

## **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 on remotely via a Microsoft Teams dial-in on December 13, 2022, at 2:30 pm relative to:

INTENT TO AWARD as a concession a Sole Source License Agreement (“License”) to the DUMBO District Management Association, Inc. (“DUMBO BID”), whose address is 20 Jay Street, Suite 510, Brooklyn, NY 11201, to provide for the operation, management, and maintenance of a pedestrian plaza located on Old Fulton Street, Front Street and Water Street, in the borough of Brooklyn (“Licensed Plaza”), including through City-approved plaza events, sponsorships, gifts, and subconcession(s), including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by DUMBO BID in the basic form of a Request for Proposals or Request for Bids, subject to DOT’s prior written approval of both solicitation and award. DUMBO BID will be required to invest any revenue generated by this concession into the maintenance and/or repair, including reasonable administrative costs, of the Licensed Plaza.

The License will provide for one (1) five-year initial term, commencing upon written Notice to Proceed, which may be renewed for up to two (2) additional five-year terms, exercisable at the sole discretion of DOT.

The 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](mailto:fcrc@mocs.nyc.gov). All written testimony must be received by December 1, 2022. 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: 951 976 883

Press # on further prompts

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

1. Submit a written request to DOT at [concessions@dot.nyc.gov](mailto:concessions@dot.nyc.gov) through December 9, 2022.
2. Submit a written request by mail to Rachel Frumin, NYC Department of Transportation, 55 Water Street, 9<sup>th</sup> Floor, New York, 10041. Written requests must be received by December 2, 2022. For mail-in requests, please include your name, return address and reference the “Old Fulton Plaza Concession Agreement”.

3. 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](mailto:DisabilityAffairs@mocs.nyc.gov) or via phone at (646) 872-0231. 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))

<b>AGENCY:</b> <u>NYC Department of Transportation (DOT)</u> <b># VOTES required for proposed action =</b> <u>4</u> <input type="checkbox"/> N/A	<b>RECOMMENDED CONCESSIONAIRE</b> <b>Name:</b> <u>DUMBO District Management Association, Inc.</u> ("Concessionaire") <b>Address:</b> <u>20 Jay Street, Suite 510, Brooklyn, NY 11201</u> <b>Telephone #</b> <u>718-237-8700</u> <input checked="" type="checkbox"/> <b>EIN</b> <input type="checkbox"/> <b>SSN #</b> <u>20-0214837</u> <b>Not-for-Profit Organization</b> <input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b> <b>Certified by DSBS as M/WBE</b> <input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b>	<b>CONCESSION TITLE/ DESCRIPTION:</b> <u>Concession to provide for the operation and management of a pedestrian plaza located at located on Old Fulton Street, Front Street, and Water Street, in the borough of Brooklyn; and maintenance and/or repair of certain amenities installed within the pedestrian plaza</u> <b>CONCESSION I.D.#</b> <u>2021Con3</u>
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**LOCATION OF CONCESSION SITE(S\*) Address:** The pedestrian plaza is located on Old Fulton Street, Water Front Street and Water Street, in the borough of Brooklyn ("Licensed Plaza") ☐ **N/A**

\*Attach additional sheet

**Borough:** Brooklyn **C.B.:** 2 **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 11/10/2021.  
☐ Negotiated Acquisition\*

## CONCESSION AGREEMENT TERM

**Initial Term: From** Notice to Proceed (NTP) **To** Five (5) years from NTP

**Renewal Option(s) Term:** Up to two (2) five-year renewal options, exercisable at the sole discretion of DOT

**Total Potential Term:** 15 years

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

## 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 the 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 09/24/2021, which was at least 40 days in advance of the FCRC meeting on 11/10/2021 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 12/14/2022.
- ☐ 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, Cityscape & 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:**  
**CONCESSION AGREEMENT AWARDED BY OTHER THAN CSB OR CSP**

**SUMMARY OF PROPOSED CONCESSION USE (Attach Proposed Agreement)**

The New York City Department of Transportation ("DOT") intends to seek FCRC approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York ("Concession Rules"), to enter into License Agreement ("License") with DUMBO District Management Association, Inc. ("Concessionaire").

***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.*

The License would permit the Concessionaire to provide for the operation and management of the pedestrian plaza located on Old Fulton Street, Front Street and Water Street in the Borough of Brooklyn (the "Licensed Plaza"); and maintenance and/or repair of certain amenities installed within the Licensed Plaza, including through City-approved plaza events, sponsorships, gifts, and subconcession(s), including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Licensed Plaza. The License will provide for one (1) five-year initial term, commencing upon written Notice to Proceed, which may be renewed for up to two (2) additional five-year terms, exercisable at the sole discretion of DOT. The Concessionaire will be required to invest any revenue generated by this concession into the maintenance and/or repair of certain amenities installed within the Licensed Plaza; and reasonable administrative costs, as such costs relate to the Licensed Plaza.

**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:**

Since the concession will not yield a profit to Concessionaire, it is in the City's best interest to enter a sole source license with Concessionaire because this not-for-profit organization's mission is to improve and enhance the neighborhood in which the Licensed Plaza is located. Concessionaire was created and is funded by property owners directly adjacent to the Licensed Plaza. This organization directly represents the neighborhood that it will serve and has a vested interest in the Licensed Plaza. Concessionaire has over ten years of relevant experience activities necessary to operate, manage and maintain public spaces, including maintaining the streetscape, subcontracting maintenance services to reliable vendors, and involving the community and other public stakeholders in managing public spaces. Concessionaire has maintained the Licensed Plaza since 2013.

**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 11/28/2022, 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 11/28/2022 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 11/28/2022.

☒ New York Post a NYC local newspaper published in the affected borough(s) on 11/28/2022 and 11/29/2022.  
☒ Brooklyn Daily Eagle, a NYC local newspaper published in the affected borough(s) on 11/28/2022 and 11/29/2022.

**2. Public Hearing Date, Exception to Public Hearing Requirement**

☒ A Public Hearing was conducted on 12/13/2022

**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.

**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

(Calendar No.X)

**BE IT RESOLVED** that the Franchise and Concession Review Committee authorizes the New York City Department of Transportation (“DOT”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York to enter into a License Agreement (“License”) with the DUMBO District Management Association, Inc. (“Concessionaire”) to provide for the operation and management of a pedestrian plaza located on Old Fulton Street, Front Street and Water Street in the borough of Brooklyn (“Licensed Plaza”); and maintenance and/or repair of certain amenities installed within the Licensed Plaza, including through City-approved plaza events, sponsorships, gifts, and subconcession(s), including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by the Concessionaire in the basic form of a Request for Proposals or Request for Bids, subject to DOT’s prior written approval of both solicitation and award. The License provides for one (1) five-year term, commencing upon written Notice to Proceed, which may be renewed for up to two (2) additional five-year terms, exercisable at the sole discretion of DOT. The Concessionaire will be required to invest any revenue generated by this concession into the maintenance and/or repair of certain amenities installed within the Licensed Plaza; and reasonable administrative costs, as such costs relate to the Licensed Plaza.

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

December 14, 2022

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

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

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

**WITNESSETH**

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

**WHEREAS**, PLAZA PARTNER was formed in 2003 to improve and enhance the DUMBO area in the borough of Brooklyn, City and State of New York ("DUMBOArea"), including but not limited to the improvement and maintenance of public space therein; and

**WHEREAS**, DOT has jurisdiction over the plaza located on Old Fulton Street between Water Street and Front Street in Brooklyn, New York ("Licensed Plaza"), as further illustrated in **Exhibit A**. DOT designated the Licensed Plaza as a DOT Pedestrian Plaza pursuant to Section 19-157 of the New York City Administrative Code; and

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

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

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

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

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

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

**WHEREAS**, the Franchise and Concession Review Committee ("FCRC") authorized DOT to enter into a License Agreement with PLAZA PARTNER for the operation and management of the Licensed Plaza; and maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza, including through City-approved plaza



events, sponsorships, gifts, and subconcession(s), including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise (“Subconcession(s)” as described in Section 7 herein) within the Licensed Plaza.

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

## **1. SCOPE OF LICENSE**

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

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

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

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

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

instrument shall be valid or binding upon the City, DOT, the DOT Commissioner or their agents, unless the same is, in each instance, in writing and duly signed by the DOT Commissioner or his/her duly authorized representative.

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

## **2. TERM**

A. The term of this License (“Term”) shall be five (5) years, commencing upon written Notice to Proceed (“Commencement Date”). This License may be renewed for up to two (2) additional five-year terms, to be exercised at the sole discretion of DOT subject to termination and revocation as hereinafter provided. DOT shall provide PLAZA PARTNER with sixty (60) days’ advance written notice of its intent to renew.

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

## **3. SERVICES**

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

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

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

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

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

(1) Maintenance:

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

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

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

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

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

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

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

(h) Perimeter planters used to delineate traffic shall not be moved without DOT’s prior written approval. Such approval or denial shall not be unreasonably delayed. If a perimeter planter is moved by a third party, PLAZA PARTNER shall return the perimeter planter(s) to its original position as soon as practicable and thereafter shall immediately notify DOT.

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

(j) Sand or snow melting agent shall be spread as needed to minimize slippery conditions which may arise from the thawing and refreezing of snow and/or ice.

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

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

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

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

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

(2) Repair:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) PLAZA PARTNER shall, with respect to the operation and management of the Licensed Plaza; and maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License, designate a person to handle all claims for loss or damage including all insured claims for loss or damages. PLAZA PARTNER shall require its subconcessionaire(s), with respect to the operation and management of the Subconcession(s), to designate a person to handle all claims for loss or damage including all insured claims for loss or damages. PLAZA PARTNER shall provide DOT with the name, telephone number and address of each such person, within thirty (30) days of the date of this License and any subconcession agreement(s).

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

#### **4. BUDGET**

A. On or before April 1<sup>st</sup> of each year the License is in effect, PLAZA PARTNER shall submit to DOT for review and approval its annual budget relating to the operation and management of the Licensed Plaza; and maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License. For accounting purposes, the fiscal year shall run from July 1<sup>st</sup> to June 30<sup>th</sup>. Notwithstanding the above, the Licensed Plaza budget for fiscal year 2022 shall be submitted within thirty (30) days of the Commencement Date.

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

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

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

## 5. REVENUE

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

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

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

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

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

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

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

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

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

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

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

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

## **6. SUBCONCESSION(S)**

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

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



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

D. The selection of the entity/entities to operate and manage the Subconcession(s) will be subject to DOT’s prior written approval. Such approval or denial shall not be unreasonably delayed. The PLAZA PARTNER shall ensure that the subconcessionaire(s) complete and submit an online Procurement and Sourcing Solutions Portal (PASSPort) Vendor and Principle Questionnaires (formerly known as Vendor Information Exchange System (VENDEX) forms) to the Mayor’s Office of Contract Services if the aggregate value of City contracts, franchises and concessions awarded that subconcessionaire, including this one, during the immediately preceding twelve-month period equals or exceeds \$100,000 (“Threshold”). Each subconcession agreement(s) shall contain provisions specified in Section 13(B)(5) herein, provided however that such provisions shall pertain to subconcessionaire(s) instead of subcontractor(s).

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

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

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

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

(b) To the fullest extent permitted by law, SUBLICENSEE shall, indemnify, defend and hold the PLAZA PARTNER, the City and their respective employees and agents (the “Indemnitees”), harmless against any and all claims, liens, demands, judgments, penalties, fines,

liabilities, settlements, damages, costs and expenses of whatever kind or nature (including without limitation attorneys' fees and disbursements) relating to or arising out of, or alleged (by a person other than the Indemnitees) to relate to or arise out of the SUBLICENSEE's, its employees', agents', servants', invitees', contractors' and subcontractors' operations under this Agreement to the extent resulting from its or their: (i) negligence or failure to comply with any of the provisions of this Agreement or of any applicable federal, state, or local laws, rules or regulations; or (ii) infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party.

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

(d) SUBLICENSEE's obligation to defend, indemnify and hold the Indemnitees harmless shall not be (i) limited in any way by SUBLICENSEE's obligations to obtain and maintain insurance under this Agreement, nor (ii) adversely affected by any failure on the part of the Indemnitees' to avail themselves of the benefits of such insurance.

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

## **7. OPERATION OF THE SUBCONCESSION(S)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

T. No trucks or storage containers may be stationed or parked at the Subconcession(s) or Licensed Plaza, unless otherwise approved in writing by DOT. Additionally, PLAZA PARTNER shall not use or permit the storage of any illuminating oils, oil

lamps, turpentine, benzene, naphtha, or similar substances or explosives of any kind (excluding fuel for generators). DOT shall cooperate with PLAZA PARTNER so that any unauthorized trucks, including food trucks, or unauthorized storage containers that are stationed or parked at the Subconcession(s) or Licensed Plaza by any third-party are removed.

