

PUBLIC NOTICE

NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and the New York City Department of Transportation (“DOT”) to be held remotely via a Microsoft Teams dial-in on April 10, 2023 at 2:30 p.m. relative to:

INTENT TO AWARD as a concession for the development, operation, and maintenance of a food, beverage and/or merchandise concession at Kiosk 3 at Fordham Plaza, at Fordham Plaza in the borough of the Bronx, for a five (5) year term, with three (3) five year renewal options, to 21st Associates LLC.

The public may participate in the public hearing by calling the dial-in number below. Written testimony may be submitted in advance of the hearing electronically to fcrc@mocs.nyc.gov. All written testimony must be received by April 7. In addition, the public may also testify during the hearing by calling the dial-in number. The dial-in information is below:

Dial-in #: +1-646-893-7101

Access Code: 250 584 973 #

Press # on further prompts

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

- 1) Send a written request to DOT at concessions@dot.nyc.gov from April 3 through April 7
- 2) Download from April 3 through April 7 on DOT’s website. To download a draft copy of the agreement, visit <https://www1.nyc.gov/html/dot/html/about/doing-business.shtml#concessions>
- 3) Send a written request by mail to Rachel Frumin, NYC Department of Transportation, 55 Water Street, 9th Floor, New York, NY 10041. Written requests must be received by April 5. For mail-in request, please include your name, return address, and reference the “Fordham Plaza Kiosk 3 Concession”.

A transcript of the hearing will be posted on the FCRC website at <https://www1.nyc.gov/site/mocs/reporting/agendas.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) 298-0734. 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.

CONCESSION AGREEMENT RECOMMENDATION FOR AWARD MEMORANDUM COVER SHEET

(Attach, in the following order, applicable CRFA Memo, Responsibility Determination Form, approved CPSR Cover Sheet and, if the selection procedure was not CSB, the CPSR Memo and CCPO Memo (if applicable))

AGENCY: New York City Department of Transportation (DOT)	RECOMMENDED CONCESSIONAIRE Name: 21st Associates LLC Address: 4212 13 Street, Long Island City, NY 11101 Telephone # 718-301-1212 <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN # 47-4076352 Not-for-Profit Organization <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Certified by DSBS as M/WBE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	CONCESSION TITLE/ DESCRIPTION: Request for Proposals (RFP) for the Development, Operation, and Maintenance of a Food, Beverage and/or Merchandise Concession at Kiosk 3 at Fordham Plaza in the Borough of the Bronx CONCESSION I.D.# 2021Con1
# VOTES required for proposed action = ___ <input checked="" type="checkbox"/> N/A		

LOCATION OF CONCESSION SITE(S)* Address Fordham Plaza, located at Fordham Road, Third Avenue and East 189th Street N/A

*Attach additional sheet **Borough** BX **C.B.** 6 **Block #** N/A **Lot #** N/A

SELECTION PROCEDURE
(*CCPO approval of CRFA required)

Competitive Sealed Bids
 Competitive Sealed Proposals* (FCRC approved Agency request to deviate from final recommendation of the Selection Committee on ___/___/___.)
 Different Selection Procedure: * (Sole Source Agreement Other _____)
 > FCRC approved different selection procedure on ___/___/___.
 Negotiated Concession*

<p align="center">CONCESSION AGREEMENT TERM</p> <p>Initial Term: From <u>Notice to Proceed</u> (NTP) To <u>Five (5) Years</u> from NTP Renewal Option(s) Term: <u>Three (3) five-year renewal options, exercisable at the sole discretion of DOT</u></p> <p>Total Potential Term: <u>20</u> Years * <input type="checkbox"/> * >20 years – FCRC unanimously approved term on ___/___/___</p>	<p align="center">ANNUAL REVENUE (Check all that apply) (<input type="checkbox"/> Additional sheet (<input type="checkbox"/>s) attached)</p> <p><input type="checkbox"/> Annual Fee(s) \$ _____ <input type="checkbox"/> % Gross Receipts _____% <input type="checkbox"/> The Greater of Annual Minimum Fee(s) of ___ v. ___ of Gross Receipts <input checked="" type="checkbox"/> Other <u>Maintenance</u></p>
---	---

NOTIFICATION REQUIREMENTS

Subject concession was awarded by CSB or CSP. YES NO

If YES, check the applicable box(es) below:

The subject concession is a Significant Concession and the Agency completed its consultations with each affected CB/BP regarding the scope of the solicitation by which was at least 30 days prior to its issuance.

The subject concession is a Significant Concession and the Agency included this concession in the Agency's Plan and completed consultations with each affected CB/BP pursuant to §1-10 of the Concession Rules.

The subject concession was determined not to be a Major Concession and the Agency sent notification of such determination to each affected CB/BP by which was at least 40 days prior to issuance of the solicitation.

If NO, check the applicable box below:

The Agency certifies that each affected CB/BP received written notice by ___/___/___, which was at least 40 days in advance of the FCRC meeting on ___/___/___ at which the agency sought and received approval to use a different selection procedure.

The Agency certifies that each affected CB/BP received written notice on ___/___/___, at the time that a notice of intent to enter into negotiations was published for the subject concession, and provided a copy of such notification to the members of the Committee within five days on ___/___/___.

The Agency certifies that based on exigent circumstances the FCRC unanimously approved waiver of advance written notice to each affected CB/BP on ___/___/___.

Law Department approved concession agreement on _____

Award is a major concession. YES NO

If 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 ___/___/___ or N/A

AUTHORIZED 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.

If the concession was awarded by other than CSB or CSP, additionally check the applicable box below:

- The concession was approved by the FCRC on ___/___/___.
- The concession was not subject to the approval of the FCRC because it has a term of <30 days and is not subject to renewal.

Name Michelle Craven Title Assistant Commissioner for Cityscape and Franchises

Signature _____ 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

**RECOMMENDATION FOR AWARD OF CONCESSION AGREEMENT MEMORANDUM:
COMPETITIVE SEALED PROPOSALS**

SUMMARY OF PROPOSED CONCESSION USE (Attach Proposed Agreement)

Request for Proposals (RFP) for the Development, Operation, and Maintenance of a Food, Beverage and/or Merchandise Concession at Kiosk 3 at Fordham Plaza in the Borough of the Bronx

Instructions: Check all applicable boxes and provide all applicable information requested below.

A. SOLICITATION

1. Notices of Solicitation were sent on 5/9/2022 to:

- All entities on the appropriate agency concession mailing list.
- The Agency certifies that a notice soliciting the names of entities interested in being included on the appropriate agency concession mailing list is published in the City Record, on the City's website and in appropriate newspapers and trade publications at least once annually for five consecutive editions and that a copy of such notices are furnished to each affected CB-BP and the Committee Members within five (5) days of publication.
- Other. *Describe:*

2(a). A Notice of Solicitation was published in:

- At least 10 successive issues of the City Record from 5/9/2022 to 5/20/2022
- The City's website from 5/9/2022 to 6/17/2022
- Appropriate newspaper(s) and trade publication(s)
- Other. *Describe:*

The Department of Transportation issued a press release through the agency press office, as well as posts on social media services Twitter, Instagram, and LinkedIn.

2(b). The Agency certifies that the RFP was sent to each affected CB/BP and the Committee Members within five (5) days of publication on 05/09/2022.

- 3. The agency certifies that outreach was specifically conducted to M/WBEs.
- 4. 35 entities requested RFP.

Note: This is the number of entities that downloaded the RFP from the City Record

5. Agency issued 1 addenda to RFP.
6. Mandatory pre-proposal conference: N/A Attended by recommended concessionaire.

B. RECEIPT OF PROPOSALS (Attach a copy of the Request for Proposals)

1. The due date (07/07/2022) and time prescribed in RFP was:

At least **20** days after the last day that the Notice of Solicitation was published in the City Record

A shorter reasonable period based on a written determination by the Concession Manager, a copy of which is included in the concession file.

2. 2 proposal(s) were received by due date and time (07/07/2022 at 2 p.m.) prescribed in RFP

The Concession Manager determined that it was in the best interests of the City to extend the submission deadline and accept late proposals. *[insert number]* proposal(s) were received within three hours after the proposal submission deadline and before any competing proposals had been opened. The proposal submitted by the recommended concessionaire was received within the extension period.

3. Responsiveness determinations:

[0 proposals were determined to be non-responsive.

No non-responsive proposer appealed that finding.

[insert number] proposer(s) appealed the finding of non-responsiveness, with the following outcome(s): upheld reversed

pending/Agency Head determined that execution of concession without delay is necessary to protect substantial City interests

By checking this box, the Concession Manager has made a written determination of responsiveness for the award of this concession pursuant to § 1-06 of the Concession Rules of the City of New York.

C. EVALUATION/SELECTION/BASIS FOR AWARD

 1 *[insert number]* concession(s) is/are being awarded through the subject RFP.

The agency certifies that all proposals were scored by at least three evaluators.

Discussions/negotiations and/or a "best and final" offer process was conducted. *Describe:*

Basis for Award: (Attach copies of at least top three rated proposals, if applicable.)

Instructions: Check applicable box below; attach a Summary Rating sheet reflecting, as applicable:

- List of proposers in descending order of initial overall score, or if applicable, final overall score
- For each proposer: (1) initial, and if applicable, final overall score and scores for each evaluated criterion (show scores at each evaluation stage); and (2) initial, and if applicable, final proposed revenue amount (or attach detailed documentation of revenue formula).
- If applicable, identify the proposer(s) determined to be in the competitive range of technically viable proposals ("short list").

Recommended concessionaire is the highest rated proposer.

Recommended concessionaire was the sole proposer or was determined to be only technically qualified proposer, and agency certifies that: a sufficient number of other entities had a reasonable opportunity to propose; the agency made inquiries of representative firms as to why they chose not to submit proposals; the submitted proposal meets minimum requirements for award; re-solicitation would not be in the City's best interest, and the Concession Manager has documented all of the above. *Explain:*

Recommended concessionaire is *other than* the proposer recommended by the Selection Committee. *Explain:*

D. PUBLIC HEARING [N/A – Subject award **NOT** a significant concession]

1. Publication & Distribution of Public Hearing Notice

Subject concession is a **Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on ___/___/___, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on ___/___/___, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO. Agency also published a public hearing notice twice in the two newspapers indicated below. A copy of each such notice was sent to each affected CB-BP by ___/___/___.

_____, a NYC citywide newspaper on ___/___/___ and ___/___/___
 _____, a NYC citywide newspaper on ___/___/___ and ___/___/___

OR

Subject concession is **NOT a Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time,

date and location of the public hearing was published once in the City Record on 3/24/2023, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on 03/24/2023, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO. Agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in two newspapers indicated below. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB-BP by 03/24/2023.

New York Daily News, a NYC local newspaper published in the affected borough(s) on 03/28/2023 and 03/30/2023.

New York Post, a NYC local newspaper published in the affected borough(s) on 03/28/2023 and 03/30/2023.

2. Public Hearing Date, Exception to Public Hearing Requirement

A Public Hearing was conducted on 04/10/2023.

OR

The Agency certifies that the total annual revenue to the City from the subject concession does not exceed one million dollars and a Public Hearing was not conducted because, pursuant to §1-13(q)(2) of the Concession Rules, the Agency gave notice of the hearing and did not receive any written requests to speak at such hearing or requests from the Committee that the Agency appear at the hearing. Furthermore, the Agency certifies that it published a notice in the City Record canceling such hearing on ___/___/___ and sent a copy of that notice to all Committee Members.

LICENSE AGREEMENT

BETWEEN

21ST ASSOCIATES LLC

AND

CITY OF NEW YORK

**DEPARTMENT OF
TRANSPORTATION**

for

THE DEVELOPMENT, OPERATION, AND MAINTENANCE OF A FOOD, BEVERAGE
AND/OR MERCHANDISE CONCESSION AT KIOSK 3

FORDHAM PLAZA

BRONX, NY

DATED: _____, 2023

Table of Contents

THE DEVELOPMENT, OPERATION, AND MAINTENANCE OF A FOOD, BEVERAGE AND/OR MERCHANDISE CONCESSION AT KIOSK 2..... 1

1. GRANT OF LICENSE 4

2. DEFINITIONS..... 5

3. TERM OF LICENSE..... 8

4. COMPENSATION TO CITY 10

5. SECURITY DEPOSIT..... 11

6. CAPITAL IMPROVEMENTS 11

7. ALTERATIONS 15

8. FIXED AND EXPENDABLE EQUIPMENT..... 16

9. UTILITIES..... 17

10. OPERATIONS..... 17

11. MAINTENANCE AND REPAIRS 24

12. APPROVALS 25

13. PLAZA EVENTS 25

14. INSPECTION AND AUDIT OF RECORDS..... 25

15. PROHIBITION AGAINST TRANSFER; ASSIGNMENTS AND SUBLICENSES..... 27

16. DOT CONSTRUCTION 28

17. COMPLIANCE WITH APPLICABLE LAWS 28

18. NON-DISCRIMINATION 28

19. NO WAIVER OF RIGHTS 29

20. RESPONSIBILITY FOR SAFETY, INJURIES OR DAMAGE, AND INDEMNIFICATION..... 29

21. INSURANCE..... 30

22. WAIVER OF COMPENSATION 35

23. INVESTIGATIONS 35

24. TERMINATION..... 37

25. CHOICE OF LAW/CONSENT TO JURISDICTION AND VENUE 39

26. WAIVER OF TRIAL BY JURY 39

27. RESERVATION OF RIGHTS AND INTERESTS 40

28. PERSONNEL 40

29. FEDERAL EMPLOYER IDENTIFICATION NUMBER..... 41

30. CONFLICT OF INTEREST 41

31. REPRESENTATIONS, WARRANTIES AND COVENANTS 41

32. CLAIMS AND ACTIONS THEREON..... 42

33. NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES..... 43

34. PARTICIPATION IN AN INTERNATIONAL BOYCOTT 43

35. INFRINGEMENTS 43

36. ANTI-TRUST 43

37. EMINENT DOMAIN AND PUBLIC USE..... 43

38. DEVELOPMENT PURPOSES 43

39. ALL LEGAL PROVISIONS DEEMED INCLUDED 44

40. SEVERABILITY: INVALIDITY OF PARTICULAR PROVISIONS..... 44

41. JUDICIAL INTERPRETATION..... 44

42. MODIFICATION OF AGREEMENT 44

43. NOTICES 44

44. ENTIRE AGREEMENT 44

45. COUNTERPARTS 45

46. MISCELLANEOUS 45

- Exhibit A Licensed Premises
- Exhibit B Schedule of Approved Hours and Rates, Fees and Prices
- Exhibit C Capital Improvements
- Exhibit D Concessionaire's Manual
- Exhibit E Maintenance Services
- Exhibit F Paid Sick Leave Law Concession Agreement Rider
- Exhibit G Certificate of Insurance and Certification by Insurance Broker or Agent

LICENSE AGREEMENT (“License Agreement” or “License”) made this ___ day of _____, 2022 between the City of New York (the “City”) acting by and through the Department of Transportation (“DOT”), whose address is 55 Water Street, 9th Floor, New York, New York 10041, and 21st Associates LLC (“Licensee” or “Concessionaire”), a New York limited liability company qualified to do business in New York, whose address is 4212 13th Street, Long Island City, NY 11101.

