Property or to discontinue use of the Property on the Licensed Products which are involved, if the City, in its sole discretion, determines such action to be necessary or desirable to resolve or settle a claim or suit or to eliminate the threat of a claim or suit by any party.

SECTION XI (Goodwill)

(a) Licensee recognizes and acknowledges that the Property and the City's name and reputation are the exclusive property of the City and that they communicate to the public, worldwide, a reputation for high standards of quality and service, which reputation and goodwill have been and continue to be unique to the City. Licensee further recognizes and acknowledges that the Property has acquired secondary meaning in the mind of the public. The Property shall not be used in connection with any illegal, illicit or immoral purpose or activity, or in any manner which would be inconsistent with or damaging to the City's name and reputation. The City shall have the right to terminate this License Agreement immediately, upon written notice, in the event that any part of the Property is used by Licensee in connection with any illegal, illicit or immoral activity. In addition, in the event that any part of the Property is used by Licensee in any way which, in the reasonable judgment of the City, is inconsistent with or damaging to the City's name or reputation, the City shall so notify Licensee in writing and this License Agreement shall terminate unless Licensee ceases and halts all such uses immediately.

(b) Licensee shall use the Property only in the manner specified by the City. Licensee acknowledges and agrees that all use of and goodwill in the Property shall inure to the sole benefit of the City. Licensee shall not acquire any rights in the Property by virtue of any use it makes of the Property. Licensee shall not attempt to register the Property alone or as part of any other trademark, service mark, trade name, or corporate identifier (including without limitation its own trademark), nor shall Licensee use, adopt as its own, or attempt to register any marks, names, domain names, designations, or indicia that are the same as or similar to the Property.

(c) Licensee agrees that it will apply the proper notations on all Licensed Products, tags, labels, package inserts, containers, packaging, advertising, promotional and display materials or the like containing the Property as set forth in Exhibits 2 and 3 hereto.

(d) Any art work or other materials conceived under or resulting from this License Agreement, including but not limited to copyrighted materials and trademarks, trade names, service marks, service names and trade dress and the like, whether developed by Licensee or on behalf of Licensee shall be considered "work made for hire" within the meaning of 17 U.S.C. §101 and is the exclusive property of the City upon creation. In the event that such materials are deemed not to be a work made for hire, Licensee hereby irrevocably assigns to the City its entire right, title, and interest in and to such work and any derivative works thereof (including without limitation all rights of copyright). Licensee agrees to execute any documents as may be deemed necessary or desirable by the City to register in its own name, record, confirm, clarify, or otherwise cause the foregoing assignment of rights to the City to have full legal effect worldwide. If Licensee desires to develop any new or different design for any mark, symbol, logo character or other element included within the Property, Licensee shall first obtain the City's written approval, and in any event all such designs shall be fully subject to the provisions of this paragraph and owned in full by the City.

(e) Licensee acknowledges that, from time to time and without notice to Licensee, it may be necessary or desirable for the City to modify certain elements of the Property in connection with the Licensed Products, to include additional elements to the Property, or to discontinue use of some or all of the elements of the Property. Accordingly, the City does not represent or warrant that the Property or any elements thereof will be maintained or used in any particular fashion. Any new elements or modifications to existing elements used by the City following the execution of this License Agreement may be included in, or deleted from (as applicable), the Property at the sole discretion of the City. Licensee agrees to comply with the City's written request to include such elements as, or to delete such elements from, the Property within a reasonable period of time from Licensee's receipt of such written request.

(f) The City shall have the right, but shall not be under any obligation, to use the Property, Licensed Products, and/or the name of Licensee so as to give the Property, and/or the Licensed Products full and favorable prominence and publicity. The City shall be under no obligation whatsoever to use or continue using the Property, the Licensed Products and/or the name of Licensee in connection with its products or services.

SECTION XII (Termination Rights)

Without prejudice to any other rights, the City has the right to terminate this License Agreement upon written notice to Licensee, effective immediately, at any time that any of the following occurs:

(a) If Licensee shall cease to manufacture and sell the Licensed Products for any reason (except for a cause beyond the control of Licensee, including "acts of God"), for a period of three (3) consecutive months or more.

(b) If Licensee shall fail to make any payment due hereunder or to deliver any of the statements herein referred to, or breaches any other obligation hereunder, and if such default shall continue for a period of thirty (30) days after written notice of such default is sent by the City to Licensee. Licensee shall pay interest on the unpaid balance thereof from and including the date such payment becomes due until the date the entire amount is paid in full at a rate equal to the prime rate being charged in New York, New York, by Citibank as of the close of business on the date the payment first becomes due plus five percent (5%) (or the maximum rate which legally can be paid by Licensee, if lower).

(c) If Licensee defaults on any obligation that is secured by a security interest in any Licensed Product, Licensee shall immediately and automatically no longer have the right to sell or otherwise transfer Licensed Products or otherwise use the Property until it notifies the City of the occurrence of such default on any such obligation, and Licenser notifies Licensee that Licenser has elected to waive its right to terminate this License Agreement.

(d) If Licensee makes any assignment for the benefit of creditors, or files any petition under Title 11, United States Code, or files in bankruptcy or is adjudicated as bankrupt or insolvent, or if any trustee in bankruptcy or insolvency is appointed under the laws of the United States or of any State. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, sheriff or any other officer of the court or official charged with taking over custody of Licensee's assets or business may continue this License Agreement or exploit the Property if this License Agreement terminates pursuant to this paragraph. Notwithstanding, if, pursuant to Title 11, United States Code, or any amendment or successor thereto, a trustee in bankruptcy or Licensee, as debtor, is permitted to assume this License Agreement and does so and, thereafter, wishes to assign this License Agreement to a third party, and that assignment complies with Title 11 of the United States Code, the trustee or Licensee shall notify Licenser of same. Said notice shall set forth the name and address of the proposed assignee, the proposed consideration for assignment and all other relevant details of the assignment. Such notice shall be deemed to grant the Licenser the option to have this License Agreement assigned to such assignee for such consideration, or its equivalent in money and upon such terms as specified in the notice. The option may be exercised by written notice to the trustee or Licensee by Licenser within fifteen (15) days from Licenser's receipt of the notice, or within such shorter time as may be deemed appropriate by the court in a bankruptcy proceeding. If Licenser fails to give notice to the Licensee or trustee within said period, the Licensee or trustee may execute the assignment to the entity referred to in the notice for the consideration and on the terms specified therein. Nothing contained herein shall be deemed to preclude or impair any rights Licenser may have as a creditor in any bankruptcy proceeding.

(e) If Licenser determines that this License Agreement should be terminated without cause.

(f) If Licensee violates the non-assignment or change in controlling interest provisions of this License Agreement.

(g) If Licensee fails to sell Licensed Products within six months of the date of this License Agreement.

Upon termination or expiration of this License Agreement, except as otherwise provided in Section XIII, during the sell-off period, all royalties earned and all applicable guaranteed minimum royalties shall become immediately due and payable.

SECTION XIII (Post Termination)

Upon the expiration of this License Agreement (but not upon termination pursuant to Section XII), Licensee shall be permitted ninety (90) days to sell its remaining inventory of Licensed Products. Sales under this section shall require payment of royalties and all other duties and obligations of Licensee under this License Agreement shall remain in force during the sell off period. At the end of such sell-off period, or upon termination pursuant to any other provision this License Agreement Licensee shall immediately discontinue manufacture, promotion, advertisement, and sale of Licensed Products. In addition, upon expiration or termination of this License Agreement for any reason, Licensee shall deliver to Licensor, or destroy or alter under Licensor's supervision, all molds, dies, prints or other equipment used to manufacture the Licensed Products and Promotional Materials so that such equipment no longer can be used to manufacture products or promotional materials bearing, displaying, or otherwise including the Property and shall provide Licensor with a letter confirming depletion or destruction of such inventory. Licensee acknowledges and agrees that its failure to cease manufacture, sale, advertising, or promotion of the Licensed Products upon expiration or termination of this License Agreement will result in immediate and irreparable harm to Licensor. Licensee further acknowledges and admits that Licensor has no adequate remedy at law for Licensee's failure to cease manufacture, sale, advertising, or promotion of the Licensed Products upon termination or expiration of this License Agreement, except as expressly provided for above. Licensee acknowledges and admits that, in the event of any such failure by it to cease manufacture, sale, advertising, or promotion of the Licensed Products, Licensor shall be entitled to equitable or injunctive relief against Licensee's failure, in addition to any and all other remedies at law that are available to Licensor.

SECTION XIV (Samples and Approvals)

(a) The Licensed Products shall meet or exceed the requirements imposed by any and all laws, regulations, government standards, guidelines, manufacturing codes, rules, and the like applicable to the Licensed Products. Without limiting the foregoing, no Licensed Products shall be manufactured from any flammable, explosive, toxic, or otherwise inherently dangerous materials or substances, nor designed so as to constitute any inherent danger to the consumer. Further, Licensee agrees that the Licensed Products shall be of a standard of quality at least as high as that of the product samples initially approved by Licensor so as to be suited to their exploitation and to the protection and enhancement of the Property and the goodwill pertaining thereto.

(b) The Licensed Products shall be manufactured in accordance with the manufacturing specifications, protocol, safety, and quality standards that have been reviewed and approved in writing by Licensor ("Specifications"), which, once approved, shall be deemed to be a part of this License Agreement. Licensor may amend such Specifications from time to time and shall provide Licensee with reasonable notice of such changes so that the Licensed Products may be adjusted to meet such changed quality standards, if required.

(c) The Specifications shall include at least the following information (and other information which Licensor requests regarding particular Licensed Products): (i) a description of the materials used in the Licensed Products, the materials' dimensional tolerances, performance and durability requirements, specifications that enable the materials to meet governmental regulatory requirements (if any) and such other appropriate information that will accurately describe the Licensed Products and their expected performance during use by the consumer; and (ii) a quality assurance plan that is used to assure the continuing acceptable quality of the Licensed Products. The plan shall include a description of the quality controls observed in the Licensed Products' manufacture, and the procedures followed to audit and verify continued quality and conformance to specifications of the Licensed Products, as well as applicable laws and regulations.

(d) The Specifications shall be provided to Licensee's suppliers and manufacturers of the Licensed

Products, and Licensee shall require its suppliers and manufacturers to comply with the Specifications. Licensor shall have the ability to inspect Licensee's facilities and warehouses and those of its suppliers and manufacturers at any time with or without prior notice to assure Licensee's compliance with this paragraph.

(e) Licensee agrees to submit, at the Licensor's request and at no cost to Licensor (i) initial sketches and/or design concepts; (ii) finished artwork or final proofs; (iii) prototypes or pre-production samples; and (iv) a minimum of one (1) and maximum of twelve (12) final production samples (the "Samples") of the Licensed Products (and any variations thereof), as well as initial samples of subsequent production run(s) if such subsequent production run(s) vary in any manner from prior runs, for Licensor's inspection, testing, analysis and approval prior to any sale or shipment of the Licensed Products. If requested by Licensor, such samples (together with the Specifications) shall be submitted by Licensee to an independent laboratory or other test facility approved in writing by Licensor. All costs associated with such inspection, testing and analysis shall be borne by Licensee, and the results of such inspection, testing and analysis shall be submitted to Licensor for its approval. Licensee shall also provide a reasonable number of samples of the Licensed Product to Licensor in accordance with this paragraph at reasonable intervals of no less than once every twelve (12) months during the Term, with such additional inspection, testing and analysis as Licensor may require in the manner set forth in this paragraph for purposes of product review and quality control.

(f) Licensor shall use reasonable efforts to communicate its written approval or disapproval within forty (40) days of receipt of Samples of the Licensed Products. Any Samples not expressly approved shall be deemed disapproved. If Licensor does not approve the Samples of the Licensed Products, the reasons for disapproval shall be communicated to Licensee. After the Samples are approved pursuant to this paragraph, Licensee shall not depart therefrom in any material respect without Licensor's prior written consent, and Licensor shall not withdraw its approval of the Samples except for good cause.

(g) Licensee shall adhere to Licensor's graphic and packaging standards and guidelines in the use of the Property and shall use the materials depicted in Exhibit 4 hereto, which have been approved by Licensor. To the extent that Licensee wishes to amend or alter the graphics depicted in Exhibit 4, Licensee shall submit to Licensor for Licensor's prior written approval all tags, labels, package inserts, containers, packaging, advertising, promotional, display or sales materials or the like containing or referring to the Property. Licensor shall use reasonable efforts to communicate its written approval or disapproval within forty (40) business days of its receipt of items under this paragraph. Any materials not specifically approved shall be deemed disapproved. If Licensor does not approve an item under this paragraph, the reason for such disapproval shall be communicated to Licensee.

(h) Licensee shall at its own cost handle all product warranty and/or guarantee issues, responses and compliance requirements, as well as all consumer inquiries or complaints (collectively, "Consumer Inquiries") relative to any of the Licensed Products. Licensor shall forward to Licensee for handling any and all such Consumer Inquiries that Licensor receives. Upon request by Licensor, Licensee shall advise Licensor in writing of the manner in which it handled any Consumer Inquiry. In addition, Licensee shall provide Licensor with a quarterly report (submitted with royalty reports pursuant to Section VII hereto) containing all data and information regarding Consumer Inquiries handled during the quarter.

(i) Licensee shall immediately advise Licensor of any product recall considerations or deliberations and provide Licensor with the right to attend and have input into such deliberations. Licensor shall have the ability to declare a product recall of such Licensed Products as Licensor determines in good faith after consulting with Licensee that any product recall is necessary for reasons of public health, safety, welfare or damage to reputation or good will. Licensee shall bear any and all costs related to any product recall of the Licensed Products using the Property whether voluntary, required by a governmental authority or the Licensor. Licensee shall have in place a comprehensive lot tracking program, starting with raw materials, to ensure such recall effectiveness.

(j) Licensee agrees not to use child labor in the manufacture of or otherwise in connection with any Licensed Products. The term “child” shall refer to a person younger than the local legal minimum age for employment or the age for compelling compulsory education, but in no case shall any children younger than fifteen (15) years of age (or fourteen (14) years of age where local law allows) be used to manufacture, package or sell the Licensed Products. In addition, Licensee agrees to comply with all applicable minimum wage, overtime, occupational safety and health and environmental protection laws in the manufacture and packaging of Licensed Products. Licensee shall perform all obligations under this License Agreement in accordance with applicable provisions of federal, state and local laws, rules and regulations as are in effect from time to time.

SECTION XV (Purchase Rights)

Licensor shall have the right to purchase from Licensee, at Licensee’s lowest available wholesale price, such number of royalty-free units of any Licensed Product as Licensor may from time to time specify in a notice to Licensee-

SECTION XVI (Indemnification)

Licensee hereby agrees to be solely responsible for and to indemnify, defend and hold harmless Licensor, NYC & Company, their affiliates and respective officers, agents, and employees, and to hold each of them harmless from and against any claims, judgments, demands, causes of action, damages, losses, costs and expenses, including but not limited to reasonable attorneys’ fees, which may be made or asserted by third persons in connection with the manufacture, design, sale, offering for sale, advertising, promotion or use of the Licensed Products, including those based on Licensee’s use of the Property authorized by this License Agreement. Such indemnification shall further extend to Licensee’s failure to comply with the terms of this License Agreement and Licensee’s unauthorized use of any patent, process, idea, method or device, or unfair trade practice, false advertising, trademark, copyright infringement or the like in connection with the manufacture, design, sale, advertising, promotion or use of the Licensed Products. Licensee expressly agrees that its obligations hereunder shall survive and continue beyond any termination or expiration of this License Agreement.

SECTION XVII (Existing Licenses)

Licensee hereby acknowledges that Licensor has previously granted and may continue to grant licenses to third parties for the use of the Property.

SECTION XVIII (Insurance)

During the term of this license and for at least three (3) years after the last date of sale by Licensee of any Licensed Product, Licensee agrees to carry commercial general liability insurance, including but not limited to product liability coverage, with insurer(s) that may lawfully issue the required policy and have an A.M. Best rating of at least A- / “VII”, a Standard & Poor’s rating of at least A, a Moody’s investors service rating of at least A3, a Fitch Ratings rating of at least A-, or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department. The commercial general liability insurance must: (x) be in an amount of at least one million dollars (\$1,000,000) per occurrence for bodily injury and property damage, one million dollars (\$1,000,000) for personal and advertising injury, two million dollars (\$2,000,000) policy aggregate, and two million dollars (\$2,000,000) products/completed operations; (y) be at least as broad as that provided by the latest edition of Insurance Services Office (ISO) form CG 00 01; and (z) include NYC & Company and the City, together with their officials and employees, as additional insureds under such policy with coverage at least as broad as the latest edition of either ISO form CG 20 26 or ISO

form CG 20 36 . Policies of insurance provided pursuant to this Agreement shall be primary and non-contributing to any insurance or self-insurance maintained by NYC & Company or the City.

Each year such insurance is required, Licensee shall provide NYC & Company and the City with a Certificate of Insurance, which certifies the issuance and effectiveness of such policies of insurance, each with the specified minimum limits, and the required additional insured endorsements, accompanied by either a duly executed "Certification by Insurance Broker or Agent" in the form required by the Licensor, or certified copies of all policies referenced in such Certificate of Insurance.

In the event that Licensee fails at any time to carry insurance as required herein, Licensee shall immediately notify Licensor thereof and Licensor shall have the right to terminate this Agreement immediately.

Whenever notice of occurrence, claim or suit to an insurance company is required under any such policy, Licensee shall provide timely notice thereof on behalf of both NYC & Company and the City, including their officials and employees, and shall promptly send a copy of such notice(s) to both NYC & Company and the City. The copy of such notice to NYC & Company shall be sent to the address set forth in Paragraph 22 below and the copy to the City shall be sent to c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. The existence of such insurance shall in no way limit Licensor's or NYC & Company's rights under this Agreement, at law or in equity, including the right to be indemnified as set forth in this Agreement.

Licensee waives all rights against the NYC & Company and the City, including their officials and employees, for any damages or losses that are covered under any insurance required by this Agreement (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Licensee.

SECTION XIX (Governing Law)

This License Agreement shall be construed in accordance with the laws of the State of New York, notwithstanding conflicts of laws principles. By execution of this License Agreement, Licensee consents to submit to the jurisdiction of the courts of the State of New York located in New York City and the federal courts located therein.

SECTION XX (No Partnership or Joint Venture)

Nothing in this License Agreement or in the course of performance under this License Agreement shall be construed to constitute a partnership or joint venture. Licensee shall have no right to obligate or bind Licensor in any manner whatsoever (nor shall Licensee hold itself out to any third party as being so authorized) and nothing contained herein nor in the course of performance hereunder shall give or is intended to give any right of any kind to any third party.

SECTION XXI (No Manufacturers, Importers, or Sublicensees)

Licensee shall provide Licensor with a list of the names and addresses of Licensee's manufacturers, importers and distributors and will notify Licensor of any change in such list. From time to time, Licensor may request that Licensee provide the names of its designers, raw material suppliers and/or authorized importers of the Licensed Products, and Licensee agrees to provide such information upon the request of Licensor. Licensee may sublicense rights under this License Agreement ("Sublicense") only with the prior, written approval of the Licensor, which may be withheld in Licensor's sole discretion. Each and every Sublicense granted under this License Agreement shall contain such provisions as Licensor may require, including without limitation that the Sublicense shall be assignable to the Licensor upon the written demand of the Licensor.