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

V. (1) PLAZA PARTNER, may, or may cause its subconcessionaire(s) at its or the subconcessionaire(s) sole cost and expense, to design, fabricate, construct and install the Subconcession(s) and/or any subconcession structure subject to DOT's prior written approval. PLAZA PARTNER shall not apply any Revenue to any such design, fabrication, construction, and installation of any Subconcession(s) and/or subconcession structure.

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

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

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

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

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

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

(8) As required by Section 24-216 of the New York City Administrative Code, devices and activities which will be operated, conducted, constructed or manufactured pursuant to this License and which are subject to the provisions of the New York City Noise Control Code (the "Code") shall be operated, conducted, constructed or manufactured without causing a violation of such Code. Such devices and activities shall incorporate advances in the art of noise control developed for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued pursuant to federal, state, City laws, rules, regulations and orders.

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

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

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

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

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

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

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

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

(1) any portion of a name that consists of the name, portrait or signature of a living or deceased individual; or

(2) a restaurant identifier or trade name that is not otherwise associated with the Licensed Plaza.

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

## **8. PLAZA EVENTS**

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



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

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

(1) an acknowledgment by DOT to SAPO that PLAZA PARTNER is the Plaza Partner as defined in section 1-01 of Title 50 of the Rules of the City of New York;

(2) the City’s right to use the Licensed Plaza for its own Plaza Events or programming or authorize others to use the Licensed Plaza;

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

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

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

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

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

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

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

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

amended from time to time upon mutual consent of the parties, and shall be posted on SAPO's website.

## **9. SPONSORSHIPS AND GIFTS**

### **A. Sponsorships**

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

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

### **B. Gifts**

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

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

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

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

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

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

## **10. INSPECTION AND AUDIT OF RECORDS**

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

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

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

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

- (1) all fiscal records, including books, accounts, and canceled checks;
- (2) internal and external audits completed within the last three fiscal years;
- (3) minutes of meetings of the Board of Directors;
- (4) reports of accidents and other incidents;

(5) programs, research, and other reports and publications in connection with PLAZA PARTNER's responsibilities in the Licensed Plaza pursuant to this License; and

(6) records of PLAZA PARTNER sponsored programs, and any other matters relating to the performance of and compliance with this License, or with any laws or regulations governing the conduct of PLAZA PARTNER under this License.

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

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

F. PLAZA PARTNER shall maintain adequate systems of internal control and shall keep complete and accurate records, books of account and data, which may be electronic records, including electronic daily sales and receipts records, which shall show in detail the total business transacted by PLAZA PARTNER, including Revenue and Accrual Fund (if applicable). Such books and records maintained pursuant to this License shall be conveniently segregated from other business matters of PLAZA PARTNER and shall include, but not be limited to:

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

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

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

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

J. PLAZA PARTNER shall and shall require its subconcessionaire(s) to retain all books, records, documents and other evidence relevant to this License for six (6) fiscal years after the expiration or termination of this License. City, State and federal auditors shall have full access to and the right to examine any of said materials during this period. In addition, if any

litigation, claim, or audit concerning this License has commenced before the expiration of such six-year period, the books, records, documents, and other evidence must be retained until the completion of such litigation, claim or audit. Any books, records, documents or other evidence that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, documents, or other evidence that are created in the regular course of business as paper copy may be retained in an electronic format provided that they satisfy the requirements of N.Y. Civil Practice law and Rules (“CPLR”) 4539(b), including the requirement that the reproduction is created in a manner “which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes.” Furthermore, PLAZA PARTNER agrees to waive any objection to the admissibility of any such books, records, documents, or other evidence on the grounds that such documents do not satisfy CPLR 4539(b).

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

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

## **11. INSURANCE**

### **A. PLAZA PARTNER’s Obligation to Insure**

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

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

### **B. Commercial General Liability Insurance**

(1) PLAZA PARTNER shall maintain Commercial General Liability insurance in the amount of at least Two Million Dollars (\$2,000,000) per occurrence for bodily injury (including death) and property damage, One Million Dollars (\$1,000,000) for personal and advertising injury, and Two Million Dollars (\$2,000,000) products completed operations. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Licensed Plaza and such per-location aggregate limit shall apply on a per-location basis applicable to the Licensed Plaza and such per-location aggregate shall be at least Two Million Dollars (\$2,000,000). However, with the permission of DOT, the requirement that the aggregate limit apply on a per-location basis may be omitted, provided that the aggregate

limit shall be at least Five Million Dollars (\$5,000,000). All self-insured retentions for such coverage must be disclosed to the City and DOT must approve any self-insured retention exceeding \$10,000 or self-insurance for such coverage. PLAZA PARTNER shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Section, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies. This insurance shall protect the insureds from claims that may arise from any of the operations under this License. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 00 01, shall contain no exclusions other than as approved by the DOT Commissioner, and shall be "occurrence" based rather than "claims-made."

(2) Such Commercial General Liability insurance shall list the City, together with its officials and employees, as an Additional Insured ("Additional Insured") for claims that may arise from any of the operations under this License. Coverage shall be at least as broad as the most recent edition of ISO Forms CG 20 26 and CG 20 37. "Blanket" or other forms are also acceptable if they provide the City, together with its officials and employees, with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37.

(3) The Commercial General Liability policy must not limit (whether by exception, exclusion, endorsement, script or other modification) any of the following coverage attributes:

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

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

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

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

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

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

#### D. Commercial Automobile Liability Insurance

(1) With regard to all operations under this License, PLAZA PARTNER shall maintain or cause to be maintained Commercial Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned (if any), non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA 00 01.

(2) If vehicles are used for transporting hazardous materials, such Commercial Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

E. [Reserved]

F. [Reserved]

#### G. Liquor Law Liability Insurance

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

#### H. General Requirements for Insurance Coverage and Policies

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

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

(3) Whenever this Section requires that insurance coverage be "at least as broad" as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the alternative form or endorsement contained in PLAZA PARTNER's policy provides coverage at least as broad as the specified form.

(4) There shall be no self-insurance program (including a self-insured retention in excess of \$10,000) with regard to any insurance required under this Section unless approved in writing by the DOT Commissioner. Under no circumstances shall the City be responsible for the payment of any self-insured retention (or any other aspect of a self-insurance program). Further,



PLAZA PARTNER shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Section, including but not limited the defense and indemnification obligations that insurers are required to undertake in liability policies. If the Commissioner authorizes a self-insured retention, the PLAZA PARTNER must allow the City to pay all or part of the self-insured retention upon the PLAZA PARTNER's failure to pay. If the City pays any portion of such self-insured retention, the City may at its option withhold any monies so paid from any monies owing to PLAZA PARTNER, whether under this License or otherwise, and/or may require PLAZA PARTNER to pay such monies upon 30 days' notice.

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

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

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

#### I. Proof of Insurance

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

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

- (a) Form C-105.2, *Certificate of Workers' Compensation Insurance*;
- (b) Form U-26.3, *State Insurance Fund Certificate of Workers' Compensation Insurance*;
- (c) Form SI-12, *Certificate of Workers' Compensation Self-Insurance*;
- (d) Form GSI-105.2, *Certificate of Participation in Worker's Compensation Group Self-Insurance*;

- (e) Form DB-120.1, *Certificate of Disability and Paid Family Leave Benefits Insurance*;
- (f) Form DB-155, *Certificate of Disability and Paid Family Leave Benefits Self-Insurance*;
- (g) Form CE-200 – *Affidavit of Exemption*;
- (h) Other forms approved by the New York State Workers' Compensation Board; or
- (i) Other proof of insurance in a form acceptable to the City.

(3) For all insurance required under this Section other than Workers Compensation, Employers' Liability, and Disability and Paid Family Leave Benefits, PLAZA PARTNER shall submit one or more Certificates of Insurance. All such Certificates of Insurance shall: (i) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (ii) be accompanied by the provision(s) or endorsement(s) in PLAZA PARTNER's policy/ies (including its general liability policy) by which the City has been made an additional insured or loss payee, as required herein. All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Insurance Broker or Agent" in the form required by the DOT Commissioner or certified copies of all policies referenced in such Certificate of Insurance.

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

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

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

#### J. Miscellaneous

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

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

(3) Whenever notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Section, PLAZA PARTNER shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given

even where PLAZA PARTNER may not be covered under such policy if this License requires that the City be an additional insured (for example, where one of PLAZA PARTNER's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York, including its officials and employees, as additional insured" (such notice shall also include the name of any other entity listed as an additional insured) and contain the following information to the extent known: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. PLAZA PARTNER shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. If PLAZA PARTNER fails to comply with the requirements of this paragraph, PLAZA PARTNER shall indemnify the City, together with its officials and employees, and any other entity listed as an additional insured for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City together with its officials and employees, and any other entity listed as an additional insured.

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

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

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

(7) Apart from damages or losses covered by Workers' Compensation Insurance, Employers' Liability Insurance, Disability and Paid Family Leave Benefits Insurance, or Commercial Automobile Insurance, PLAZA PARTNER waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Section (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of PLAZA PARTNER and/or its employees, agents, or servants of its contractors or subcontractors, except for those damages or losses for which the City has an obligation to indemnify, defend and hold the PLAZA PARTNER harmless under Section 12(C).

(8) PLAZA PARTNER shall require its construction contractors that perform construction on the Licensed Plaza to maintain Commercial General Liability Insurance in accordance with this Section and such insurance shall include the City, including its officials and employees, as an additional insured with coverage at least as broad as ISO Forms CG 20 26 and

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

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

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

### **A. PLAZA PARTNER Responsibilities**

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

(2) PLAZA PARTNER shall take all reasonable precautions to protect the persons and property of the City or others from damage, loss or injury resulting from any and all operations under this License.

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

### **B. PLAZA PARTNER Indemnification**

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

("Limitation of Liability"). The Limitation of Liability shall not apply to PLAZA PARTNER's contractors, subcontractors or agents or subconcessionaire(s) or any of subconcessionaire(s)'s contractors, subcontractors or agents.

(2) Subject to the Limitation of Liability but notwithstanding any other provisions of the License, PLAZA PARTNER shall indemnify, defend and hold the City and its officials and employees ("Indemnified Parties") harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements) (hereinafter called "Liabilities"), relating to or arising out of, or alleged (by a person other than the City) to relate to or arise out of this License. Such Liabilities shall include, claims alleged to result from the following:

(a) PLAZA PARTNER's or any subconcessionaire(s)'s or any of their respective employees', servants', contractors', subcontractors' or agents' negligence or failure to comply with any of the requirements of this License, including PLAZA PARTNER's maintenance and/or repair obligations set forth in Section 3 herein;

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

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

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

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

(5) PLAZA PARTNER's obligation to defend, indemnify and hold the Indemnified Parties harmless shall not be (i) limited in any way by PLAZA PARTNER's obligations to obtain and maintain insurance under this License except as expressly provided in Section 12(B)(1), nor

(ii) be adversely affected by any failure on the part of an Indemnified Party to avail themselves of the benefits of such insurance.

C. City Indemnification

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

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

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

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

Upon receipt by PLAZA PARTNER of actual notice of any Liabilities to which PLAZA PARTNER is entitled to indemnification in accordance with this Section, PLAZA PARTNER shall give prompt written notice of such Liabilities to the City. Such notice shall be presented to the New York City Law Department, 100 Church Street, NY, NY 10007 attention: Tort Division. The City shall assume and prosecute the defense of such Liabilities at its sole cost and expense. The City may settle any such Liabilities in its discretion without PLAZA PARTNER's consent only if (i) the sole relief under the settlement is monetary damages, (ii) the City indemnifies PLAZA PARTNER for the full amount of the settlement (iii) the settlement involves no admission by PLAZA PARTNER or finding of guilt and (iv) such settlement includes an unconditional release of PLAZA PARTNER. Any other settlement of Liabilities shall require consent from PLAZA PARTNER.

### 13. ASSIGNMENT

A. No assignment, sale, mortgage or transfer of any interest of this License by PLAZA PARTNER, in whole or in part, will be effective unless it is agreed to, in writing, by DOT and

signed by the DOT Commissioner, or his/her designee, nor shall this License be transferred by operation of law, it being the purpose and spirit of this License to grant this privilege solely to PLAZA PARTNER.