WHEREAS, DOT has jurisdiction of a pedestrian plaza located at Fordham Road, Third Avenue and East 189th Street in the Borough of the Bronx, which has also been designated as Fordham Pedestrian Plaza pursuant to section 19-157 of the NYC Administrative Code (“Fordham Plaza” or “Plaza”); and

WHEREAS, DOT desires to provide for the development, operation, and maintenance of a food, beverage, and/or merchandise concession (“Concession”) at Kiosk 3 — Small Kiosk, North (“Kiosk 3”) and its surrounding outdoor seating area within the Plaza (“Licensed Premises or “Premises”), as further illustrated in **Exhibit A**, for the accommodation of and use by the public; and

WHEREAS, the Licensee desires to develop, operate and maintain a Concession at the Licensed Premises in accordance with the terms set forth herein; and

WHEREAS, DOT has complied with the requirements of the Franchise and Concession Review Committee (“FCRC”) for the selection of concessionaires, including the issuance of a Request for Proposals (“RFP”) for the Concession at the Licensed Premises (Solicitation Number 84122BXAD546); and

WHEREAS, Licensee submitted its proposal to DOT in response to the RFP for the Concession at the Licensed Premises; and

WHEREAS, DOT and Licensee desire to enter into this License Agreement specifying rights and obligations with respect to the Concession at the Licensed Premises;

NOW THEREFORE, in consideration of the promises and covenants contained herein, the parties do hereby agree as follows:

1. GRANT OF LICENSE

1.1 DOT hereby grants to Licensee and Licensee hereby accepts from DOT this License to develop, operate and maintain a Concession at the Licensed Premises, in accordance with the provisions herein and to the satisfaction of DOT. All plans, schedules, services, menu items, merchandise, prices and fees, and hours of operation are subject to DOT’s prior written approval. Licensee will be responsible for all costs associated with the Concession at the Licensed Premises.

1.2 At its sole cost and expense, Licensee 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 to develop, operate and maintain a Concession at the Licensed Premises in accordance with the terms of this License and to perform the Capital Improvements required by this License Agreement. In order to be in compliance with this License Agreement, Licensee must

fulfill all of the obligations contained herein. DOT may deem as a default Licensee's failure to fulfill any of its obligations herein for any reason.

1.3 It is expressly understood that this License is not a lease or other conveyance of land, building, space, equipment, or parking rights, but that during the Interim Period and Term (as defined in Section 3.1) of this License, Licensee shall have, subject to the terms of this License, the right to operate the Concession at the Licensed Premises at the times of day and on the days of the week outlined in **Exhibit B**. Licensee has the right to occupy and use the Licensed Premises as provided for herein, so long as this License is not terminated by DOT in accordance with the terms hereof.

1.4 DOT shall have the right at all times to have representatives of the City, the State and/or Federal government present at the Licensed Premises for any purpose, including but not limited to conducting routine inspections, routine repair work, emergency inspections, emergency repair work, and to ensure DOT's satisfaction with Licensee's compliance with the terms of this License Agreement. Licensee shall provide DOT with full and free access to the Licensed Premises.

1.5 Licensee may utilize the trade name "Mangia Fresco" at the outset of this License for its business at the Licensed Premises. Licensee may thereafter use such name in its operations at the Licensed Premises as shall be approved in advance in writing by DOT. Licensee represents and warrants that Licensee has all the right, title and interest in the approved trade name above, or has acquired or properly licensed such right, title and interest, and that to the extent Licensee shall cease to possess such right, title, or interest, it shall immediately notify DOT and cease to use such trade name in connection with the operation of this License. DOT may require that the City own the portion of any name selected by Licensee for use at the Licensed Premises that indicates City property or a preexisting facility name, including the name of the Plaza. The City will not own any portion of a new 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 DOT's property.

2. DEFINITIONS

2.1 As used throughout this License, the following terms shall have the meanings set forth below:

(a) "Alteration" shall mean (excepting ordinary repair and maintenance):

(1) any restoration (to original premises or in the event of fire or other cause), rehabilitation, modification, renovation or improvement to Licensed Premises; or

(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 Premises; or

(3) any work, excluding ordinary maintenance and repair, affecting the plumbing, heating, electrical, water, mechanical, ventilating or other systems of the Licensed Premises.

(b) "Capital Improvements" shall mean all construction, reconstruction or renovation of the Licensed Premises. Capital Improvements also include all "Alterations" and "Additional Fixed Equipment," as defined herein, which the Licensee installs or causes to be installed on the Licensed Premises. Capital Improvements shall not include routine maintenance and repair activities required to be performed in the normal course of management and operation of the Licensed

Premises. Capital Improvements shall include those activities described in Section 6.1 and the list of Capital Improvements attached as **Exhibit C**.

(c) “City” shall mean the City of New York, its departments and political subdivisions.

(d) (1) “Commissioner” shall mean the Commissioner of the New York City Department of Transportation or his/her designee.

(2) “Concession Manager” shall mean the individual designated by Commissioner to serve in such position at DOT.

(e) “Comptroller” shall mean the Comptroller of the City of New York.

(f) “Expendable Equipment” or “Personal Equipment” shall mean all equipment, other than Fixed and Additional Fixed Equipment provided by Licensee.

(g) “Final Completion” or “Finally Complete” shall mean 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) “Fixed Equipment” shall mean any property affixed in any way to the Licensed Premises existing at the time Notice to Proceed is given, whose removal would damage the Licensed Premises.

(1) “Additional Fixed Equipment” shall mean Fixed Equipment affixed to the Licensed Premises subsequent to the date that Notice to Proceed is given.

(2) “Fixed and Additional Fixed Equipment” shall refer to Fixed Equipment and Additional Fixed Equipment jointly and severally.

(i) “Gross Receipts” shall mean:

(1) “Gross Receipts” shall include, 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 merchandise, food and beverages, or 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 as against its sales. 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 orders taken at the Licensed Premises by Licensee for services to be rendered by Licensee in the future either at or outside of the Licensed Premises. All receipts of Licensee for orders taken at the Licensed Premises by Licensee for services to be rendered by Licensee in the future shall be included in Gross Receipts at the time of payment. 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, but may be deducted to the extent subsequently refunded. 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.

(2) Gross Receipts shall include all sales made by any other operator(s) using the Licensed Premises, provided that Gross Receipts shall also include Licensee's income from rental and sublicense or subcontracting fees and commissions Licensee receives in connection with all services provided by Licensee's subcontractors or sublicensees.

(3) 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 due to be received by Licensee from all sources from the operation of this License shall be included in Gross Receipts, provided however that any gratuities transmitted by Licensee directly or indirectly to employees and staff shall not be included within Gross Receipts.

For purposes of this subsection (3):

(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 DOT 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 DOT 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.

(4) Gross Receipts shall not include uncollected sales debts known to be bad. Upon request, Permittee shall provide to DOT documentation of its efforts to collect such bad debts.

(5) Gross Receipts shall include receipts from all sponsorships, whether in cash or as discounts against purchase price of materials, equipment or commodities.

(j) "Licensed Premises" or "Premises" shall mean the designated area within Fordham Plaza where Kiosk 3 and its surrounding outdoor seating are designated as such in **Exhibit A**, attached hereto, and shall include any improvements constructed thereon.

(k) “Substantial Completion” or “Substantially Complete” shall mean, 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 DOT, notwithstanding that minor work remains to be completed in accordance with work schedules provided for herein and/or set forth as incomplete or outstanding items, and that the improvement may be utilized by the public.

(l) “Year” or “Operating Year” shall both refer to 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.

3. TERM OF LICENSE

3.1 This License shall become effective upon DOT giving written Notice to Proceed to Licensee following registration with the Comptroller (“Notice to Proceed”) and the Concession shall commence on the first to occur of: (i) the first day that Licensee opens for business operations at the Licensed Premises; or (ii) the six-month anniversary of the date of Notice to Proceed (“Commencement Date”), provided, however, that DOT may extend such period if DOT has determined that Licensee’s Capital Improvement work cannot be completed by such date (to the extent required to be completed by such date) due to circumstances beyond the control of Licensee as set forth in the second sentence of Section 6.8 or any delay by DOT or any City, State, or Federal permitting authority not attributable to Licensee, such determination of extension by DOT not to be unreasonably delayed, and shall terminate five (5) years from the Commencement Date (“Termination Date” or Expiration Date”). The period between the Notice to Proceed and the Commencement Date of this License shall be referred to as the “Interim Period.” The period between the Commencement Date and the Termination Date shall be referred to as the “Term”. Licensee may not commence business operations at the Licensed Premises prior to the Commencement Date. At DOT’s sole discretion, this License may be renewed for up to three (3) additional five-year terms commencing on the Expiration Date and upon such renewal, shall extend the Term for such period(s). DOT shall provide Licensee with sixty (60) days’ advance written notice of its intent to renew. In no event shall the Concession become effective prior to registration with the Comptroller.

3.2 Notwithstanding any language contained herein, this License is terminable at will by the DOT at any time; however, such termination shall not be arbitrary or capricious. Such termination shall be effective after twenty-five (25) days written notice is sent to Licensee. The City, its employees and agents shall not be liable for damages to Licensee in the event that this License is terminated by DOT as provided for herein.

3.3 DOT may terminate this License 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 local law, rule, regulation or order affecting this License or the Licensed Premises with regard to any and all matters, DOT 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) days from the mailing or facsimile transmission thereof, subject to unavoidable delays beyond the reasonable control of Licensee, 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, the cure period shall be extended for such period as may be reasonably necessary in DOT'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, DOT, by notice in writing, may revoke and terminate this License, such revocation and termination to be immediately effective on the mailing thereof.

(b) The following shall constitute events of default for which this License may be terminated on three (3) days' 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 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 DOT may terminate this License.

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

3.5 In the event DOT terminates this License for reasons related to Paragraphs 3.3 above, any property of the Licensee on the Licensed Premises may be held and used by DOT in order to operate the License during the balance of the calendar year and may be held and used thereafter until all indebtedness of the 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 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 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 expected. 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. Pursuant to Section 5 herein, City may use the Security Deposit to recover such damages in part or in whole.

3.8 If this License is terminated as provided herein, DOT 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 License is terminated as provided in Section 3.3 hereof:

- (a) DOT may draw down on the Security Deposit in accordance with Section 5; and
- (b) Licensee shall pay to DOT all fees payable under this License Agreement by Licensee to DOT to the Termination Date and Licensee shall remain liable for fees thereafter falling due on the respective dates when such fees would have been payable but for the termination of this License Agreement, provided the Licensed Premises are not re-licensed or re-permitted, which DOT shall extend its reasonable efforts to accomplish, at an equal or higher fee (if at a lower fee, then only the net difference shall be owed by Licensee); and
- (c) DOT 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 DOT may deem necessary or advisable without relieving Licensee of any liability under this License 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. DOT 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 License Agreement or to otherwise affect any such liability.

3.10 No receipt of moneys by DOT from Licensee after the termination of this License Agreement, or after the giving of any notice of the termination of this License Agreement, shall reinstate, continue or extend the Term or affect any notice theretofore given to Licensee, or operate as a waiver of the right of DOT to enforce the payment of fees payable by Licensee hereunder or thereafter falling due, or operate as a waiver of the right of DOT to recover possession of the Licensed Premises by proper remedy. After the service of notice to terminate this License Agreement or the commencement of any suit or summary proceedings or after a final order or judgment for the possession of the Licensed Premises, DOT may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting the notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupation of the Licensed Premises or, at the election of DOT, on account of Licensee's liability hereunder.

3.11 In the event this License Agreement is terminated, DOT will not reimburse Licensee's unamortized capital improvement cost.

4. COMPENSATION TO CITY

4.1 In lieu of a fee for the use of the Licensed Premises, Licensee shall use the revenue generated from the Concession to offset the cost of providing the operation and maintenance (including repair) of the Licensed Premises.

4.2 If revenues exceed the cost of operating and maintaining (including repair) the Licensed Premises, such excess revenues shall not be remitted to the City or used to benefit the City beyond the operation and maintenance (including repair) of the Licensed Premises.

4.3 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 may be deducted from Gross Receipts.

5. SECURITY DEPOSIT

5.1 Upon affixing its signature on this License, Licensee shall maintain a deposit with the City in the sum of \$2,000 as its security deposit (“Security Deposit”) in a format approved by DOT, which may include an interest-bearing instrument (including a bond) if approved by the Comptroller.

5.2 The Security Deposit shall be held by the City as security for the full, faithful and prompt performance of and compliance with each and every term and condition of this License to be observed and performed by the Licensee. The Security Deposit shall remain with the City throughout the Interim Period and Term of this License.

5.3 The City shall not be obligated to place or to keep cash deposited hereunder in interest-bearing bank accounts.

5.4 If any fees or other charges or sums payable by Licensee to the City shall be overdue and unpaid or should the City make payments on behalf of the Licensee, or should the Licensee fail to perform any of the terms of this License, then DOT may, at its option, and without prejudice to any other remedy which the City may have on account thereof, after ten business days' notice, appropriate and apply the Security Deposit or as much thereof as may be necessary to compensate the City toward the payment of license fees, late charges, liquidated damages or other sums due from the Licensee or towards any loss, damage or expense sustained by the City resulting from such default on the part of Licensee. In such event, the Licensee shall restore the Security Deposit to the original sum deposited within ten (10) business days after written demand therefor. In the event Licensee shall fully and faithfully comply with all of the terms, covenants and conditions of this License and pay all License fees and other charges and sums payable by Licensee to the City, the Security Deposit shall be returned to Licensee upon the surrender of the Licensed Premises by the Licensee in compliance with the provisions of this License.

6. CAPITAL IMPROVEMENTS

6.1 Licensee shall perform or cause to be performed during the Interim Period and Term of this License Capital Improvements as defined in Section 2.1 herein. Licensee shall be responsible for all costs associated with such Capital Improvements, including any architectural and design fees necessary to implement the Capital Improvements.