SECTION XXII (Notices)

All notices required to be given under the terms of this License Agreement, or which either party hereto may desire to give to the other, shall be in writing and sent by mail to the following addresses:

If to Licensors:

NYC & Company
1 Rockefeller Plaza, 5th floor
New York, NY 10020
ATTN.: Natalie Koepff
COO & General Counsel

With a copy to:

New York City Department of Small Business Services
110 Williams Street, 2nd Floor
New York, NY 10038

If to Licensee:

Gennaro Jewelers, Inc.
410 Bedford Avenue
Bellmore Village, NY 11710
Attn: Gary Hudes

SECTION XXIII (Confidentiality)

Except as otherwise required by law, Licensee agrees to, and shall cause its affiliates, agents, representatives, accountants, employees, officers and directors to: (i) treat and hold as confidential all information, reports or data, prepared, assembled, used or that Licensee comes to obtain under this License Agreement, and (ii) prior to publication, not disclose or provide access to such confidential information to any individual or organization without the prior written approval of Licensors. In the event that Licensee or Affiliate, agent, contractor, representative, employee, officer, or director of Licensee, becomes legally compelled to disclose confidential information of Licensors, Licensee must provide Licensors with prompt written notice of such requirement so that Licensors may seek a protective order or other remedy or waive compliance with this Article XXIII. In the event that such protective order or other remedy is not obtained, or compliance with this Article XXIII is waived, Licensee agrees to furnish only that portion of such confidential information which is legally required to be provided and exercise its reasonable best efforts to obtain assurances that confidential treatment will be accorded such information. Notwithstanding the foregoing, this Article XXIII shall not apply to any information that, at the time of disclosure, (i) was available publicly and not disclosed in breach of this License Agreement, (ii) was known to the receiving party without breach of an obligation of confidentiality or (iii) was learned from a third party who was not under an obligation of confidentiality. The parties agree and acknowledge that remedies at law for any breach of the obligations under this Article XXIII may be inadequate and that in addition thereto Licensors and NYC & Company are entitled to seek equitable relief, including injunction and specific performance, in the event of any such breach.

In the event that Licensee believes that specific information it submits to Licensors or NYC & Company pursuant to this Agreement should be treated confidentially by Licensors or NYC & Company, Licensee shall so advise the party receiving the information in a writing identifying the specific information. Licensors and NYC & Company agree to treat information so designated as confidential proprietary information of Licensee, consistent with legal requirements.

The City or NYC & Company may be required, pursuant to the New York State Freedom of Information Law ("FOIL") (New York Public Officers Law Section 84 et seq.), to disclose information, or any portion thereof. In the event that disclosure is requested by a third party of materials designated by Licensee as confidential or proprietary information in accordance with this Section, the Licensor or NYC & Company will provide notice to Licensee and shall consult with Licensee to evaluate the extent to which such information may be withheld from disclosure under the provisions of FOIL.

Consistent with the requirements of FOIL, the final determination regarding disclosure shall be made by Licensor or NYC & Company in their sole discretion. In the event that Licensor or NYC & Company determines in its discretion that information may not be withheld, Licensor or NYC & Company, as appropriate will provide Licensee with prompt notice of intent to disclose in order that Licensee may invoke any rights or remedies to prevent disclosure to which it believes it may be entitled under the law.

Licensee expressly acknowledges and agrees that neither the Licensor nor NYC & Company will have any obligation or liability to Licensee in the event of disclosure of materials, including materials designated by Licensee as proprietary information, provided such disclosure is in accordance with this Section.

SECTION XXIV (Investigations)

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

B. (i) 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, permit, contract, or license entered into with the City of New York, the State of New York, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City of New York, or any public benefit corporation organized under the laws of the State of New York, or;

(ii) 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 of New York 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 of New York, the State, or any political subdivision thereof or any local development corporation within the City of New York, then;

C. (i) The commission 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 (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

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

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

(i) The disqualification for a period not to exceed five (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 of New York; and/or

(ii) The cancellation or termination of any and all such existing City of New York contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this License Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City of New York 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 Licensor.

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

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

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

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

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

F. (i) 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.

(ii) 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.

(iii) 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 of New York, or otherwise transacts business with the City of New York.

(iv) 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 provision of this License Agreement the Commissioner or agency head may in his or her sole discretion terminate this License Agreement upon not less than three (3) days' written notice in the event Licensee fails to promptly report in writing to the Commissioner of

Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this License Agreement by Licensee, or affecting the performance of this License Agreement.

SECTION XXV (Miscellaneous)

A. No action at law or proceeding in equity by Licensee against Licensor or NYC & Company shall lie or be maintained upon any claim based upon this License Agreement or arising out of this License Agreement or in any way connected with this License Agreement unless Licensee has strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.

B. No action shall lie or be maintained against Licensor or NYC & Company by Licensee upon any claims based upon this License Agreement unless such action shall be commenced within six (6) months after the date of final payment hereunder, or within six (6) months of the termination or conclusion of this License Agreement, or within six (6) months after the accrual of the cause of action, whichever first occurs

C. In the event any claim is made or any action is brought against Licensor or NYC & Company in any way relating to the Agreement herein on the basis of Licensee's actions and in each case by a third party, Licensee shall diligently render to Licensor and NYC & Company without additional compensation any and all assistance which Licensor and NYC & Company may reasonably require of Licensee, subject to reimbursement for Licensee's actual, reasonable, pre-approved expenses.

D. Either party shall report to the other party in writing within ten (10) working days of the date such party becomes aware of the initiation by or against it of any legal action or proceeding in connection with or relating to this License Agreement.

E. No claim whatsoever shall be made by Licensee against any officer, agent, or employee of Licensor or NYC & Company for, or on account of, anything done or omitted in connection with this License Agreement.

F. This License Agreement may be executed in two copies, each of which shall be deemed an original. This License Agreement contains the entire understanding between the parties with respect to the subject matter hereof and replaces and supersedes all prior agreements and understandings between the parties. This License Agreement may only be amended by a writing executed by all parties.

G. Headings used herein are for convenience only and shall not be considered part of this License Agreement. This Agreement has been negotiated by the parties hereto. No provision of this License Agreement shall be strictly construed against the drafter of the language concerned, but shall be interpreted applying the most reasonable interpretation under the circumstances, giving due consideration to the intentions of the parties at the time of contracting.

H. Licensee represents and warrants to Licensor that: (i) it is duly organized and validly existing under the laws of the State of New York, (ii) it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; (iii) its execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on its part; (iv) once executed and delivered, this Agreement will constitute its legal, valid and binding obligation, enforceable in accordance with its terms; (v) there are no legal or arbitral proceedings or any proceedings by or before any governmental or regulatory authority or agency, now pending or (to the knowledge of Licensee) threatened against Licensee which, if adversely determined, could have a material adverse effect on the financial condition, operations, business or prospects of Licensee; (vi) the execution and delivery of this Agreement and any related agreement to which it is party, the consummation of the transactions herein and therein contemplated and compliance with the terms and provisions hereof and thereof, will not conflict with or result in a breach of, or require any consent under, the charter, by-laws or partnership agreement, as applicable, of Licensee, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which Licensee is a party or by which it is

bound or to which it is subject, or constitute a default under any such agreement or instrument, or result in the creation or imposition of any lien upon any of the revenues or assets of Licensee pursuant to the terms of any such agreement or instrument.

I. Licensors represents and warrants to Licensee that: (i) subject to applicable law, it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; and (ii) to the best of Licensors knowledge, the execution of and delivery of this Agreement and any related agreement to which it is party, the consummation of the transactions herein and therein contemplated and compliance with the terms and provisions hereof and thereof, will not conflict with or result in a breach of, or require any consent under any agreement or instrument to which Licensors is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.

J. Each of the parties hereto shall use all reasonable efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things necessary, proper or advisable under applicable law, and to execute and deliver such

documents and other papers, as may be required to carry out the provisions of this License Agreement and consummate and make effective the transactions contemplated by this License Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement as of the date and year first above written.

NEW YORK CITY DEPARTMENT OF SMALL BUSINESS SERVICES

By:

Its:

Date of Signature: _____

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY:

Acting Corporation Counsel

Gennaro Jewelers, Inc.,

By:

Its:

Date of Signature: _____

Exhibit I

The Property

Trademarks of the City of New York

Trademarks



Exhibit 2

Licensed Products

Personalized and non-personalized Jewelry and Accessories

Exhibit 3
Distribution Channels

1. Jewelry Stores
2. Department Stores
3. Boutiques
4. Independent souvenir shops
5. Internet
6. Police Supply shops
7. Museums

Exhibit 4

Product Labels and Graphics

City Seal Hologram

All products must include a permanent copyright notice and trademark designation etched on the back of the product. It must read “© 2025[or current year] City of New York. All Rights Reserved.”

If too little room is available to accommodate this etching, individual decisions will be made in consultation with NYC & Company, which shall have the right of prior approval over the final version.

All packaging must include at least the copyright notice “© 2025 [or current year] City of New York. All Rights Reserved.”

Exhibit 5

Quality Control Guidelines

1. All Licensed Products and related materials associated with NYC & Company's licensing program, including but not limited to packaging, print ads, advertising initiatives, point of purchase displays, story boards, scripts, molds, brochures, videos, DVDs, labels, hangtags, catalogs, sales sheets and all collateral materials must be submitted to NYC & Company for written approval prior to any production.
2. Each product submitted for approval must, at every stage, be submitted via NYC & Company's online product approval system, Trademarx. Licensee will be introduced and set up with Trademarx upon contract execution.
3. All prototypes of any items which utilize the Licensed Property must be submitted at each stage of production. Based on written approval, Licensee may proceed to the next step.
4. Contracts will contain NYC & Company's entire sample submission/ approval process. The following brief steps will be required for all product submissions:
 - Initial sketches and/ or design concepts
 - Finished artwork or final proofs
 - Prototypes or pre-production samples
 - Production samples
5. Licensees are required to submit all licensed products in each style and variation.
6. Product submissions shall be reviewed and evaluated for:
 - Accuracy of logo representation
 - Proper use of Pantone colors
 - Proper use of trademark designations
 - General appearance and quality of product
 - NYC & Company policies and standards
7. All approvals granted are conditioned upon FULL EXECUTION OF THE LICENSING AGREEMENT AND TIMELY PAYMENTS, or with the prior written permission of NYC & Company
8. Each logo is distinctive and therefore must be used separately on Licensed Product and collateral materials. Logos may not be reversed and/ or turned to appear in an opposite direction.
9. All hard goods must include a permanent copyright notice and trademark designation etched on the bottom or other approved location on the product.
10. Licensees must indicate the size of, and the amount of times, they intend to utilize logo(s) discussed herein, third party logo(s) and/or corporate identification(s) in relationship to the size of the logo(s) discussed herein prior to the Licensee's logo use on products.
11. All products are required to utilize holograms, hangtags and/ or labels purchased from NYC & Company's exclusive on-product authentication products supplier.
12. Licensee agrees to use the following notice, TM, [®] or [©], as specified by the Licensor, in connection with the first most prominent usage of the Property on all Licensed Products, hang tags and packaging: "All New York City logos and marks depicted herein are the property of New York City and may not be reproduced without written consent. © 2025 (or other year of initial publication). City of New York. All rights reserved."

Licensee agrees to use the following notice, ™, ® or ©, in connection with all displays, advertising, sales brochures, instruction manuals and other promotional materials for each Licensed Product (hereinafter the "Promotional Materials"): "All New York City logos and marks depicted herein are the property of the City of New York and may not be used or reproduced without prior written consent. © 2025 (or other initial year of publication). City of New York. All rights reserved." If impracticable in a particular situation, a shortened version of such notices may be used with Licensors prior written approval.

- 13.** Licensee must have any vendor or factory that is used to produce Licensed Products acknowledge in writing receipt and compliance with the Ethical Standards Form attached as Exhibit 6. Such written acknowledgment of receipt and compliance shall be substantially in the form attached as Exhibit 7. Licensee agrees to upload to Trademarx the factory name and factory contact information (foreign or domestic) where production of a particular item will occur once such factory has been assigned for such item. No product approvals will be given without this information

Exhibit 6

Ethical Standards for the City of New York

The City of New York (“City”) is committed to conducting business in an ethical and responsible manner in all countries, and requires the same from all of its business partners. While the City recognizes that there are different legal and cultural environments in which factories operate throughout the world, these Ethical Standards for Vendors (“Standards”), set forth the basic minimum requirements all factories must meet in order to do business with the City.

These Standards apply to City rights holders of specific licensed products (“Licensees”) and factories that produce goods for the City (“Licensed Products”), including manufacturers, contractors and subcontracted manufacturers (hereinafter collectively referred to as “Vendors”). Under the agreement in place with each Licensee, the City has the right to approve all Vendors of Licensed Products. No Vendor will be approved and no currently approved Vendor will be retained who does not comply with these Standards. The City strongly encourages Vendors to exceed these Standards and promote best practices and continuous improvement throughout their factories.

Legal Requirements:

The City requires that its Vendors must operate in full compliance with all applicable laws and regulations of the countries in which they manufacture and compliance with all local environmental laws applicable to the workplace.

Forced Labor:

The City requires that its Vendors not use forced labor, including, but not limited to, prison, indentured, bonded or involuntary labor.

Child Labor:

Vendor agrees not to use child labor in the manufacture of or otherwise in connection with any Licensed Products. The term “child” shall refer to a person younger than the local legal minimum age for employment or the age for compelling compulsory education, but in no case shall any children younger than fifteen (15) years of age (or fourteen (14) years of age where local law allows) be used to manufacture, package or sell the Licensed Products. In addition, Vendor agrees to comply with all applicable minimum wage, overtime, occupational safety and health and environmental protection laws in the manufacture and packaging of Licensed Products.

Harassment or Abuse:

The City requires that its Vendors treat their employees with respect and dignity. Vendors must provide a work environment free of harassment, abuse or corporal punishment in any form. In addition, Vendors will not use monetary fines as a disciplinary practice.

Discrimination:

The City requires that its Vendors ensure that employment, including but not limited to hiring, salary, benefits, advancement, discipline or termination, is based solely on ability and not on any personal characteristics.

Health and Safety:

The City requires that its Vendors provide a safe and healthy working environment in accordance with applicable local law to prevent accidents and injury arising out of, linked with, or occurring in the course of work or as a result of the operation of employer facilities. Vendors who provide residential facilities must ensure these facilities

are also safe and healthy in accordance with applicable local laws.

Freedom of Association:

The City requires that its Vendors recognize and respect the legal right of employees to freely associate. Employees should not be subject to intimidation or harassment as a result of the peaceful exercise of their legal right to join or to refrain from joining any organization.

Compensation and Benefits:

The City requires that its Vendors pay employees at least the minimum compensation required by local law, and to provide all legally mandated benefits. In addition to their compensation for regular hours of work, employees shall be compensated for overtime hours at such premium rate as is legally required or, in those countries where such laws do not exist, at a rate at least equal to their regular hourly compensation rate.

Hours of Work:

The City requires that its Vendors ensure that, except in extraordinary business circumstances, on a regularly scheduled basis, employees shall (i) not be required to work more than the lesser of (a) sixty (60) hours per week or (b) the limits on regular and overtime hours allowed by the law of the country of manufacture, and (ii) be entitled to at least one day off in every seven day period.

Communication:

The City requires that its Vendors take appropriate steps to ensure that the provisions of these Standards are communicated to employees.

Monitoring and Compliance:

The City requires that its Vendors maintain on file all documentation necessary to demonstrate compliance with the City's Standards. Vendors must allow the City and its designated agents (including third parties) to engage in announced and unannounced monitoring visits, including confidential employee interviews.

City Vendors are required to take necessary corrective actions to promptly remediate any noncompliance. The City reserves the right to ultimately terminate its business relationship and/or cancel existing orders with any Vendor who is unwilling or unable to comply with these Standards.

Exhibit 7
**Vendor or Factory Acknowledgements of Receipt and Compliance with Ethical Standards for the
City of New York for Manufacture or Otherwise in Connection with any Licensed Product**

Each entity signing below acknowledges receipt and full compliance with the Ethical Standards for the City of New York.

NAME OF VENDOR OR FACTORY
FULL ADDRESS OF VENDOR OR FACTORY

By:
NAME

Its:
TITLE

Date of Signature: _____

NAME OF VENDOR OR FACTORY
FULL ADDRESS OF VENDOR OR FACTORY

By:
NAME

Its:
TITLE

Date of Signature: _____

LICENSEE SHOULD ADD AS MANY SIGNATURE BLOCKS AS NECESSARY TO INCLUDE ALL AUTHORIZED
SOURCES OF LICENSED PRODUCT

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 6)

RESOLVED, that the Franchise and Concession Review Committee ("FCRC") authorizes the New York City Tourism + Conventions on behalf of the New York City Department of Small Business Services ("SBS") to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into a Sole Source License Agreement with Gennaro Jewelers, Inc., for the non-exclusive use of city-owned trademarks on merchandise. The Agreement shall commence January 1, 2025, and shall continue through December 31, 2027, unless sooner terminated pursuant to the terms and conditions of this License Agreement. Gennaro Jewelers, Inc. will pay the city a guarantee of **\$10,500** for the first 3 years and with a royalty rate equal to 10%. Licensor shall have the option in its sole discretion of renewing the license agreement on substantially the same terms and conditions for a period of two (2) years.

**THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON**

3/12/2025

Signed: _____


Title: City Chief Procurement Officer

Date: _____

Rule 1-16: Different Procedure

Concession Agreement Recommendation For Award Memorandum Cover Sheet

Concession Title GreenLight Collectibles LLC Concession ID NYCCO-2024-004

Description Non-Exclusive Use of City-Owned Trademarks on Merchandise Agency New York City Tourism + Conventions. on behalf of NYC Department of Small Business Services 

☒ Additional information has been attached to this document (please use the "Additional Information Form" available on BuyWise)

Recommended Concessionaire

Name GreenLight Collectibles LLC Telephone (516) 785-0134
Address 5901 Lakeside Blvd ☒ EIN or ☐ SSN # #01-0719778
Indianapolis, IN 46278 ☐ Not-for-Profit Organization ☐ Certified M/WBE by SBS

Recommended Concession Agreement Term

Initial Term Jan 1, 2025 to Dec 31, 2027 Concession Site(s) ☐ Yes ☒ No
Renewal Option(s) 1/1/2028 to 12/31/2029 Address _____
_____ to _____
Total Potential Term 5 years Borough _____ Community Board _____
☐ >20 years – FCRC unanimously approved term on ____/____/____ Block# _____ Lot# _____

Recommended Annual Revenue (Check all that apply)

☐ Annual Fee(s) \$ _____
☐ Gross Receipts _____ %
☐ The Greater of Annual Minimum Fee(s) of \$ _____ vs _____ % of Gross Receipts
☒ Other See additional Form

Selection Procedure Requirements

Please select the appropriate Different Procedure method justification below:

- ☒ Sole Source
- ☐ Amendment or extension to an existing concession agreement
- ☐ Not-for-Profit concession agreement
- ☐ Other (Please specify)

Award is a Major Concession

☐ Yes – Award was approved pursuant to Sections 197-c and 197-d of the NYC Charter as follows:
☐ CPC approved on ____/____/____
☐ City Council approved on ____/____/____
☐ N/A
☒ No

Negotiation Requirements

Below, please describe the nature of negotiations conducted, including with respect to the amount of revenue offered:

See additional information form.