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

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

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

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

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

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

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

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

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

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

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

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

#### **14. CAPITAL IMPROVEMENTS AND ALTERATIONS**

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

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

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

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

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

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



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

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

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

## **15. INSPECTION AT SITE**

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

## **16. PERSONNEL**

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

B. All persons who are employed by PLAZA PARTNER and all PLAZA PARTNER's subconcessionaire(s) and subcontractor(s) (including without limitation, consultants and independent contractors) that are retained to perform services under or in connection with this License are neither employees of the City nor under contract with the City. PLAZA PARTNER, and not the City, is responsible for their work, direction, compensation, and personal conduct while PLAZA PARTNER is engaged under this License. Nothing in this License, and no entity or

person's performance pursuant to or in connection with this License, shall create any relationship between the City and PLAZA PARTNER's employees, agents, subconcessionaire(s), or subconcessionaire(s) employees or agents subcontractors, or subcontractor's employees or agents (including without limitation, a contractual relationship, employer-employee relationship, or quasi-employer/quasi-employee relationship) or impose any liability or duty on the City (i) for or on account of the acts, omissions, liabilities, rights or obligations of PLAZA PARTNER, its employees or agents, its subcontractors, or its subcontractor's employees or agents (including without limitation, obligations set forth in any collective bargaining agreement), its subconcessionaire(s), or its subconcessionaire(s) employees or agents; or (ii) for taxes of any nature; or (iii) for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of PLAZA PARTNER or any other entity (including without limitation, Workers' Compensation coverage, Employers' Liability coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage, employee health and welfare benefits or employee retirement benefits, membership or credit). PLAZA PARTNER and its employees, officers, and agents shall not, by reason of this License or any performance pursuant to or in connection with this License, (i) hold themselves out as, or claim to be, officials or employees of the City, including any department, agency, office, or unit of the City, or (ii) make or support in any way on behalf of or for the benefit of PLAZA PARTNER, its employees, officers, or agents any demand, application, or claim upon or against the City for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of PLAZA PARTNER or any other entity. Except as specifically stated in this License, nothing in the License and no performance pursuant to or in connection with the License shall impose any liability or duty on the City to any person or entity whatsoever.

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

## **17. INVESTIGATIONS CLAUSE**

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

submitted proposal, contract, lease, or license that is the subject of the investigation, audit or inquiry.

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

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

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

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

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

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

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

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

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

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

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

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

#### F. Definition of Terms

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

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

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

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

G. In addition to and notwithstanding any other provisions of this License, the

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

## **18. NOTICE**

All notices, except those related to Sections 11(J)(3) and 12(C)(5) above, from PLAZA PARTNER to DOT shall be in writing and delivered to the attention of the Director of Public Space, New York City Department of Transportation, 55 Water Street, 6<sup>th</sup> Floor, New York, NY 10041, or such other address as DOT may designate, with copies sent to DOT's General Counsel at same address. All notices from DOT to PLAZA PARTNER shall be dispatched in the same manner, and delivered to PLAZA PARTNER at 20 Jay Street, Suite 510, Brooklyn, NY 11201, or such other address as may be notified from time to time.

## **19. TERMINATION**

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

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

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

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

(3) Upon PLAZA PARTNER becoming insolvent.

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

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

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

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

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

F. Force Majeure Event

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

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

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

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

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

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

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

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

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

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

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

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

(2) Not incurring or paying any further obligation pursuant to this License beyond the termination date. Any obligation necessarily incurred by PLAZA PARTNER on account of this License prior to receipt of notice of termination and falling due after such date shall be paid by DOT, if such obligation was required by DOT in accordance with the terms of this License. PLAZA PARTNER shall be solely responsible for any obligations that are not specifically incurred on account of this License. In no event shall the term "obligation", as used herein, be construed as including any lease agreement, oral or written, entered into between PLAZA PARTNER and its landlord.

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

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

L. PLAZA PARTNER expressly waives any and all claims for compensation, loss of profit, or refund of its investment, if any, or any other payment whatsoever, in the event this License is terminated by DOT sooner than the fixed term because the Licensed Plaza is required for any public purpose, or because the License was terminated or revoked for any reason as provided herein.

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

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

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

P. In the event PLAZA PARTNER continues to operate and manage the Licensed Plaza; and/or maintain and/or repair the amenities listed in **Exhibit B** that are installed within the Licensed Plaza under this License, after the expiration or termination of this License, the PLAZA PARTNER 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.

## **20. COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS**

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



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

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

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

## **21. REPRESENTATIONS, WARRANTIES AND COVENANTS**

A. PLAZA PARTNER makes the following representations and warranties:

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

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

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

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

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

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

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

## **22. CONFLICT OF INTEREST**

PLAZA PARTNER represents and warrants that neither it nor any of its officers, trustees, employees, or volunteers has any interest, nor shall they acquire any interest directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. PLAZA PARTNER further represents and warrants that in the performance of this License no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this License which affects his or her personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this License or in the proceeds thereof.

## **23. NO LEASE**

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

## **24. FEDERAL EMPLOYER IDENTIFICATION NUMBER**

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

proceeding pending relating to the responsibility or qualification of PLAZA PARTNER to receive a license or public contracts. The Federal Employer Identification Number of PLAZA PARTNER is 20-0214837.

## **25. RESERVATION OF RIGHTS AND INTERESTS**

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

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

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

## **26. WAIVER OF JURY TRIAL**

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

## **27. CHOICE OF LAW/CONSENT TO JURISDICTION AND VENUE**

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

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

PARTNER, wherever PLAZA PARTNER may be found, or by registered mail addressed to PLAZA PARTNER at the address set forth in this License, or to such other address as PLAZA PARTNER may provide to DOT or the City in writing; and

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

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

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

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

## **28. CLAIMS AND ACTIONS THEREON**

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

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

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

## **29. CLAIM AGAINST OFFICERS OR EMPLOYEES**

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

### **30. PARTICIPATION IN AN INTERNATIONAL BOYCOTT**

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

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

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

### **31. TRADEMARK**

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

### **32. INFRINGEMENTS**

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

### **33. ANTI-TRUST**

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

#### **34. EMINENT DOMAIN AND PUBLIC USE**

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

#### **35. DEVELOPMENT PURPOSES**

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

#### **36. SEVERABILITY**

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

#### **37. ALL LEGAL PROVISIONS DEEMED INCLUDED**

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

#### **38. MODIFICATION**

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

#### **39. ENTIRE AGREEMENT**

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

**40. COUNTERPARTS**

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

**NO FURTHER TEXT ON THIS PAGE**

Agreed to this \_\_\_\_ day of \_\_\_\_\_, 20\_\_:

By: \_\_\_\_\_

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

Dated:

By: \_\_\_\_\_

Alexandria Sica  
President  
DUMBO District Management Association, Inc.

Dated:

Approved as to Form and Certified as to Legal Authority:

\_\_\_\_\_  
Acting Corporation Counsel



STATE OF NEW YORK     )

ss:

COUNTY OF NEW YORK   )

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

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Notary Public

STATE OF NEW YORK     )

ss:

COUNTY OF NEW YORK   )

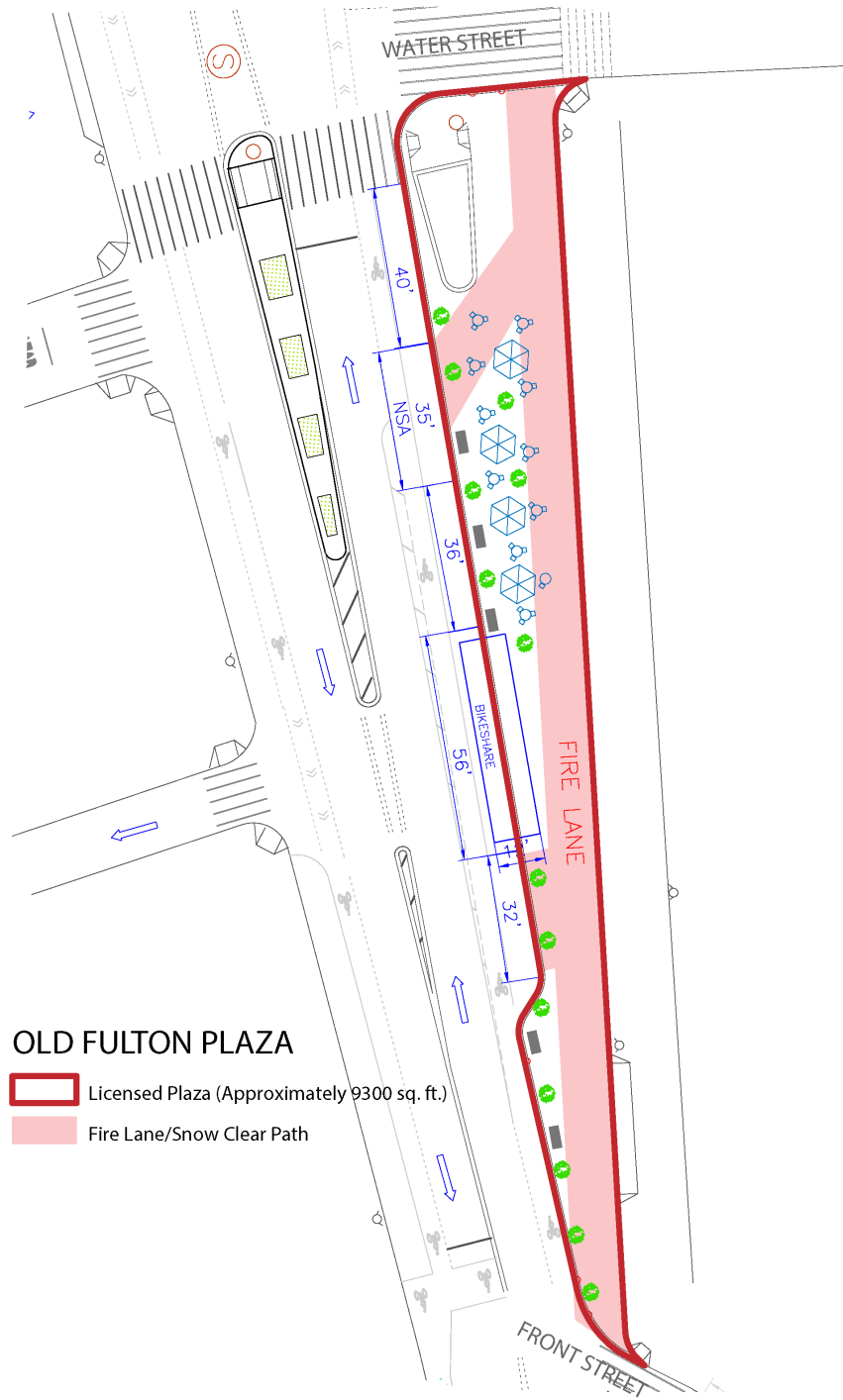
On this            day of            , 20\_\_ before me personally came Alexandria Sica, who, being duly sworn by me did depose and say that s/he is the President of DUMBO District Management Association, Inc., the corporation described in and who executed the foregoing instrument and s/he acknowledged that s/he executed the same in his/her official capacity and for the purposes mentioned therein.

---

Notary Public

## Exhibit A

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



## Exhibit B

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

- 2 32" Commercial Step Planter
- 5 3' x 4' granite blocks
- 1 5'x 6' metal art benches

Exhibit C  
[Snow Removal Map]