6.2 Capital Improvements shall include, but are not limited to, the items listed in **Exhibit C** attached hereto. Licensee shall perform and complete all such Capital Improvements in accordance with designs and plans approved by DOT and other government agencies having jurisdiction. Notwithstanding the foregoing, Licensee is permitted to make additional Capital Improvements, provided, however, Licensee first obtains DOT’s prior written consent, which shall not be unreasonably delayed. No consent shall be required for interior cosmetic or decorative alterations done by Licensee.

6.3 All Additional Fixed Equipment and Expendable Equipment applied toward the Capital Improvements required in this Section 6 shall become the property of DOT upon installation, at DOT’s option.

6.4 Licensee must provide Americans with Disabilities Act (“ADA”) accessibility throughout the Licensed Premises, including, but not limited to, installing ADA accessible counters in the food service facility area and providing ADA signage. Licensee shall comply with all New York City, State and Federal requirements to provide safe and accessible recreational opportunities for everyone, including persons with disabilities. At least 20% of seating and tables—for mobility devices—must meet ADA standards. Licensee is encouraged to exceed accessibility requirements whenever possible and not simply provide the minimum level required.

6.5 At DOT’s discretion, Licensee may be required to provide a construction security deposit, in an amount and format approved by DOT, to ensure that all capital work is completed. If required, this security deposit, preferably in the form of a letter of credit, must be in place before any capital work commences.

6.6 To guarantee prompt payment of moneys due to a contractor or his or her subcontractors and to all persons furnishing labor and materials to the contractor or his or her subcontractors in the prosecution of any Capital Improvement Project with an estimated cost exceeding two hundred fifty thousand dollars (\$250,000), Licensee shall post a payment bond or other form of undertaking approved by DOT 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 DOT. 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 DOT in its sole discretion.

6.7 The total cost of the Capital Improvements shall be determined by the Commissioner based upon construction documents, invoices, labor time sheets, canceled checks, credit card receipts, bank statements, and such other supporting documents or other data as the Commissioner may reasonably require. Expenditures for ordinary repairs and maintenance shall not be considered Capital Improvements; however, expenditures for Capital Improvements reflected in **Exhibit C** shall be included in the total cost in addition to architectural/engineering fees incurred by the Licensee. In making the determination of the total cost of Capital Improvements, Commissioner may request any information he reasonably believes would be helpful to make such a determination. Licensee shall forward such information to the Commissioner upon his request.

6.8 Licensee shall proceed in good faith and with due diligence to complete all necessary Capital Improvements in accordance with **Exhibit C**. Licensee shall complete or cause to be completed all Capital Improvements so that the services to the public contemplated herein may commence and continue, unless such work cannot be completed due to circumstances beyond the control of Licensee as determined by DOT, including acts of God, war, enemies or hostile government actions, revolutions, insurrection, riots, civil commotion, strikes, fire or other casualty. In the event of such unforeseen circumstances the scope of work may be modified with prior written approval of DOT.

6.9 Licensee shall pay all applicable fees and shall submit to DOT, the New York City Department of Buildings (“DOB”), the New York City Public Design Commission of the City of New York (“PDC”), and all other agencies having jurisdiction, for prior written approval, all designs, plans, specifications, schematics, working and mechanical drawings, which shall be signed and sealed by a registered architect or licensed professional engineer, who will oversee the entire construction project. Licensee shall submit the architect’s or engineer’s qualifications to DOT for prior written approval. All designs, plans, specifications, schematics, and working and mechanical drawings shall be in such detail as DOT shall require. All necessary permits and approvals for capital work must be obtained from DOB, including, but not limited to, obtaining a construction permit, Certificate of Occupancy, public assembly permit and letters of no objection, as needed.

All designs, outdoor signage, capital work and construction will require prior written approval from DOT, PDC, the New York State Historic Preservation Office, the New York City Landmarks Preservation Commission (if applicable), DOB and any other agency having jurisdiction. All work shall be undertaken in accordance with the plans, specifications, schematics, and working and mechanical drawings approved in writing in advance by DOT. The supervising architect or engineer is required to ensure that all construction conforms to the plans approved by DOT. No Capital Improvement shall be deemed Finally Completed until DOT approves in writing that the Capital Improvement has been completed to its satisfaction. DOT's determination as to whether the Capital Improvements are Finally Complete shall not be unreasonably delayed.

6.10 At DOT's request, upon certification by DOT of Final Completion by Licensee of the Capital Improvements required herein, Licensee shall provide DOT with one complete set of final, approved "AS-DESIGNED" plans in a format reasonably acceptable to DOT. Acceptable manual drafting methods include ink or plastic film pencil. Right reading fixed line photo on 4 millimeter Mylar may be substituted for original drawings. If the fixed line photo process is used, the resultant film negative must be submitted with the drawings. CADD-generated drawings must be printed right-reading with either a pen or ink jet plotter. Drawings produced by diazo, electrostatic (i.e. Xerographic), laser, copy press (i.e. OCE), or other means utilizing toner will not be accepted. All "AS-DESIGNED" drawings submitted must be so labeled. Each drawing shall contain the name, address & telephone number of the Architect / Engineer and the Contractor. Each drawing shall also include to the extent such information is available, and, if applicable, the DOB approval / application number.

6.11 Licensee shall, prior to commencing work, obtain all necessary governmental approvals, permits, and licenses. Licensee will also be responsible for obtaining, amending and complying with the Certificate of Occupancy, sign-offs, public assembly permits, Department of Health and Mental Hygiene ("DOHMH") permits, fire department certificates and all other permits and approvals including, but not limited to, New York City Department of Environmental Protection ("DEP"), New York State Department of Environmental Conservation, New York State Historic Preservation Office, PDC, and/or other government agency approvals and permits necessary for any alterations to the existing premises. Licensee shall notify DOT of the specific date on which construction shall begin.

6.12 Licensee shall perform all Capital Improvements 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 as part of the Capital Improvements shall be new or like-new, free of defects, of high grade and quality, suitable for the purpose intended and furnished in ample quantities to prevent delays. Licensee shall obtain all manufacturer's warranties and guarantees for all such equipment and materials, as applicable, and shall assign same to the City when and if the City exercises its option to take title to such equipment and materials in accordance with the terms of this License Agreement except to the extent that Licensee retains the obligation to maintain such work or components and systems under this License Agreement. In furtherance of the preceding sentence, as applicable, Licensee shall execute and deliver to the City any documents reasonably requested by the City in order to enable the City to enforce such guaranties and warranties. All of the City's rights and title and interest in and to said manufacturers' warranties and guaranties may be assigned by the City to any subsequent licensees of the Licensed Premises.

6.13 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, and City laws, rules, regulations and orders.

6.14 Unless otherwise provided, Licensee shall choose the means and methods of completing the Capital Improvements unless Commissioner reasonably determines that such means and methods constitute or create a hazard to the Capital Improvements or to persons or property or will not produce finished Capital Improvements.

6.15 No temporary storage or other ancillary structures and staging areas may be erected and maintained without DOT's prior written approval.

6.16 Licensee is prohibited from cutting down, pruning or removing any trees on the Licensed Premises without prior written approval from DOT. Any attachments to the trees, such as lights, will not be permitted, unless Licensee obtains DOT's prior written approval, which shall not be unreasonably delayed.

6.17 During performance of the Capital Improvements and up to the date of Final Completion, Licensee shall be responsible for the protection of the finished and unfinished Capital Improvements against any damage, loss or injury. In the event of such damage, loss or injury, Licensee shall promptly replace or repair such Capital Improvements at its sole cost and expense.

6.18 Licensee shall provide written notice to DOT when it believes that the Capital Improvements are Substantially Completed. After receiving such notice, DOT shall inspect such Capital Improvements. After such inspection DOT and Licensee shall jointly develop a single final list of incomplete and outstanding items incorporating all findings from such inspection concerning all work not completed to DOT's satisfaction. Licensee shall proceed with diligence to complete all items on that list within a reasonable time as determined by DOT.

6.19 Licensee, within three (3) months of Substantial Completion, shall furnish DOT with a certified statement, issued by Licensee, detailing the actual costs of construction. Accompanying such statement shall be construction documents, bills, invoices, labor time books, accounts payable, daily reports, bank deposit books, bank statements, checkbooks and canceled checks. Licensee shall maintain accurate books and records of account of construction costs, which shall be segregated from other accounts, and shall itemize and specify those costs attributable to the Licensed Premises to permit audit by DOT or the New York City Comptroller upon request.

6.20 Licensee shall provide DOT with discharges for any and all liens which may be filed or levied against the Capital Improvements during construction of such improvements. Licensee shall use its best efforts to discharge such liens within thirty business days of receipt of lien by Licensee. Upon Final Completion, as defined in Section 2, of all Capital Improvements, DOT shall return to Licensee the unused balance of any construction security provided to the City.

6.21 Licensee shall promptly repair, replace, restore, or rebuild, as the Commissioner reasonably may determine, items of Capital Improvements in which defects in materials, workmanship or design 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 such Capital Improvements.

6.22 Neither DOT, nor the City, nor the agencies, officers, agents, employees or assigns thereof shall be bound, precluded or estopped by any determination, decision, approval, order, letter, payment or certificate made or given under or in connection with this License by the City, the Commissioner, or any other officer, agent or employee of the City, before the Final Completion and acceptance of the Capital Improvements, from showing that the Capital Improvements or any part thereof do not in fact conform to the requirements of this License and from demanding and recovering from the Licensee such damages as DOT or the City may sustain by reason of Licensee's failure to perform each and every part of this License in accordance with its terms, unless such determination, decision, approval, order, letter, payment or certificate shall be made pursuant to a specific waiver of this Section signed by the Commissioner or his/her authorized representative.

6.23 Upon installation, title to all construction, renovation, improvements, and fixtures made to the Licensed Premises as well as to all furnishings, finishes, and equipment accepted by DOT as Capital Improvements shall vest in and thereafter belong to the City at the City's option, which may be exercised any time after the Substantial Completion of their construction, renovation, improvement, affixing, placement or installation. To the extent the City chooses not to exercise its option with respect to any of the Capital Improvements made to the Licensed Premises, Licensee shall remove such Capital Improvements and restore the Licensed Premises to DOT's satisfaction to a condition as good or better than at the commencement of the Term at the sole cost and expense of Licensee.

6.24 Prior to the commencement of any construction, Licensee shall have an asbestos inspection performed on the existing structures at the Licensed Premises to the extent required by DOB or other applicable authority. In the event that asbestos removal is deemed necessary, Licensee will remove the asbestos, at its sole cost and expense, according to City, State and Federal regulations.

7. ALTERATIONS

7.1 Licensee may alter the Licensed Premises only in accordance with the requirements of Section 7.2 below. Alterations shall become property of City, at its option, upon their attachment, installation or affixing.

7.2 In order to alter Licensed Premises, Licensee must:

(a) obtain DOT's written approval (which shall not be unreasonably delayed) for whatever designs, plans, specifications, cost estimates, agreements and contractual understandings may pertain to contemplated purchases and/or work;

(b) insure that work performed and Alterations (as defined in Section 2.1) made on the Licensed Premises are undertaken and completed in accordance with submissions approved pursuant to (a) above, in a good and workmanlike manner, and within a reasonable time; and

(c) notify DOT of completion of, and the making final payment for, any Alteration within ten days after the occurrence of said completion or final payment.

7.3 Upon installation, title to all Alterations made to the Licensed Premises 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 their construction, renovation, improvement, affixing, placement or installation. To the extent the City chooses not to exercise its option with respect to any of the Alterations made to the Licensed Premises, Licensee shall remove such Alterations and restore the Licensed Premises to DOT's satisfaction to a condition as good as or better than at the commencement of the Term at the sole cost and expense of Licensee.

7.4 DOT may, in its discretion, make or cause to make additions, alterations, repairs, decorations or improvements to Licensed Premises at the City's expense, but nothing 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 Licensee's obligation herein in any respect. DOT will coordinate with Licensee and provide reasonable notice to Licensee of any such additions, alterations, repairs, decorations or improvements. DOT will use reasonable efforts to schedule any such additions, alterations, repairs, decorations, or improvements to be made by DOT at such times as will cause the least interference with Licensee's operations.

8. FIXED AND EXPENDABLE EQUIPMENT

8.1 Licensee shall, at its sole cost and expense and to DOT's reasonable satisfaction, provide, and replace 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.

8.2 City has title to all Fixed Equipment (as defined in Section 2.1) on the Licensed Premises as of the date of Notice to Proceed. Title to any Additional Fixed Equipment (as defined in Section 2.1) 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 City chooses not to exercise such option it shall, at the termination or expiration of this License, be the responsibility of Licensee, at its sole cost and expense and to DOT's satisfaction, to remove such equipment and restore the Licensed Premises to DOT in 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 (as defined in Section 2.1) required for the proper operation of this License, and repair or replace same at its own cost and expense when reasonably requested by DOT. Licensee must acquire and use for the purpose intended any Expendable Equipment which DOT reasonably determines is necessary to the operation of this License.

8.4 Licensee must acquire, replace or repair, install or affix, at its sole cost and expense, any equipment, materials and supplies required for the proper operation of the Licensed Premises as described herein or as reasonably required by DOT.

8.5 Title to all Expendable Equipment (as defined in Section 2.1) obtained by Licensee (other than that applied toward Capital Improvements) shall remain in Licensee and such equipment shall be removed by Licensee at the termination or expiration of this License. In the event such equipment remains in the Licensed Premises following such termination or expiration, DOT may treat such property as abandoned and charge all costs and expenses incurred in the removal thereof to Licensee.

8.6 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." Notwithstanding anything to the contrary set forth in this License, Licensee shall not be responsible for any environmental hazards, conditions and/or liability with

respect to the Licensed Premises which are caused by any conduct that occurred prior to Notice to Proceed, except as otherwise required.

8.7 The equipment to be removed by Licensee pursuant to this License Agreement shall be removed from the Licensed Premises in such a way as shall cause no material damage to the Licensed Premises. 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. Notwithstanding the foregoing, Licensee shall not be required to restore ordinary wear and tear.

8.8 Licensee shall install Energy Star approved or other similarly efficient appliances and equipment.

9. UTILITIES

9.1 DOT makes no representations regarding the adequacy of utilities currently in place at the Licensed Premises.

9.2 Licensee may be required to connect to and/or upgrade any existing utility service or create a new utility system and obtain the appropriate permits and approvals, at its sole cost and expense. Licensee shall coordinate the performance of all utility work with DOT. See also Concessionaire's Manual **Exhibit D**.