Award Requirements

The agency determined that the award of this concession is in the best interest of the City because:

See additional information form.

Rule 1-16: Different Procedure

Concession Agreement Recommendation For Award Memorandum Cover Sheet

Public Hearing Requirements

(Only applicable for significant concessions)

☐ [IF REQUIRED] a public hearing was conducted on: ____/____/____

Subject concession is a (check one): ☐ **Citywide** or ☐ **NOT Citywide** concession and Agency hereby certifies that a notice summarizing the terms and conditions of the proposed concession, and the time, date and location of the public hearing was published once in the City Record and given to all affected CB-BP and the Committee Members on ____/____/____ (not less than 15 days prior to the hearing date). In addition, if you have posted this notice publicly elsewhere, please describe below:

☒ Subject concession is non-significant. No public hearing is required

FCRC Approval

☒ FCRC approved this concession agreement on 03 / 12 / 2025 (date of the FCRC public meeting)

Votes in favor: ____ Votes against: ____

OR

☐ The concession was not subject to approval of the FCRC because it has a term of less than 30 days and is not subject to renewal

Law Department approved concession agreement on: ____/____/____

Authorized Signatures

Agency Staff

This is to certify that the information presented herein is accurate and that I find the proposed concessionaire to be responsible and approve of the award of the subject concession agreement

Signature _____

Name _____

Title _____ Date _____

Certificate of Procedural Requisites

This is to certify that the agency has complied with the prescribed procedural requisites for award of the subject concession agreement

Signature _____ Date _____

City Chief Procurement Officer

For Agency Use With Concession Forms

GreenLight Collectibles, LLC

NYCCO-2024-004

Concession Title		Concession ID	
Description	Non-Exclusive Use of City-Owned Trademarks on Merchandise	Agency	New York City Tourism + Conventions. on behalf of NYC Department of Small Business Services

Full Response - Negotiation Requirements & Recommended Annual Revenue (Cover Sheet):

New York City Tourism + Conventions/ SBS negotiated with GreenLight Collectibles LLC for the following compensation:
For the initial term, GreenLight Collectibles, LLC. will pay the City the greater of a minimum guarantee of \$25,000 versus a percentage of net sales based on the following royalty rate structures:

(1) For the Standard Model (a Licensed Product that includes a car brand mark (for e.g., Ford or Nissan)): seven percent (7%) of Net Sales.

(2) In the event there is the Standard Model that includes an additional mark of a third party (such inclusion subject in each case to Licensor's prior written approval): four percent (4%) of Net Sales.

(3) In the event, the Licensed Product includes only the Property and no other marks: twelve percent (12%) of Net Sales.

Any other combination of the Property with a third party's mark not falling within the categories described above is expressly excluded from this License, unless otherwise agreed to in writing by Licensor; however, if such a combination is subsequently approved by Licensor in writing, it shall be subject to the twelve percent (12%) royalty rate.

Licensor shall have the option in its sole discretion of renewing the license agreement on substantially the same terms and conditions for a period of two (2) years.

Full Response - Award Requirements (Cover Sheet):

The agency determined that the award of this concession is in the best interest of the City because GreenLight Collectibles LLC has demonstrated consistent performance as an authorized licensee of the City's Licensing Program since 2013. They have built a strong reputation for producing high-quality, accurate die-cast replica vehicles that faithfully represent the City's vehicles and trademarks. Greenlight's products have been well-received by a dedicated base of collectors, and their continued success in generating substantial sales further supports their reliability. Additionally, Greenlight has proven financial stability, as evidenced by their timely and accurate royalty reports, and they have maintained transparency in their financial dealings. Their business integrity is also firmly established, with no adverse findings from thorough background checks. Given Greenlight's track record of meeting or exceeding the City's expectations and their strong commitment to producing quality merchandise, awarding this concession is in the City's best interest. Their continued involvement in the City's Licensing Program ensures the use of high-quality products and helps maintain the value of the City's trademarks in the marketplace.

Full Response - Record of Satisfactory Performance (RD):

GreenLight Collectibles LLC has been an authorized license of the City's licensing program since 2013. During that time, Greenlight has consistently created high-quality products that accurately represent the City's vehicles and trademarks. They have established a strong reputation among collectors for producing die-cast replica vehicles that meet the City's specifications. They have placed our products in all different national retailers and have gained us good placement in multiple retail channels. Their performance has been reliable and consistently aligned with the City's requirements.

LICENSE AGREEMENT

AGREEMENT made this _____ day of _____, 2025, by and between the City of New York (the “City” or “Licensor”), acting by and through the New York City Department of Small Business Services with its principal place of business located at 110 Williams Street, 2nd Floor, New York, NY 10038, and GreenLight, LLC, a (organized and existing under the laws of the State of Indianapolis with its principal place of business located at 5901 Lakeside Blvd Indianapolis, IN 46278 USA (hereinafter “Licensee”).

IN CONSIDERATION OF the mutual promises, covenants and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION I (License)

Subject to the limitations, terms and conditions set forth herein, Licensor hereby grants to Licensee a limited, revocable non-exclusive license to use the trademarks and service marks listed in Exhibit 1 hereto (individually and/or collectively the “Property”) solely in the manner approved in advance in writing by Licensor during the Term in connection with the manufacture, advertising, promotion, sale, and offering for sale of the products listed in Exhibit 2 individually and/or collectively the “Licensed Products”) worldwide (“Territory”). Licensed Products listed in Exhibit 2 shall be sold only in the distribution channels defined in Exhibit 3.

The license granted herein shall be personal in nature, and it is expressly understood and agreed that Licensee has no right to sublicense, assign, convey or transfer in any manner to any other person or entity any rights granted to it hereunder. Any attempt by Licensee, or anyone acting on its behalf, to sublicense, assign, convey or otherwise transfer the license granted herein shall be null and void and shall be grounds for immediate termination of this License Agreement by the City. All sales of Licensed Products pursuant to this License Agreement shall be made by or through Licensee, who agrees to account to Licensor for all sales in the Territory. The City hereby appoints as its agent for all purposes under this License Agreement NYC & Company, Inc., a not-for-profit corporation organized and existing under the laws of the State of New York and having an address at 1 Rockefeller Plaza, 5th floor New York, NY 10020 (“NYC & Company”).

SECTION II (Express Conditions and Limitations)

The license granted herein is subject to the following express conditions and limitations:

(a) Licensee agrees to use the applicable trademark and copyright notices as directed by Licensor (™, ® or ©), as well as any additional notations directed by Licensor in connection with the first and most prominent usages of the Property on or in connection with all Licensed Products, hang tags, and packaging: “All New York City logos and marks depicted herein are the property of the City of New York and may not be reproduced without written consent. © 2025 (or other year of initial publication). City of New York. All rights reserved.” Licensee agrees to display the applicable notices and notations as directed by the City on all web sites, displays, advertising, sales brochures, and other promotional materials for each Licensed Product (hereinafter the “Promotional Materials”): “All New York City logos and marks depicted herein are the property of the City of New York and may not be used or reproduced without prior written consent. © 2025 (or other initial year of publication). City of New York. All rights reserved.” Any shortened version of such notices may be used only with the City’s prior written approval.

(b) Licensee agrees that it will not use the Property in any advertising, promotion, sale, or offering for sale of the Licensed Products except as depicted in Exhibit 2 hereto, or as approved by the City in advance in writing.

(c) Information labels which include the statements set forth in Exhibit 4, attached hereto and made a part hereof, shall be affixed to the Licensed Product, or to the packaging for the Licensed Product. The

City may, from time to time after consultation with Licensee, amend the language of the labels upon written notice thereof to Licensee. Licensee shall purchase such hangtags, holograms and/or adhesive labels that identify and authenticate the Licensed Product ("Product Authentication Materials") as required by the City from the City's authorized supplier of Product Authentication Materials. Such Product Authentication Materials shall be displayed in connection with Licensed Products sold or offered for sale by Licensee in a form and location specified by the City.

(d) The Property shall not be used in connection with the trademarks, service marks, trade names, corporate names, or personal names of any third party, except with the prior written consent of the City.

(e) The Property shall not be used by Licensee or any entity or individual controlled directly or indirectly by Licensee as or as any part of its corporate name, trade name, fictitious name, "d/b/a," symbol, logo, or other identifier.

(f) The Licensed Product and Licensee's manufacture, sales, promotion, marketing and selling of the Licensed Product shall be in full compliance (at Licensee's sole cost and expense) with all applicable federal, state and local statutes, rules, regulations and orders. If Licensee is required to or chooses to recall or remove the Licensed Product to maintain conformity to any such statutes, rules, regulations or orders, Licensee shall bear all costs, expenses and charges caused by or related to such recall or modification.

(g) No license is granted hereunder for the use of the Property for any purpose other than upon or in connection with the Licensed Product. No license is granted hereunder for the manufacture, sale or distribution of Licensed Products to be used for publicity purposes, in combination sales, as giveaways, or to be disposed of under similar methods of merchandising. In the event that Licensee desires to sell Licensed Products for such purposes, Licensee acknowledges and agrees that it must first seek and obtain a separate license therefore from the City, and that the user thereof must also obtain a separate license from Licensor for such use of the Licensed Products. Licensee acknowledges that such separate license may be withheld for any reason.

(h) Licensee may manufacture, promote, advertise, sell, and offer for sale the Licensed Product only in the form approved by the City.

(i) Subject to the City's prior written approval in the City's sole discretion, Licensee agrees to adhere to such quality and ethical standards as may be provided by the City from time to time. The current quality control guidelines and ethical standards in effect are attached hereto as Exhibit 5 and 6.

(j) Subject to the City's prior written approval in the City's sole discretion, Licensee shall sell the Licensed Products in the Territory. The City may object to the continued sale of any Licensed Products that the City determines in its sole discretion to be inconsistent with the goodwill and reputation represented by the Property, or otherwise not in the best interests of the City.

(k) Licensee agrees and acknowledges that its license extends only to the Territory, and that it has no rights in the Property or to export, sell or authorize or permit the sale of any Licensed Products or other products or services bearing or otherwise associated with the Property outside the Territory, or any such proposed or potential sales that Licensee reasonably knows or should know would occur outside the Territory.

(l) Except to the extent that exclusive rights are explicitly granted hereunder, the parties agree and acknowledge that the City reserves the right to use itself or license to others the right to use the Property on any products or services, including those specifically defined as Licensed Products under this License Agreement.

(m) Co-Op Budget – Licensee will provide NYC & Company with a minimum of one hundred (100) units per year to be used, in their sole discretion, as promotional products.

SECTION III (Term)

This License Agreement shall become effective upon written notice from NYC & Company to Licensee (the “Effective Date”). The term (the “Initial Term”) of this License Agreement shall commence January 1, 2025 and shall continue through December 31, 2027, unless sooner terminated pursuant to the terms and conditions of this License Agreement. Licensor shall have the option in its sole discretion of renewing this License Agreement on substantially the same terms and conditions for a period of two (2) years (together with the Initial Term, the “Term”). Nothing herein shall be construed as obligating Licensor to exercise its renewal option.

SECTION IV (License Years)

For purposes of administering this License Agreement and of computing royalty payments owing from Licensee to the City hereunder, the term “License Year” shall apply to each calendar year during the Term.

SECTION V (Royalties)

In each License Year of this License Agreement, Licensee shall pay to NYC & Company a royalty for the license granted herein as follows:

- (1) For the Standard Model: seven percent (7%) of Net Sales. The “Standard Model”, as used herein, is defined as a Licensed Product that includes a car brand mark (for e.g., Ford or Nissan).
- (2) In the event there is the Standard Model that includes an additional mark of a third party (such inclusion subject in each case to Licensor’s prior written approval): four percent (4%) of Net Sales.
- (3) In the event, the Licensed Product includes only the Property and no other marks: twelve percent (12%) of Net Sales.

Any other combination of the Property with a third party’s mark not falling within the categories described above is expressly excluded from this License, unless otherwise agreed to in writing by Licensor; however, if such a combination is subsequently approved by Licensor in writing, it shall be subject to the twelve percent (12%) royalty rate.

The term Net Sales means the gross invoice price billed to purchasers of Licensed Products (whether sold by Licensee or any person or entity acting on behalf of Licensee) less promotional allowances and markdowns as may be approved in writing by NYC & Company, and any actual and adequately documented returns. Net Sales shall include insurance proceeds received by Licensee in payment for Licensed Products. Licensed Products shall be considered sold (and therefore included in Net Sales and subject to royalty payments) when they are billed, invoiced, shipped, or paid for, whichever occurs first. No costs incurred in the manufacture, sale, offering for sale, promotion, advertisement, or shipment of the Licensed Products shall be deducted, nor shall deductions be made for taxes, tariffs, freight, advertising, any other discounts or uncollectible accounts, or any other purpose. Sales of Licensed Product made other than in an arm’s length transaction shall be deemed to have been made at the regular wholesale price for such Licensed Products.

SECTION VI

(Guaranteed Minimum Royalty)

Notwithstanding any other royalty payment requirements of this License Agreement, including those set forth above, Licensee shall pay to NYC & Company guaranteed minimum royalties ("Guaranteed Minimum Royalty") of Twenty Five Thousand dollars (\$25,000) on or before December 31, 2027.

All Guaranteed Minimum Royalty payments shall be nonrefundable and shall be made whatever the Net Sales of the Licensed Products have been or are for any of the License Years, and shall be applied to and credited as advances against Licensee's liability for royalties for each License Year for which the License Agreement is in effect. No carry over of excess earned royalty (over the Guaranteed Minimum Royalty) or deficiency of earned royalty (under the Guaranteed Minimum Royalty) into subsequent license periods within the term shall be allowed.

SECTION VII

(Royalty Payments, Accounting and Statements)

Licensee shall furnish to NYC & Company the following no later than thirty (30) days after the end of each calendar quarter (beginning with the calendar quarter in which the initial shipment of Licensed Products covered by this License Agreement is made):

(a) complete and accurate statements in a format approved by NYC & Company and certified in writing to be accurate by an officer of Licensee, itemized by (a) product item number; (b) City Agency and/or specific trademark associated with such Agency (e.g., FDNY, NYPD) and showing the net number of units sold inclusive of returns, item description and Average Sales price of the Licensed Products sold by Licensee during the preceding quarter. Such statements shall be furnished to NYC & Company whether or not any Licensed Products have been sold during the preceding quarter; and

(b) payment of the earned royalty and/or guaranteed minimum royalty due from sales during the preceding quarter. In the event Licensee's earned royalty in a given quarter is less than the guaranteed minimum royalty, then payment shall include the difference between earned royalty and the guaranteed minimum royalty.

The receipt or acceptance by NYC & Company or the City of any statements furnished pursuant to this License Agreement or any royalties paid hereunder (or the cashing of any royalty checks paid hereunder) shall not preclude NYC & Company or the City from questioning the correctness of such statement or payment at any time. In the event any inconsistencies or mistakes are discovered in such statements or payments, they shall immediately be rectified and the appropriate payments made by Licensee. In the event of an overpayment by Licensee, Licensee may deduct such mutually verified overpayment from any earned royalty or guaranteed minimum royalty payment due with the next regular quarterly royalty statement and payment. In the event no further royalty payments would be forthcoming after discovery and mutual verification of the payment, then Licensee shall receive a refund of such overpayment within thirty (30) days after its written request for a refund is received by NYC & Company.

In the event that Licensee fails to make any payments, including, guaranteed minimum royalty, earned royalty and audit findings, when such payments are due under this License Agreement, interest shall be charged at an annual rate of eighteen percent (18%), or the maximum rate allowed by law, whichever is lower. All payments made hereunder shall be in United States currency drawn on a United States bank. Licensee shall keep accurate books of account and records covering all transactions related to this License Agreement for at least six (6) years after termination of this License Agreement.

SECTION VIII (Audit Rights)

The City or its authorized agent shall have the right during business hours upon forty-eight (48) hours' advance notice to examine and request copies of Licensee's books, records, and accounts and all other documents and materials in the possession or under the control of Licensee relating to the sale of the Licensed Product or this License Agreement to such extent as may be necessary to determine the accuracy or inaccuracy of any royalty statements submitted by Licensee to Licensor. Licensee shall segregate its records and agrees that such audit may be used as a basis for settlement of charges under this License Agreement. The City may also at any time select any independent accounting firm to review Licensee's books, records and accounts, and to check shipments and verify the account (hereinafter referred to as the "Audit"). In the event that the Audit reveals any underpayment by Licensee to Licensor, Licensee shall remit payment for the amount shown to be due within ten (10) days, of receipt of official audit report plus a late charge in the amount of eighteen percent (18%) per annum, or the maximum rate allowed by law whichever is lower, on all amounts shown to be owing by Licensee. In the event that the Audit determines that Licensee has underpaid by an amount equal to five percent (5%) or more of the total amount shown to be due to Licensor for the period audited, Licensee shall reimburse Licensor or its agent for all costs and expenses of the Audit. In addition, if the discrepancy is an amount equal to five percent (5%) or more and a discrepancy or underpayment of 5% or more had been found in at least one prior instance, Licensor may terminate this License Agreement by giving Licensee notice within sixty (60) days after receipt of the audit report disclosing the discrepancy. Licensee shall retain all books of account and records relating to this License Agreement for at least six (6) years after the termination or expiration of this License Agreement, and any renewals thereof and Licensor's right to audit such records during the duration of this License Agreement and for six (6) years thereafter. The parties acknowledge and agree that the powers, duties, and obligations of the Comptroller of the City of New York pursuant to the provisions of the New York City Charter shall not be diminished, compromised, or abridged in any way.

SECTION IX (No Assignment)

This License Agreement is personal to Licensee and may not be assigned in whole or in part by Licensee without the prior written consent of the City, which may be withheld in the sole discretion of the City. Any attempted or purported assignment or other transfer, sublicense, mortgage or other encumbrance of this License Agreement by Licensee without the prior written approval of the City shall be null and void and grounds for immediate termination of this License Agreement by the City.

SECTION X (Trademark Ownership)

(a) Licensee agrees that by virtue of this License Agreement it does not and shall not claim any right, title, or interest in the Property or any part thereof (except the right to use them in accordance with this License Agreement), and that any and all uses thereof by Licensee shall inure to the benefit of the City. Licensee acknowledges the City's sole right, title, and interest in and to, and ownership of the Property and the validity of the trademarks and service marks that are part of the Property and the City's rights therein. Licensee agrees that it will not raise or cause to be raised any challenges, questions, or objections to the validity, registrability, or enforceability of the Property, to this License Agreement or to the validity of the Property and the City's rights therein, and shall not contest such right and title, nor do or permit to be done any act or omission which will in any way impair the rights of the City with respect to such Property. Any violation of this paragraph shall constitute an immediate breach of this License Agreement and cause for immediate termination by the City.

(b) Licensee acknowledges that the City is the owner of the Property depicted in **Exhibit I** hereto in the United States and certain marks are registered in certain international territories as more specifically described in **Exhibit 7**.

(c) Licensee agrees to reasonably assist the City in protecting the City's rights to the Property, including but not limited to reporting to the City any infringement or imitation of the Property of which Licensee becomes aware. The City shall have the sole right to determine whether to institute litigation with respect to such infringements, as well as the sole right to select counsel. The City may commence or prosecute any claims or suits for infringement of the Property in its own name or the name of Licensee or join Licensee as a party thereto. The City shall be entitled to keep the entire amount of any recovery. If the City brings an action against any infringement of the Property, Licensee shall cooperate with the City and lend whatever assistance is necessary, subject to being reimbursed for its reasonable and pre-approved out-of-pocket expenses.