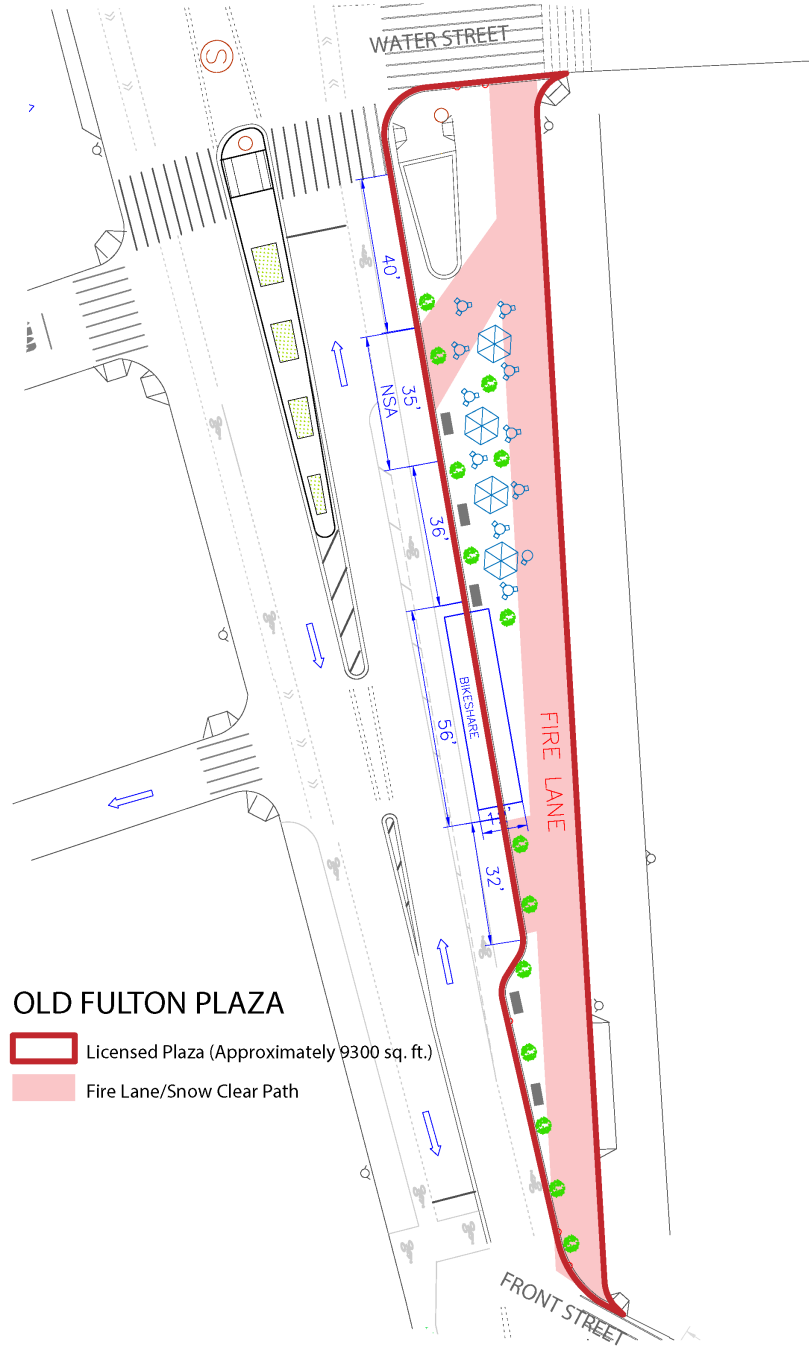


Exhibit D  
[PDC Approval of DOT Standard Plaza Kiosk]



December 11, 2017

CERTIFICATE

26412

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

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

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



Justin Garrett Moore  
Executive Director

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

## Exhibit E

### [Paid Sick Leave Law Concession Rider]

#### Introduction and General Provisions

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

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

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

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

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

Pursuant to the PSLL and the Rules:

#### Applicability, Accrual, and Use

An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSLL (“Year”) must be provided sick time. Employers must provide a minimum of one hour of

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

sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage. Employers are not required to provide more than forty hours of sick time to an employee in any Year.

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

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

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

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

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

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

### Exemptions and Exceptions

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

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

### Retaliation Prohibited

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

### Notice of Rights

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

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



## Records

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

## Enforcement and Penalties

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

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

## More Generous Policies and Other Legal Requirements

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

## SCHEDULE A

[Plaza Concession Fees for Commercial/Promotional Plaza Events]

Event Size	Small	Medium	Large
Fee per Event Day	\$7,000	\$28,000	\$56,000

## **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 on remotely via a Microsoft Teams dial-in on December 13, 2022 at 2:30 pm relative to:

INTENT TO AWARD as a concession a Sole Source License Agreement ("License") to the MetroTech Area District Management Association, Inc. d/b/a MetroTech Business Improvement District ("MetroTech BID"), whose address is 1 MetroTech Center #1003, Brooklyn, NY 11201, to provide for the operation, management, and maintenance of a pedestrian plaza located at Willoughby Street between Pearl Street and Adams Street, in the borough of Brooklyn ("Licensed Plaza"), including through City-approved plaza events, sponsorships, gifts, and subconcession(s), including but not limited to providing for the sale of any of the following: prepared food, beverages,, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by MetroTech BID in the basic form of a Request for Proposals or Request for Bids, subject to DOT's prior written approval of both solicitation and award. MetroTech BID will be required to invest any revenue generated by this concession into the maintenance and/or repair, including reasonable administrative costs, of the Licensed Plaza.

The License will provide for one (1) five-year initial term, commencing upon written Notice to Proceed, which may be renewed for up to two (2) additional five-year terms, exercisable at the sole discretion of DOT.

The 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](mailto:fcrc@mocs.nyc.gov). All written testimony must be received by December 1, 2022. 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: 951 976 883  
Press # on further prompts

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

1. Submit a written request to DOT at [concessions@dot.nyc.gov](mailto:concessions@dot.nyc.gov) through December 9, 2022.
2. Submit a written request by mail to Rachel Frumin, NYC Department of Transportation, 55 Water Street, 9<sup>th</sup> Floor, New York, 10041. Written requests must

be received by December 2, 2022. For mail-in requests, please include your name, return address and reference the "Willoughby Plaza Concession Agreement".

3. 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](mailto:DisabilityAffairs@mocs.nyc.gov) or via phone at (646) 872-0231. 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))

<b>AGENCY:</b> <u>NYC Department of Transportation (DOT)</u> <b># VOTES required for proposed action =</b> <u>4</u> <input type="checkbox"/> <b>N/A</b>	<b>RECOMMENDED CONCESSIONAIRE</b> <b>Name:</b> MetroTech Area District Management Association, Inc. d/b/a MetroTech Business Improvement District ("Concessionaire") <b>Address:</b> <u>1 MetroTech Center #1003, Brooklyn, NY 11201</u> Telephone # <u>718-403-1600</u> <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN # <u>13-3601854</u>  <b>Not-for-Profit Organization</b> <input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b> <b>Certified by DSBS as M/WBE</b> <input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b>	<b>CONCESSION TITLE/ DESCRIPTION:</b> <u>Concession to provide for the operation and management of a pedestrian plaza located at located at Willoughby Street between Pearl Street and Adams Street, in the borough of Brooklyn; and maintenance and/or repair of certain amenities installed within the pedestrian plaza</u>  <b>CONCESSION I.D.#</b> <u>2021Con4</u>
---------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**LOCATION OF CONCESSION SITE(S)\* Address:** The pedestrian plaza is located at Willoughby Street between Pearl Street and Adams Street, in the borough of Brooklyn ("Licensed Plaza") ☐ **N/A**

\*Attach additional sheet

**Borough:** Brooklyn **C.B.:** 2 **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 12/08/2021.  
☐ Negotiated Acquisition\*

## CONCESSION AGREEMENT TERM

**Initial Term: From** Notice to Proceed (NTP) **To** Five (5) years from NTP

**Renewal Option(s) Term:** Up to two (2) five-year renewal options, exercisable at the sole discretion of DOT

**Total Potential Term:** 15 years

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

## 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 the 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 10/26/2021, which was at least 40 days in advance of the FCRC meeting on 12/08/2021 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 12/14/2022.
- ☐ 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, Cityscape & 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:**  
**CONCESSION AGREEMENT AWARDED BY OTHER THAN CSB OR CSP**

**SUMMARY OF PROPOSED CONCESSION USE (Attach Proposed Agreement)**

The New York City Department of Transportation ("DOT") intends to seek FCRC approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York ("Concession Rules"), to enter into License Agreement ("License") with MetroTech Area District Management Association, Inc. d/b/a MetroTech Business Improvement District ("Concessionaire").

***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.*

The License would permit the Concessionaire to provide for the operation and management of the pedestrian plaza located at Willoughby Street between Pearl Street and Adams Street in the Borough of Brooklyn (the "Licensed Plaza"); and maintenance and/or repair of certain amenities installed within the Licensed Plaza, including through City-approved plaza events, sponsorships, gifts, and subconcession(s), including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Licensed Plaza. The License will provide for one (1) five-year initial term, commencing upon written Notice to Proceed, which may be renewed for up to two (2) additional five-year terms, exercisable at the sole discretion of DOT. The Concessionaire will be required to invest any revenue generated by this concession into the maintenance and/or repair of certain amenities installed within the Licensed Plaza; and reasonable administrative costs, as such costs relate to the Licensed Plaza.

**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:**

Since the concession will not yield a profit to Concessionaire, it is in the City's best interest to enter into a sole source license with the Concessionaire because this not-for-profit organization's mission is to improve and enhance the neighborhood in which the Licensed Plaza is located. Concessionaire was created and is funded by property owners directly adjacent to the Licensed Plaza. This organization directly represents the neighborhood that it will serve and has a vested interest in the Licensed Plaza. Concessionaire has over five years of relevant experience activities necessary to operate, manage and maintain public spaces, including maintaining the streetscape, subcontracting maintenance services to reliable vendors, and involving the community and other public stakeholders in managing public spaces. Concessionaire has maintained the Licensed Plaza since 2013.

**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 11/28/2022, 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 11/28/2022 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 11/28/2022.

☒ New York Post, a NYC local newspaper published in the affected borough(s) on 11/28/2022 and 11/29/2022.  
☒ Brooklyn Daily Eagle, a NYC local newspaper published in the affected borough(s) on 11/28/2022 and 11/29/2022.

**2. Public Hearing Date, Exception to Public Hearing Requirement**

☒ A Public Hearing was conducted on 12/13/2022.

**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.



**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

(Calendar No.X)

**BE IT RESOLVED** that the Franchise and Concession Review Committee authorizes the New York City Department of Transportation (“DOT”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York to enter into a License Agreement (“License”) with the MetroTech Area District Management Association, Inc. d/b/a MetroTech Business Improvement District (“Concessionaire”) to provide for the operation and management of a pedestrian plaza located at Willoughby Street between Pearl Street and Adams Street, in the borough of Brooklyn (“Licensed Plaza”); and maintenance and/or repair of certain amenities installed within the Licensed Plaza, including through City-approved plaza events, sponsorships, gifts, and subconcession(s), including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by the Concessionaire in the basic form of a Request for Proposals or Request for Bids, subject to DOT’s prior written approval of both solicitation and award. The License provides for one (1) five-year term, commencing upon written Notice to Proceed, which may be renewed for up to two (2) additional five-year terms, exercisable at the sole discretion of DOT. The Concessionaire will be required to invest any revenue generated by this concession into the maintenance and/or repair of certain amenities installed within the Licensed Plaza; and reasonable administrative costs, as such costs relate to the Licensed Plaza.

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

December 14, 2022

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

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

**THIS LICENSE**, made as of \_\_\_\_\_, 20\_\_ between and among the City of New York (the "City"), a municipal corporation of the State of New York, acting by and through the New York City Department of Transportation ("DOT"), and MetroTech Area District Management Association, Inc. d/b/a MetroTech Business Improvement District ("PLAZA PARTNER"), a New York not-for-profit corporation.

**WITNESSETH**

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

**WHEREAS**, PLAZA PARTNER was formed in 1990 to improve and enhance the MetroTech area in the borough of Brooklyn, City and State of New York ("MetroTech Area"), including but not limited to the improvement and maintenance of public space therein; and

**WHEREAS**, DOT has jurisdiction over the plaza located on Willoughby Street between Pearl Street and Adams Street in Brooklyn, NY ("Licensed Plaza"), as further illustrated in **Exhibit A**. DOT designated the Licensed Plaza as a DOT Pedestrian Plaza pursuant to Section 19-157 of the New York City Administrative Code; and

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

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

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

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

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

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

**WHEREAS**, the Franchise and Concession Review Committee ("FCRC") authorized DOT to enter into a License Agreement with PLAZA PARTNER to provide for the operation and

management of the Licensed Plaza; and maintenance and/or repair of the amenities listed in Exhibit B that are installed within the Licensed Plaza as specifically set forth in this License, including through City-approved plaza events, sponsorships, gifts, and subconcession(s), including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise (“Subconcession(s)” as described in Section 7 herein) within the Licensed Plaza.

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

## **1. SCOPE OF LICENSE**

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

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

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

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

D. PLAZA PARTNER shall, or shall require its subconcessionaire(s) to obtain any and all approvals, permits, and other licenses required by federal, state and City laws, rules, regulations and orders which are or may become necessary for the operation and management of the Licensed Plaza; and maintenance and/or repair of the amenities listed in Exhibit B that are installed within the Licensed Plaza, in accordance with the terms of this License. Whenever any act, consent, approval or permission is required of the City, DOT or the DOT Commissioner under

this License, the same shall be valid only if it is, in each instance, in writing and signed by the DOT Commissioner or his/her duly authorized representative, and such approval or permission shall not be unreasonably delayed. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon the City, DOT, the DOT Commissioner or their agents, unless the same is, in each instance, in writing and duly signed by the DOT Commissioner or his/her duly authorized representative.

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

## **2. TERM**

A. The term of this License (“Term”) shall be five (5) years, commencing upon written Notice to Proceed (“Commencement Date”). This License may be renewed for up to two (2) additional five-year terms, to be exercised at the sole discretion of DOT subject to termination and revocation as hereinafter provided. DOT shall provide PLAZA PARTNER with sixty (60) days’ advance written notice of its intent to renew.