9.3 Licensee shall pay for any and all utility costs connected with its operations at the Licensed Premises during the Interim Period and Term. These utility costs include, but are not limited to, electricity as well as paying all water and sewer charges that the DEP assesses for water usage.

9.4 Licensee is strictly prohibited from unauthorized use of utilities used, operated or owned by the City.

9.5 If generators are used, Licensee shall provide whatever is necessary under Federal, State, and City laws, rules, regulations, and orders for the lawful operation of its generators.

9.6 Licensee shall comply with all City directives and restrictions regarding drought and water conservation issues during the Interim Period and Term of this License Agreement.

9.7 Licensee shall not accept any money, commission, premium, bonus or other consideration from any person for the use or sale of utility services.

10. OPERATIONS

10.1 Licensee, at its sole cost and expense, shall develop, operate, and maintain the Concession at the Licensed Premises for the use and enjoyment of the general public and in such manner as DOT shall prescribe and as permitted by, and in compliance with, all laws, rules, regulations and orders of government agencies having jurisdiction.

10.2 Licensee must maintain access lanes, where necessary. DOT retains the authority to guarantee unimpeded pedestrian access along the sidewalks and/or pathways at the Licensed Premises. Licensee shall not block entrances or exits of the Licensed Premises or park on any sidewalks, and/or leave vehicles on the Licensed Premises overnight, unless otherwise permitted by DOT. Where applicable, Licensee shall maintain clear access for emergency vehicles during days of operation.

10.3 The exact hours and days of operation of all operations at the Licensed Premises are subject to DOT's prior written approval. At its sole discretion, but based upon written request from Licensee, DOT may allow changes to Licensee's approved operating hours/schedule. If the request is granted by DOT, Licensee will continue to be responsible for all other obligations under this License Agreement. Licensee may make non-substantive changes to the hours and days of operation without seeking DOT approval, but Licensee will provide DOT with written notice thirty (30) days prior to the non-substantive changes. If after receiving such notice, DOT thinks the changes are substantive, DOT will notify the Licensee and the changes will not go into effect.

10.4 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 DOT. Annexed hereto as **Exhibit B** is the Schedule of Approved Hours and Rates, Fees and Prices for the commencement of operations hereunder. Licensee may make non-substantive changes to the Exhibit without seeking DOT approval, but Licensee will provide DOT with written notice thirty (30) days prior to the non-substantive changes. If after receiving such notice, DOT thinks the changes are substantive, DOT will notify the Licensee and the changes will not go into effect.

10.5 Licensee shall provide the necessary number of personnel having the requisite skills, together with the necessary personnel and equipment to monitor and coordinate Licensee's operations at the Licensed Premises.

10.6 Licensee, at its sole cost and expense, shall maintain and make any necessary repairs to the Licensed Premises within 24 hours of occurrence. If such repairs cannot be completed within 24 hours, as determined by DOT, Licensee shall commence such repairs or clean-up within 24 hours of occurrence and proceed with due diligence in carrying out the repairs or clean-up until they are completed.

10.7 Licensee, at its sole cost and expense, shall be responsible for all security at the Licensed Premises during the Interim Period and the Term of this License Agreement. Licensee shall secure the Licensed Premises and remove any equipment (including barriers) therefrom before closing for the day.

10.8 All food, beverage, merchandise, or supply of any kind must comply with all health code regulations. Licensee must operate, manage and maintain a food/beverage service establishment at a high standard of quality. Licensee must maintain adequate inventory to assure a constant supply of food and beverages. 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 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 that any of the food service operations at the Licensed Premises are 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.

10.9 The selling and/or advertisement of cigarettes, cigars, electronic cigarettes, any tobacco products, or non-tobacco smoking products is strictly prohibited. The concessionaire will be required to adhere to and enforce this policy. Any prohibited material displayed or placed shall be immediately removed by the concessionaire upon notice from DOT at concessionaire's sole cost and expense. Smoking of any tobacco product, electronic cigarette, or non-tobacco smoking product is strictly prohibited at the Licensed Premises.

10.10 Licensee may place tables, chairs and umbrellas within the outdoor seating area of the Licensed Premises. The design, color, style, type, layout, and number of all tables, chairs and umbrellas at the Licensed Premises are subject to DOT's prior written approval. DOT reserves the right to provide all tables, chairs and umbrellas for the Licensed Premises which must be used exclusively by the Licensee. Licensee must ensure free and open public access to any outdoor seating areas, even outside of the Licensee's hours of operation

10.11 Alcoholic beverages may be served to complement the food service, provided that Licensee obtains the appropriate license(s) from the New York State Liquor Authority and all other agencies having jurisdiction. Alcoholic beverages may only be served and consumed within designated areas in the Licensed Premises. All efforts must be made to keep alcohol consumption discrete. Licensee must keep in mind that this is a public pedestrian plaza and the consumption of alcohol should be encouraged only as an accompaniment to the cuisine.

10.12 Licensee may sell merchandise at the Licensed Premises. All merchandise to be sold at the Licensed Premises and the proposed prices of those items are subject to DOT's prior written approval. 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. 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.

10.13 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 is subject to prior written approval by DOT which approval shall not be unreasonably delayed.

10.14 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 B** is the Schedule of Approved Hours and Rates, Fees and Prices for the commencement of operations hereunder.

10.15 Smoking of any tobacco product, electronic cigarette, or non-tobacco smoking product is strictly prohibited at the Licensed Premises. Additionally, Licensee shall not use in its operations any polystyrene packaging for food containers pursuant to Local Law 142 of 2013. Licensee shall adhere to and enforce the prohibitions contained in this Section.

10.16 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.

10.17 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.

10.18 Licensee shall employ an operations manager at the Licensed Premises. An officer of the Licensee or manager must be available by telephone during all hours of operation, and Licensee shall continuously notify DOT of a 24-hour pager or cellular telephone number through which DOT may contact the officer or manager in the event of an emergency. Licensee shall replace any manager, officer, employee, subcontractor or sublicensee whenever requested by DOT.

10.19 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. Licensee shall bear the loss of any lost, stolen, misappropriated or counterfeit monies derived from operations under this License Agreement.

10.20 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.

10.21 Pursuant to a plan approved in writing by DOT, Licensee shall, at its sole cost and expense, be responsible for all security at the Licensed Premises during the Interim Period and Term of this License Agreement and shall provide a 24-hour-a-day security system at the Licensed Premises. Licensee shall secure the Licensed Premises and any equipment every evening and anytime the Concession is closed.

10.22 Licensee shall prepare and provide to DOT operational status reports and reports of any accidents or other incidents, if known, occurring at the Licensed Premises, on a regular basis and in a format acceptable to the Commissioner. Licensee shall promptly notify DOT, 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 DOT in writing as to said person's name, telephone number, and address within thirty (30) days of the date of the Notice to Proceed.

10.23 Licensee shall promptly notify DOT 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 kind.

10.24 Licensee shall cooperate with all efforts to enforce DOT Rules and Regulations at the Licensed Premises. Licensee shall use its best efforts to prevent illegal activity on the Licensed Premises.

10.25 Advertising (other than in a form identifying Licensee with approval from DOT) is strictly prohibited.

10.26 An item and price list, approved in advance in writing by DOT, must be displayed at the Licensed Premises at all times. No signage will be permitted outside the Licensed Premises onto the Plaza. Additionally, if Licensee contemplates placing any signs off-site that advertise the

Concession, such as on nearby streets, it shall be Licensee's responsibility to obtain any necessary approvals or permits from any governmental agency having jurisdiction over such locations. The design and content of all such signs are subject to DOT's reasonable prior approval. Any prohibited material displayed or placed shall be immediately removed by Licensee upon notice from DOT at Licensee's sole cost and expense. See also Concessionaire's Manual **Exhibit D**.

10.27 Licensee must obtain the prior written approval of DOT prior to entering into any marketing or sponsorship agreement. In the event Licensee breaches this provision, the City shall take any action that the City may deem necessary to protect the City's interests. DOT reserves the right to enter into a sponsorship agreement for the Plaza, including the Licensed Premises.

10.28 Should DOT determine that Licensee is not operating the Licensed Premises in a satisfactory manner, DOT may in writing order Licensee to improve operations or correct such conditions as DOT may deem unsatisfactory. In the event that Licensee fails to comply with such written notice or respond in a manner reasonably satisfactory to DOT within the timeframe set forth in said notice, subject to unavoidable delays beyond the reasonable control of Licensee, notwithstanding any other provisions herein, then DOT may terminate this License.

10.29 Should DOT, in its sole judgment, determine that an unsafe or emergency condition exists on the Licensed Premises, after written notification, Licensee shall have 24 hours to correct such unsafe or emergency condition. DOT will use the list of contact information, provided and updated on a bi-annual basis by the Licensee, to call in case of emergency. During any period where DOT determines that an unsafe or emergency condition exists on the Licensed Premises then DOT may require a partial or complete suspension of operation in the area affected by the unsafe or emergency condition. If Licensee believes that such unsafe or emergency condition cannot be corrected within said period of time, the Licensee shall notify DOT in writing and indicate the period within which such condition shall be corrected. DOT, in its sole discretion, may then extend such period of time in order to permit Licensee to cure, under such terms and conditions as appropriate.

10.30 Licensee shall not use or permit the storage of any illuminating oils, oil lamps, turpentine, benzene, naphtha, or similar substances or explosives of any kind or any substances or items prohibited in the standard policies of insurance companies in the State of New York. Licensee shall operate the Licensed Premises in accordance with all applicable Fire Department Codes.

10.31 DOT staff may visit the Licensed Premises unannounced to inspect operations, ensure proper operation and maintenance of the Concession and Licensed Premises and determine whether or not Licensee is in compliance with the terms of this License Agreement. Based on their inspections, DOT may issue directives regarding deficiencies which Licensee shall rectify in a timely fashion. Violations of the terms of this License Agreement, after notice and reasonable opportunity to cure, may result in the assessment of liquidated damages, which, if not paid promptly, may be deducted from the Security Deposit. Should Licensee fail to provide the cleaning, maintenance, and operational services required by this License, DOT shall notify Licensee in writing, and Licensee shall be required to correct such shortcomings within the time frame set forth in such notice. If Licensee fails to cure the violation within the time frame set forth in the notice, DOT may, at its option, in addition to any other remedies available to it, assess liquidated damages and/or suspend or terminate this License Agreement. Liquidated damages may be assessed in accordance with the following schedule:

Provision	Liquidated Damages per Occurrence
Unauthorized Menu Items or Merchandise	\$250
Missing or Unauthorized Price List	\$250
Overcharging	\$500
Expanding or Operating Beyond Licensed Premises	\$500
Impeding Pedestrian or Staff Movement	\$500
Impeding Plaza Operations	\$500
Improper or Unauthorized Disposal (noxious liquids, debris, etc.)	\$500
Improper or Unauthorized Parking	\$500
Equipment or Structure(s) Damaged, in Poor Repair, or Unsightly Condition	\$500
Advertising	\$500
Unauthorized Signage	\$500
Improper or Unauthorized Storage	\$500
Graffiti or Dirty Facility and/or Equipment	\$500
Operating without Valid Permit(s) or License(s)	\$500

If an assessment is received for one of the above violations, Licensee may appeal the assessment. The appeal procedure is outlined below:

(a) Filing an Appeal

- (1) If Licensee wishes to appeal the assessment, a notice of appeal must be delivered to DOT within ten (10) days along with a statement of reasons why it believes the assessment was erroneous. The statement of reasons must be notarized. Any evidence supporting Licensee's appeal (such as photographs, documents, witness statements, etc.) should also be included.
- (2) If no appeal is received within 10 days of the date the assessment is mailed, the assessment shall be considered final and charged to Licensee's account.

(b) Adjudication of Appeal

- (1) The appeal shall be sent to the Director of Concessions & Franchises, Rachel Frumin, whose office is located at 55 Water Street, 9th Floor, New York, NY 10041. The Commissioner has designated the Director of Concessions & Franchises to decide on the merits of these appeals. The decision of the Director of Concessions & Franchises shall constitute the final decision of DOT.
- (2) The Director of Concessions & Franchises is authorized to investigate the merits of the appeal, but is not required to hold a hearing or to speak to Licensee in person.

10.32 A Concessionaire's Manual including drawings, utility information, specifications regarding structure, and selected maintenance guidance is attached as **Exhibit D**. DOT makes no representations as to the accuracy, or completeness of these documents.

10.33 Licensee recognizes that this License Agreement does not grant Licensee exclusive rights to sell in the Plaza in which the Licensed Premises are located. Moreover, DOT may grant other licenses or permits to concessionaires to sell the same or similar items authorized under this License Agreement within the same Plaza in which the Licensed Premises are located. DOT does not guarantee that illegal vendors, persons unauthorized by DOT or disabled veteran vendors will not compete with Licensee or operate near the Plaza or the Licensed Premises. DOT encourages Licensee to report illegal vending activity by calling 311.

10.34 DOT makes no representations or guarantees that there is adequate parking or storage space at the Licensed Premises. Monthly parking permit or daily metered parking may be available nearby. Licensee shall be responsible, at its sole cost and expense, for obtaining any additional storage space required for operation of the Concession. Licensee shall not store any equipment or supplies at the Licensed Premises without the prior written approval of DOT, which shall not be unreasonably delayed. No item shall be placed upon any public space, including the ground adjacent to the Licensed Premises without DOT's prior written approval. Licensee shall secure all outdoor equipment and furniture on a nightly basis and anytime its operations at the Licensed Premises are closed.

10.35 DOT does not guarantee the adequacy of space for Licensee to load and unload supplies for the operation of the Concession. All such operations must occur at the direction of DOT.

10.36 Licensee shall have a sufficient number of staff available at the Licensed Premises during hours of operation for the proper operation of the Concession. DOT reserves the right to require that all staff wear uniforms that have been approved in writing by DOT.

10.37 Licensee should implement customer service and feedback mechanisms that will enhance and maintain the satisfaction of the public. Licensee shall provide reasonable means for measuring the satisfaction of its customers.

10.38 Licensee 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 Agreement Rider annexed hereto as **Exhibit F**.

10.39 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.