(d) If claims are made against the City, NYC & Company, or Licensee with respect to the use of the Property in connection with the Licensed Products, then the parties agree to consult with each other on a suitable course of action. In no event shall Licensee, without the prior written consent of the City, have the right to acknowledge the validity of the claim of such party, to obtain or seek a license from such party, or to take any other action which might impair the ability of the City to defend or otherwise contest the claim of such party. The City shall have the right to participate at its own expense in the defense of any claims or suit instituted against Licensee with respect to the use by Licensee of the Property.

(e) Licensee agrees to make modifications requested by the City in Licensee's use of the Property or to discontinue use of the Property on the Licensed Products which are involved, if the City, in its sole discretion, determines such action to be necessary or desirable to resolve or settle a claim or suit or to eliminate the threat of a claim or suit by any party.

SECTION XI

(Goodwill)

(a) Licensee recognizes and acknowledges that the Property and the City's name and reputation are the exclusive property of the City and that they communicate to the public, worldwide, a reputation for high standards of quality and service, which reputation and goodwill have been and continue to be unique to the City. Licensee further recognizes and acknowledges that the Property has acquired secondary meaning in the mind of the public. The Property shall not be used in connection with any illegal, illicit or immoral purpose or activity, or in any manner which would be inconsistent with or damaging to the City's name and reputation. The City shall have the right to terminate this License Agreement immediately, upon written notice, in the event that any part of the Property is used by Licensee in connection with any illegal, illicit or immoral activity. In addition, in the event that any part of the Property is used by Licensee in any way which, in the reasonable judgment of the City, is inconsistent with or damaging to the City's name or reputation, the City shall so notify Licensee in writing and this License Agreement shall terminate unless Licensee ceases and halts all such uses immediately.

(b) Licensee shall use the Property only in the manner specified by the City. Licensee acknowledges and agrees that all use of and goodwill in the Property shall inure to the sole benefit of the City. Licensee shall not acquire any rights in the Property by virtue of any use it makes of the Property. Licensee shall not attempt to register the Property alone or as part of any other trademark, service mark, trade name, or corporate identifier (including without limitation its own trademark), nor shall Licensee use, adopt as its own, or attempt to register any marks, names, domain names, designations, or indicia that are the same as or similar to the Property.

(c) Licensee agrees that it will apply the proper notations on all Licensed Products, tags, labels, package inserts, containers, packaging, advertising, promotional and display materials or the like containing the Property as set forth in Exhibits 2 and 3 hereto.

(d) Any art work or other materials conceived under or resulting from this License Agreement, including but not limited to copyrighted materials and trademarks, trade names, service marks, service names and trade dress and the like, whether developed by Licensee or on behalf of Licensee shall be considered "work made for hire" within the meaning of 17 U.S.C. §101 and is the exclusive property of the City upon creation. In the event that such materials are deemed not to be a work made for hire, Licensee hereby irrevocably assigns to the City its entire right, title, and interest in and to such work and any derivative works thereof (including without limitation

all rights of copyright). Licensee agrees to execute any documents as may be deemed necessary or desirable by the City to register in its own name, record, confirm, clarify, or otherwise cause the foregoing assignment of rights to the City to have full legal effect worldwide. If Licensee desires to develop any new or different design for any mark, symbol, logo character or other element included within the Property, Licensee shall first obtain the City's written approval, and in any event all such designs shall be fully subject to the provisions of this paragraph and owned in full by the City.

(e) Licensee acknowledges that, from time to time and without notice to Licensee, it may be necessary or desirable for the City to modify certain elements of the Property in connection with the Licensed Products, to include additional elements to the Property, or to discontinue use of some or all of the elements of the Property. Accordingly, the City does not represent or warrant that the Property or any elements thereof will be maintained or used in any particular fashion. Any new elements or modifications to existing elements used by the City following the execution of this License Agreement may be included in, or deleted from (as applicable), the Property at the sole discretion of the City. Licensee agrees to comply with the City's written request to include such elements as, or to delete such elements from, the Property within a reasonable period of time from Licensee's receipt of such written request.

(f) The City shall have the right, but shall not be under any obligation, to use the Property, Licensed Products, and/or the name of Licensee so as to give the Property, and/or the Licensed Products full and favorable prominence and publicity. The City shall be under no obligation whatsoever to use or continue using the Property, the Licensed Products and/or the name of Licensee in connection with its products or services.

SECTION XII

(Termination Rights)

Without prejudice to any other rights, the City has the right to terminate this License Agreement upon written notice to Licensee, effective immediately, at any time that any of the following occurs:

(a) If Licensee shall cease to manufacture and sell the Licensed Products for any reason (except for a cause beyond the control of Licensee, including "acts of God"), for a period of three (3) consecutive months or more.

(b) If Licensee shall fail to make any payment due hereunder or to deliver any of the statements herein referred to, or breaches any other obligation hereunder, and if such default shall continue for a period of thirty (30) days after written notice of such default is sent by the City to Licensee. Licensee shall pay interest on the unpaid balance thereof from and including the date such payment becomes due until the date the entire amount is paid in full at a rate equal to the prime rate being charged in New York, New York, by Citibank as of the close of business on the date the payment first becomes due plus five percent (5%) (or the maximum rate which legally can be paid by Licensee, if lower).

(c) If Licensee defaults on any obligation that is secured by a security interest in any Licensed Product, Licensee shall immediately and automatically no longer have the right to sell or otherwise transfer Licensed Products or otherwise use the Property until it notifies the City of the occurrence of such default on any such obligation, and Licensor notifies Licensee that Licensor has elected to waive its right to terminate this License Agreement.

(d) If Licensee makes any assignment for the benefit of creditors, or files any petition under Title 11, United States Code, or files in bankruptcy or is adjudicated as bankrupt or insolvent, or if any trustee in bankruptcy or insolvency is appointed under the laws of the United States or of any State. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, sheriff or any other officer of the court or official charged with taking over custody of Licensee's assets or business may continue this License Agreement or exploit the Property if this License Agreement terminates pursuant to this paragraph. Notwithstanding, if, pursuant to Title 11, United States Code, or any amendment or successor thereto, a trustee in bankruptcy or Licensee, as debtor, is permitted to assume this License Agreement and does so and, thereafter, wishes to assign this License Agreement to a third party, and that assignment complies with Title 11 of the United States Code, the trustee or

Licensee shall notify Licensor of same. Said notice shall set forth the name and address of the proposed assignee, the proposed consideration for assignment and all other relevant details of the assignment. Such notice shall be deemed to grant the Licensor the option to have this License Agreement assigned to such assignee for such consideration, or its equivalent in money and upon such terms as specified in the notice. The option may be exercised by written notice to the trustee or Licensee by Licensor within fifteen (15) days from Licensor's receipt of the notice, or within such shorter time as may be deemed appropriate by the court in a bankruptcy proceeding. If Licensor fails to give notice to the Licensee or trustee within said period, the Licensee or trustee may execute the assignment to the entity referred to in the notice for the consideration and on the terms specified therein. Nothing contained herein shall be deemed to preclude or impair any rights Licensor may have as a creditor in any bankruptcy proceeding.

(e) If Licensor determines that this License Agreement should be terminated without cause.

(f) If Licensee violates the non-assignment or change in controlling interest provisions of this License Agreement.

(g) If Licensee fails to sell Licensed Products within six months of the date of this License Agreement.

Upon termination or expiration of this License Agreement, except as otherwise provided in Section XIII, during the sell-off period, all royalties earned and all applicable guaranteed minimum royalties shall become immediately due and payable.

SECTION XIII (Post Termination)

Upon the expiration of this License Agreement (but not upon termination pursuant to Section XII), Licensee shall be permitted ninety (90) days to sell its remaining inventory of Licensed Products. Sales under this section shall require payment of royalties and all other duties and obligations of Licensee under this License Agreement shall remain in force during the sell off period. At the end of such sell-off period, or upon termination pursuant to any other provision this License Agreement Licensee shall immediately discontinue manufacture, promotion, advertisement, and sale of Licensed Products. In addition, upon expiration or termination of this License Agreement for any reason, Licensee shall deliver to Licensor, or destroy or alter under Licensor's supervision, all molds, dies, prints or other equipment used to manufacture the Licensed Products and Promotional Materials so that such equipment no longer can be used to manufacture products or promotional materials bearing, displaying, or otherwise including the Property and shall provide Licensor with a letter confirming depletion or destruction of such inventory. Licensee acknowledges and agrees that its failure to cease manufacture, sale, advertising, or promotion of the Licensed Products upon expiration or termination of this License Agreement will result in immediate and irreparable harm to Licensor. Licensee further acknowledges and admits that Licensor has no adequate remedy at law for Licensee's failure to cease manufacture, sale, advertising, or promotion of the Licensed Products upon termination or expiration of this License Agreement, except as expressly provided for above. Licensee acknowledges and admits that, in the event of any such failure by it to cease manufacture, sale, advertising, or promotion of the Licensed Products, Licensor shall be entitled to equitable or injunctive relief against Licensee's failure, in addition to any and all other remedies at law that are available to Licensor.

SECTION XIV (Samples and Approvals)

(a) The Licensed Products shall meet or exceed the requirements imposed by any and all laws, regulations, government standards, guidelines, manufacturing codes, rules, and the like applicable to the Licensed Products. Without limiting the foregoing, no Licensed Products shall be manufactured from any flammable, explosive, toxic, or otherwise inherently dangerous materials or substances, nor designed so as to constitute any inherent danger to the consumer. Further, Licensee agrees that the Licensed Products shall be of a standard of quality at least as high as that of the product samples initially approved by Licensor so as to be suited to their exploitation and to the protection and enhancement of the Property and the goodwill pertaining thereto.

(b) The Licensed Products shall be manufactured in accordance with the manufacturing specifications, protocol, safety, and quality standards that have been reviewed and approved in writing by Licensor ("Specifications"), which, once approved, shall be deemed to be a part of this License Agreement. Licensor may amend such Specifications from time to time and shall provide Licensee with reasonable notice of such changes so that the Licensed Products may be adjusted to meet such changed quality standards, if required.

(c) The Specifications shall include at least the following information (and other information which Licensor requests regarding particular Licensed Products): (i) a description of the materials used in the Licensed Products, the materials' dimensional tolerances, performance and durability requirements, specifications that enable the materials to meet governmental regulatory requirements (if any) and such other appropriate information that will accurately describe the Licensed Products and their expected performance during use by the consumer; and (ii) a quality assurance plan that is used to assure the continuing acceptable quality of the Licensed Products. The plan shall include a description of the quality controls observed in the Licensed Products' manufacture, and the procedures followed to audit and verify continued quality and conformance to specifications of the Licensed Products, as well as applicable laws and regulations.

(d) The Specifications shall be provided to Licensee's suppliers and manufacturers of the Licensed Products, and Licensee shall require its suppliers and manufacturers to comply with the Specifications. Licensor shall have the ability to inspect Licensee's facilities and warehouses and those of its suppliers and manufacturers at any time with or without prior notice to assure Licensee's compliance with this paragraph.

(e) Licensee agrees to submit, at the Licensor's request and at no cost to Licensor (i) initial sketches and/or design concepts; (ii) finished artwork or final proofs; (iii) prototypes or pre-production samples; and (iv) a minimum of one (1) and maximum of twelve (12) final production samples (the "Samples") of the Licensed Products (and any variations thereof), as well as initial samples of subsequent production run(s) if such subsequent production run(s) vary in any manner from prior runs, for Licensor's inspection, testing, analysis and approval prior to any sale or shipment of the Licensed Products. If requested by Licensor, such samples (together with the Specifications) shall be submitted by Licensee to an independent laboratory or other test facility approved in writing by Licensor. All costs associated with such inspection, testing and analysis shall be borne by Licensee, and the results of such inspection, testing and analysis shall be submitted to Licensor for its approval. Licensee shall also provide a reasonable number of samples of the Licensed Product to Licensor in accordance with this paragraph at reasonable intervals of no less than once every twelve (12) months during the Term, with such additional inspection, testing and analysis as Licensor may require in the manner set forth in this paragraph for purposes of product review and quality control.

(f) Licensor shall use reasonable efforts to communicate its written approval or disapproval within forty (40) days of receipt of Samples of the Licensed Products. Any Samples not expressly approved shall be deemed disapproved. If Licensor does not approve the Samples of the Licensed Products, the reasons for disapproval shall be communicated to Licensee. After the Samples are approved pursuant to this paragraph, Licensee shall not depart therefrom in any material respect without Licensor's prior written consent, and Licensor shall not withdraw its approval of the Samples except for good cause.

(g) Licensee shall adhere to Licensor's graphic and packaging standards and guidelines in the use of the Property and shall use the materials depicted in Exhibit 4 hereto, which have been approved by Licensor. To the extent that Licensee wishes to amend or alter the graphics depicted in Exhibit 4, Licensee shall submit to Licensor for Licensor's prior written approval all tags, labels, package inserts, containers, packaging, advertising, promotional, display or sales materials or the like containing or referring to the Property. Licensor shall use reasonable efforts to communicate its written approval or disapproval within forty (40) business days of its receipt of items under this paragraph. Any materials not specifically approved shall be deemed disapproved. If Licensor does not approve an item under this paragraph, the reason for such disapproval shall be communicated to Licensee.

(h) Licensee shall at its own cost handle all product warranty and/or guarantee issues, responses and compliance requirements, as well as all consumer inquiries or complaints (collectively, "Consumer Inquiries") relative to any of the Licensed Products. Licensor shall forward to Licensee for handling any and all such Consumer Inquiries that Licensor receives. Upon request by Licensor, Licensee shall advise Licensor in writing of the manner in which it handled any Consumer Inquiry. In addition, Licensee shall provide Licensor with a quarterly report (submitted with royalty reports pursuant to Section VII hereto) containing all data and information regarding Consumer Inquiries handled during the quarter.

(i) Licensee shall immediately advise Licensor of any product recall considerations or deliberations and provide Licensor with the right to attend and have input into such deliberations. Licensor shall have the ability to declare a product recall of such Licensed Products as Licensor determines in good faith after consulting with Licensee that any product recall is necessary for reasons of public health, safety, welfare or damage to reputation or good will. Licensee shall bear any and all costs related to any product recall of the Licensed Products using the Property whether voluntary, required by a governmental authority or the Licensor. Licensee shall have in place a comprehensive lot tracking program, starting with raw materials, to ensure such recall effectiveness.

(j) Licensee agrees not to use child labor in the manufacture of or otherwise in connection with any Licensed Products. The term "child" shall refer to a person younger than the local legal minimum age for employment or the age for compelling compulsory education, but in no case shall any children younger than fifteen (15) years of age (or fourteen (14) years of age where local law allows) be used to manufacture, package or sell the Licensed Products. In addition, Licensee agrees to comply with all applicable minimum wage, overtime, occupational safety and health and environmental protection laws in the manufacture and packaging of Licensed Products. Licensee shall perform all obligations under this License Agreement in accordance with applicable provisions of federal, state and local laws, rules and regulations as are in effect from time to time.

SECTION XV (Purchase Rights)

Licensor shall have the right to purchase from Licensee, at Licensee's lowest available wholesale price, such number of royalty-free units of any Licensed Product as Licensor may from time to time specify in a notice to Licensee.

SECTION XVI (Indemnification)

Licensee hereby agrees to be solely responsible for and to indemnify, defend and hold harmless Licensor, NYC & Company, their affiliates and respective officers, agents, and employees, and to hold each of them harmless from and against any claims, judgments, demands, causes of action, damages, losses, costs and expenses, including but not limited to reasonable attorneys' fees, which may be made or asserted by third persons in connection with the manufacture, design, sale, offering for sale, advertising, promotion or use of the Licensed Products, including those based on Licensee's use of the Property authorized by this License Agreement. Such indemnification shall further extend to Licensee's failure to comply with the terms of this License Agreement and Licensee's unauthorized use of any patent, process, idea, method or device, or unfair trade practice, false advertising, trademark, copyright infringement or the like in connection with the manufacture, design, sale, advertising, promotion or use of the Licensed Products. Licensee expressly agrees that its obligations hereunder shall survive and continue beyond any termination or expiration of this License Agreement.

SECTION XVII (Existing Licenses)

Licensee hereby acknowledges that Licensor has previously granted and may continue to grant licenses to third parties for the use of the Property.

SECTION XVIII (Insurance)

During the term of this license and for at least three (3) years after the last date of sale by Licensee of any Licensed Product, Licensee agrees to carry commercial general liability insurance, including but not limited to product liability coverage, with insurer(s) that may lawfully issue the required policy and have an A.M. Best rating of at least A- / "VII", a Standard & Poor's rating of at least A, a Moody's investors service rating of at least A3, a Fitch Ratings rating of at least A-, or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department. The commercial general liability insurance must: (x) be in an amount of at least one million dollars (\$1,000,000) per occurrence for bodily injury and property damage, one million dollars (\$1,000,000) for personal and advertising injury, two million dollars (\$2,000,000) policy aggregate, and two million dollars (\$2,000,000) products/completed operations; (y) be at least as broad as that provided by the latest edition of Insurance Services Office (ISO) form CG 00 01; and (z) include NYC & Company and the City, together with their officials and employees, as additional insureds under such policy with coverage at least as broad as the latest edition of either ISO form CG 20 26 or ISO form CG 20 36. Policies of insurance provided pursuant to this Agreement shall be primary and non-contributing to any insurance or self-insurance maintained by NYC & Company or the City.

Each year such insurance is required, Licensee shall provide NYC & Company and the City with a Certificate of Insurance, which certifies the issuance and effectiveness of such policies of insurance, each with the specified minimum limits, and the required additional insured endorsements, accompanied by either a duly executed "Certification by Insurance Broker or Agent" in the form required by the Licensor, or certified copies of all policies referenced in such Certificate of Insurance.

In the event that Licensee fails at any time to carry insurance as required herein, Licensee shall immediately notify Licensor thereof and Licensor shall have the right to terminate this Agreement immediately.

Whenever notice of occurrence, claim or suit to an insurance company is required under any such policy, Licensee shall provide timely notice thereof on behalf of both NYC & Company and the City, including their officials and employees, and shall promptly send a copy of such notice(s) to both NYC & Company and the City. The copy of such notice to NYC & Company shall be sent to the address set forth in Paragraph 22 and the copy to the City shall be sent to c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. The existence of such insurance shall in no way limit Licensor's or NYC & Company's rights under this Agreement, at law or in equity, including the right to be indemnified as set forth in this Agreement.

Licensee waives all rights against the NYC & Company and the City, including their officials and employees, for any damages or losses that are covered under any insurance required by this Agreement (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Licensee.

SECTION XIX (Governing Law)

This License Agreement shall be construed in accordance with the laws of the State of New York, notwithstanding conflicts of laws principles. By execution of this License Agreement, Licensee consents to submit to the jurisdiction of the courts of the State of New York located in New York City and the federal courts located therein.

SECTION XX (No Partnership or Joint Venture)

Nothing in this License Agreement or in the course of performance under this License Agreement shall be construed to constitute a partnership or joint venture. Licensee shall have no right to obligate or bind Licensor in any manner whatsoever (nor shall Licensee hold itself out to any third party as being so authorized) and nothing contained herein nor in the course of performance hereunder shall give or is intended to give any right of any kind to any third party.