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

## **3. SERVICES**

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

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

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

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

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

(1) Maintenance:

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

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

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

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

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

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

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

(h) Perimeter planters used to delineate traffic shall not be moved without DOT’s prior written approval. Such approval or denial shall not be unreasonably delayed. If a perimeter planter is moved by a third party, PLAZA PARTNER shall return the perimeter planter(s) to its original position as soon as practicable and thereafter shall immediately notify DOT.

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

(j) Sand or snow melting agent shall be spread as needed to minimize slippery conditions which may arise from the thawing and refreezing of snow and/or ice.

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

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

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

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

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

(2) Repair:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

generators. In the event of a drought, Permittee shall comply with all City directives and restrictions.

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

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

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

(3) PLAZA PARTNER shall, with respect to the operation and management of the Licensed Plaza; and maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License, designate a person to handle all claims for loss or damage including all insured claims for loss or damages. PLAZA PARTNER shall require its subconcessionaire(s), with respect to the operation and management of the Subconcession(s), to designate a person to handle all claims for loss or damage including all insured claims for loss or damages. PLAZA PARTNER shall provide DOT with the name, telephone number and address of each such person, within thirty (30) days of the date of this License and any subconcession agreement(s).

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

#### **4. BUDGET**

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



the Licensed Plaza budget for fiscal year 2023 shall be submitted within thirty (30) days of the Commencement Date.

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

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

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

## **5. REVENUE**

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

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

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

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

(2) In the event that any other non-monetary considerations are received, PLAZA PARTNER may submit a request to DOT for the exclusion of such other non-monetary consideration from the Revenue. Such case by case approval or denial shall be at DOT's sole discretion and shall not be unreasonably delayed. Any other PLAZA PARTNER funds not directly

generated as a result of the operation and management of the Licensed Plaza, including but not limited to general sponsorships, but used for the benefit of the City and Licensed Plaza shall be considered Revenue.

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

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

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

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

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

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

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

## **6. SUBCONCESSION(S)**

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

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

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

D. The selection of the entity/entities to operate and manage the Subconcession(s) will be subject to DOT’s prior written approval. Such approval or denial shall not be unreasonably delayed. The PLAZA PARTNER shall ensure that the subconcessionaire(s) complete and submit an online Procurement and Sourcing Solutions Portal (PASSPort) Vendor and Principle Questionnaires (formerly known as Vendor Information Exchange System (VENDEX) forms) to the Mayor’s Office of Contract Services if the aggregate value of City contracts, franchises and concessions awarded that subconcessionaire, including this one, during the immediately preceding twelve-month period equals or exceeds \$100,000 (“Threshold”). Each subconcession agreement(s) shall contain provisions specified in Section 13(B)(5) herein, provided however that such provisions shall pertain to subconcessionaire(s) instead of subcontractor(s).

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

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

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

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

(b) To the fullest extent permitted by law, SUBLICENSEE shall, indemnify, defend and hold the PLAZA PARTNER, the City and their respective employees and agents (the "Indemnitees"), harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including without limitation attorneys' fees and disbursements) relating to or arising out of, or alleged (by a person other than the Indemnitees) to relate to or arise out of the SUBLICENSEE's, its employees', agents', servants', invitees', contractors' and subcontractors' operations under this Agreement to the extent resulting from its or their: (i) negligence or failure to comply with any of the provisions of this Agreement or of any applicable federal, state, or local laws, rules or regulations; or (ii) infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party.

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

(d) SUBLICENSEE's obligation to defend, indemnify and hold the Indemnitees harmless shall not be (i) limited in any way by SUBLICENSEE's obligations to obtain and maintain insurance under this Agreement, nor (ii) adversely affected by any failure on the part of the Indemnitees' to avail themselves of the benefits of such insurance.

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

## **7. OPERATION OF THE SUBCONCESSION(S)**

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

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

B. PLAZA PARTNER shall require its subconcessionaire(s) to submit its proposed hours of operation, a menu (if applicable) and price list, for PLAZA PARTNER's approval. The information submitted to and approved by PLAZA PARTNER by its subconcessionaire(s) shall

be provided to DOT within a reasonable time thereafter. However, DOT reserves the right to review and approve such hours of operation, menu (if applicable), and price list at its discretion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V. (1) PLAZA PARTNER, may, or may cause its subconcessionaire(s) at its or the subconcessionaire(s) sole cost and expense, to design, fabricate, construct and install the Subconcession(s) and/or any subconcession structure subject to DOT's prior written approval. PLAZA PARTNER shall not apply any Revenue to any such design, fabrication, construction, and installation of any Subconcession(s) and/or subconcession structure.

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

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

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

(5) PLAZA PARTNER shall or shall cause its subconcessionaire(s) to apply



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

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

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

(8) As required by Section 24-216 of the New York City Administrative Code, devices and activities which will be operated, conducted, constructed or manufactured pursuant to this License and which are subject to the provisions of the New York City Noise Control Code (the "Code") shall be operated, conducted, constructed or manufactured without causing a violation of such Code. Such devices and activities shall incorporate advances in the art of noise control developed for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued pursuant to federal, state, City laws, rules, regulations and orders.

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

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

(11) PLAZA PARTNER shall provide DOT with discharges for any and all liens which may be levied against the Subconcession(s) and/or any subconcession structure during construction of such improvements. PLAZA PARTNER shall, or shall cause its

subconcessionaire(s) to use its best efforts to discharge such liens within thirty business days of receipt of lien by PLAZA PARTNER.

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

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

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

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

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

(1) any portion of a name that consists of the name, portrait or signature of a living or deceased individual; or

(2) a restaurant identifier or trade name that is not otherwise associated with the Licensed Plaza.

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

## **8. PLAZA EVENTS**

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

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

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

(1) an acknowledgment by DOT to SAPO that PLAZA PARTNER is the Plaza Partner as defined in section 1-01 of Title 50 of the Rules of the City of New York;

(2) the City’s right to use the Licensed Plaza for its own Plaza Events or programming or authorize others to use the Licensed Plaza;

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

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

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

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

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

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

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

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

## **9. SPONSORSHIPS AND GIFTS**

### **A. Sponsorships**

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

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

### **B. Gifts**

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

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

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

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

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

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

## **10. INSPECTION AND AUDIT OF RECORDS**

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

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

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

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

- (1) all fiscal records, including books, accounts, and canceled checks;

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

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

(1) Notwithstanding the above, for each fiscal year in which PLAZA PARTNER generates less than \$150,000 in Revenue, PLAZA PARTNER, may, in lieu of the audited and certified financial statement related to the operation and management of the Licensed Plaza; and the maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License for each fiscal year during the Term of this License and any renewals thereof, furnish to DOT a reviewed financial statement of PLAZA PARTNER related to the operation and management of the Licensed Plaza; and the maintenance and/or repair of amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License for each fiscal year during the Term of this License and any renewals thereof. Such statements shall include in reasonable detail the amounts allocated for the operation and management of the Licensed Plaza; and the maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License, including but not limited to the Services described herein and reasonable administrative costs, including but not limited to insurance costs, and a list of all personnel salaries

or a portion thereof, reflecting their work performed as it relates to the Licensed Plaza. Such review shall be conducted by an independent certified public accountant at the sole cost and expense of PLAZA PARTNER. Such annual statement shall be submitted to DOT no later than 180 days after the close of each fiscal year.

F. PLAZA PARTNER shall maintain adequate systems of internal control and shall keep complete and accurate records, books of account and data, which may be electronic records, including electronic daily sales and receipts records, which shall show in detail the total business transacted by PLAZA PARTNER, including Revenue and Accrual Fund (if applicable). Such books and records maintained pursuant to this License shall be conveniently segregated from other business matters of PLAZA PARTNER and shall include, but not be limited to:

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

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

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

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

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

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

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

## **11. INSURANCE**

### **A. PLAZA PARTNER’s Obligation to Insure**

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

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

### **B. Commercial General Liability Insurance**

(1) PLAZA PARTNER shall maintain Commercial General Liability insurance in the amount of at least Two Million Dollars (\$2,000,000) per occurrence for bodily injury (including death) and property damage, One Million Dollars (\$1,000,000) for personal and advertising injury, and Two Million Dollars (\$2,000,000) products completed operations. In the



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

(2) Such Commercial General Liability insurance shall list the City, together with its officials and employees, as an Additional Insured ("Additional Insured") for claims that may arise from any of the operations under this License. Coverage shall be at least as broad as the most recent edition of ISO Forms CG 20 26 and CG 20 37. "Blanket" or other forms are also acceptable if they provide the City, together with its officials and employees, with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37.

(3) The Commercial General Liability policy must not limit (whether by exception, exclusion, endorsement, script or other modification) any of the following coverage attributes:

- (a) Contractual liability coverage insuring the contractual obligations of the insureds;
- (b) Employers' liability coverage for liability assumed by the Licensee under an "insured contract";
- (c) Coverage for claims arising under New York Labor Law; and
- (d) The applicability of Commercial General Liability coverage to the Additional Insured in respect of liability arising out of any of the following claims: (i) claims against the Additional Insured by employees of a PLAZA PARTNER or employees of the entity required to maintain the insurance hereunder; or (ii) claims against the Additional Insured by any general contractor, construction manager, contractor, architect or engineer or by the employees of any of the foregoing; or (iii) claims against the Additional Insured arising out of any work performed by a general contractor, construction manager, contractor, architect or engineer.

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

(1) PLAZA PARTNER shall maintain and shall cause its subconcessionaire or others to maintain Workers' Compensation insurance, Employers' Liability insurance, and Disability and Paid Family Leave Benefits insurance in accordance with the law on behalf of, or

with regard to, all employees involved in the PLAZA PARTNER's operations under this License, and such insurance shall comply with the laws of the State of New York.

#### D. Commercial Automobile Liability Insurance

(1) With regard to all operations under this License, PLAZA PARTNER shall maintain or cause to be maintained Commercial Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned (if any), non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA 00 01.

(2) If vehicles are used for transporting hazardous materials, such Commercial Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

E. [Reserved]

F. [Reserved]

#### G. Liquor Law Liability Insurance

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

#### H. General Requirements for Insurance Coverage and Policies

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

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

(3) Whenever this Section requires that insurance coverage be "at least as broad" as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the alternative form or endorsement contained in PLAZA PARTNER's policy provides coverage at least as broad as the specified form.

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

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

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

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

#### I. Proof of Insurance

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

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

(a) Form C-105.2, *Certificate of Workers' Compensation Insurance*;

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

(3) For all insurance required under this Section other than Workers Compensation, Employers' Liability, and Disability and Paid Family Leave Benefits, PLAZA PARTNER shall submit one or more Certificates of Insurance. All such Certificates of Insurance shall: (i) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (ii) be accompanied by the provision(s) or endorsement(s) in PLAZA PARTNER's policy/ies (including its general liability policy) by which the City has been made an additional insured or loss payee, as required herein. All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Insurance Broker or Agent" in the form required by the DOT Commissioner or certified copies of all policies referenced in such Certificate of Insurance.

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

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

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

#### J. Miscellaneous

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

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

(3) Whenever notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Section, PLAZA PARTNER shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where PLAZA PARTNER may not be covered under such policy if this License requires that the City be an additional insured (for example, where one of PLAZA PARTNER's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York, including its officials and employees, as additional insured" (such notice shall also include the name of any other entity listed as an additional insured) and contain the following information to the extent known: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. PLAZA PARTNER shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. If PLAZA PARTNER fails to comply with the requirements of this paragraph, PLAZA PARTNER shall indemnify the City, together with its officials and employees, and any other entity listed as an additional insured for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City together with its officials and employees, and any other entity listed as an additional insured.

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

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

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

(7) Apart from damages or losses covered by Workers' Compensation Insurance, Employers' Liability Insurance, Disability and Paid Family Leave Benefits Insurance, or Commercial Automobile Insurance, PLAZA PARTNER waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Section (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of PLAZA PARTNER and/or its employees, agents, or servants of its contractors or subcontractors, except for those

damages or losses for which the City has an obligation to indemnify, defend and hold the PLAZA PARTNER harmless under Section 12(C).

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

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

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

### **A. PLAZA PARTNER Responsibilities**

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

(2) PLAZA PARTNER shall take all reasonable precautions to protect the persons and property of the City or others from damage, loss or injury resulting from any and all operations under this License.

(3) PLAZA PARTNER shall use the Licensed Plaza in compliance with, and shall not cause or permit the Licensed Plaza to be used in violation of, any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adapted in the future which are or become applicable to the PLAZA PARTNER or the Licensed Plaza (collectively “Environmental Laws”). Except as may be agreed by the City as part of this License, PLAZA PARTNER shall not cause or permit, or allow any of the PLAZA PARTNER’s personnel to cause or permit, any Hazardous Materials to be brought upon, store, used generated, treated or disposed of on the Licensed Plaza. As used herein, “Hazardous Materials” means any chemical, substance

or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects.