10.40 The City shall own any copyrights, trademarks, logos and brands developed in association with the operation of the Concession, that include the name of the Plaza or is directly associated with the Plaza. However, the City shall not own:

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

10.41 Licensee shall submit to DOT monthly statements of Gross Receipts from all categories of income in a format approved by DOT. Within sixty (60) days following the end of each Operating

Year, the Licensee shall submit a detailed income and expense statement for the past year's operation. Licensee shall, on a quarterly basis, provide DOT documentation showing revenues collected. Licensee shall maintain a revenue control system to ensure the accurate and complete recording of all revenues, as described below in Section 14.

11. MAINTENANCE AND REPAIRS

11.1 Licensee shall, at its sole cost and expense (or through arrangements with third parties), maintain the Licensed Premises in good, clean, and safe condition and in accordance with industry standards. This includes, but is not limited to, the maintenance and repair of the Licensed Premises, including the amenities listed in **Exhibit D**, the interior and exterior of Kiosk 3, and as set forth in **Exhibit E** regarding maintenance services.

11.2 Licensee shall maintain the Licensed Premises to DOT's satisfaction. All such maintenance shall be performed by Licensee in a good and worker-like manner.

11.3 At DOT's request, Licensee shall conduct site inspections at the Licensed Premises with a representative of DOT. Such inspections shall assess the condition of the Licensed Premises and all Fixed and Additional Fixed Equipment therein, and determine the nature and extent of repairs to be performed by Licensee. Licensee shall make all necessary repairs during the Interim Period and Term.

11.4 Licensee shall be responsible for, at its sole cost and expense, clean-up and removal of all snow, waste, garbage, refuse, rubbish and litter from the Licensed Premises.

11.5 Licensee shall provide adequate and easily accessible garbage and recycling receptacles, approved by DOT, and have these receptacles emptied and removed on each day of operation and as directed by DOT. The location and placement of all garbage and recycling receptacles is subject to DOT's prior written approval. Licensee shall comply with all City, State, and Federal rules and regulations regarding recycling.

11.6 Snow and ice shall be removed from the entire Licensed Premises within a reasonable period of time. If necessary, tables, chairs and umbrellas shall be removed from the Licensed Premises due to such snow and/or ice conditions. 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. Signs shall be posted throughout the Licensed Premises cautioning users of any dangerous conditions due to snow and/or ice. If necessary, the Licensed Premises may be closed due to such snow and/or ice conditions.

11.7 Licensee shall conduct regular pest control inspections and extermination, as needed. Under no circumstances may licensee use a baiting system for pest control or extermination. To the extent Licensee applies pesticides to the Licensed Premises, Licensee, or any subcontractor hired by Licensee, shall comply with Chapter 12 of Title 17 of the New York City Administrative Code and limit the environmental impact of its pesticide use.

11.8 Licensee shall make reasonable efforts to use "Green Seal" eco-friendly cleaning supplies and soaps and chlorine-free, biodegradable products.

11.9 Licensee shall maintain the landscaping at the Licensed Premises. This shall include, but is not limited to, performing any seeding, trimming, pruning, planting, fertilization in all planters and

planting beds. Licensee shall also remove any weeds from paving blocks, pavement and concrete areas, and perform seasonal pruning of trees in the Licensed Premises, if applicable. Licensee shall submit detailed plans to DOT of landscaping work to be performed. All work to be performed at the Licensed Premises is subject to DOT's prior written approval which shall not be unreasonably delayed. No prior written approval shall be required for minor landscaping work done by Licensee. In addition, Licensee shall obtain all necessary permits, approvals, and authorizations from all City, State, and Federal agencies having jurisdiction over the Licensed Premises before any work is performed, and such work shall be of a quality which meets DOT's standards.

12. APPROVALS

12.1 Licensee is solely responsible for obtaining all permits, licenses, and approvals required from all Federal, State and City agencies having jurisdiction for the operation and maintenance of the Licensed Premises.

12.2 Whenever any act, consent, approval or permission is required of the City under this License, the same shall be valid only if it is, in each instance, in writing. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon the City unless the same is, in each instance, in writing.

13. PLAZA EVENTS

13.1 It is expressly understood that this License shall in no way limit the City's right to sponsor or promote plaza events or to enter into agreements with third parties to sponsor or promote such events. City shall use best efforts to provide Licensee with at least 14 days' notice of such event.

13.2 The City reserves the right to use the Licensed Premises for its own plaza events or to authorize others to use the Licensed Premises for their own plaza events. The City shall use best efforts to provide Licensee 14 days' notice of any such plaza event. The City reserves the right to relocate the Licensee from the Licensed Premises or suspend operations under this License in the event that such plaza event occurs within the Licensed Premises during days of operation. Under such circumstances DOT shall provide Licensee with thirty (30) days' prior written notice. Licensee shall cooperate with DOT during plaza events and other unforeseen contingencies. Any third party permittee for such events may be required to obtain and present insurance coverage in an amount to protect the licensee's interests including property and liability coverage. During any City or third party plaza events, Expendable Equipment may not be used unless approved by Licensee.

13.3 Licensee may hold plaza events at the Licensed Premises subject to the City's prior written approval. All such plaza events must be open to the public and be at no cost.

14. INSPECTION AND AUDIT OF RECORDS

14.1 Licensee, during the Interim Period and Term of this License, shall establish and maintain complete and accurate records, books of account and data, including sales and receipts records, which shall show in detail the total daily business transacted by Licensee and the Gross Receipts therefrom. Such books and records maintained pursuant to this License shall be conveniently segregated from other business matters of Licensee and shall include, but not be limited to: all Federal, State and City tax returns and schedules of the 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, sales books; duplicate bank deposit slips and bank statements.

14.2 Licensee shall use accounting and internal control methods and procedures and keep such books and records as may be reasonably prescribed by DOT or the Comptroller. DOT or the Comptroller shall have the right to examine the record keeping procedures of the Licensee prior to the commencement of the Interim Period and 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 the Licensee.

14.3 DOT, 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 the Licensee for the purpose of examination, audit, review or any purpose they deem necessary. Licensee shall also permit the inspection by DOT, Comptroller or other duly authorized representatives of the City of any equipment used by Licensee, including, but not limited to, cash registers and recording machines, and all reports or data generated from or by the equipment. Licensee shall cooperate fully and assist DOT, the Comptroller or any other duly authorized representative of the City in any examination or audit thereof. In the event that the Licensee's books and records, including supporting documentation, are situated at a location 50 miles or more from the City, the records must be brought to the City for examination and audit or Licensee must pay the food, board and travel costs incidental to two auditors conducting such examination or audit at said location.

14.4 The failure or refusal of the Licensee to permit DOT, the Comptroller or any other duly authorized representative of the City to audit and examine the Licensee's records, books of account and data or the interference in any way by the 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 DOT to terminate this License.

14.5 Licensee shall retain all books, records, documents and other evidence relevant to this License Agreement for six (6) years from the date of creation of the record. 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, Licensee 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).

14.6 Notwithstanding the foregoing, the parties hereto 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.

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

14.8 Throughout the Term, Licensee shall 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, the concessionaire's sales information must be recorded electronically, via a 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. The concessionaire must also establish a dedicated bank account for all deposits related to this concession's revenue. All accounting and internal control related records shall be maintained for a minimum of six (6) years from the date of creation of the record.

15. PROHIBITION AGAINST TRANSFER; ASSIGNMENTS AND SUBLICENSES

15.1 Licensee shall not sell, transfer, assign, sublicense or encumber in any way this License, twenty-five (25) percent 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 DOT.

15.2 Should Licensee choose to assign or sublicense the management and operation of any element of the Licensed Premises to another party, Licensee shall seek DOT's prior written approval by submitting a written request including proposed assignment documents as provided herein. The Commissioner may request any additional information deemed necessary and Licensee shall promptly comply with such requests. The term "assignment" shall be deemed to include any direct or indirect assignment, sublet, sale, pledge, mortgage, transfer of or change in twenty-five (25) percent or more in the stock or voting control of or interest in Licensee, including any transfer by operation of law.

15.3 No assignment or other transfer of any interest in this License Agreement shall be permitted which, 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 twenty-five (25) percent or more of the stock or voting control of Licensee in the Licensed Premises without the prior written consent of DOT. Licensee shall present to DOT the assignment or sublicense 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 stating the financial net worth of the proposed assignee or sublicensee, and a certification from the proposed assignee or sublicensee that its financial net worth is sufficient to comply with Licensee's obligations under this License Agreement, and a certification from the proposed assignee or sublicensee that it shall provide management control acceptable to 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 which are experienced and reputable operators and are not intended to diminish Licensee's interest in the Licensed Premises. DOT reserves the right to require payment of a reasonable transfer fee as a condition of the granting of any required consent or approval.

15.4 No consent to or approval of any assignment or sublicense granted pursuant to this Section 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.

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

15.6 Any sublicense agreement(s) shall be subject to the terms and conditions of this License, and Licensee shall require said sublicensee(s) to acknowledge in writing that it received a copy of this License and that it is bound by same.

16. DOT CONSTRUCTION

16.1 DOT reserves the right to perform safety, maintenance or construction work deemed necessary in its sole discretion at or throughout the Licensed Premises at any time during the Interim Period and Term. Licensee agrees to cooperate with DOT to accommodate any such work by DOT and provide public and construction access through the Licensed Premises as deemed necessary by DOT.

16.2 DOT shall use its reasonable efforts to give Licensee at least one week notice of any such work and not to interfere substantially with Licensee's operations or use of the Licensed Premises. DOT may temporarily close a part or all of the Licensed Premises for a DOT purpose as determined by the Commissioner. In the event that Licensee must close the Licensed Premises for the purposes provided for in this License because of such DOT's work, then Licensee may propose and submit for approval a plan to equitably address the impact of the closure, including but not limited to a suspension of all financial obligations of this License.

16.3 Licensee shall be responsible for security of all Licensee's property on the Licensed Premises at all times.

16.4 DOT 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.

17. COMPLIANCE WITH APPLICABLE LAWS

17.1 Licensee shall comply with all Federal, State, and City laws, rules, regulations, and DOT specifications, standards, and policies applicable to the Licensed Premises and Licensee's use and occupation thereof, including but not limited to the provisions of the New York State Labor Law regarding gratuities.

17.2 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 Interim Period and Term of this License.

18. NON-DISCRIMINATION

18.1 With respect to services provided under this License, Licensee 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. Licensee shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

18.2 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. Licensee 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, Licensee is encouraged to exceed all applicable accessibility requirements for people with disabilities.

19. NO WAIVER OF RIGHTS

19.0 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 Commissioner to terminate this License. No waiver by 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.

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

20.1 Licensee shall be solely responsible for the safety and protection of its employees, agents, servants, sublicensees, contractors, and subcontractors, and for the safety and protection of the employees, agents, or servants of its sublicensees, contractors or subcontractors.

20.2 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.

20.3 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 the Licensee, including but not limited to injuries or damages resulting from the acts or omissions of any of its employees, agents, servants, sublicensees, contractors, subcontractors, or any other person.

20.4 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 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.

20.5 To the fullest extent permitted by law, Licensee shall indemnify, defend and hold the City and its officials and employees harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements) arising out of or related to any of the operations under this License (regardless of whether or not Licensee itself has been

negligent, except to the extent caused by the gross negligence or intentional tortious acts or omissions of City and its officials and employees)) and/or Licensee'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 the City or its officials and employees from being completely indemnified by Licensee, the City and its officials and employees shall be indemnified to the fullest extent permitted by law.

20.6 Licensee's obligation to defend, indemnify and hold the City and its officials and employees harmless shall not be (i) limited in any way by Licensee's obligations to obtain and maintain insurance under this Licensee, 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.

21. INSURANCE

21.1 Throughout the Interim Period and Term Licensee shall ensure that the types of insurance indicated in this Section are obtained and remain in force, and that such insurance adheres to all requirements herein. The City may require other types of insurance and/or higher liability limits and other terms if, in the opinion of Commissioner, Licensee's operations warrant it.

21.2 Licensee is authorized to undertake or maintain operations under this License only during the effective period of all required insurance coverage.

21.3 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 at least 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 Premises and such per-location aggregate shall be at least Two Million Dollars (\$2,000,000). 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. Licensee 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 required by law or as approved by the Commissioner, and shall be "occurrence" based rather than "claims-made." Such Commercial General Liability insurance shall name the City together with its officials and employees, as Additional Insureds 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.

21.4 In the event Licensee shall serve alcohol, or shall permit a sublicensee or others to serve alcohol on the Licensed Premises, Licensee shall carry or cause the sublicensee or others to carry liquor law liability insurance in an amount not less than Five Million Dollars (\$5,000,000) 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 operations.

21.5 Licensee shall 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 Licensee's operations under this License, and such insurance shall comply with the laws of the State of New York.

21.6 If vehicles are to be used in connection with the Concession, Licensee shall maintain or cause to be maintained Commercial Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA0001. If vehicles are used for transporting hazardous materials, such 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.

21.7 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 Commencement Date or built at any time before the Termination Date. 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 the Licensee as Named Insured and the City as Additional Insured and Loss Payee as its interests may appear. This section does not require coverage for damage caused by flooding.

(a) 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.

(b) 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.

21.8 Licensee represents and warrants that its operations at the Licensed Premises will not involve petroleum products, asbestos, lead, pcb's or any other hazardous materials.

21.9 General Requirements for Insurance Coverage and Policies

(a) 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-VII 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.

(b) 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.

(c) 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 Licensee's policy provides coverage at least as broad as the specified form.

(d) 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, Licensee 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.

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

(f) In the event the Licensee receives notice, from an insurance company or other person, that any insurance policy required under this License shall expire or be cancelled or terminated for any reason, the Licensee shall immediately forward a copy of such notice to both the Commissioner, City of New York Department of Transportation, 55 Water Street, 9th Floor, New York, NY, 10041, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

(g) 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.

21.10 Certificates of Insurance for all insurance required in this Section must be submitted to and accepted by the Commissioner prior to execution of this License Agreement.

21.11 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), Licensee shall submit proof of License'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.

21.12 For all insurance required under this Section other than Workers Compensation, Employers Liability, and Disability and Paid Family Leave Benefits insurance, 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 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 (provided that if Licensee has a blanket Additional Insured, it is acceptable that the City is not specifically named).

All such Certificates of Insurance shall be accompanied by either a duly executed “Certification by Insurance Broker or Agent” in the form annexed hereto as **Exhibit G** 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.

21.13 Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner within five days after renewal for all policies required under this License. Such Certificates of Insurance shall comply with sections 21.11 and 21.12 directly above.

21.14 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 Section is secured and maintained, nor does it waive Licensee’s liability for its failure to do so.

21.15 Licensee shall be obligated to provide the City with a copy of any policy of insurance required under this Section upon request by the Commissioner or the New York City Law Department.