SECTION XXI **(No Manufacturers, Importers, or Sublicensees)**

Licensee shall provide Licensor with a list of the names and addresses of Licensee's manufacturers, importers and distributors and will notify Licensor of any change in such list. From time to time, Licensor may request that Licensee provide the names of its designers, raw material suppliers and/or authorized importers of the Licensed Products, and Licensee agrees to provide such information upon the request of Licensor. Licensee may sublicense rights under this License Agreement ("Sublicense") only with the prior, written approval of the Licensor, which may be withheld in Licensor's sole discretion. Each and every Sublicense granted under this License Agreement shall contain such provisions as Licensor may require, including without limitation that the Sublicense shall be assignable to the Licensor upon the written demand of the Licensor.

SECTION XXII **(Notices)**

All notices required to be given under the terms of this License Agreement, or which either party hereto may desire to give to the other, shall be in writing and sent by mail to the following addresses:

If to Licensor:

NYC & Company
1 Rockefeller Plaza, 5th floor
New York, NY 10020
ATTN.: Natalie Koepff
General Counsel

With a copy to:

New York City Department of Small Business Services
110 Williams Street, 2nd Floor
New York, NY 10038

If to Licensee:

GreenLight, LLC
5901 Lakeside Blvd
Indianapolis, IN 46278 Attn: Cale Hotton

SECTION XXIII **(Confidentiality)**

Except as otherwise required by law, Licensee agrees to, and shall cause its affiliates, agents, representatives, accountants, employees, officers and directors to: (i) treat and hold as confidential all information, reports or data, prepared, assembled, used or that Licensee comes to obtain under this License Agreement, and (ii) prior to publication, not disclose or provide access to such confidential information to any individual or

organization without the prior written approval of Licensor. In the event that Licensee or Affiliate, agent, contractor, representative, employee, officer, or director of Licensee, becomes legally compelled to disclose confidential information of Licensor, Licensee must provide Licensor with prompt written notice of such requirement so that Licensor may seek a protective order or other remedy or waive compliance with this Article XXIII. In the event that such protective order or other remedy is not obtained, or compliance with this Article XXIII is waived, Licensee agrees to furnish only that portion of such confidential information which is legally required to be provided and exercise its reasonable best efforts to obtain assurances that confidential treatment will be accorded such information. Notwithstanding the foregoing, this Article XXIII shall not apply to any information that, at the time of disclosure, (i) was available publicly and not disclosed in breach of this License Agreement, (ii) was known to the receiving party without breach of an obligation of confidentiality or (iii) was learned from a third party who was not under an obligation of confidentiality. The parties agree and acknowledge that remedies at law for any breach of the obligations under this Article XXIII may be inadequate and that in addition thereto Licensor and NYC & Company are entitled to seek equitable relief, including injunction and specific performance, in the event of any such breach.

In the event that Licensee believes that specific information it submits to Licensor or NYC & Company pursuant to this Agreement should be treated confidentially by Licensor or NYC & Company, Licensee shall so advise the party receiving the information in a writing identifying the specific information. Licensor and NYC & Company agree to treat information so designated as confidential proprietary information of Licensee, consistent with legal requirements.

The City or NYC & Company may be required, pursuant to the New York State Freedom of Information Law ("FOIL") (New York Public Officers Law Section 84 et seq.), to disclose information, or any portion thereof. In the event that disclosure is requested by a third party of materials designated by Licensee as confidential or proprietary information in accordance with this Section, the Licensor or NYC & Company will provide notice to Licensee and shall consult with Licensee to evaluate the extent to which such information may be withheld from disclosure under the provisions of FOIL.

Consistent with the requirements of FOIL, the final determination regarding disclosure shall be made by Licensor or NYC & Company in their sole discretion. In the event that Licensor or NYC & Company determines in its discretion that information may not be withheld, Licensor or NYC & Company, as appropriate will provide Licensee with prompt notice of intent to disclose in order that Licensee may invoke any rights or remedies to prevent disclosure to which it believes it may be entitled under the law.

Licensee expressly acknowledges and agrees that neither the Licensor nor NYC & Company will have any obligation or liability to Licensee in the event of disclosure of materials, including materials designated by Licensee as proprietary information, provided such disclosure is in accordance with this Section.

SECTION XXIV (Investigations)

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

B. (i) 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, permit, contract, or license entered into with the City of New York, the State of New York, or any political subdivision or public authority thereof, or the Port Authority of New York and New

Jersey, or any local development corporation within the City of New York, or any public benefit corporation organized under the laws of the State of New York, or;

(ii) 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 of New York 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 of New York, the State, or any political subdivision thereof or any local development corporation within the City of New York, then;

C. (i) The commission 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 (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

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

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

(i) The disqualification for a period not to exceed five (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 of New York; and/or

(ii) The cancellation or termination of any and all such existing City of New York contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this License Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City of New York 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 Licensor.

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

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

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

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

(iv) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under D above, provided that the party or entity has given

actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in C(i) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

F. (i) 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.

(ii) 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.

(iii) 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 of New York, or otherwise transacts business with the City of New York.

(iv) 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 provision of this License Agreement the Commissioner or agency head may in his or her sole discretion terminate this License Agreement upon not less than three (3) days' written notice in the event Licensee fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this License Agreement by Licensee, or affecting the performance of this License Agreement.

SECTION XXV (Miscellaneous)

A. No action at law or proceeding in equity by Licensee against Licensor or NYC & Company shall lie or be maintained upon any claim based upon this License Agreement or arising out of this License Agreement or in any way connected with this License Agreement unless Licensee has strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.

B. No action shall lie or be maintained against Licensor or NYC & Company by Licensee upon any claims based upon this License Agreement unless such action shall be commenced within six (6) months after the date of final payment hereunder, or within six (6) months of the termination or conclusion of this License Agreement, or within six (6) months after the accrual of the cause of action, whichever first occurs

C. In the event any claim is made or any action is brought against Licensor or NYC & Company in any way relating to the Agreement herein on the basis of Licensee's actions and in each case by a third party, Licensee shall diligently render to Licensor and NYC & Company without additional compensation any and all assistance which Licensor and NYC & Company may reasonably require of Licensee, subject to reimbursement for Licensee's actual, reasonable, pre-approved expenses.

D. Either party shall report to the other party in writing within ten (10) working days of the date such party becomes aware of the initiation by or against it of any legal action or proceeding in connection with or relating to this License Agreement.

E. No claim whatsoever shall be made by Licensee against any officer, agent, or employee of Licensor or NYC & Company for, or on account of, anything done or omitted in connection with this License Agreement.

F. This License Agreement may be executed in two copies, each of which shall be deemed an original. This License Agreement contains the entire understanding between the parties with respect to the subject matter

hereof and replaces and supersedes all prior agreements and understandings between the parties. This License Agreement may only be amended by a writing executed by all parties.

G. Headings used herein are for convenience only and shall not be considered part of this License Agreement. This Agreement has been negotiated by the parties hereto. No provision of this License Agreement shall be strictly construed against the drafter of the language concerned, but shall be interpreted applying the most reasonable interpretation under the circumstances, giving due consideration to the intentions of the parties at the time of contracting.

H. Licensee represents and warrants to Licensor that: (i) it is duly organized and validly existing under the laws of the State of Indiana, (ii) it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; (iii) its execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on its part; (iv) once executed and delivered, this Agreement will constitute its legal, valid and binding obligation, enforceable in accordance with its terms; (v) there are no legal or arbitral proceedings or any proceedings by or before any governmental or regulatory authority or agency, now pending or (to the knowledge of Licensee) threatened against Licensee which, if adversely determined, could have a material adverse effect on the financial condition, operations, business or prospects of Licensee; (vi) the execution and delivery of this Agreement and any related agreement to which it is party, the consummation of the transactions herein and therein contemplated and compliance with the terms and provisions hereof and thereof, will not conflict with or result in a breach of, or require any consent under, the charter, by-laws or partnership agreement, as applicable, of Licensee, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which Licensee is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument, or result in the creation or imposition of any lien upon any of the revenues or assets of Licensee pursuant to the terms of any such agreement or instrument.

I. Licensor represents and warrants to Licensee that: (i) subject to applicable law, it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; and (ii) to the best of Licensor's knowledge, the execution of and delivery of this Agreement and any related agreement to which it is party, the consummation of the transactions herein and therein contemplated and compliance with the terms and provisions hereof and thereof, will not conflict with or result in a breach of, or require any consent under any agreement or instrument to which Licensor is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.

J. Each of the parties hereto shall use all reasonable efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things necessary, proper or advisable under applicable law, and to execute and deliver such

documents and other papers, as may be required to carry out the provisions of this License Agreement and consummate and make effective the transactions contemplated by this License Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement as of the date and year first above written.

NEW YORK CITY DEPARTMENT OF SMALL BUSINESS SERVICES

By:

Its:

Date of Signature: _____

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY:

Acting Corporation Counsel

GreenLight LLC

By:

Its:

Date of Signature: _____

Exhibit I

The Property

Trademarks of the City of New York

Trademarks



Exhibit 2

Licensed Products

Vehicle replicas in any size, scale and material, and accessories merchandise

Exhibit 3

Distribution Channels

Airport Shops, Automotive, Club Stores, Convenience, Catalog, Automotive and Indian Motorcycle Dealerships, Discount Stores, Direct Mail, Drug Store Chains, Home Shopping, Internet Sales, Mass Market retailers, Mid-Tier retailers, Military Bases, Museum Stores, Regional Chains Stores, Supermarkets, Specialty, Toy Stores, Trade Shows, die-cast and toy distributors

Exhibit 4

Product Labels and Graphics

City Seal Hologram

All products must include a permanent copyright notice and trademark designation etched on the back of the product. It must read “© 2025[or current year] City of New York. All Rights Reserved.”

If too little room is available to accommodate this etching, individual decisions will be made in consultation with NYC & Company, which shall have the right of prior approval over the final version.

All packaging must include at least the copyright notice “© 2025 [or current year] City of New York. All Rights Reserved.”

Exhibit 5

Quality Control Guidelines

1. All Licensed Products and related materials associated with NYC & Company's licensing program, including but not limited to packaging, print ads, advertising initiatives, point of purchase displays, story boards, scripts, molds, brochures, videos, DVDs, labels, hangtags, catalogs, sales sheets and all collateral materials must be submitted to NYC & Company for written approval prior to any production.
2. Each product submitted for approval must, at every stage, be submitted via NYC & Company's online product approval system, Trademarx. Licensee will be introduced and set up with Trademarx upon contract execution.
3. All prototypes of any items which utilize trademarks discussed herein must be submitted at each stage of production. Based on written approval, Licensee may proceed to the next step.
4. Contracts will contain NYC & Company's entire sample submission/ approval process. The following brief steps will be required for all product submissions:
 - Initial sketches and/ or design concepts
 - Finished artwork or final proofs
 - Prototypes or pre-production samples
 - Production samples
5. Licensees are required to submit all licensed products in each style and variation.
6. Product submissions shall be reviewed and evaluated for:
 - Accuracy of logo representation
 - Proper use of Pantone colors
 - Proper use of trademark designations
 - General appearance and quality of product
 - NYC & Company policies and standards
7. All approvals granted are conditioned upon FULL EXECUTION OF THE LICENSING AGREEMENT AND TIMELY PAYMENTS, or with the prior written permission of NYC & Company
8. Each logo is distinctive and therefore must be used separately on Licensed Product and collateral materials. Logos may not be reversed and/ or turned to appear in an opposite direction.
9. All hard goods must include a permanent copyright notice and trademark designation etched on the bottom or other approved location on the product.
10. Licensees must indicate the size of, and the amount of times, they intend to utilize logo(s) discussed herein, third party logo(s) and/or corporate identification(s) in relationship to the size of the logo(s) discussed herein prior to the Licensee's logo use on products.
11. All products are required to utilize holograms, hangtags and/ or labels purchased from NYC & Company's exclusive on-product authentication products supplier.
12. Licensee agrees to use the following notice, TM, ® or ©, as specified by the Licensor, in connection with the first most prominent usage of the Property on all Licensed Products, hang tags and packaging: "All New York City logos and marks depicted herein are the property of New York City and may not be reproduced without written consent. © 2025 (or other year of initial publication). City of New York. All rights reserved." Licensee agrees to use the following notice, TM, ® or ©, in connection with all displays, advertising, sales brochures, instruction manuals and other promotional materials for each Licensed Product (hereinafter the

“Promotional Materials”): “All New York City logos and marks depicted herein are the property of the City of New York and may not be used or reproduced without prior written consent. © 2025 (or other initial year of publication). City of New York. All rights reserved.” If impracticable in a particular situation, a shortened version of such notices may be used with Licensor’s prior written approval.

- 13.** Licensee must have any vendor or factory that is used to produce Licensed Products acknowledge in writing receipt and compliance with the Ethical Standards Form attached as Exhibit 6. Such written acknowledgment of receipt and compliance shall be substantially in the form attached as Exhibit 8. Licensee agrees to upload to Trademarx the factory name and factory contact information (foreign or domestic) where production of a particular item will occur once such factory has been assigned for such item. No product approvals will be given without this information.

Exhibit 6

Ethical Standards for the City of New York

The City of New York ("City") is committed to conducting business in an ethical and responsible manner in all countries, and requires the same from all of its business partners. While the City recognizes that there are different legal and cultural environments in which factories operate throughout the world, these Ethical Standards for Vendors ("Standards"), set forth the basic minimum requirements all factories must meet in order to do business with the City.

These Standards apply to City rights holders of specific licensed products ("Licensees") and factories that produce goods for the City ("Licensed Products"), including manufacturers, contractors and subcontracted manufacturers (hereinafter collectively referred to as "Vendors"). Under the agreement in place with each Licensee, the City has the right to approve all Vendors of Licensed Products. No Vendor will be approved and no currently approved Vendor will be retained who does not comply with these Standards. The City strongly encourages Vendors to exceed these Standards and promote best practices and continuous improvement throughout their factories.

Legal Requirements:

The City requires that its Vendors must operate in full compliance with all applicable laws and regulations of the countries in which they manufacture and compliance with all local environmental laws applicable to the workplace.

Forced Labor:

The City requires that its Vendors not use forced labor, including, but not limited to, prison, indentured, bonded or involuntary labor.

Child Labor:

Vendor agrees not to use child labor in the manufacture of or otherwise in connection with any Licensed Products. The term "child" shall refer to a person younger than the local legal minimum age for employment or the age for compelling compulsory education, but in no case shall any children younger than fifteen (15) years of age (or fourteen (14) years of age where local law allows) be used to manufacture, package or sell the Licensed Products. In addition, Vendor agrees to comply with all applicable minimum wage, overtime, occupational safety and health and environmental protection laws in the manufacture and packaging of Licensed Products.

Harassment or Abuse:

The City requires that its Vendors treat their employees with respect and dignity. Vendors must provide a work environment free of harassment, abuse or corporal punishment in any form. In addition, Vendors will not use monetary fines as a disciplinary practice.

Discrimination:

The City requires that its Vendors ensure that employment, including but not limited to hiring, salary, benefits, advancement, discipline or termination, is based solely on ability and not on any personal characteristics.

Health and Safety:

The City requires that its Vendors provide a safe and healthy working environment in accordance with applicable local law to prevent accidents and injury arising out of, linked with, or occurring in the course of work or as a result of the operation of employer facilities. Vendors who provide residential facilities must ensure these facilities

are also safe and healthy in accordance with applicable local laws.

Freedom of Association:

The City requires that its Vendors recognize and respect the legal right of employees to freely associate. Employees should not be subject to intimidation or harassment as a result of the peaceful exercise of their legal right to join or to refrain from joining any organization.

Compensation and Benefits:

The City requires that its Vendors pay employees at least the minimum compensation required by local law, and to provide all legally mandated benefits. In addition to their compensation for regular hours of work, employees shall be compensated for overtime hours at such premium rate as is legally required or, in those countries where such laws do not exist, at a rate at least equal to their regular hourly compensation rate.

Hours of Work:

The City requires that its Vendors ensure that, except in extraordinary business circumstances, on a regularly scheduled basis, employees shall (i) not be required to work more than the lesser of (a) sixty (60) hours per week or (b) the limits on regular and overtime hours allowed by the law of the country of manufacture, and (ii) be entitled to at least one day off in every seven-day period.

Communication:

The City requires that its Vendors take appropriate steps to ensure that the provisions of these Standards are communicated to employees.



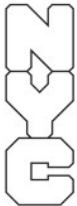


Monitoring and Compliance:

The City requires that its Vendors maintain on file all documentation necessary to demonstrate compliance with the City's Standards. Vendors must allow the City and its designated agents (including third parties) to engage in announced and unannounced monitoring visits, including confidential employee interviews.


City Vendors are required to take necessary corrective actions to promptly remediate any noncompliance. The City reserves the right to ultimately terminate its business relationship and/or cancel existing orders with any Vendor who is unwilling or unable to comply with these Standards.




EXHIBIT 7

Registered Trademarks

<u>NYC Marks</u>	<u>Registered Countries</u>
	United States, Mexico, EU, China and Japan
	United States
	United States
 City of New York Parks & Recreation	United States
 THE CITY OF NEW YORK MAYOR'S OFFICE OF FILM, THEATRE AND BROADCASTING ®	United States

	United States
	United States
	United States
	United States
	United States
	United States

	United States
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NYPD Marks	Registered Countries
	Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United States, United Kingdom, Mexico, China & Japan
	Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United States, United Kingdom, Mexico, China & Japan
	United States

	United States
	United States
	United States
	United States
	United States

	United States
	Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United States, United Kingdom, EU, & China
	Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United States, United Kingdom, Mexico, EU, Japan, & China
	United States
	Mexico

Exhibit 8
**Vendor or Factory Acknowledgements of Receipt and Compliance with Ethical Standards for the
City of New York for Manufacture or Otherwise in Connection with any Licensed Product**

Each entity signing below acknowledges receipt and full compliance with the Ethical Standards for the City of New York.

NAME OF VENDOR OR FACTORY
FULL ADDRESS OF VENDOR OR FACTORY

By:
NAME

Its:
TITLE

Date of Signature: _____

NAME OF VENDOR OR FACTORY
FULL ADDRESS OF VENDOR OR FACTORY

By:
NAME

Its:
TITLE

Date of Signature: _____

LICENSEE SHOULD ADD AS MANY SIGNATURE BLOCKS AS NECESSARY TO INCLUDE ALL AUTHORIZED
SOURCES OF LICENSED PRODUCT

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 7)

RESOLVED, that the Franchise and Concession Review Committee ("FCRC") authorizes the New York City Tourism + Conventions on behalf of New York City Department of Small Business Services ("SBS") to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into a Sole Source License Agreement with GreenLight Collectibles LLC, for the non-exclusive use of city-owned trademarks on merchandise. The Agreement shall commence on January 1, 2025 and shall continue through December 31, 2027, unless sooner terminated pursuant to the terms and conditions of the License Agreement. For the initial term, GreenLight Collectibles, LLC. will pay the City the greater of a minimum guarantee of **\$25,000** versus a percentage of net sales based on the following royalty rate structures: (1) For the Standard Model: seven percent (7%) of Net Sales. (2) In the event there is the Standard Model that includes an additional mark of a third party (such inclusion subject in each case to Licensor's prior written approval): four percent (4%) of Net Sales. (3) In the event, the Licensed Product includes only the Property and no other marks: twelve percent (12%) of Net Sales. Any other combination of the Property with a third party's mark not falling within the categories described above is expressly excluded from this License, unless otherwise agreed to in writing by Licensor; however, if such a combination is subsequently approved by Licensor in writing, it shall be subject to the twelve percent (12%) royalty rate. Licensor shall have the option in its sole discretion of renewing the license agreement on substantially the same terms and conditions for a period of two (2) years.

**THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON**

3/12/2025

Signed: _____

Title: City Chief Procurement Officer

Date: _____

Rule 1-16: Different Procedure

Concession Agreement Recommendation For Award Memorandum Cover Sheet

Concession Title Tombolo, LLC Concession ID NYCCO-2024-002

Description Non-Exclusive Use of City-Owned Trademarks on Merchandise Agency New York City Tourism + Conventions. on behalf of NYC Department of Small Business Services

☒ Additional information has been attached to this document (please use the "Additional Information Form" available on BuyWise)

Recommended Concessionaire

Name Tombolo, LLC Telephone 917 628 4968
Address 110 Riverside Drive, Apt. 8A ☒ EIN or ☐ SSN # 82-2218652
New York, NY, 10024 ☐ Not-for-Profit Organization ☐ Certified M/WBE by SBS

Recommended Concession Agreement Term

Initial Term 1/1/2025 to Dec 31, 2027 Concession Site(s) ☐ Yes ☒ No
Renewal Option(s) 1/1/2028 to 12/31/2029 Address _____
_____ to _____
Total Potential Term 5 years years Borough _____ Community Board _____
☐ >20 years – FCRC unanimously approved term on ____/____/____ Block# _____ Lot# _____

Recommended Annual Revenue (Check all that apply)

☐ Annual Fee(s) \$ _____
☐ Gross Receipts _____ %
☐ The Greater of Annual Minimum Fee(s) of \$ _____ vs _____ % of Gross Receipts
☒ Other See additional Form

Selection Procedure Requirements

Please select the appropriate Different Procedure method justification below:

- ☒ Sole Source
- ☐ Amendment or extension to an existing concession agreement
- ☐ Not-for-Profit concession agreement
- ☐ Other (Please specify)

Award is a Major Concession

☐ Yes – Award was approved pursuant to Sections 197-c and 197-d of the NYC Charter as follows:
☐ CPC approved on ____/____/____
☐ City Council approved on ____/____/____
☐ N/A
☒ No

Negotiation Requirements

Below, please describe the nature of negotiations conducted, including with respect to the amount of revenue offered:

New York City Tourism + Conventions/ SBS negotiated with Tombolo, LLC that it shall pay royalty equal to Ten percent (10%) of Net Sales. The Agreement provides for guaranteed minimum royalties for \$20,000 for the term. The calculation for the Guaranteed Minimum Royalties shall begin as of the Effective Date. For the avoidance of doubt, NYC & Company received a payment of \$26,046.34 prior to 9/30/24, which accounts for excess revenue received in connection with a previous agreement and which will not be included in the Guaranteed Minimum.

Award Requirements

The agency determined that the award of this concession is in the best interest of the City because:

Tombolo launched in late 2018 and is a New York City-based clothing brand that designs unisex "escapewear" for leisure with a flagship store at 208 Mott St. Tombolo has been a licensee under the Admin agreements since 2021 and has as found success with the DSNY marks with their unisex signature cabana shirts, they have opened up a new channel of retail/brick and mortar, with a new revenue stream we previously did not have. For these reasons, it is in the City's best interest to approve a sole source agreement with Tombolo, LLC.

Rule 1-16: Different Procedure

Concession Agreement Recommendation For Award Memorandum Cover Sheet

Public Hearing Requirements

(Only applicable for significant concessions)

☐ [IF REQUIRED] a public hearing was conducted on: ____/____/____

Subject concession is a (check one): ☐ **Citywide** or ☐ **NOT Citywide** concession and Agency hereby certifies that a notice summarizing the terms and conditions of the proposed concession, and the time, date and location of the public hearing was published once in the City Record and given to all affected CB-BP and the Committee Members on ____/____/____ (not less than 15 days prior to the hearing date). In addition, if you have posted this notice publicly elsewhere, please describe below:

☒ Subject concession is non-significant. No public hearing is required

FCRC Approval

☒ FCRC approved this concession agreement on 03 / 12 / 2025 (date of the FCRC public meeting)

Votes in favor: ____ Votes against: ____

OR

☐ The concession was not subject to approval of the FCRC because it has a term of less than 30 days and is not subject to renewal

Law Department approved concession agreement on: ____/____/____

Authorized Signatures

Agency Staff

This is to certify that the information presented herein is accurate and that I find the proposed concessionaire to be responsible and approve of the award of the subject concession agreement

Signature _____

Name _____

Title _____ Date _____

Certificate of Procedural Requisites

This is to certify that the agency has complied with the prescribed procedural requisites for award of the subject concession agreement

Signature _____ Date _____

City Chief Procurement Officer


ADDITIONAL INFORMATION

For Agency Use With Concession Forms

Tombolo, LLC

NYCCO-2024-002

Concession Title _____ **Concession ID** _____

Description Non-Exclusive Use of City-Owned Trademarks on Merchandise **Agency** New York City Tourism + Conventions. on behalf of NYC Department of Small Business Services 

Licensee shall pay to New York City Conventions + Tourism guaranteed minimum royalties ("Guaranteed Minimum Royalty") of Twenty Thousand Dollars (\$20,000) on or before December 31, 2027.

During the Term, Licensee shall pay to New York City Tourism + Conventions a royalty rate of Ten (10%) percent of net sales.

Licensors shall have the option, in its sole discretion, to renew the agreement for a further two (2) years on substantially the same terms.

For the avoidance of doubt, NYC & Company received a payment of Twenty Six Thousand, forty six dollars and thirty four cents (\$26,046.34) prior to September 30, 2024, which accounts for excess revenue received in connection with a previous agreement between the parties, and which will not be included in the Guaranteed Minimum Royalties. The calculation for the Guaranteed Minimum Royalties shall begin as of the Effective Date as described in Section III of the agreement.

LICENSE AGREEMENT

AGREEMENT made this _____ day of _____, 2024, by and between the City of New York (the “City” or “Licensor”), acting by and through the New York City Department of Small Business Services with its principal place of business located at 110 Williams Street, 2nd Floor, New York, NY 10038, and Tombolo, LLC, a Limited Liability Company organized and existing under the laws of the State of New York with its principal place of business located at 110 Riverside Drive, Apt. 8A New York, NY, 10024 (hereinafter “Licensee”).

WHEREAS, in connection with a previous agreement between the Parties, Licensor has paid in full for its prior uses of the Property (as defined herein);

IN CONSIDERATION OF the mutual promises, covenants and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION I (License)

Subject to the limitations, terms and conditions set forth herein, Licensor hereby grants to Licensee a limited, revocable non-exclusive license to use the trademarks and service marks listed in Exhibit 1 hereto (individually and/or collectively the “Property”) solely in the manner approved in advance in writing by Licensor during the Term in connection with the manufacture, advertising, promotion, sale, and offering for sale of the products listed in Exhibit 2 in the United States (including its territories and possessions) and Canada (“Territory”). Licensed Products listed in Exhibit 2 shall be sold only in the distribution channels defined in Exhibit 3.

The license granted herein shall be personal in nature, and it is expressly understood and agreed that Licensee has no right to sublicense, assign, convey or transfer in any manner to any other person or entity any rights granted to it hereunder. Any attempt by Licensee, or anyone acting on its behalf, to sublicense, assign, convey or otherwise transfer the license granted herein shall be null and void and shall be grounds for immediate termination of this License Agreement by the City. All sales of Licensed Products pursuant to this License Agreement shall be made by or through Licensee, who agrees to account to Licensor for all sales in the Territory. The City hereby appoints as its agent for all purposes under this License Agreement NYC & Company, Inc., a not-for-profit corporation organized and existing under the laws of the State of New York and having an address at 810 Seventh Avenue, 3rd Floor, New York, NY 10019 (“NYC & Company”).

SECTION II (Express Conditions and Limitations)

The license granted herein is subject to the following express conditions and limitations:

(a) Licensee agrees to use the applicable trademark and copyright notices as directed by Licensor (™, ® or ©), as well as any additional notations directed by Licensor in connection with the first and most prominent usages of the Property on or in connection with all Licensed Products, hang tags, and packaging: “All New York City logos and marks depicted herein are the property of the City of New York and may not be reproduced without written consent. © 2024 (or other year of initial publication). City of New York. All rights reserved.” Licensee agrees to display the applicable notices and notations as directed by the City on all web sites, displays, advertising, sales brochures, and other promotional materials for each Licensed Product (hereinafter the “Promotional Materials”): “All New York City logos and marks depicted herein are the property of the City of New York and may not be used or reproduced without prior written consent. © 2024 (or other initial year of publication). City of New York. All rights reserved.” Any shortened version of such notices may be used only with the City’s prior written approval.

(b) Licensee agrees that it will not use the Property in any advertising, promotion, sale, or offering for sale of the Licensed Products except as depicted in Exhibit 2 hereto, or as approved by the City in advance in writing.

(c) Information labels which include the statements set forth in Exhibit 4, attached hereto and made a part hereof, shall be affixed to the Licensed Product, or to the packaging for the Licensed Product. The City may, from time to time after consultation with Licensee, amend the language of the labels upon written notice thereof to Licensee. Licensee shall purchase such hangtags, holograms and/or adhesive labels that identify and authenticate the Licensed Product ("Product Authentication Materials") as required by the City from the City's authorized supplier of Product Authentication Materials. Such Product Authentication Materials shall be displayed in connection with Licensed Products sold or offered for sale by Licensee in a form and location specified by the City.

(d) The Property shall not be used in connection with the trademarks, service marks, trade names, corporate names, or personal names of any third party, except with the prior written consent of the City.

(e) The Property shall not be used by Licensee or any entity or individual controlled directly or indirectly by Licensee as or as any part of its corporate name, trade name, fictitious name, "d/b/a," symbol, logo, or other identifier.

(f) The Licensed Product and Licensee's manufacture, sales, promotion, marketing and selling of the Licensed Product shall be in full compliance (at Licensee's sole cost and expense) with all applicable federal, state and local statutes, rules, regulations and orders. If Licensee is required to or chooses to recall or remove the Licensed Product to maintain conformity to any such statutes, rules, regulations or orders, Licensee shall bear all costs, expenses and charges caused by or related to such recall or modification.

(g) No license is granted hereunder for the use of the Property for any purpose other than upon or in connection with the Licensed Product. No license is granted hereunder for the manufacture, sale or distribution of Licensed Products to be used for publicity purposes, in combination sales, as giveaways, or to be disposed of under similar methods of merchandising. In the event that Licensee desires to sell Licensed Products for such purposes, Licensee acknowledges and agrees that it must first seek and obtain a separate license therefore from the City, and that the user thereof must also obtain a separate license from Licensor for such use of the Licensed Products. Licensee acknowledges that such separate license may be withheld for any reason.

(h) Licensee may manufacture, promote, advertise, sell, and offer for sale the Licensed Product only in the form approved by the City.

(i) Subject to the City's prior written approval in the City's sole discretion, Licensee agrees to adhere to such quality and ethical standards as may be provided by the City from time to time. The current quality control guidelines and ethical standards in effect are attached hereto as Exhibit 5 and 6.

(j) Subject to the City's prior written approval in the City's sole discretion, Licensee shall sell the Licensed Products in the Territory. The City may object to the continued sale of any Licensed Products that the City determines in its sole discretion to be inconsistent with the goodwill and reputation represented by the Property, or otherwise not in the best interests of the City.

(k) Licensee agrees and acknowledges that its license extends only to the Territory, and that it has no rights in the Property or to export, sell or authorize or permit the sale of any Licensed Products or other products or services bearing or otherwise associated with the Property outside the Territory, or any such proposed or potential sales that Licensee reasonably knows or should know would occur outside the Territory.

(l) Except to the extent that exclusive rights are explicitly granted hereunder, the parties agree and acknowledge that the City reserves the right to use itself or license to others the right to use the Property on any products or services, including those specifically defined as Licensed Products under this License Agreement.

SECTION III (Term)

This License Agreement shall become effective upon written notice from NYC & Company to Licensee (the "Effective Date"). The term (the "Initial Term") of this License Agreement shall commence January 1, 2025 (Effective Date) and shall continue through December 31, 2027(Termination Date), unless sooner terminated pursuant to the terms and conditions of this License Agreement. Licensor shall have the option in its sole discretion of renewing this License Agreement on substantially the same terms and conditions for a period of two (2) years (together with the Initial Term, the "Term"). Nothing herein shall be construed as obligating Licensor to exercise its renewal option.

SECTION IV (License Years)

For purposes of administering this License Agreement and of computing royalty payments owing from Licensee to the City hereunder, the term "License Year" shall apply to each calendar year during the Term.

SECTION V (Royalties)

In each License Year of this License Agreement, for products bearing solely the Licensed Property (or the Property with the Licensee's marks) Licensee shall pay to NYC & Company for the license granted herein a royalty equal to Ten percent (10%) of Net Sales. In the event the parties wish to co-brand the Property and the Licensee's marks with any additional marks, the parties shall mutually agree to co-brand and mutually agree to the co-brand royalty in an amendment to this Agreement. The term Net Sales means the gross invoice price billed to purchasers of Licensed Products (whether sold by Licensee or any person or entity acting on behalf of Licensee) less only promotional allowances, taxes, freight charges (if separately stated) and such other discounts as may be approved in writing by NYC & Company, and any actual and adequately documented returns. Net Sales shall include insurance proceeds received by Licensee in payment for Licensed Products. Licensed Products shall be considered sold (and therefore included in Net Sales and subject to royalty payments) when they are billed, invoiced, shipped, or paid for, whichever occurs first. No costs incurred in the manufacture, sale, offering for sale, promotion, advertisement, or shipment of the Licensed Products shall be deducted, nor shall deductions be made for cash, taxes, tariffs, freight, advertising, any other discounts or uncollectible accounts, or any other purpose. Sales of Licensed Product made other than in an arm's length transaction shall be deemed to have been made at the regular wholesale price for such Licensed Products.

SECTION VI (Guaranteed Minimum Royalty)

Notwithstanding any other royalty payment requirements of this License Agreement, including those set forth above, Licensee shall pay to NYC & Company guaranteed minimum royalties in the amounts and on the dates set forth below:

Guaranteed Minimum:

The following total Guaranteed Minimum Royalties for the term shall be payable, as follows:

On or before December 31, 2027 (12/31/2027): Twenty Thousand Dollars (\$20,000)

For the avoidance of doubt, NYC & Company received a payment of Twenty Six Thousand, forty six dollars and thirty four cents (\$26,046.34) prior to September 30, 2024, which accounts for excess revenue received in connection with a previous agreement between the parties, and which will not be included in the Guaranteed Minimum Royalties. The calculation for the Guaranteed Minimum Royalties shall begin as of the Effective Date as described in Section III above.

All Guaranteed Minimum Royalty payments shall be nonrefundable and shall be made whatever the Net Sales of the Licensed Products have been or are for any of the License Years, and shall be applied to and credited as advances against Licensee's liability for royalties for each License Year for which the License Agreement is in effect. No carry over of excess earned royalty (over the Guaranteed Minimum Royalty) or deficiency of earned royalty (under the Guaranteed Minimum Royalty) into subsequent license periods within the term shall be allowed.

SECTION VII

(Royalty Payments, Accounting and Statements)

Licensee shall furnish to NYC & Company the following no later than thirty (30) days after the end of each calendar quarter (beginning with the calendar quarter in which the initial shipment of Licensed Products covered by this License Agreement is made):

(a) complete and accurate statements in a format approved by NYC & Company and certified in writing to be accurate by an officer of Licensee, itemized by (a) product item number; (b) City Agency and/or specific trademark associated with such Agency (e.g., FDNY, NYPD) and showing the net number of units sold inclusive of returns, item description and Average Sales price of the Licensed Products sold by Licensee during the preceding quarter. Such statements shall be furnished to NYC & Company whether or not any Licensed Products have been sold during the preceding quarter; and

(b) payment of the earned royalty and/or guaranteed minimum royalty due from sales during the preceding quarter. In the event Licensee's earned royalty in a given quarter is less than the guaranteed minimum royalty, then payment shall include the difference between earned royalty and the guaranteed minimum royalty.

The receipt or acceptance by NYC & Company or the City of any statements furnished pursuant to this License Agreement or any royalties paid hereunder (or the cashing of any royalty checks paid hereunder) shall not preclude NYC & Company or the City from questioning the correctness of such statement or payment at any time. In the event any inconsistencies or mistakes are discovered in such statements or payments, they shall immediately be rectified and the appropriate payments made by Licensee. In the event of an overpayment by Licensee, Licensee may deduct such mutually verified overpayment from any earned royalty or guaranteed minimum royalty payment due with the next regular quarterly royalty statement and payment. In the event no further royalty payments would be forthcoming after discovery and mutual verification of the payment, then Licensee shall receive a refund of such overpayment within thirty (30) days after its written request for a refund is received by NYC & Company.

In the event that Licensee fails to make any payments, including, advances, guaranteed minimum royalty, earned royalty and audit findings, when such payments are due under this License Agreement, interest shall be charged at an annual rate of eighteen percent (18%), or the maximum rate allowed by law, whichever is lower. All payments made hereunder shall be in United States currency drawn on a United States bank. Licensee shall keep accurate books of account and records covering all transactions related to this License Agreement for at least six (6) years after termination of this License Agreement.

SECTION VIII

(Audit Rights)

The City or its authorized agent shall have the right during business hours upon forty-eight (48) hours' advance notice to examine and request copies of Licensee's books, records, and accounts and all other documents and materials in the possession or under the control of Licensee relating to the sale of the Licensed Product or this License Agreement to such extent as may be necessary to determine the accuracy or inaccuracy of any royalty statements submitted by Licensee to Licensor. Licensee shall segregate its records and agrees that such audit may be used as a basis for settlement of charges under this License Agreement. The City may also at any time select any independent accounting firm to review Licensee's books, records and accounts, and to check shipments and verify the account (hereinafter referred to as the "Audit"). In the event that the Audit reveals any underpayment by Licensee to Licensor, Licensee shall remit payment for the amount shown to be due within ten (10) days, of receipt of official audit report plus a late charge in the amount of eighteen percent (18%) per annum, or the maximum rate allowed by law whichever is lower, on all amounts shown to be owing by Licensee. In the event that the Audit determines that Licensee has underpaid by an amount equal to five percent (5%) or more of the total amount shown to be due to Licensor for the period audited, Licensee shall reimburse Licensor or its agent for all costs and expenses of the Audit. In addition, if the discrepancy is an amount equal to five percent (5%) or more and a discrepancy or underpayment of 5% or more had been found in at least one prior instance, Licensor may terminate this License Agreement by giving Licensee notice within sixty (60) days after receipt of the audit report disclosing the discrepancy. Licensee shall retain all books of account and records relating to this License Agreement for at least six (6) years after the termination or expiration of this License Agreement, and any renewals thereof and Licensor's right to audit such records during the duration of this License Agreement and for six (6) years thereafter. The parties acknowledge and agree that the powers, duties, and obligations of the Comptroller of the City of New York pursuant to the provisions of the New York City Charter shall not be diminished, compromised, or abridged in any way.