#### B. PLAZA PARTNER Indemnification

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

(2) Subject to the Limitation of Liability but notwithstanding any other provisions of the License, PLAZA PARTNER shall indemnify, defend and hold the City and its officials and employees ("Indemnified Parties") harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements) (hereinafter called "Liabilities"), relating to or arising out of, or alleged (by a person other than the City) to relate to or arise out of this License. Such Liabilities shall include, claims alleged to result from the following:

(a) PLAZA PARTNER's or any subconcessionaire(s)'s or any of their respective employees', servants', contractors', subcontractors' or agents' negligence or failure to comply with any of the requirements of this License, including PLAZA PARTNER's maintenance and/or repair obligations set forth in Section 3 herein;

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

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

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

(4) Upon receipt by any Indemnified Party of actual notice of a claim to which such Indemnified Party is entitled to indemnification in accordance with this Section, DOT shall give prompt written notice of such claim to PLAZA PARTNER. PLAZA PARTNER shall assume and prosecute the defense of such claim at the sole cost and expense of PLAZA PARTNER. PLAZA PARTNER may settle any such claim in its discretion without consent of DOT and the Corporation Counsel only if (i) the sole relief under the settlement is monetary damages, (ii) the PLAZA PARTNER indemnifies the Indemnified Parties for the full amount of the settlement, (iii) the

settlement involves no admission by the Indemnified Parties or finding of guilt and (iv) such settlement includes an unconditional release of the Indemnified Party. Any other settlement of a claim shall require consent from DOT and the Corporation Counsel.

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

### C. City Indemnification

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

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

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

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

Upon receipt by PLAZA PARTNER of actual notice of any Liabilities to which PLAZA PARTNER is entitled to indemnification in accordance with this Section, PLAZA PARTNER shall give prompt written notice of such Liabilities to the City. Such notice shall be presented to the New York City Law Department, 100 Church Street, NY, NY 10007 attention: Tort Division. The City shall assume and prosecute the defense of such Liabilities at its sole cost and expense. The City may settle any such Liabilities in its discretion without PLAZA PARTNER's consent only if (i) the sole relief under the settlement is monetary damages, (ii) the City indemnifies PLAZA PARTNER for the full amount of the settlement (iii) the settlement involves no admission by PLAZA PARTNER or finding of guilt and (iv) such settlement includes



an unconditional release of PLAZA PARTNER. Any other settlement of Liabilities shall require consent from PLAZA PARTNER.

### **13. ASSIGNMENT**

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **14. CAPITAL IMPROVEMENTS AND ALTERATIONS**

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

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

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

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

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

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

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

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

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

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

## **15. INSPECTION AT SITE**

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

## **16. PERSONNEL**

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

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

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

## 17. INVESTIGATIONS CLAUSE

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

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

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

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

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

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

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

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

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

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

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

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

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

#### F. Definition of Terms

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

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

(3) The term "entity" as used herein shall be defined as any firm, partnership,

corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.

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

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

## **18. NOTICE**

All notices, except those related to Sections 11(J)(3) and 12(C)(5) above, from PLAZA PARTNER to DOT shall be in writing and delivered to the attention of the Director of Public Space, New York City Department of Transportation, 55 Water Street, 6<sup>th</sup> Floor, New York, NY 10041, or such other address as DOT may designate, with copies sent to DOT's General Counsel at same address. All notices from DOT to PLAZA PARTNER shall be dispatched in the same manner, and delivered to PLAZA PARTNER at 1 Metrotech Center North, 10th Floor, Brooklyn, NY 11201, or such other address as may be notified from time to time.

## **19. TERMINATION**

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

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

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

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

(3) Upon PLAZA PARTNER becoming insolvent.

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

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

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

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

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

F. Force Majeure Event

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

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

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

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

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



(b) use all reasonable endeavors to mitigate the effects of the Force Majeure Event on the performance of the Services under this License; and

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

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

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

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

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

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

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

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

(2) Not incurring or paying any further obligation pursuant to this License beyond the termination date. Any obligation necessarily incurred by PLAZA PARTNER on account of this License prior to receipt of notice of termination and falling due after such date shall

be paid by DOT, if such obligation was required by DOT in accordance with the terms of this License. PLAZA PARTNER shall be solely responsible for any obligations that are not specifically incurred on account of this License. In no event shall the term “obligation”, as used herein, be construed as including any lease agreement, oral or written, entered into between PLAZA PARTNER and its landlord.

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

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

L. PLAZA PARTNER expressly waives any and all claims for compensation, loss of profit, or refund of its investment, if any, or any other payment whatsoever, in the event this License is terminated by DOT sooner than the fixed term because the Licensed Plaza is required for any public purpose, or because the License was terminated or revoked for any reason as provided herein.

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

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

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

P. In the event PLAZA PARTNER continues to operate and manage the Licensed Plaza; and/or maintain and/or repair the amenities listed in **Exhibit B** that are installed within the Licensed Plaza under this License, after the expiration or termination of this License, the PLAZA PARTNER 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.

## **20. COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS**

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

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

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

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

## **21. REPRESENTATIONS, WARRANTIES AND COVENANTS**

A. PLAZA PARTNER makes the following representations and warranties:

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

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

(3) The execution and delivery of this License, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under

PLAZA PARTNER's Certificate of Incorporation, by-laws, or any statute, indenture, mortgage, deed of trust or other License or instrument to which PLAZA PARTNER is bound, or, to the knowledge of PLAZA PARTNER, any order, rule or regulation of any court, governmental agency or body having jurisdiction over PLAZA PARTNER or any of its activities or properties.

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

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

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

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

## **22. CONFLICT OF INTEREST**

PLAZA PARTNER represents and warrants that neither it nor any of its officers, trustees, employees, or volunteers has any interest, nor shall they acquire any interest directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. PLAZA PARTNER further represents and warrants that in the performance of this License no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this License which affects his or her personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this License or in the proceeds thereof.

## **23. NO LEASE**

It is expressly understood that the City has title to the Licensed Plaza and that no land, building, space, or equipment is leased to PLAZA PARTNER, but that during the term of this

License, PLAZA PARTNER shall be allowed the use of the Licensed Plaza only as herein provided.

#### **24. FEDERAL EMPLOYER IDENTIFICATION NUMBER**

PLAZA PARTNER represents that it is not in arrears to the City upon any debt, contract or taxes and is not a defaulter as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of PLAZA PARTNER to receive a license or public contracts. The Federal Employer Identification Number of PLAZA PARTNER is 13-3601854.

#### **25. RESERVATION OF RIGHTS AND INTERESTS**

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

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

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

#### **26. WAIVER OF JURY TRIAL**

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

#### **27. CHOICE OF LAW/CONSENT TO JURISDICTION AND VENUE**

A. This License shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of PLAZA PARTNER and shall be governed by and construed in accordance with the internal laws of the State of New York. Any and all claims asserted by or

against the City arising under this License or related hereto shall be heard and determined either in the courts of the United States ("Federal Courts") located within New York City or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this License and intent, it is understood that:

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

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

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

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

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

## **28. CLAIMS AND ACTIONS THEREON**

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

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

six months of the termination or conclusion of this License, or within six months after the accrual of the cause of action, whichever first occurs.

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

## **29. CLAIM AGAINST OFFICERS OR EMPLOYEES**

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

## **30. PARTICIPATION IN AN INTERNATIONAL BOYCOTT**

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

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

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

## **31. TRADEMARK**

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

## **32. INFRINGEMENTS**

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

### **33. ANTI-TRUST**

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

### **34. EMINENT DOMAIN AND PUBLIC USE**

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

### **35. DEVELOPMENT PURPOSES**

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

### **36. SEVERABILITY**

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

### **37. ALL LEGAL PROVISIONS DEEMED INCLUDED**

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



**38. MODIFICATION**

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

**39. ENTIRE AGREEMENT**

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

**40. COUNTERPARTS**

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

**NO FURTHER TEXT ON THIS PAGE**

Agreed to this \_\_\_\_ day of \_\_\_\_\_, 20\_\_:

By: \_\_\_\_\_

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

Dated:

By: \_\_\_\_\_

Ali Esmaelizadeh  
Chair  
MetroTech Area District Management Association, Inc.

Dated:

Approved as to Form and Certified as to Legal Authority:

\_\_\_\_\_  
Acting Corporation Counsel

STATE OF NEW YORK     )

ss:

COUNTY OF NEW YORK   )

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

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Notary Public

STATE OF NEW YORK     )

ss:

COUNTY OF NEW YORK   )

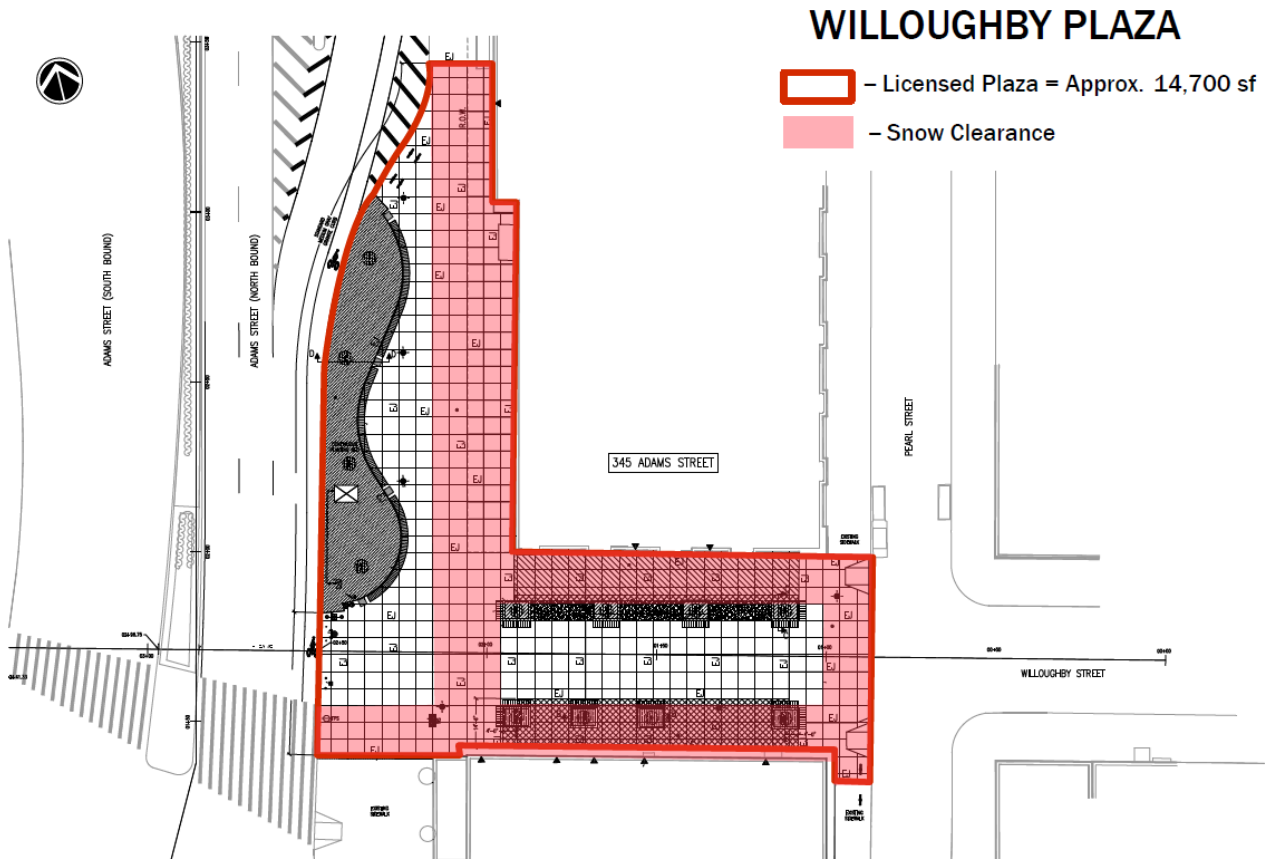
On this            day of            , 20\_\_ before me personally came Ali Esmaelizadeh, who, being duly sworn by me did depose and say that s/he is the Chair of MetroTech Area District Management Association, Inc., the corporation described in and who executed the foregoing instrument and s/he acknowledged that s/he executed the same in his/her official capacity and for the purposes mentioned therein.