21.16 Licensee 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.

21.17 Licensee shall require its construction contractors that perform construction on the Licensed Premises to maintain Commercial General Liability Insurance in accordance with Section 20.2, 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 the 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 the Licensee as an Additional Insured under such insurance, the 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).

21.18 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.

21.19 Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Section, Licensee shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this License Agreement (including notice to Commercial General Liability insurance carriers for events relating to Licensee's own employees) no later than 20 days after such event. For any policy where the City is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. 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.

21.20 Licensee'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 Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

21.21 Insurance coverage in the minimum amounts provided for in this Section shall not relieve the Licensee of any liability under this License Agreement, 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 Agreement or the law.

21.22 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, Licensee shall at all times fully cooperate with the City with regard to such potential or actual claim.

21.23 Apart from damages or losses covered by Workers' Compensation Insurance, Employers Liability Insurance, Disability and Paid Family Leave 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 Section (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.

21.24 In the event Licensee requires any 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 the City, including its officials and employees, as additional insureds with coverage at least as broad as ISO form CG 20 26.

21.25 In the event Licensee 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, Licensee shall immediately forward a copy of such notice to both the Commissioner, City of New York Department of Transportation, 55 Water Street, 9th Floor, New York, NY 10041 and the New York City Comptroller, attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New

York 10007. Notwithstanding the foregoing, Licensee shall ensure that there is no interruption in any of the insurance coverage required under this Section.

22. WAIVER OF COMPENSATION

22.1 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, his agents, and City from any and all demands, claims, actions, and causes of action arising from any of the causes aforesaid.

22.2 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 Commissioner sooner than the fixed term because the Licensed Premises are required for any DOT or other public purpose, or because the License was terminated or revoked for any reason as provided herein.

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 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

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

(B) 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 23(d) below without the City incurring any penalty or damages for delay or otherwise.

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

(i) The disqualification for a period not to exceed five years from the date of an adverse determination 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 23(d)(i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in Sections 23(d)(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.

(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)(A) 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 License Agreement upon not less than three 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 of other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this agreement by the Licensee, or affecting the performance or this License Agreement.

24. TERMINATION

24.1 Upon termination of this License, Licensee shall comply with DOT close-out procedures, including but not limited to:

(a) 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.

(b) Not incurring or paying any further obligation pursuant to this License beyond the termination date. Any obligation necessarily incurred by Licensee 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. Licensee 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 Licensee and its landlord.

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

(d) 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.

24.2 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, Licensee shall not operate. In the event that Licensee’s operation is disrupted due to construction in the immediate area where the Licensed Premises is

located, this License may be suspended, at DOT's option. Notwithstanding any other provisions of this License, Licensee shall not be relieved of liability to the City for damages sustained by the City by virtue of Licensee's breach of the License.

24.3 The rights and remedies of the City provided in this Section and Section 3.2 through 3.11 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.

24.4 In the event Licensee continues to operate and maintain the Licensed Premises under this License after the expiration or termination of this License Agreement, Licensee shall continue to comply with all provisions of this License as if the License was still in force and effect, throughout the period of such continued operation, provided that any such continued operation and compliance with this License shall in no way be construed as a renewal or other extension of this License, nor as a limitation on the remedies available to the City as a result of such continued operation after the term of this License, including but not limited to, damages and restitution and injunctive relief.

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

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

- (i) acts of God, hurricane, tornado, flood, drought, earthquake or other natural disaster;
- (ii) epidemic or pandemic;
- (iii) 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;
- (iv) nuclear, chemical or biological contamination or sonic boom; and
- (v) collapse of buildings, fire, explosion, or citywide blackout.

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

- (i) 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;
- (ii) use all reasonable endeavors to mitigate the effects of the Force Majeure Event on the performance of the obligations under this License; and
- (iii) resume performance of the obligations as soon as reasonably practicable

after the removal of the Force Majeure Event.

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

25. CHOICE OF LAW/CONSENT TO JURISDICTION AND VENUE

25.1 This License 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.

25.2 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:

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

(b) With respect to any action arising out of this License between the City and Licensee in New York State Courts, Licensee 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.

(c) With respect to any action arising out of this License between the City and Licensee in Federal Court located in New York City, Licensee 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.

(d) If Licensee 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, Licensee 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, Licensee 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.

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

26. WAIVER OF TRIAL BY JURY

26.1 Licensee hereby expressly waives all rights to trial by jury in any lawsuit or summary proceeding hereafter instituted by the City against Licensee 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 Licensee. This provision relating to the waiver of jury trial rights shall survive the expiration or termination of this License Agreement or any terms hereof.

27. RESERVATION OF RIGHTS AND INTERESTS

27.1 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.

27.2 Any statement or release made to the public relating to the subject of this License must be approved in advance by DOT. Licensee 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, Licensee and DOT agree in good faith to make such release, advertisement or statement accurate and acceptable to both parties.

27.3 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 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.

28. PERSONNEL

28.1 The parties agree that Licensee is an independent contractor and not an employee, subsidiary, affiliate, division, department, agency, office, or unit of the City. Accordingly, Licensee 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 Licensee, with respect to the City, that differs from or is inconsistent with that of an independent contractor.

28.2 All persons who are employed by Licensee and all Licensee's sublicensee(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. Licensee, and not the City, is responsible for their work, direction, compensation, and personal conduct while Licensee 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 Licensee's employees, agents, sublicensee(s), or sublicensee(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 Licensee, 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 sublicensee(s), or its sublicensee(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 Licensee 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). Licensee 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 Licensee, 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 Licensee 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.

28.3 To the extent required by law, Licensee 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. Licensee 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.

29. FEDERAL EMPLOYER IDENTIFICATION NUMBER

29.1 Licensee 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 Licensee to receive a license or public contracts. The Federal Employer Identification Number of Licensee is [47-4076352](#).

30. CONFLICT OF INTEREST

30.1 Licensee represents and warrants that neither it nor any of its directors, officers, members, partners or employees, 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.

31. REPRESENTATIONS, WARRANTIES AND COVENANTS

31.1 Licensee makes the following representations and warranties:

(a) Licensee is a 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.

(b) This License 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 DOT, constitutes a legal, valid, binding and enforceable obligation of Licensee.

(c) 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 Licensee's Certificate of Incorporation, by-laws, or any statute, indenture, mortgage, deed of trust or other License 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) Licensee has neither been asked to pay, offered to pay, nor paid any illegal consideration, whether monetary or otherwise, in connection with obtaining this License.

(e) Licensee represents and warrants that, with respect to securing or soliciting this License Agreement, Licensee is in compliance with the requirements of the New York State Lobbying Law (Legislative Law §§ 1-a *et seq.*). Licensee makes such representation and warranty to induce the City to enter into this License Agreement 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 Agreement without liability; and Licensee shall not make claim for, or be entitled to recover, any sum or sums due under this License Agreement. 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.

31.2 Licensee covenants and agrees that for so long as this License Agreement is in effect it shall maintain its corporate existence under the laws of the State of New York.

31.3 City hereby represents and warrants that this License Agreement 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 Licensee, and registration with the Comptroller, constitutes a legal, valid, binding and enforceable obligation of the City.

32. CLAIMS AND ACTIONS THEREON

32.1 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 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.

32.2 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 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.

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

33. NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

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

34. PARTICIPATION IN AN INTERNATIONAL BOYCOTT

34.1 Licensee agrees that neither Licensee 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.

34.2 Upon the final determination by the Commerce Department or any other agency of the United States as to conviction of Licensee 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.

34.3 Licensee 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.

35. INFRINGEMENTS

35.1 Licensee 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 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 License Agreement.

36. ANTI-TRUST

36.1 Licensee 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.

37. EMINENT DOMAIN AND PUBLIC USE

37.1 In the event that the Plaza, including the Licensed Premises 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, Licensee 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 Licensee's request, use reasonable efforts to provide Licensee 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 Licensee's business. In such case, the License term shall begin to run again as soon as the public work is completed and Licensee is able to resume its business.

38. DEVELOPMENT PURPOSES

38.1 In the event that the Plaza, including the Licensed Premises or any part thereof is required by DOT or any other agency of government for development purposes, construction, repairs or other

work, Licensee 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. Licensee also agrees that this License shall terminate with regard to the affected area(s) and Licensee shall vacate the affected area(s) upon twenty-five (25) days' written notice from DOT.

39. ALL LEGAL PROVISIONS DEEMED INCLUDED

39.1 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.

40. SEVERABILITY: INVALIDITY OF PARTICULAR PROVISIONS

40.1 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.

41. JUDICIAL INTERPRETATION

41.1 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.

42. MODIFICATION OF AGREEMENT

42.1 This License Agreement 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 Agreement may be modified from time to time by agreement in writing, but no modification of this License Agreement 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.

43. NOTICES

43.1 All notices from Licensee 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.

43.2 All notices from DOT to Licensee shall be dispatched in the same manner, and delivered to Licensee at 4212 13th Street, Long Island City, NY 11101 or such other address as may be notified from time to time.

44. ENTIRE AGREEMENT

44.1 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.

45. COUNTERPARTS

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

46. MISCELLANEOUS

46.1 The headings of sections and paragraphs are inserted for convenience only and shall not be deemed to constitute part of this License Agreement or to affect the construction thereof. The use in this License Agreement of singular, plural, masculine, feminine and neuter pronouns shall include the others as the context may require.

NO FURTHER TEXT ON THIS PAGE

IN WITNESS WHEREOF, the parties hereto have caused this License Agreement to be signed and sealed on the day and year first above written.

CITY OF NEW YORK
DEPARTMENT OF
TRANSPORTATION

21st ASSOCIATES LLC

By: _____

By: _____

Dated: _____

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 _____, 202_ before me personally came _____ to me known, and known to be the _____ of the DEPARTMENT OF TRANSPORTATION OF THE CITY OF NEW YORK, 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

STATE OF NEW YORK

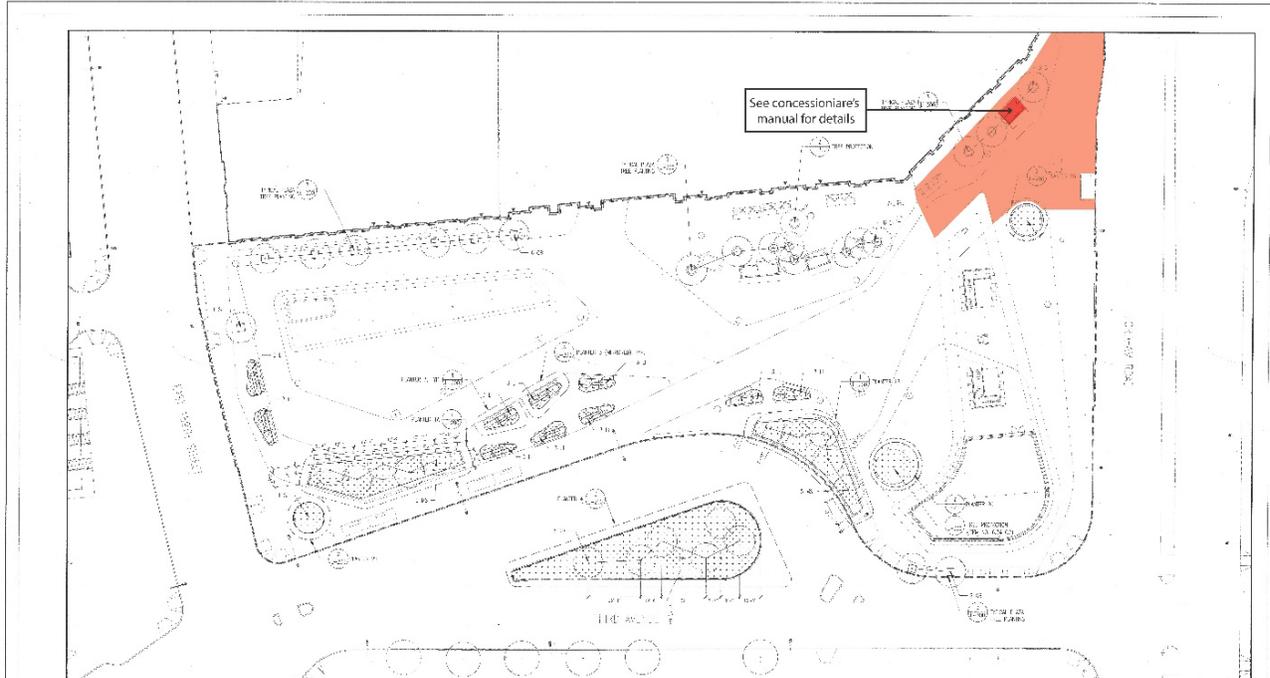
ss:

COUNTY OF

On this day of _____, 202_ before me personally came to me known and who, being duly sworn by me, did depose and say that (s)he is the _____ of 21st AASSOCIATES LLC and that (s)he was authorized to execute the foregoing instrument on behalf of that company and acknowledged that (s)he executed the same on behalf of that company for the purposes mentioned therein.

Notary Public

EXHIBIT A
LICENSED PREMISES



FORDHAM PLAZA, BX

-  K3 - Small Kiosk, North (approx 95 sqft)
-  K3 - Licensed Premises (approx 3,105 sqft)

EXHIBIT B

SCHEDULE OF APPROVED HOURS AND RATES, FEES AND PRICES

Days of Operation: 7 days per week

Hours of Operation: 8:00 AM to 8:00 PM

SCHEDULE OF APPROVED HOURS AND RATES, FEES AND PRICES (CONTINUED)

Bakery	
Filled Croissant (250-450 Calories)	\$4.99
Plain Croissant (300 Calories)	\$2.99
Regular Muffins (480-600 Calories)	\$4.50
Low Fat Muffin (300 Calories)	\$5.50
Danish	\$5.50
Scone	\$4.99
Pecan Roll	\$5.50
Pound Cake	\$4.99
Bagel w/condiments	\$3.49

Espresso Drinks:

Caffe Latte	Medium	\$4.99
Caramel Macchiato	Medium	\$4.99
White Chocolate Latte	Medium	\$4.99
Chai Latte	Medium	\$4.99
Vanilla Latte	Medium	\$4.99
Espresso		\$2.99

EXHIBIT B
SCHEDULE OF APPROVED HOURS AND RATES, FEES AND PRICES (CONTINUED)

CREATE *your own* SALAD

\$12.95

1. Choose Greens - included
2. Add Meats or Seafood - \$3.00
3. Select 3 Toppings - included
4. Choose Dressing - included

ETHNIC DISHES WILL VARY FROM DAY TO DAY,
THERE WILL BE SCHEDULE MADE AVAILABLE 1 WEEK AHEAD.