SECTION IX (No Assignment)

This License Agreement is personal to Licensee and may not be assigned in whole or in part by Licensee without the prior written consent of the City, which may be withheld in the sole discretion of the City. Any attempted or purported assignment or other transfer, sublicense, mortgage or other encumbrance of this License Agreement by Licensee without the prior written approval of the City shall be null and void and grounds for immediate termination of this License Agreement by the City.

SECTION X (Trademark Ownership)

(a) Licensee agrees that by virtue of this License Agreement it does not and shall not claim any right, title, or interest in the Property or any part thereof (except the right to use them in accordance with this License Agreement), and that any and all uses thereof by Licensee shall inure to the benefit of the City. Licensee acknowledges the City's sole right, title, and interest in and to, and ownership of the Property and the validity of the trademarks and service marks that are part of the Property and the City's rights therein. Licensee agrees that it will not raise or cause to be raised any challenges, questions, or objections to the validity, registrability, or enforceability of the Property, to this License Agreement or to the validity of the Property and the City's rights therein, and shall not contest such right and title, nor do or permit to be done any act or omission which will in any way impair the rights of the City with respect to such Property. Any violation of this paragraph shall constitute an immediate breach of this License Agreement and cause for immediate termination by the City.

(b) Licensee agrees to reasonably assist the City in protecting the City's rights to the Property, including but not limited to reporting to the City any infringement or imitation of the Property of which Licensee becomes aware. The City shall have the sole right to determine whether to institute litigation with respect to such infringements, as well as the sole right to select counsel. The City may commence or prosecute any claims or suits for infringement of the Property in its own name or the name of Licensee or join Licensee as a party thereto. The City shall be entitled to keep the entire amount of any recovery. If the City brings an action against any infringement of the Property, Licensee shall cooperate with the City and lend whatever assistance is necessary, subject to being reimbursed for its reasonable and pre-approved out-of-pocket expenses.

(c) If claims are made against the City, NYC & Company, or Licensee with respect to the use of the Property in connection with the Licensed Products, then the parties agree to consult with each other on a suitable course of action. In no event shall Licensee, without the prior written consent of the City, have the right to acknowledge the validity of the claim of such party, to obtain or seek a license from such party, or to take any other action which might impair the ability of the City to defend or otherwise contest the claim of such party. The City shall have the right to participate at its own expense in the defense of any claims or suit instituted against Licensee with respect to the use by Licensee of the Property.

(d) Licensee agrees to make modifications requested by the City in Licensee's use of the Property or to discontinue use of the Property on the Licensed Products which are involved, if the City, in its sole discretion, determines such action to be necessary or desirable to resolve or settle a claim or suit or to eliminate the threat of a claim or suit by any party.

SECTION XI

(Goodwill)

(a) Licensee recognizes and acknowledges that the Property and the City's name and reputation are the exclusive property of the City and that they communicate to the public, worldwide, a reputation for high standards of quality and service, which reputation and goodwill have been and continue to be unique to the City. Licensee further recognizes and acknowledges that the Property has acquired secondary meaning in the mind of the public. The Property shall not be used in connection with any illegal, illicit or immoral purpose or activity, or in any manner which would be inconsistent with or damaging to the City's name and reputation. The City shall have the right to terminate this License Agreement immediately, upon written notice, in the event that any part of the Property is used by Licensee in connection with any illegal, illicit or immoral activity. In addition, in the event that any part of the Property is used by Licensee in any way which, in the reasonable judgment of the City, is inconsistent with or damaging to the City's name or reputation, the City shall so notify Licensee in writing and this License Agreement shall terminate unless Licensee ceases and halts all such uses immediately.

(b) Licensee shall use the Property only in the manner specified by the City. Licensee acknowledges and agrees that all use of and goodwill in the Property shall inure to the sole benefit of the City. Licensee shall not acquire any rights in the Property by virtue of any use it makes of the Property. Licensee shall not attempt to register the Property alone or as part of any other trademark, service mark, trade name, or corporate identifier (including without limitation its own trademark), nor shall Licensee use, adopt as its own, or attempt to register any marks, names, domain names, designations, or indicia that are the same as or similar to the Property.

(c) Licensee agrees that it will apply the proper notations on all Licensed Products, tags, labels, package inserts, containers, packaging, advertising, promotional and display materials or the like containing the Property as set forth in Exhibits 2 and 3 hereto.

(d) Any art work or other materials conceived under or resulting from this License Agreement, including but not limited to copyrighted materials and trademarks, trade names, service marks, service names and trade dress and the like, whether developed by Licensee or on behalf of Licensee shall be considered "work made for hire" within the meaning of 17 U.S.C. §101 and is the exclusive property of the City upon creation. In the event that such materials are deemed not to be a work made for hire, Licensee hereby irrevocably assigns to the City its entire right, title, and interest in and to such work and any derivative works thereof (including without limitation all rights of copyright). Licensee agrees to execute any documents as may be deemed necessary or desirable by the City to register in its own name, record, confirm, clarify, or otherwise cause the foregoing assignment of rights to the City to have full legal effect worldwide. If Licensee desires to develop any new or different design for any mark, symbol, logo character or other element included within the Property, Licensee shall first obtain the City's written approval, and in any event all such designs shall be fully subject to the provisions of this paragraph and owned in full by the City.

(e) Licensee acknowledges that, from time to time and without notice to Licensee, it may be necessary or desirable for the City to modify certain elements of the Property in connection with the Licensed

Products, to include additional elements to the Property, or to discontinue use of some or all of the elements of the Property. Accordingly, the City does not represent or warrant that the Property or any elements thereof will be maintained or used in any particular fashion. Any new elements or modifications to existing elements used by the City following the execution of this License Agreement may be included in, or deleted from (as applicable), the Property at the sole discretion of the City. Licensee agrees to comply with the City's written request to include such elements as, or to delete such elements from, the Property within a reasonable period of time from Licensee's receipt of such written request.

(f) The City shall have the right, but shall not be under any obligation, to use the Property, Licensed Products, and/or the name of Licensee so as to give the Property, and/or the Licensed Products full and favorable prominence and publicity. The City shall be under no obligation whatsoever to use or continue using the Property, the Licensed Products and/or the name of Licensee in connection with its products or services.

SECTION XII (Termination Rights)

Without prejudice to any other rights, the City has the right to terminate this License Agreement upon written notice to Licensee, effective immediately, at any time that any of the following occurs:

(a) If Licensee shall cease to manufacture and sell the Licensed Products for any reason (except for a cause beyond the control of Licensee, including "acts of God"), for a period of three (3) consecutive months or more.

(b) If Licensee shall fail to make any payment due hereunder or to deliver any of the statements herein referred to, or breaches any other obligation hereunder, and if such default shall continue for a period of thirty (30) days after written notice of such default is sent by the City to Licensee. Licensee shall pay interest on the unpaid balance thereof from and including the date such payment becomes due until the date the entire amount is paid in full at a rate equal to the prime rate being charged in New York, New York, by Citibank as of the close of business on the date the payment first becomes due plus five percent (5%) (or the maximum rate which legally can be paid by Licensee, if lower).

(c) If Licensee defaults on any obligation that is secured by a security interest in any Licensed Product, Licensee shall immediately and automatically no longer have the right to sell or otherwise transfer Licensed Products or otherwise use the Property until it notifies the City of the occurrence of such default on any such obligation, and Licensor notifies Licensee that Licensor has elected to waive its right to terminate this License Agreement.

(d) If Licensee makes any assignment for the benefit of creditors, or files any petition under Title 11, United States Code, or files in bankruptcy or is adjudicated as bankrupt or insolvent, or if any trustee in bankruptcy or insolvency is appointed under the laws of the United States or of any State. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, sheriff or any other officer of the court or official charged with taking over custody of Licensee's assets or business may continue this License Agreement or exploit the Property if this License Agreement terminates pursuant to this paragraph. Notwithstanding, if, pursuant to Title 11, United States Code, or any amendment or successor thereto, a trustee in bankruptcy or Licensee, as debtor, is permitted to assume this License Agreement and does so and, thereafter, wishes to assign this License Agreement to a third party, and that assignment complies with Title 11 of the United States Code, the trustee or Licensee shall notify Licensor of same. Said notice shall set forth the name and address of the proposed assignee, the proposed consideration for assignment and all other relevant details of the assignment. Such notice shall be deemed to grant the Licensor the option to have this License Agreement assigned to such assignee for such consideration, or its equivalent in money and upon such terms as specified in the notice. The option may be exercised by written notice to the trustee or Licensee by Licensor within fifteen (15) days from Licensor's receipt of the notice, or within such shorter time as may be deemed appropriate by the court in a bankruptcy proceeding. If Licensor fails to give notice to the Licensee or trustee within said period, the Licensee or trustee may execute the assignment to the entity referred to in the notice for the consideration and on the terms specified therein.

Nothing contained herein shall be deemed to preclude or impair any rights Licensor may have as a creditor in any bankruptcy proceeding.

(e) If Licensor determines that this License Agreement should be terminated without cause.

(f) If Licensee violates the non-assignment or change in controlling interest provisions of this License Agreement.

(g) If Licensee fails to sell Licensed Products within six months of the date of this License Agreement.

Upon termination or expiration of this License Agreement, except as otherwise provided in Section XIII, during the sell-off period, all royalties earned and all applicable guaranteed minimum royalties shall become immediately due and payable.

SECTION XIII (Post Termination)

Upon the expiration of this License Agreement (but not upon termination pursuant to Section XII), Licensee shall be permitted ninety (90) days to sell its remaining inventory of Licensed Products. Sales under this section shall require payment of royalties and all other duties and obligations of Licensee under this License Agreement shall remain in force during the sell off period. At the end of such sell-off period, or upon termination pursuant to any other provision this License Agreement Licensee shall immediately discontinue manufacture, promotion, advertisement, and sale of Licensed Products. In addition, upon expiration or termination of this License Agreement for any reason, Licensee shall deliver to Licensor, or destroy or alter under Licensor's supervision, all molds, dies, prints or other equipment used to manufacture the Licensed Products and Promotional Materials so that such equipment no longer can be used to manufacture products or promotional materials bearing, displaying, or otherwise including the Property and shall provide Licensor with a letter confirming depletion or destruction of such inventory. Licensee acknowledges and agrees that its failure to cease manufacture, sale, advertising, or promotion of the Licensed Products upon expiration or termination of this License Agreement will result in immediate and irreparable harm to Licensor. Licensee further acknowledges and admits that Licensor has no adequate remedy at law for Licensee's failure to cease manufacture, sale, advertising, or promotion of the Licensed Products upon termination or expiration of this License Agreement, except as expressly provided for above. Licensee acknowledges and admits that, in the event of any such failure by it to cease manufacture, sale, advertising, or promotion of the Licensed Products, Licensor shall be entitled to equitable or injunctive relief against Licensee's failure, in addition to any and all other remedies at law that are available to Licensor.

SECTION XIV (Samples and Approvals)

(a) The Licensed Products shall meet or exceed the requirements imposed by any and all laws, regulations, government standards, guidelines, manufacturing codes, rules, and the like applicable to the Licensed Products. Without limiting the foregoing, no Licensed Products shall be manufactured from any flammable, explosive, toxic, or otherwise inherently dangerous materials or substances, nor designed so as to constitute any inherent danger to the consumer. Further, Licensee agrees that the Licensed Products shall be of a standard of quality at least as high as that of the product samples initially approved by Licensor so as to be suited to their exploitation and to the protection and enhancement of the Property and the goodwill pertaining thereto.

(b) The Licensed Products shall be manufactured in accordance with the manufacturing specifications, protocol, safety, and quality standards that have been reviewed and approved in writing by Licensor ("Specifications"), which, once approved, shall be deemed to be a part of this License Agreement. Licensor may amend such Specifications from time to time and shall provide Licensee with reasonable notice of such changes so that the Licensed Products may be adjusted to meet such changed quality standards, if required.

(c) The Specifications shall include at least the following information (and other information which Licensor requests regarding particular Licensed Products): (i) a description of the materials used in the Licensed Products, the materials' dimensional tolerances, performance and durability requirements, specifications that enable the materials to meet governmental regulatory requirements (if any) and such other appropriate information that will accurately describe the Licensed Products and their expected performance during use by the consumer; and (ii) a quality assurance plan that is used to assure the continuing acceptable quality of the Licensed Products. The plan shall include a description of the quality controls observed in the Licensed Products' manufacture, and the procedures followed to audit and verify continued quality and conformance to specifications of the Licensed Products, as well as applicable laws and regulations.

(d) The Specifications shall be provided to Licensee's suppliers and manufacturers of the Licensed Products, and Licensee shall require its suppliers and manufacturers to comply with the Specifications. Licensor shall have the ability to inspect Licensee's facilities and warehouses and those of its suppliers and manufacturers at any time with or without prior notice to assure Licensee's compliance with this paragraph.

(e) Licensee agrees to submit, at the Licensor's request and at no cost to Licensor (i) initial sketches and/or design concepts; (ii) finished artwork or final proofs; (iii) prototypes or pre-production samples; and (iv) a minimum of one (1) and maximum of Five (5) final production samples (the "Samples") of the Licensed Products (and any variations thereof), as well as initial samples of subsequent production run(s) if such subsequent production run(s) vary in any manner from prior runs, for Licensor's inspection, testing, analysis and approval prior to any sale or shipment of the Licensed Products. If requested by Licensor, such samples (together with the Specifications) shall be submitted by Licensee to an independent laboratory or other test facility approved in writing by Licensor. All costs associated with such inspection, testing and analysis shall be borne by Licensee, and the results of such inspection, testing and analysis shall be submitted to Licensor for its approval. Licensee shall also provide a reasonable number of samples of the Licensed Product to Licensor in accordance with this paragraph at reasonable intervals of no less than once every twelve (12) months during the Term, with such additional inspection, testing and analysis as Licensor may require in the manner set forth in this paragraph for purposes of product review and quality control.

(f) Licensor shall use reasonable efforts to communicate its written approval or disapproval within forty (40) days of receipt of Samples of the Licensed Products. Any Samples not expressly approved shall be deemed disapproved. If Licensor does not approve the Samples of the Licensed Products, the reasons for disapproval shall be communicated to Licensee. After the Samples are approved pursuant to this paragraph, Licensee shall not depart therefrom in any material respect without Licensor's prior written consent, and Licensor shall not withdraw its approval of the Samples except for good cause.

(g) Licensee shall adhere to Licensor's graphic and packaging standards and guidelines in the use of the Property and shall use the materials depicted in Exhibit 4 hereto, which have been approved by Licensor. To the extent that Licensee wishes to amend or alter the graphics depicted in Exhibit 4, Licensee shall submit to Licensor for Licensor's prior written approval all tags, labels, package inserts, containers, packaging, advertising, promotional, display or sales materials or the like containing or referring to the Property. Licensor shall use reasonable efforts to communicate its written approval or disapproval within forty (40) business days of its receipt of items under this paragraph. Any materials not specifically approved shall be deemed disapproved. If Licensor does not approve an item under this paragraph, the reason for such disapproval shall be communicated to Licensee.

(h) Licensee shall at its own cost handle all product warranty and/or guarantee issues, responses and compliance requirements, as well as all consumer inquiries or complaints (collectively, "Consumer Inquiries") relative to any of the Licensed Products. Licensor shall forward to Licensee for handling any and all such Consumer Inquiries that Licensor receives. Upon request by Licensor, Licensee shall advise Licensor in writing of the manner in which it handled any Consumer Inquiry. In addition, Licensee shall provide Licensor with a quarterly report (submitted with royalty reports pursuant to Section VII hereto) containing all data and information regarding Consumer Inquiries handled during the quarter.

(i) Licensee shall immediately advise Licensor of any product recall considerations or deliberations and provide Licensor with the right to attend and have input into such deliberations. Licensor shall have the ability to declare a product recall of such Licensed Products as Licensor determines in good faith after consulting with Licensee that any product recall is necessary for reasons of public health, safety, welfare or damage to reputation or good will. Licensee shall bear any and all costs related to any product recall of the Licensed Products using the Property whether voluntary, required by a governmental authority or the Licensor. Licensee shall have in place a comprehensive lot tracking program, starting with raw materials, to ensure such recall effectiveness.

(j) Licensee agrees not to use child labor in the manufacture of or otherwise in connection with any Licensed Products. The term "child" shall refer to a person younger than the local legal minimum age for employment or the age for compelling compulsory education, but in no case shall any children younger than fifteen (15) years of age (or fourteen (14) years of age where local law allows) be used to manufacture, package or sell the Licensed Products. In addition, Licensee agrees to comply with all applicable minimum wage, overtime, occupational safety and health and environmental protection laws in the manufacture and packaging of Licensed Products. Licensee shall perform all obligations under this License Agreement in accordance with applicable provisions of federal, state and local laws, rules and regulations as are in effect from time to time.

SECTION XV (Purchase Rights)

Licensor shall have the right to purchase from Licensee, at Licensee's lowest available wholesale price, such number of royalty-free units of any Licensed Product as Licensor may from time to time specify in a notice to Licensee.

SECTION XVI (Indemnification)

Licensee hereby agrees to be solely responsible for and to indemnify, defend and hold harmless Licensor, NYC & Company, their affiliates and respective officers, agents, and employees, and to hold each of them harmless from and against any claims, judgments, demands, causes of action, damages, losses, costs and expenses, including but not limited to reasonable attorneys' fees, which may be made or asserted by third persons in connection with the manufacture, design, sale, offering for sale, advertising, promotion or use of the Licensed Products, including those based on Licensee's use of the Property authorized by this License Agreement. Such indemnification shall further extend to Licensee's failure to comply with the terms of this License Agreement and Licensee's unauthorized use of any patent, process, idea, method or device, or unfair trade practice, false advertising, trademark, copyright infringement or the like in connection with the manufacture, design, sale, advertising, promotion or use of the Licensed Products. Licensee expressly agrees that its obligations hereunder shall survive and continue beyond any termination or expiration of this License Agreement.

SECTION XVII (Existing Licenses)

Licensee hereby acknowledges that Licensor has previously granted and may continue to grant licenses to third parties for the use of the Property.

SECTION XVIII (Insurance)

During the term of this license and for at least three (3) years after the last date of sale by Licensee of any Licensed Product, Licensee agrees to carry commercial general liability insurance, including but not limited to

product liability coverage, with insurer(s) that may lawfully issue the required policy and have an A.M. Best rating of at least A- / "VII", a Standard & Poor's rating of at least A, a Moody's investors service rating of at least A3, a Fitch Ratings rating of at least A-, or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department. The commercial general liability insurance must: (x) be in an amount of at least one million dollars (\$1,000,000) per occurrence for bodily injury and property damage, one million dollars (\$1,000,000) for personal and advertising injury, two million dollars (\$2,000,000) policy aggregate, and two million dollars (\$2,000,000) products/completed operations; (y) be at least as broad as that provided by the latest edition of Insurance Services Office (ISO) form CG 00 01; and (z) include NYC & Company and the City, together with their officials and employees, as additional insureds under such policy with coverage at least as broad as the latest edition of either ISO form CG 20 26 or ISO form CG 20 36 . Policies of insurance provided pursuant to this Agreement shall be primary and non-contributing to any insurance or self-insurance maintained by NYC & Company or the City.

Each year such insurance is required, Licensee shall provide NYC & Company and the City with a Certificate of Insurance, which certifies the issuance and effectiveness of such policies of insurance, each with the specified minimum limits, and the required additional insured endorsements, accompanied by either a duly executed "Certification by Insurance Broker or Agent" in the form required by the Licensor, or certified copies of all policies referenced in such Certificate of Insurance.