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Notary Public

## Exhibit A

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



## Exhibit B

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

Item	Quantity/Size
River Bench – 5-foot straight units	11
River Bench - curvilinear	120 lin.ft.
Granite Block Side Tables	4
DOT Standard Pedestrian Lightpole	4
DOT Standard Tinted Concrete Pavement with Silicarb	12,442 sq. ft.
Shrub/Ground Cover	1,841 sq. ft.
RPZ and Water Spigot	1
Drinking Fountain	1
DOT Standard Wayfinding Sign	1
DOT Standard Bike Racks	2
Parc Centre Tables	30
Parc Centre Chairs	54
Kiosk	1
Umbrella	4
Tree Guard	8

Exhibit C  
[Snow Removal Map]

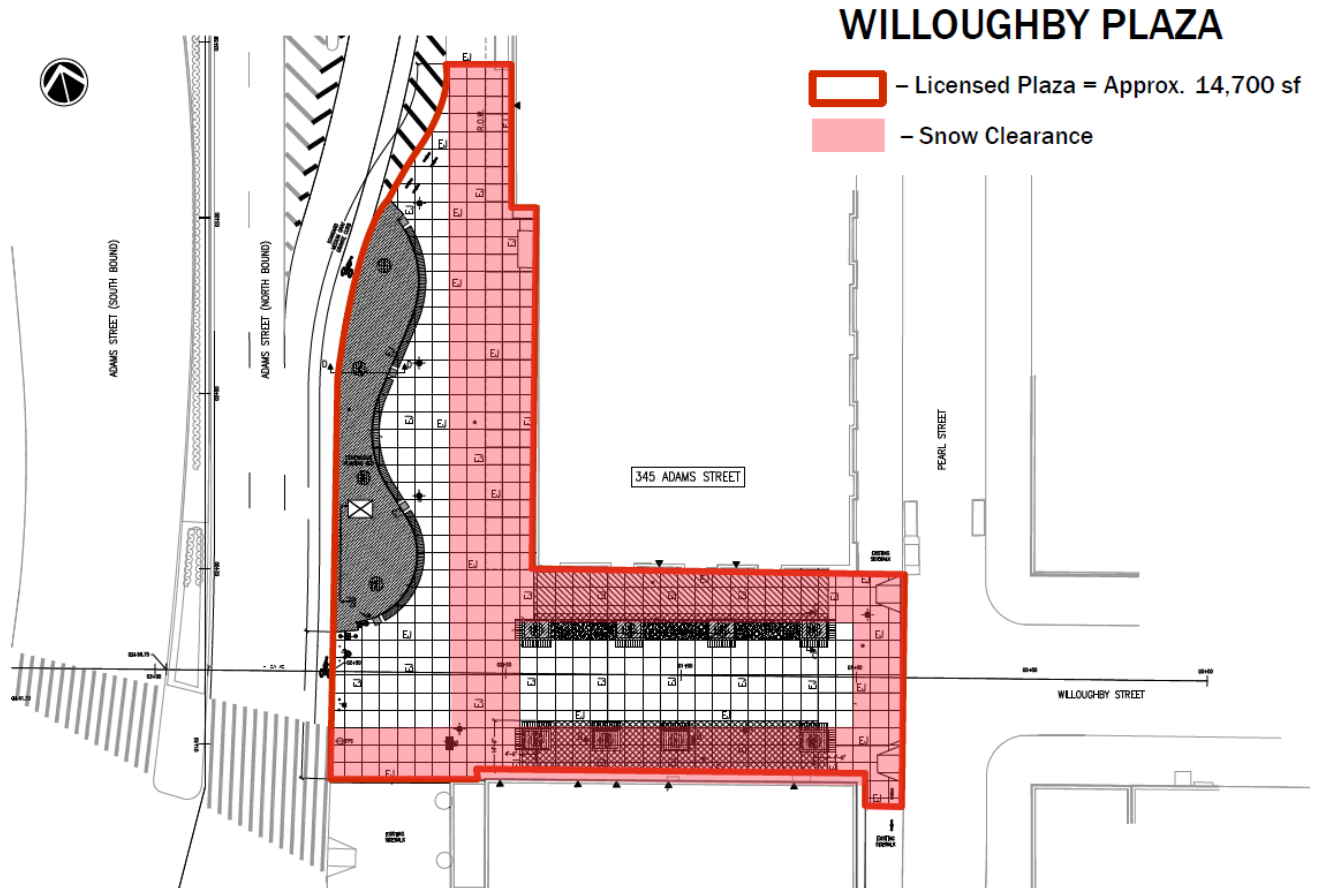


Exhibit D  
[PDC Approval of DOT Standard Plaza Kiosk]



December 11, 2017

CERTIFICATE 26412

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

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

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



Justin Garrett Moore  
Executive Director

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

## Exhibit E

### [Paid Sick Leave Law Concession Rider]

#### Introduction and General Provisions

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

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

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

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

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

Pursuant to the PSLL and the Rules:

#### Applicability, Accrual, and Use

An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSLL (“Year”) must be provided sick time. Employers must provide a minimum of one hour of

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



sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage. Employers are not required to provide more than forty hours of sick time to an employee in any Year.

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

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

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

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

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

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

### Exemptions and Exceptions

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

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

### Retaliation Prohibited

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

### Notice of Rights

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

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

## Records

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

## Enforcement and Penalties

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

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

## More Generous Policies and Other Legal Requirements

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

## SCHEDULE A

[Plaza Concession Fees for Commercial/Promotional Plaza Events]

Event Size	Extra Small	Small	Medium	Large
Fee per Event Day	N/A	\$2,500	\$10,000	\$20,000



## Department of Transportation

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Ydanis Rodriguez, Commissioner

October 7, 2022

Mr. Antonio Reynoso  
Brooklyn Borough President  
209 Joralemon Street  
Brooklyn, NY 11201

Ms. Michelle George, District Manager  
Community Board 8  
1291 St. Marks Avenue  
Brooklyn, NY 11213

Re: Open Streets Concession

Dear Mr Reynoso and Ms. George:

Pursuant to Title 12, Section 1-16 of the Concession Rules of the City of New York, the New York City Department of Transportation ("DOT") intends to seek approval from the Franchise and Concession Review Committee to utilize a different procedure to negotiate a Sole Source License Agreement with an organization (the "Concessionaire") for the operation and management of an Open Street located on Vanderbilt Avenue between Park Place, and the south side of Atlantic Ave in the borough of Brooklyn ("Licensed Open Street") and maintenance and/or repair of certain amenities placed within the Licensed Open Street, including through City-approved special events, sponsorships, gifts, market concession(s) and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Licensed Open Street.

DOT has identified Prospect Heights Neighborhood Development Council as a potential Concessionaire. This concession has been determined not to be a major concession as defined in Chapter 7 of the Rules of the City Planning Commission.

If you have any questions, please feel free to contact me at 212-839-6210.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith Bray", enclosed in a rectangular box.

Keith Bray  
Brooklyn Borough Commissioner

CC: Ms. Crystal Hudson, Councilmember for District 35

**CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM COVER SHEET**  
*(Complete and attach a CPSR Memorandum only if the selection procedure will be other than Competitive Sealed Bids)*

<b>AGENCY:</b> <u>New York City Department of Transportation ("DOT")</u>	<b>CONCESSION TITLE/DESCRIPTION:</b> <u>Operation and management of an Open Street located on Vanderbilt Avenue between Park Place, and the south side of Atlantic Avenue in the borough of Brooklyn and maintenance and/or repair of certain amenities placed within the Open Street</u>
<b># VOTES required for proposed action = <u>4</u></b> <input type="checkbox"/> <b>N/A</b>	<b>CONCESSION IDENTIFICATION #</b> <u>2023Con01</u>

**SELECTION PROCEDURE**  
 (\* City Chief Procurement Officer approval of CPSR required)

☐ Competitive Sealed Bids (CSB) (CSP)\*
 ☐ Competitive Sealed Proposals

☒ Different Procedure \* (☒ Sole Source Agreement ☐ Other \_\_\_\_\_)

☐ Negotiated Concession\*

Recommended Concessionaire: Prospect Heights Neighborhood Development Council, Inc. ☒ EIN ☐ SSN # 41-2138050

Attach Memo(s) \*

<p align="center"><b>CONCESSION AGREEMENT TERM</b></p> <p>Initial Term: <u>To be negotiated</u></p> <p>Renewal Option(s) Term: <u>To be negotiated</u></p> <p>Total Potential Term: <u>To be negotiated</u></p>	<p align="center"><b>ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS</b> (Check all that apply)</p> <p align="center">(<input type="checkbox"/> Additional description attached)</p> <p><input type="checkbox"/> Annual Minimum Fee(s) \$ _____</p> <p><input type="checkbox"/> % Gross Receipts _____%</p> <p><input type="checkbox"/> The Greater of Annual Minimum Fee(s) of \$ _____ v. _____% of Gross Receipts</p> <p><input checked="" type="checkbox"/> <b>Other formula:</b> <u>Concessionaire will be required to invest any revenue generated by this concession into the maintenance and/or repair of certain amenities installed within the Open Street; and reasonable administrative costs, as such costs relate to the Open Street</u></p>
<p><b>LOCATION OF CONCESSION SITE(S)*</b> <input type="checkbox"/> N/A</p> <p><b>Address:</b> <u>Vanderbilt Avenue between Park Place, and the south side of Atlantic Avenue</u></p> <p><b>Borough:</b> <u>Brooklyn</u> <b>C.B.</b> <u>8</u></p> <p><b>Block #</b> <u>N/A</u> <b>Lot #</b> <u>N/A</u></p> <p><small>*Attach additional sheet</small></p>	

**CONCESSION TYPE (Check all that apply)**

**> Significant Concession:**

☐ NO  
☒ **YES Basis:**  
☒ Total potential term =>10 years ☐ Projected annual income/value to City >\$100,000 ☐ Major Concession

**> Major Concession:**

☒ NO  
☐ YES - Award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter.

**NOTIFICATION REQUIREMENTS**

**Subject concession will be 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 has/will complete its consultations with each affected CB/BP regarding the scope of the solicitation at least 30 days prior to its issuance.

☐ The subject concession is a Significant Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.

☐ The subject concession has been determined not to be a Major Concession and the Agency has sent/will send written notification of such determination to each affected CB/BP at least 40 days prior to issuance of the solicitation.

☐ The subject concession has been determined not to be a Major Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan

pursuant to §1-10 of the Concession Rules.

**If NO**, check the applicable box below:

- ☒ The Agency certifies that each affected CB/BP has received/will receive written notice at least 40 days in advance of the FCRC meeting at which the agency will seek approval to use a different selection procedure.
- ☐ The Agency certifies that based on exigent circumstances it has requested/will request unanimous approval of the FCRC to waive advance written notice to each affected CB/BP.
- ☐ The Agency certifies that each affected CB/BP will receive written notice that the concession was determined to be non-major along with a summary of the terms and conditions of the proposed concession upon publication of a Notice of Intent to Enter into Negotiations. The agency further certifies that it will send a copy of this notice to the members of the Committee within five days of the notice to each affected CB/BP.

**AUTHORIZED AGENCY STAFF**

**This is to certify that the information presented herein is accurate.**

**Name** Michelle Craven **Title** Assistant Commissioner, Cityscape & Franchises

**Signature** \_\_\_\_\_ **Date**   /  /  

**CITY CHIEF PROCUREMENT OFFICER**

**This is to certify that the agency's plan presented herein will comply with the prescribed procedural requisites for the award of the subject concession.**

**Signature** \_\_\_\_\_ **Date**   /  /    
**City Chief Procurement Officer**

# CONCESSION PRE-SOLICITATION REVIEW MEMORANDUM

## A. **DETERMINATION TO UTILIZE OTHER THAN COMPETITIVE SEALED BIDS** ☐ N/A

*Instructions: Attach copy of draft RFP or other solicitation document, and check all applicable box(es) below.*

The Agency has determined that it is not practicable or advantageous to use Competitive Sealed Bids because:

- ☐ Specifications cannot be made sufficiently definite and certain to permit selection based on revenue to the City alone.
- ☐ Judgment is required in evaluating competing proposals, and it is in the best interest of the City to require a balancing of revenue to the City, quality and other factors.
- ☐ The agency will be pursuing a negotiated concession for the reasons listed in section (B)(3)(b)
- ☒ **Other (Describe):**

The New York City Department of Transportation ("DOT") will be pursuing a Sole Source License Agreement ("Agreement") pursuant to Section 1-16 of the Concession Rules of the City of New York ("different procedures") for the reasons listed in section (B)(2).

## B. **DETERMINATION TO USE OTHER THAN COMPETITIVE SEALED PROPOSALS** ☐ N/A

1. ***Briefly summarize the terms and conditions of the concession. Add additional sheet(s), if necessary.***

Subject to Franchise and Concession Review Committee ("FCRC") Step 1 authorization, DOT intends to negotiate the Agreement with the Prospect Heights Neighborhood Development Council, Inc. for the operation and management of an open street located on Vanderbilt Avenue between Park Place, and the south side of Atlantic Avenue in the borough of Brooklyn ("Licensed Open Street"); and maintenance and/or repair of certain amenities placed within the Licensed Open Street.