Beverages:

Fruit Juices	\$3.25
Fountain	\$3.95
Bottled Beverages	\$3.25
Bottled Water	\$3.25
Naked Juice	\$4.00

Icecream

<u>Haagen-Dazs</u> Ice Cream Bars (All Varieties)	\$5.00
Magnum Ice Cream Bars (All Varieties)	\$4.00
Dove Bar	\$4.00
Ben & Jerry's Vanilla Peace Pop	\$4.00
Ben & Jerry's Cherry Garcia Peace Pop	\$4.00

EXHIBIT B
SCHEDULE OF APPROVED HOURS AND RATES, FEES AND PRICES (CONTINUED)

Breakfast Menu:

<i>Breakfast Sandwiches</i>	\$5.95
All-natural eggs cracked, Vermont white cheddar, Applewood-smoked bacon, all- natural sausage and smoked ham on fresh baked breads and bagels.	
<i>EGG, Mushroom and Swiss Sandwich</i>	\$6.95
Two freshly cracked Eggs, Mushroom, Swiss Cheese, and lite Ranch Dressing on Ciabatta Bread	
<i>EGG, and Swiss Sandwich</i>	\$6.45
Two freshly cracked Eggs,, Swiss Cheese, and lite Ranch Dressing on Ciabatta Bread	
<i>EGGWhite, Avocado and Swiss on Skinny Bagel</i>	\$6.95
Egg whites,, Swiss Cheese, Avocado, and lite Ranch Dressing on Skinny Bagel	
<i>Oatmeal</i>	\$3.49
<i>Breakfast Empanada</i>	\$3.00

sandwiches

simply vegetable vegetables on 7-grain bread \$11.25
lettuce, tomatoes, cucumbers, avocado, sprouts, non fat herb yogurt & dijonmustard

fresh mozzarella & oven dried tomatoes \$11.95
arugula, chopped basil, black pepper & olive oil

white tuna on sour dough whole wheat bread \$11.95
mixed with carrots, dill & mayonnaise, lettuce, tomatoes & watercress

smoked salmon on black bread \$11.95
cucumber, watercress, romaine, & horseradish cream

herb roasted grilled breast of chicken \$11.95
tomatoes, watercress & herb mustard
basil parmesan chicken salad tomatoes & arugula
prosciutto di parma & fresh mozzarella roasted peppers & arugula
& lemon mayonnaise

Mediterranean Wrap \$11.95

Empanada \$5.00

SOUPS \$5.95 soups change daily and always include one vegetarian selection.
Minimum 2 flavors

EXHIBIT C

CAPITAL IMPROVEMENTS

The following Capital Improvements shall be completed as detailed below:

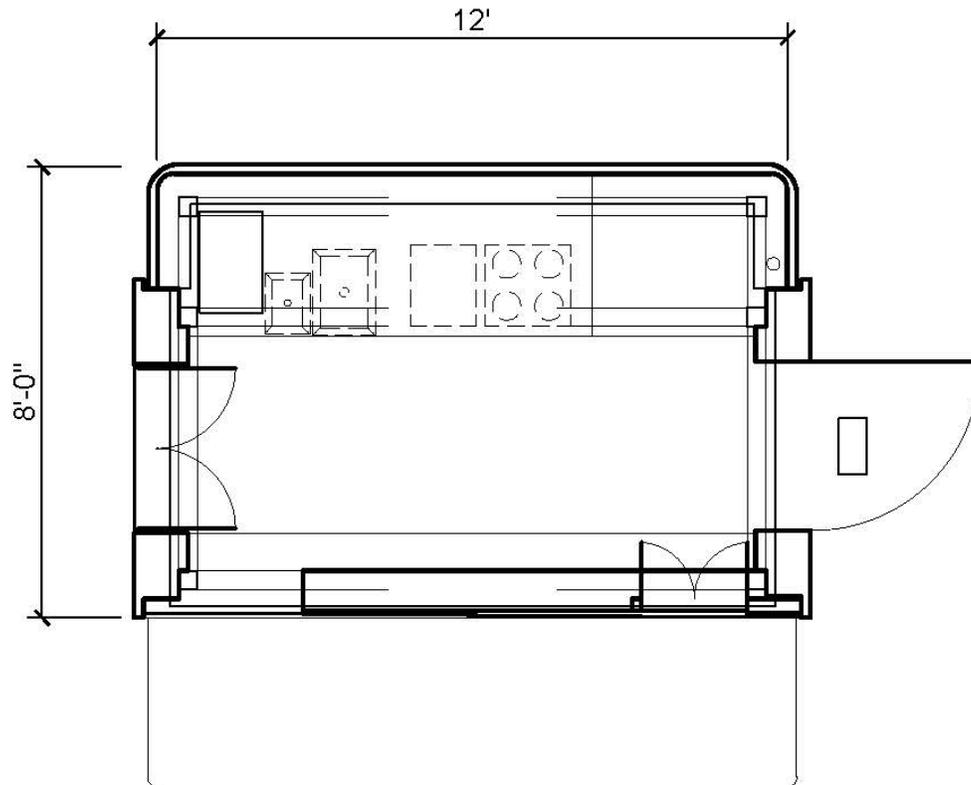
- Provide interior finishes needed for the operation of a food/beverage/merchandise service establishment;
- Installation of ventilation and any other systems related to a food/beverage/merchandise service establishment (e.g. refrigeration, point of sale, and food storage); and
- Installation of any energy-efficient lighting systems needed.

EXHIBIT D
CONCESSIONAIRE'S MANUAL

1. Kiosk Building Plan
2. Amenity List
3. Utility Chart
4. Signage Guidelines
5. Selected Maintenance Guidance

Appendix I – Plans

1. Kiosk Building Plan



2. Amenity List

Licensed Premises amenities include but are not limited to the following, all quantities are approximations.

Plaza Paving

- DOT standard concrete paving, exposed aggregate (1,905 SF)

Small Kiosk Exterior

- Access door with small window, stainless steel (1)
- Awning (33 SF)
- Fritted window with menu board space, 3' x 5' (1)
- Glass panel on side, for signage, 5' x 4' (1)
- Glass window, small, 1' x 2' (1)
- Glass windows, sliding, 3' x 5' (3)
- Glazing panel, laminated (25 SF)
- Glazing panel with light box for signage, 12' x 2'6" (25 SF)
- Lighting fixture above door (1)
- Metal louvers (24 SF)
- Stainless steel wall panels (120 SF)
- Stainless steel roof panels (75 SF)

Small Kiosk Interior (95 SF)

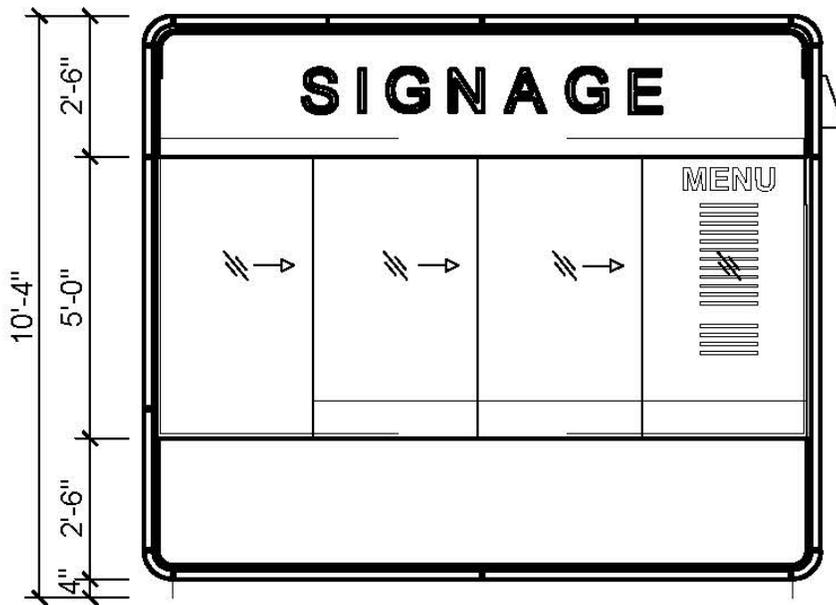
- Customer counter (11.5 LF)
- Staff counter (11.5 LF)
- Lighting fixtures (1)
- RPZ (1)

3. Utility Chart

The kiosk contains utility connections including electricity, gas, water, sewage, and telecommunications.

SERVICE	STATUS	CONNECTION
Electric Service	ConEd - Account established	100 Amps
Gas Service	ConEd – Concessionaire to open account	¾" Connection
Water Service	DEP - Concessionaire to open account	1" pipe
Data/Telecom Provision	TBD--Concessionaire to make connection and open account	3" Empty Conduit

4. Signage Guidelines



All proposed signage requires DOT approval.

- The signage and menu board shall be provided as part of the fit-out work.
- Refer to drawings A220 and A330 for signage and menu board mounting details.
- The signage may be back-lit.
- Flashing, revolving, or strobe lighting or signage is prohibited.

- The wording of all exterior signs shall be limited to the announcement of store names, a DOT-approved logo, or a generic inscription (e.g., “BOOKSTORE”, “NEWSSTAND”, or the like), unless otherwise approved by the DOT.
- Advertising (other than in a form identifying the Concessionaire with approval from DOT) is strictly prohibited.
- No signage will be permitted outside the Licensed Premises onto the Plaza. Additionally, if the Concessionaire contemplates placing any signs off-site that advertise the Concession, such as on nearby streets, it shall be the Concessionaire’s responsibility to obtain any necessary approvals or permits from any governmental agency having jurisdiction over such locations.

5. Selected Maintenance Guidance

Stainless Steel Surfaces

Stainless Steel’s chromium film is responsible for its resistance to rust and tarnish, and with proper care this film can provide protection for many years. The integrity of the film can be damaged by dirt and other contaminants so clean often and do not let contaminants build up on larger objects. The more frequently you clean, the easier cleaning will be and the less chance you will have of contaminants damaging the stainless steel's protective film.

1. Attend to stains as quickly as possible. Stainless steel does not hold stains easily, but it's best to clean up spills and marks as quickly as possible. While it will probably be possible to remove a stain after it sets, it will require more work and potentially damaging or scratching cleaners.
2. Fill a sink or bucket with warm, soapy water or a weak ammonia and water solution. Stainless steel is durable, but can be sensitive to harsh cleaners, so for routine cleaning, use a gentle detergent, such as dish soap. Dilute the detergent with very warm water. It is better to have too little detergent than too much.
3. Wet a soft towel or dish cloth in the soapy water. Avoid using an abrasive cloth on stainless steel. Instead, get a soft cloth or nylon sponge, dip it in the water-detergent solution, and wring it out thoroughly. If you prefer to use a cleaning brush, choose one with soft bristles.
4. Scrub the stainless steel. Take your cloth and softly scrub the surface. It is typically not necessary to press very hard. If the stainless steel has a directional polished finish, scrub with the finish, not against it, and avoid scrubbing with a circular motion. Rinse and wring out your cloth frequently to keep it damp and to avoid smearing potentially abrasive contaminants over the surface of the steel.
5. Rinse thoroughly with warm, clean water. Using a clean cloth or sponge, wet and wipe down the stainless. Be sure to remove all the detergent residue - it can leave streaks and a rainbow-colored discoloration.
6. Repeat if necessary. The gentle cleaning should take care of most dirt and contaminants, but if stains persist, repeat the process. Be patient - persistent scrubbing will usually win out over even the toughest stains.
7. Apply a mild abrasive cleaner. Only apply an abrasive product after you've exhausted your patience (and your arms) scrubbing. Start by trying a paste of water and sodium bicarbonate (baking soda). Rub the paste onto the stainless with a soft cloth. Again, exercise patience, scrub well and rinse thoroughly.

8. If the combination of soaking, detergent and a mild abrasive didn't work, apply a more caustic abrasive cleaner such as the commercial brands of "Ajax" or "Comet" or their equivalent. To do this, wet a cloth or sponge with hot water, put the abrasive on one side and, moving in the direction of the stainless grain, apply the abrasive side of the cloth to the stainless.

9. Flip the towel over to the side without the abrasive, and remove the cleaner you just applied (again in the direction of the grain). Keep this towel hot and damp, but not dripping wet.

10. Rinse thoroughly and dry. Immediately after wiping off the abrasive cleaner, rinse well using clean, warm water. Dry the stainless using a second cloth, again rubbing with the grain.

11. A 3M or its equivalent Stainless Steel Cleaner can then be used to prevent future contamination.

12. The only and last way to get the material off of the stainless steel would be to apply the 3M or its equivalent Stainless Steel Cleaner with a WHITE Scotch Brite Pad 3M 7445 or its equivalent. Again moving in the direction of the stainless grain ONLY.

Warnings:

- Be careful when mixing any types of cleaners. Don't mix commercial cleaners, such as "Bar Keepers Friend" or its equivalent, with vinegar or with other brands.
- Do not apply bleach to stainless steel. Stainless is sensitive to chlorine, and contact with bleach will result in staining and damage to the protective film.