In the event that Licensee fails at any time to carry insurance as required herein, Licensee shall immediately notify Licensor thereof and Licensor shall have the right to terminate this Agreement immediately.

Whenever notice of occurrence, claim or suit to an insurance company is required under any such policy, Licensee shall provide timely notice thereof on behalf of both NYC & Company and the City, including their officials and employees, and shall promptly send a copy of such notice(s) to both NYC & Company and the City. The copy of such notice to NYC & Company shall be sent to the address set forth in Paragraph 12 above and the copy to the City shall be sent to c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. The existence of such insurance shall in no way limit Licensor's or NYC & Company's rights under this Agreement, at law or in equity, including the right to be indemnified as set forth in this Agreement.

Licensee waives all rights against the NYC & Company and the City, including their officials and employees, for any damages or losses that are covered under any insurance required by this Agreement (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Licensee.

SECTION XIX (Governing Law)

This License Agreement shall be construed in accordance with the laws of the State of New York, notwithstanding conflicts of laws principles. By execution of this License Agreement, Licensee consents to submit to the jurisdiction of the courts of the State of New York located in New York City and the federal courts located therein.

SECTION XX (No Partnership or Joint Venture)

Nothing in this License Agreement or in the course of performance under this License Agreement shall be construed to constitute a partnership or joint venture. Licensee shall have no right to obligate or bind Licensor in any manner whatsoever (nor shall Licensee hold itself out to any third party as being so authorized) and nothing contained herein nor in the course of performance hereunder shall give or is intended to give any right of any kind to any third party.

SECTION XXI (No Manufacturers, Importers, or Sublicensees)

Licensee shall provide Licensor with a list of the names and addresses of Licensee's manufacturers, importers and distributors and will notify Licensor of any change in such list. From time to time, Licensor may request that Licensee provide the names of its designers, raw material suppliers and/or authorized importers of the Licensed Products, and Licensee agrees to provide such information upon the request of Licensor. Licensee may sublicense rights under this License Agreement ("Sublicense") only with the prior, written approval of the Licensor, which may be withheld in Licensor's sole discretion. Each and every Sublicense granted under this License Agreement shall contain such provisions as Licensor may require, including without limitation that the Sublicense shall be assignable to the Licensor upon the written demand of the Licensor.

SECTION XXII (Notices)

All notices required to be given under the terms of this License Agreement, or which either party hereto may desire to give to the other, shall be in writing and sent by mail to the following addresses:

If to Licensor:

NYC & Company
810 Seventh Ave.
New York, NY 10019
ATTN: Bryan X. Grimaldi
Chief Operating Officer & General Counsel

With a copy to:

New York City Department of Small Business Services
110 Williams Street, 2nd Floor
New York, NY 10038

If to Licensee:

Tombolo LLC
Attn: Chris Galasso
110 Riverside Drive, Apt. 8A
New York, NY, 10024

SECTION XXIII (Confidentiality)

Except as otherwise required by law, Licensee agrees to, and shall cause its affiliates, agents, representatives, accountants, employees, officers and directors to: (i) treat and hold as confidential all information, reports or data, prepared, assembled, used or that Licensee comes to obtain under this License Agreement, and (ii) prior to publication, not disclose or provide access to such confidential information to any individual or organization without the prior written approval of Licensor. In the event that Licensee or Affiliate, agent, contractor, representative, employee, officer, or director of Licensee, becomes legally compelled to disclose confidential information of Licensor, Licensee must provide Licensor with prompt written notice of such requirement so that Licensor may seek a protective order or other remedy or waive compliance with this Article XXIII. In the event that such protective order or other remedy is not obtained, or compliance with this Article XXIII is waived, Licensee agrees to furnish only that portion of such confidential information which is legally required to be provided and exercise its reasonable best efforts to obtain assurances that confidential treatment will be accorded such information. Notwithstanding the foregoing, this Article XXIII shall not apply to any information that, at the time of disclosure, (i) was available publicly and not disclosed in breach of this License

Agreement, (ii) was known to the receiving party without breach of an obligation of confidentiality or (iii) was learned from a third party who was not under an obligation of confidentiality. The parties agree and acknowledge that remedies at law for any breach of the obligations under this Article XXIII may be inadequate and that in addition thereto Licensor and NYC & Company are entitled to seek equitable relief, including injunction and specific performance, in the event of any such breach.

In the event that Licensee believes that specific information it submits to Licensor or NYC & Company pursuant to this Agreement should be treated confidentially by Licensor or NYC & Company, Licensee shall so advise the party receiving the information in a writing identifying the specific information. Licensor and NYC & Company agree to treat information so designated as confidential proprietary information of Licensee, consistent with legal requirements.

The City or NYC & Company may be required, pursuant to the New York State Freedom of Information Law ("FOIL") (New York Public Officers Law Section 84 et seq.), to disclose information, or any portion thereof. In the event that disclosure is requested by a third party of materials designated by Licensee as confidential or proprietary information in accordance with this Section, the Licensor or NYC & Company will provide notice to Licensee and shall consult with Licensee to evaluate the extent to which such information may be withheld from disclosure under the provisions of FOIL.

Consistent with the requirements of FOIL, the final determination regarding disclosure shall be made by Licensor or NYC & Company in their sole discretion. In the event that Licensor or NYC & Company determines in its discretion that information may not be withheld, Licensor or NYC & Company, as appropriate will provide Licensee with prompt notice of intent to disclose in order that Licensee may invoke any rights or remedies to prevent disclosure to which it believes it may be entitled under the law.

Licensee expressly acknowledges and agrees that neither the Licensor nor NYC & Company will have any obligation or liability to Licensee in the event of disclosure of materials, including materials designated by Licensee as proprietary information, provided such disclosure is in accordance with this Section.

SECTION XXIV (Investigations)

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

B. (i) 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, permit, contract, or license entered into with the City of New York, the State of New York, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City of New York, or any public benefit corporation organized under the laws of the State of New York, or;

(ii) 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 of New York 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 of New York, the State, or any political subdivision thereof or any local development corporation within the City of New York, then;

C. (i) The commission 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 (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

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

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

(i) The disqualification for a period not to exceed five (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 of New York; and/or

(ii) The cancellation or termination of any and all such existing City of New York contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this License Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City of New York 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 Licensor.

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

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

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

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

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

F. (i) 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.

(ii) 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.

(iii) 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 of New York, or otherwise transacts business with the City of New York.

(iv) 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 provision of this License Agreement the Commissioner or agency head may in his or her sole discretion terminate this License Agreement upon not less than three (3) days’ written notice in the event Licensee fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this License Agreement by Licensee, or affecting the performance of this License Agreement.

SECTION XXV (Miscellaneous)

A. No action at law or proceeding in equity by Licensee against Licensor or NYC & Company shall lie or be maintained upon any claim based upon this License Agreement or arising out of this License Agreement or in any way connected with this License Agreement unless Licensee has strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.

B. No action shall lie or be maintained against Licensor or NYC & Company by Licensee upon any claims based upon this License Agreement unless such action shall be commenced within six (6) months after the date of final payment hereunder, or within six (6) months of the termination or conclusion of this License Agreement, or within six (6) months after the accrual of the cause of action, whichever first occurs

C. In the event any claim is made or any action is brought against Licensor or NYC & Company in any way relating to the Agreement herein on the basis of Licensee’s actions and in each case by a third party, Licensee shall diligently render to Licensor and NYC & Company without additional compensation any and all assistance which Licensor and NYC & Company may reasonably require of Licensee, subject to reimbursement for Licensee’s actual, reasonable, pre-approved expenses.

D. Either party shall report to the other party in writing within ten (10) working days of the date such party becomes aware of the initiation by or against it of any legal action or proceeding in connection with or relating to this License Agreement.

E. No claim whatsoever shall be made by Licensee against any officer, agent, or employee of Licensor or NYC & Company for, or on account of, anything done or omitted in connection with this License Agreement.

F. This License Agreement may be executed in two copies, each of which shall be deemed an original. This License Agreement contains the entire understanding between the parties with respect to the subject matter hereof and replaces and supersedes all prior agreements and understandings between the parties. This License Agreement may only be amended by a writing executed by all parties.

G. Headings used herein are for convenience only and shall not be considered part of this License Agreement. This Agreement has been negotiated by the parties hereto. No provision of this License Agreement shall be strictly construed against the drafter of the language concerned, but shall be interpreted applying the most reasonable interpretation under the circumstances, giving due consideration to the intentions of the parties at the time of contracting.

H. Licensee represents and warrants to Licensors that: (i) it is duly organized and validly existing under the laws of the State of New York, (ii) it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; (iii) its execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on its part; (iv) once executed and delivered, this Agreement will constitute its legal, valid and binding obligation, enforceable in accordance with its terms; (v) there are no legal or arbitral proceedings or any proceedings by or before any governmental or regulatory authority or agency, now pending or (to the knowledge of Licensee) threatened against Licensee which, if adversely determined, could have a material adverse effect on the financial condition, operations, business or prospects of Licensee; (vi) the execution and delivery of this Agreement and any related agreement to which it is party, the consummation of the transactions herein and therein contemplated and compliance with the terms and provisions hereof and thereof, will not conflict with or result in a breach of, or require any consent under, the charter, by-laws or partnership agreement, as applicable, of Licensee, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which Licensee is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument, or result in the creation or imposition of any lien upon any of the revenues or assets of Licensee pursuant to the terms of any such agreement or instrument.

I. Licensors represent and warrants to Licensee that: (i) subject to applicable law, it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; and (ii) to the best of Licensors' knowledge, the execution of and delivery of this Agreement and any related agreement to which it is party, the consummation of the transactions herein and therein contemplated and compliance with the terms and provisions hereof and thereof, will not conflict with or result in a breach of, or require any consent under any agreement or instrument to which Licensors is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.

J. Each of the parties hereto shall use all reasonable efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things necessary, proper or advisable under applicable law, and to execute and deliver such

documents and other papers, as may be required to carry out the provisions of this License Agreement and consummate and make effective the transactions contemplated by this License Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement as of the date and year first above written.

NEW YORK CITY DEPARTMENT OF SMALL BUSINESS SERVICES

By:

Its:

Date of Signature: _____

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY:

Acting Corporation Counsel

Tombolo, LLC

By:

Its:

Date of Signature: _____

**Manufacturer Acknowledgements of Receipt and Compliance with City of New York Ethical
Standards for Manufacture of Licensed Product**

IN WITNESS WHEREOF, each entity signing below acknowledges receipt and full compliance with Exhibit 6
(Ethical Standards for the City of New York) of this License Agreement.

NAME OF MANUFACTURER
FULL ADDRESS OF MANUFACTURER

By:
NAME

Its:
TITLE

Date of Signature: _____

NAME OF MANUFACTURER
FULL ADDRESS OF MANUFACTURER

By:
NAME

Its:
TITLE

Date of Signature: _____

LICENSEE SHOULD ADD AS MANY SIGNATURE BLOCKS AS NECESSARY TO INCLUDE ALL AUTHORIZED
SOURCES OF LICENSED PRODUCT

Exhibit I

The Property

Trademarks of the City of New York

Trademarks



Exhibit 2

Licensed Products

Apparel and Accessories

Exhibit 3

Distribution Channels

Tombolo Brick and Mortar Stores

Online sales

Exhibit 4

Product Labels and Graphics

City Seal Hologram

All products must include a permanent copyright notice and trademark designation etched on the back of the product. It must read “© 2024[or current year] City of New York. All Rights Reserved.”

If too little room is available to accommodate this etching, individual decisions will be made in consultation with NYC & Company, which shall have the right of prior approval over the final version.

All packaging must include at least the copyright notice “© 2024 [or current year] City of New York. All Rights Reserved.”

Exhibit 5
Quality Control Guidelines

1. All Licensed Products and related materials associated with NYC & Company's licensing program, including but not limited to packaging, print ads, advertising initiatives, point of purchase displays, story boards, scripts, molds, brochures, videos, DVDs, labels, hangtags, catalogs, sales sheets and all collateral materials must be submitted to NYC & Company for written approval prior to any production.
2. Each product submitted for approval must, at every stage, be submitted via NYC & Company's online product approval system, Trademarx Insight. Licensee will be introduced and set up with Trademarx Insight upon contract execution.
3. All prototypes of any items which utilize trademarks discussed herein must be submitted at each stage of production. Based on written approval, Licensee may proceed to the next step.
4. Contracts will contain NYC & Company's entire sample submission/ approval process. The following brief steps will be required for all product submissions:
 - Initial sketches and/ or design concepts
 - Finished artwork or final proofs
 - Prototypes or pre-production samples
 - Production samples
5. Licensees are required to submit all licensed products in each style and variation.
6. Product submissions shall be reviewed and evaluated for:
 - Accuracy of logo representation
 - Proper use of Pantone colors
 - Proper use of trademark designations
 - General appearance and quality of product
 - NYC & Company policies and standards
7. All approvals granted are conditioned upon FULL EXECUTION OF THE LICENSING AGREEMENT AND TIMELY PAYMENTS, or with the prior written permission of NYC & Company
8. Each logo is distinctive and therefore must be used separately on Licensed Product and collateral materials. Logos may not be reversed and/ or turned to appear in an opposite direction.
9. All hard goods must include a permanent copyright notice and trademark designation etched on the bottom or other approved location on the product.
10. Licensees must indicate the size of, and the amount of times, they intend to utilize logo(s) discussed herein, third party logo(s) and/or corporate identification(s) in relationship to the size of the logo(s) discussed herein prior to the Licensee's logo use on products.
11. All products are required to utilize holograms, hangtags and/ or labels purchased from NYC & Company's exclusive on-product authentication products supplier.
12. Licensee agrees to use the following notice, TM, ® or ©, as specified by the Licensor, in connection with the first most prominent usage of the Property on all Licensed Products, hang tags and packaging: "All New York City logos and marks depicted herein are the property of New York City and may not be reproduced without written consent. © 2024 (or other year of initial publication). City of New York. All rights reserved."

Licensee agrees to use the following notice, ™, ® or ©, in connection with all displays, advertising, sales brochures, instruction manuals and other promotional materials for each Licensed Product (hereinafter the "Promotional Materials"): "All New York City logos and marks depicted herein are the property of the City of New York and may not be used or reproduced without prior written consent. © 2024 (or other initial year of publication). City of New York. All rights reserved." If impracticable in a particular situation, a shortened version of such notices may be used with Licensor's prior written approval.

- 13.** Licensee must have any vendor or factory that is used to produce Licensed Products acknowledge in writing receipt and compliance with the Ethical Standards Form attached as Exhibit 6. Licensee agrees to upload to Trademarx the factory name and factory contact information (foreign or domestic) where production of a particular item will occur once such factory has been assigned for such item. No product approvals will be given without this information.

Exhibit 6

Ethical Standards for the City of New York

The City of New York ("City") is committed to conducting business in an ethical and responsible manner in all countries, and requires the same from all of its business partners. While the City recognizes that there are different legal and cultural environments in which factories operate throughout the world, these Ethical Standards for Vendors ("Standards"), set forth the basic minimum requirements all factories must meet in order to do business with the City.

These Standards apply to City rights holders of specific licensed products ("Licensees") and factories that produce goods for the City ("Licensed Products"), including manufacturers, contractors and subcontracted manufacturers (hereinafter collectively referred to as "Vendors"). Under the agreement in place with each Licensee, the City has the right to approve all Vendors of Licensed Products. No Vendor will be approved and no currently approved Vendor will be retained who does not comply with these Standards. The City strongly encourages Vendors to exceed these Standards and promote best practices and continuous improvement throughout their factories.

Legal Requirements:

The City requires that its Vendors must operate in full compliance with all applicable laws and regulations of the countries in which they manufacture and compliance with all local environmental laws applicable to the workplace.

Forced Labor:

The City requires that its Vendors not use forced labor, including, but not limited to, prison, indentured, bonded or involuntary labor.

Child Labor:

Vendor agrees not to use child labor in the manufacture of or otherwise in connection with any Licensed Products. The term "child" shall refer to a person younger than the local legal minimum age for employment or the age for compelling compulsory education, but in no case shall any children younger than fifteen (15) years of age (or fourteen (14) years of age where local law allows) be used to manufacture, package or sell the Licensed Products. In addition, Vendor agrees to comply with all applicable minimum wage, overtime, occupational safety and health and environmental protection laws in the manufacture and packaging of Licensed Products.

Harassment or Abuse:

The City requires that its Vendors treat their employees with respect and dignity. Vendors must provide a work environment free of harassment, abuse or corporal punishment in any form. In addition, Vendors will not use monetary fines as a disciplinary practice.

Discrimination:

The City requires that its Vendors ensure that employment, including but not limited to hiring, salary, benefits, advancement, discipline or termination, is based solely on ability and not on any personal characteristics.

Health and Safety:

The City requires that its Vendors provide a safe and healthy working environment in accordance with applicable local law to prevent accidents and injury arising out of, linked with, or occurring in the course of work or as a result of the operation of employer facilities. Vendors who provide residential facilities must ensure these facilities

are also safe and healthy in accordance with applicable local laws.

Freedom of Association:

The City requires that its Vendors recognize and respect the legal right of employees to freely associate. Employees should not be subject to intimidation or harassment as a result of the peaceful exercise of their legal right to join or to refrain from joining any organization.

Compensation and Benefits:

The City requires that its Vendors pay employees at least the minimum compensation required by local law, and to provide all legally mandated benefits. In addition to their compensation for regular hours of work, employees shall be compensated for overtime hours at such premium rate as is legally required or, in those countries where such laws do not exist, at a rate at least equal to their regular hourly compensation rate.

Hours of Work:

The City requires that its Vendors ensure that, except in extraordinary business circumstances, on a regularly scheduled basis, employees shall (i) not be required to work more than the lesser of (a) sixty (60) hours per week or (b) the limits on regular and overtime hours allowed by the law of the country of manufacture, and (ii) be entitled to at least one day off in every seven day period.

Communication:

The City requires that its Vendors take appropriate steps to ensure that the provisions of these Standards are communicated to employees.

Monitoring and Compliance:

The City requires that its Vendors maintain on file all documentation necessary to demonstrate compliance with the City's Standards. Vendors must allow the City and its designated agents (including third parties) to engage in announced and unannounced monitoring visits, including confidential employee interviews.

City Vendors are required to take necessary corrective actions to promptly remediate any noncompliance. The City reserves the right to ultimately terminate its business relationship and/or cancel existing orders with any Vendor who is unwilling or unable to comply with these Standards.

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 8)

RESOLVED, that the Franchise and Concession Review Committee ("FCRC") authorizes New York City Tourism + Conventions on behalf of New York City Department of Small Business Services ("SBS") to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into a Sole Source License Agreement with Tombolo, LLC for the non-exclusive use of city-owned trademarks on merchandise. The Agreement shall commence upon written notice, and shall continue through December 31, 2027, unless sooner terminated pursuant to the terms and conditions of this License Agreement. Tombolo, LLC will pay the City a guarantee of \$20,000 for the first three (3) years with a royalty rate equal to Ten percent (10%) of Net Sales when sold at Wholesale. The calculation for the Guaranteed Minimum Royalties shall begin as of the Effective date. Licensor shall have the option in its sole discretion of renewing the license agreement on substantially the same terms and conditions for a period of two (2) years.

**THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON**

3/12/2025

Signed: _____

Title: City Chief Procurement Officer

Date: _____