Power Washing

- Use less than 1500 PSI as to not damage the plaza paving
- Use a fan type sprayer
- Avoid spraying directly on any joints

Rodent & Pest Control

- Eliminate food waste on site by promptly removing full or near full trash cans and picking up litter daily from plaza and landscape areas.
- Closes inactive burrows that might be found within planting beds.
- On Rodent Baiting and how to choose a pest control company, refer to 'Preventing Rats on Your Property' from the Department of Health:
http://www1.nyc.gov/assets/doh/downloads/pdf/pest/rodent_control.pdf

EXHIBIT E

MAINTENANCE SERVICES

TASK	Frequency	Performed by	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
			xxxx											
Inspections														
Building interior common areas—check for damage, make repairs	monthly	staff	X	X	X	X	X	X	X	X	X	X	X	X
Building exterior—check for damage, make repairs	monthly	staff	X	X	X	X	X	X	X	X	X	X	X	X
Units—check for damage, cleanliness, make repairs	annual	staff					X							
Building Exterior														
Siding—wash if needed, monitor condition of paint, spot re-paint as needed	annual	staff				X								
Windows—wash, re-caulk if needed	annual	vendor			X									
Doors—wash, check weather stripping, re-paint as needed	annual	staff			X									
Signage—inspect, clean, repair as needed	monthly	staff		X										
Lighting—clean fixtures, change lamps as needed	monthly	staff	X	X	X	X	X	X	X	X	X	X	X	X
Roof—clear debris off flat areas and from drains/scuppers, monitor condition for cracking, water pooling, leaks, loose flashing	monthly	staff	X	X	X	X	X	X	X	X	X	X	X	X
Roof—remove moss off sloped areas, clear debris from gutters/downspouts	annual	vendor							X					
Decks and stairs—wash	annual	staff				X								
Foundation—monitor for cracking, check vent covers, confirm no pests	annual	staff			X									
NOISE — Maintain to appropriate levels	As needed	Staff	X	X	X	X	X	X	X	X	X	X	X	X
GRAFFITI —inspect, clean/remove as needed	As needed	staff/vendor	X	X	X	X	X	X	X	X	X	X	X	X
Building Interior														
Hallways & stairs—vacuum carpet, mop linoleum and stained concrete	weekly	staff	xxxx											
Floors—professionally clean common area carpet	annually	vendor				X								
Walls—wash off hand prints and dirt in high traffic areas	weekly	staff	xxxx											
Laundry—wipe down all surfaces, empty trash, mop floor, clean behind machines, check lint traps and clean as needed	weekly	staff	xxxx											
Laundry—professionally clean dryer vents	annually	vendor		X										
Trash/Recycling Room—clean, mop floor, wash out containers	weekly	staff	xxxx											
Lighting—clean fixtures, replace lamps as needed	monthly	staff	X	X	X	X	X	X	X	X	X	X	X	X
Unit Appliances—clean interior and exterior, vacuum under and behind	annually	resident/staff						X						
Fire Protection														

Case 4:24-cv-00001-UNA Document 1-1 Filed 01/24/24 Page 1 of 1

EXHIBIT E

MAINTENANCE SERVICES (CONTINUED)

		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Sprinklers, Alarms, Fire Extinguishers, Backflow—professionally service	annually		X										
Smoke detectors—test all units and common areas, replace as needed	annually		X										
TASK		Performed by											
Frequency		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
HVAC (Heating, Ventilation, Air Conditioning)													
Hydronic Heating System—see separate binder for maintenance and care	see binder												
Heat Recovery Ventilator—see separate binder for maintenance and care	see binder												
Whole house ventilation—professionally service roof fans	quarterly		X				X			X			X
Unit bathroom fans—inspect, vacuum, clean covers	annually						X						
Air filters—clean and/or replace as needed	quarterly												
Plumbing													
Toilets—check for leaks, running water	annually						X						
Faucets and shut-offs—check for leaks, drips	annually						X						
Boilers/hot water tanks—see separate binder for maintenance and care	see binder												
TASK		Performed by											
Frequency		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Landscaping and Grounds													
Walk property—pick up trash, see landscape maintenance fact sheet	daily	daily	daily	daily	daily	daily	daily	daily	daily	daily	daily	daily	daily
Mulch all landscape beds—see landscape maintenance fact sheet	annual				X								
Shrubs and Trees—remove broken, dead, deformed, deranged branches	weekly/seasonal	xxxx	xxxx	xxxx	xxxx	xxxx	xxxx	xxxx	xxxx	xxxx	xxxx	xxxx	xxxx
Weed—remove weeds as you see them, never let weeds go to seed	daily	daily	daily	daily	daily	daily	daily	daily	daily	daily	daily	daily	daily
Pest and disease control—monitor and follow integrated Pest Management and Natural Gardening principles. Do not use products harmful to environment or beneficial critters	weekly/seasonal	X	X	X	X	X	X	X	X	X	X	X	X
Watering/Irrigation—soak deeply, let dry out before watering again, see fact sheet.	weekly/seasonal	xxxx	xxxx	xxxx	xxxx	xxxx	xxxx	xxxx	xxxx	xxxx	xxxx	xxxx	xxxx
Irrigation spring startup/fall shut-down—blow out lines and secure for winter	semi-annual					X					X		
Walks, Paving, Curbs—monitor condition, clean and repair as needed	monthly	X	X	X	X	X	X	X	X	X	X	X	X
Litter —inspect, clean/remove as needed	Daily	X	X	X	X	X	X	X	X	X	X	X	X

EXHIBIT F

PAID SICK LEAVE LAW CONCESSION AGREEMENT 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. 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;

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.

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 G

CERTIFICATES OF INSURANCE

Instructions to New York City Agencies, Departments, and Offices

All certificates of insurance (except certificates of insurance solely evidencing Workers' Compensation Insurance, Employer's Liability Insurance, and/or Disability 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.

CONCESSION AGREEMENT RECOMMENDATION FOR AWARD MEMORANDUM COVER SHEET

(Attach, in the following order, applicable CRFA Memo, Responsibility Determination Form, approved CPSR Cover Sheet and, if the selection procedure was not CSB, the CPSR Memo and CCPO Memo (if applicable))

AGENCY: NYC & Company, Inc. on behalf of NYC Department of Small Business Services	RECOMMENDED CONCESSIONAIRE Name: Fire Replicas, LLC Address: PO Box 44, Millington TN 38083 Telephone # 920-395-9042 <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN #47-2702814 Not-for-Profit Organization <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Certified by DSBS as M/WBE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	CONCESSION TITLE/ DESCRIPTION: Non-exclusive use of City-Owned Trademarks on Merchandise CONCESSION I.D.# NYCCO-2022-005
# VOTES required for proposed action = 4 <input type="checkbox"/> N/A		

LOCATION OF CONCESSION SITE(S*) Address _____ N/A
 *Attach additional sheet **Borough** _____ **C.B.** _____ **Block #** _____ **Lot #** _____

SELECTION PROCEDURE
 (*CCPO approval of CRFA required)

Competitive Sealed Bids
 Competitive Sealed Proposals* (FCRC approved Agency request to deviate from final recommendation of the Selection Committee on ___/___/___.)
 Different Selection Procedure: * (Sole Source Agreement Other _____)
 > FCRC approved different selection procedure on 12/14/22.
 Negotiated Concession*

CONCESSION AGREEMENT TERM

Initial Term: From Effective Date To 12/31/25
Renewal Option(s) Term: From 01/01/26 To 12/31/27
 From ___/___/___ To ___/___/___

Total Potential Term: 4 Years and 9 months

 * >20 years – FCRC unanimously approved term on ___/___/___

ANNUAL REVENUE
 (Check all that apply)
 Additional sheet (s) attached

Annual Fee(s) \$ _____
 % Gross Receipts _____%
 The Greater of Annual Minimum Fee(s of \$_____ v. _____% of Gross Receipts
 Other For each license year of the initial term, Fire Replicas, LLC shall pay royalties equal to five percent (5%) of Net Sales.

Guaranteed Minimum Royalty payment shall be payable as follows:

A guaranteed minimum royalty of forty five thousand dollars (\$45,000) for the period effective date to December 31, 2025. With an option to extend the agreement for an additional 2 years on substantially the same terms, but not to exceed the threshold for significant concession.

NOTIFICATION REQUIREMENTS

Subject concession was awarded by CSB or CSP. YES NO

If YES, check the applicable box(es) below:

The subject concession is a Significant Concession and the Agency completed its consultations with each affected CB/BP regarding the scope of the solicitation by ___/___/___, which was at least 30 days prior to its issuance.

 The subject concession is a Significant Concession and the Agency included this concession in the Agency's Plan and completed consultations with each affected CB/BP pursuant to §1-10 of the Concession Rules.

 The subject concession was determined not to be a Major Concession and the Agency sent notification of such determination to each affected CB/BP by ___/___/___, which was at least 40 days prior to issuance of the solicitation.

If NO, check the applicable box below:

The Agency certifies that each affected CB/BP received written notice by 11/4/22, which was at least 40 days in advance of the FCRC meeting on 12/14/22 at which the agency sought and received approval to use a different selection procedure.

- The Agency certifies that each affected CB/BP received written notice on __/__/__, at the time that a notice of intent to enter into negotiations was published for the subject concession, and provided a copy of such notification to the members of the Committee within five days on __/__/__.
- The Agency certifies that based on exigent circumstances the FCRC unanimously approved waiver of advance written notice to each affected CB/BP on __/__/__.

Law Department approved concession agreement on 01/18/23

Award is a major concession. YES NO

If 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 __/__/__ or N/A

AUTHORIZED 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.

If the concession was awarded by other than CSB or CSP, additionally check the applicable box below:

- The concession was approved by the FCRC on __/__/__.
- The concession was not subject to the approval of the FCRC because it has a term of <30 days and is not subject to renewal.

Name _____ Title _____

Signature _____ 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

RECOMMENDATION FOR AWARD OF CONCESSION AGREEMENT MEMORANDUM:
CONCESSION AGREEMENT AWARDED BY OTHER THAN CSB OR CSP

SUMMARY OF PROPOSED CONCESSION USE (Attach Proposed Agreement)

NYC & Company, Inc. ("NYC & Company") on behalf of the New York City Department of Small Business Services ("SBS") intends to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, for SBS to enter into a non-exclusive, Sole Source License Agreement ("License Agreement") with Fire Replicas, LLC ("Fire Replicas") for the non-exclusive use of city-owned trademarks on merchandise. Fire Replicas sells replica high end trucks and cars on its Fire Replicas e-commerce site. Fire Replicas has been a successful licensee in the past and their unique design capabilities and retail channel offer the opportunity for merchandise with city owned trademarks to be sold in places where it is not being sold currently. Therefore, it is in the City's best interest to continue the partnership with a new sole source agreement with Fire Replicas. This proposed non-exclusive license agreement will not bar opportunities for other replica fire truck manufacturers.

Instructions: Provide all information requested below; check all applicable boxes.

A. SELECTION PROCEDURE

Sole Source

Other *Describe:*

B. NEGOTIATIONS

Instructions: Describe the nature of negotiations conducted, including negotiations with respect to the amount of revenue offered.

NYC & Company/SBS negotiated that Fire Replicas shall pay licensing fees equal to five percent (5%) of Net Sales with a guaranteed minimum royalty of forty-five thousand dollars (\$45,000) that shall be paid on or before December 31, 2025. With an option to extend the agreement for an additional 2 years on substantially the same terms, but not to exceed the threshold for significant concession.

C. BASIS FOR AWARD (If sole source award, attach the offer; if other than a sole source award, attach the three highest rated offers, if applicable.)

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

Fire Replicas is a licensee who held a sole source agreement during that time they continued to produce and perform better than the contract. During the pandemic, Fire Replicas, continued to grow their business and increase sales, quarter over quarter. Given Fire Replicas' past success and continued consumer awareness, it is now in the City's best interest to enter into a new concession agreement with Fire Replicas to continue to build on this market segment. Fire Replicas maintains unique manufacturing and distribution arrangements with their e-commerce site. Fire Replicas proposed unique designs to be created by Fire Replicas' manufacturing department to be used solely for this arrangement if approved. This proposed non-exclusive license agreement will not bar other opportunities for other replica fire truck manufacturers.

D. PUBLIC HEARING

N/A – Subject award NOT a significant concession]

1. Publication & Distribution of Public Hearing Notice

Subject concession is a **Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on __/__/__, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on __/__/__, which was not less than 15 days prior to the hearing date. Agency also published a public hearing notice twice in the two newspapers indicated below. A copy of each such notice was sent to each affected CB-BP by __/__/__.

- _____, a NYC citywide newspaper on __/__/__ and __/__/__
- _____, a NYC citywide newspaper on __/__/__ and __/__/__

OR

Subject concession is **NOT a Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on __/__/__, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on __/__/__, which was not less than 15 days prior to the hearing date. Agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in two newspapers indicated below. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB-BP by __/__/__.

- _____, a NYC local newspaper published in the affected borough(s) on __/__/__ and __/__/__.
- _____, a NYC local newspaper published in the affected borough(s) on __/__/__ and __/__/__.

2. Public Hearing Date, Exception to Public Hearing Requirement

A Public Hearing was conducted on __/__/__.

OR

The Agency certifies that the total annual revenue to the City from the subject concession does not exceed one million dollars and a Public Hearing was not conducted because, pursuant to §1-13(q)(2) of the Concession Rules, the Agency gave notice of the hearing and did not receive any written requests to speak at such hearing or requests from the Committee that the Agency appear at the hearing. Furthermore, the Agency certifies that it published a notice in the City Record canceling such hearing on __/__/__ and sent a copy of that notice to all Committee Members.

LICENSE AGREEMENT

AGREEMENT made this ____ day of 2023____, 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 Fire Replicas LLC a limited liability company organized and existing under the laws of the State of Tennessee with its principal place of business located at PO Box 44, Millington TN 38083 (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 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. © 2023 (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. © 2023 (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 upon written notice (Effective Date) and shall continue through December 31, 2025 (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 five percent (5%) 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 and annual advances in the amounts and on the dates set forth below:

Guaranteed Minimum:

The following total Guaranteed Minimum Royalties, as follows:

On or before December 31 2025: \$45,000

20232023

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 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 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.
3rd Floor
New York, NY 10019
ATTN: Natalie Koepff
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

Additional copy to:

New York City Law Department
100 Church Street, 6th Floor
New York, NY 10007
ATTN.: Katherine Winningham

If to Licensee:

Fire Replicas LLC
PO Box 44
Millington, TN 38083

Attn: Nicholas Newman

**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 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. 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

Fire Replicas, 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

Replica Fire Trucks and cars

Exhibit 3

Distribution Channels

- (a) Mid-Tier and Better department store chains, specialty chains, boutiques and mall based retailers.
- (b) National Mass Merchants
- (c) Direct to consumer media such as websites, catalogues and television shopping
- (d) Independent Retailers

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 “© 2023[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 “© 2023 [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, ™, ® 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. © 2019 (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. © 2019 (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

April 12, 2023

(Cal. No. 1)

RESOLVED, that the Franchise and Concession Review Committee (“FCRC”) authorizes NYC & Company, Inc., 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, for SBS to enter into a non-exclusive, Sole Source License Agreement (“License Agreement”) with Fire Replicas, LLC (“Fire Replicas”) for the non-exclusive use of city-owned trademarks on merchandise. The Agreement shall commence upon written notice (Effective Date) and shall continue through December 31, 2025 (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. For the initial term, Fire Replicas shall pay royalties equal to five (5%) of Net Sales (as defined in the License Agreement). The License Agreement provides for a guaranteed minimum royalty of Forty-Five thousand dollars (\$45,000) covering the period from written notice to December 31, 2025. With an option to extend the agreement for an additional 2 years on substantially the same terms, but not to exceed the threshold for significant concession.

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

April 12th, 2023

Date: _____

Signed: _____

Title: Director of the Mayor's Office of Contract Services