Prospect Heights Neighborhood Development Council, Inc. would have the right to provide for the operation and management of the Licensed Open Street in exchange for ongoing maintenance of the Licensed Open Street, including through City-approved special events, sponsorships and subconcessions including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Licensed Open Street. Subconcessions would be awarded based on solicitations issued by Prospect Heights Neighborhood Development Council, Inc. in the basic form of Request for Proposals or Request for Bids, subject to DOT's prior written approval of both solicitation and award.

2. ***Briefly explain the basis for the determination not to solicit Competitive Sealed Proposals.***

The intent of the Agreement is that all revenue received by Prospect Heights Neighborhood Development Council, Inc. from the operation and management of the concession will go toward maintaining the Licensed Open Street. Since the concession will not yield a profit to Prospect Heights Neighborhood Development Council, Inc., a determination was made not to solicit Competitive Sealed Proposals.

DOT has identified Prospect Heights Neighborhood Development Council, Inc. as the potential Concessionaire.

It is in the City's best interest to enter into the Agreement using a different procedure with Prospect Heights Neighborhood Development Council, Inc. because this organization's mission is to enhance the neighborhood in which the Licensed Open Street is located. Prospect Heights



Neighborhood Development Council, Inc. directly represents the neighborhood that it will serve and has a specific interest in the Licensed Open Street.

3a. ***Briefly explain the selection procedure that will be utilized.***

On December 14, 2022 DOT intends to seek FCRC authorization to negotiate the Agreement with Prospect Heights Neighborhood Development Council, Inc. for the operation, and management of the Licensed Open Street and maintenance and/or repair of certain amenities placed within the Licensed Open Street ("Step 1"). Pending FCRC Step 1 approval, DOT intends to negotiate the terms of the Agreement with Prospect Heights Neighborhood Development Council, Inc.

Once negotiated and if determined by DOT to be a significant concession, DOT and the FCRC will hold a joint Public Hearing on the proposed Agreement before presenting the proposed concession to the FCRC for "Step 2" approval at a second meeting. If DOT determines the concession to be non-significant, DOT will present the fully negotiated Agreement with Prospect Heights Neighborhood Development Council, Inc. to the FCRC and request the required FCRC authorization to enter into the Agreement directly (without the need for an initial public hearing).

3b. ***If the selection procedure is a negotiated concession, check the applicable box: ☒ N/A***

*The Agency made a determination that it is not practicable and/or advantageous to award a concession by competitive sealed bidding or competitive sealed proposals due to the existence of a time-sensitive situation where a concession must be awarded quickly because:*

- ☐ The agency has an opportunity to obtain significant revenues that would be lost or substantially diminished should the agency be required to solicit the concession by competitive sealed bids or competitive sealed proposals and the diminished revenue does not relate only to the present value of the revenue because of the additional time needed to solicit competitive sealed bids or competitive sealed proposals; *[Explain]*
- ☐ An existing concessionaire has been terminated, has defaulted, has withdrawn from, or has repudiated a concession agreement, or has become otherwise unavailable; *[Explain]*
- ☐ The agency has decided, for unanticipated reasons, not to renew an existing concession in the best interest of the City and requires a substitute/successor concessionaire. *[Explain]*
- ☐ DCAS is awarding a concession to an owner of property adjacent to the concession property, or to a business located on such adjacent property, and has determined that it is not in the best interest of the City to award the concession pursuant to a competitive process because of the layout or some other characteristic of the property, or because of a unique service that can be performed only by the proposed concessionaire. *[Explain]*

**Approved by CCPO:** \_\_\_\_\_ **on** \_\_\_\_/\_\_\_\_/\_\_\_\_.

4. If the agency has/will request unanimous FCRC approval to waive advance written notice to affected CB(s) that a selection procedure other than CSB or CSP will be utilized, explain the exigent circumstances. ☒ **N/A**

**CITY OF NEW YORK**  
**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

(Cal. No. X)

**BE IT RESOLVED** that the Franchise and Concession Review Committee (“FCRC”) hereby authorizes the New York City Department of Transportation (“DOT”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a Sole Source License Agreement (“Agreement”) with Prospect Heights Neighborhood Development Council, Inc. , to provide for the operation and management of an open street located on Vanderbilt Avenue between Park Place, and the south side of Atlantic Avenue in the borough of Brooklyn , (“Licensed Open Street”); and maintenance and/or repair of certain amenities placed within the Licensed Open Street, including through City-approved special events, sponsorships, gifts, and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Licensed Open Street. Subconcessions would be awarded based on solicitations issued by Prospect Heights Neighborhood Development Council, Inc. in the basic form of Request for Proposals or Request for Bids, subject to DOT’s prior written approval of both solicitation and award.

**BE IT FURTHER RESOLVED** that DOT shall submit the Agreement it proposes to enter into with Prospect Heights Neighborhood Development Council, Inc. to the FCRC for approval.

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

December 14, 2022

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

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

# Memo

**To:** NYC Borough Presidents  
NYC Community Board Presidents

**From:** Christina Rowley  
NYC & Company Inc.

**CC:** Jean Paul Venegas  
Department of Small Business Services

Alexandre Stamoulis  
Mayor's Office of Contract Services

Natalie Koepff  
NYC & Company Inc.

**Date:** November 4, 2022

**Re:** Notice of Intent to Seek FCRC approval to utilize a different procedure to negotiate a Sole Source License Agreement with Fire Replicas LLC for the non-exclusive use of city-owned trademarks on merchandise

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Dear NYC Borough Presidents and NYC Community Board Presidents:

Pursuant to §1-16 of the Concession Rules of the City of New York, this is to notify the affected Borough Presidents and Community Boards that NYC & Company Inc., on behalf of the NYC Department of Small Business Services, intends to seek Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a sole source license agreement with Fire Replicas LLC for a non-significant concession for the non-exclusive use of city-owned trademarks on merchandise.

The proposed concession has been determined not to be a major concession as defined in Chapter 7 of the Rules of the City Planning Commission.

If you have any questions or comments, please contact me by e-mail at [crowley@nycgo.com](mailto:crowley@nycgo.com).

Best,

Christina Rowley

**CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM COVER SHEET**  
(Complete and attach a CPSR Memorandum only if the selection procedure will be other than Competitive Sealed Bids)

<b>AGENCY:</b> NYC & Company, Inc. on behalf of NYC Department of Small Business Services	<b>CONCESSION TITLE/DESCRIPTION:</b> Non-exclusive Use of City-Owned Trademarks on Merchandise  <b>CONCESSION IDENTIFICATION #</b> NYCCO-2022-005
<b># VOTES required for proposed action = 4</b> <input type="checkbox"/> <b>N/A</b>	
<b>SELECTION PROCEDURE</b> (* City Chief Procurement Officer approval of CPSR required) <input type="checkbox"/> Competitive Sealed Bids (CSB) <input type="checkbox"/> Competitive Sealed Proposals (CSP)* <input checked="" type="checkbox"/> Different Procedure * ( <input checked="" type="checkbox"/> Sole Source Agreement <input type="checkbox"/> Other _____) <input type="checkbox"/> Negotiated Concession*  Recommended Concessionaire: Fire Replicas LLC <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN # 47-2702814 Attach Memo(s) *	
<b>CONCESSION AGREEMENT TERM</b>  Initial Term: <u>To be negotiated</u> Renewal Option(s) Term: <u>To be negotiated</u>  Total Potential Term: <u>To be negotiated</u>	<b>ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS</b> (Check all that apply)  ( <input type="checkbox"/> Additional description attached)  <input type="checkbox"/> Annual Minimum 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 formula <u>To be negotiated</u>
<b>LOCATION OF CONCESSION SITE(S)*</b> <input checked="" type="checkbox"/> <b>N/A</b> Address _____ Borough _____ C.B. _____ Block # _____ Lot # _____ <small>*Attach additional sheet</small>	
<b>CONCESSION TYPE (Check all that apply)</b>	
<b>&gt; Significant Concession:</b> <input checked="" type="checkbox"/> <b>NO</b> <input type="checkbox"/> <b>YES Basis:</b> <input type="checkbox"/> Total potential term =>10 years <input type="checkbox"/> Projected annual income/value to City >\$100,000 <input type="checkbox"/> Major Concession	
<b>&gt; Major Concession:</b> <input checked="" type="checkbox"/> <b>NO</b> <input type="checkbox"/> <b>YES - Award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter.</b>	
<b>NOTIFICATION REQUIREMENTS</b>	
<b>Subject concession will be awarded by CSB or CSP.</b> <span style="float: right;"><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</span>  If <b>YES</b> , check the applicable box(es) below: <input type="checkbox"/> The subject concession is a Significant Concession and the Agency has/will complete its consultations with each affected CB/BP regarding the scope of the solicitation at least 30 days prior to its issuance.  <input type="checkbox"/> The subject concession is a Significant Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1- 10 of the Concession Rules.  <input type="checkbox"/> The subject concession has been determined not to be a Major Concession and the Agency has sent/will send written notification of such determination to each affected CB/BP at least 40 days prior to issuance of the solicitation.  <input type="checkbox"/> The subject concession has been determined not to be a Major Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.	

If **NO**, check the applicable box below:

- ☒ The Agency certifies that each affected CB/BP has received/will receive written notice at least 40 days in advance of the FCRC meeting at which the agency will seek approval to use a different selection procedure.
- ☐ The Agency certifies that based on exigent circumstances it has requested/will request unanimous approval of the FCRC to waive advance written notice to each affected CB/BP.
- ☐ The Agency certifies that each affected CB/BP will receive written notice that the concession was determined to be non-major along with a summary of the terms and conditions of the proposed concession upon publication of a Notice of Intent to Enter into Negotiations. The agency further certifies that it will send a copy of this notice to the members of the Committee within five days of the notice to each affected CB/BP.

**AUTHORIZED AGENCY STAFF**

This is to certify that the information presented herein is accurate.

Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_/\_\_/\_\_

**CITY CHIEF PROCUREMENT OFFICER**

This is to certify that the agency's plan presented herein will comply with the prescribed procedural requisites for the award of the subject concession.

Signature \_\_\_\_\_ Date \_\_/\_\_/\_\_

City Chief Procurement Officer

# CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM

## A. DETERMINATION TO UTILIZE OTHER THAN COMPETITIVE SEALED BIDS ☐ N/A

***Instructions:*** Attach copy of draft RFP or other solicitation document, and check all applicable box(es) below.

**The Agency has determined that it is not practicable or advantageous to use Competitive Sealed Bids because:**

- ☐ Specifications cannot be made sufficiently definite and certain to permit selection based on revenue to the City alone.
- ☐ Judgment is required in evaluating competing proposals, and it is in the best interest of the City to require a balancing of revenue to the City, quality and other factors.
- ☐ The agency will be pursuing a negotiated concession for the reasons listed in section (B)(3)(b)
- ☒ Other (Describe)

NYC & Company Inc. on behalf of New York City Department of Small Business Services (SBS), intends to seek Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a non-exclusive, sole source license agreement with Fire Replicas, LLC pursuant to Section 1-16 of the Concession Rules of the City of New York (different procedures) for the reasons listed in Section (B)(2) below.

## B. DETERMINATION TO USE OTHER THAN COMPETITIVE SEALED PROPOSALS ☐ N/A

1. **Briefly summarize the terms and conditions of the concession.** *Add additional sheet(s), if necessary.*

To be determined at a later date- when/if the Franchise and Concession Review Committee (FCRC) approves the use of a different procedure to negotiate an agreement with Fire Replicas, LLC.

2. **Briefly explain the basis for the determination not to solicit Competitive Sealed Proposals.** *[Explain]*

Fire Replicas, LLC is a longstanding licensee with NYC & Company, Inc. and creates high end replica fire trucks containing the City's proprietary marks for distribution on their e-commerce site. Fire Replicas, LLC proposed unique designs to be created by Fire Replicas, LLC's creative department to be used solely for this arrangement if approved. This proposed non-exclusive license agreement will not bar other opportunities from other replica fire truck manufacturers and will allow the City to provide replica fire trucks to consumers at retail. There is no other company or agency that would be able to perform this task, and therefore a CSP is not the best way to do contracts for licensing the City's IP. Accordingly, because Fire Replicas, LLC presented a unique design that will be otherwise useful to our program or licensees with other replica vehicles, this is appropriate for a sole source.

- 3a. **Briefly explain the selection procedure that will be utilized.** *[Explain]*

NYC & Company Inc./SBS is requesting authorization to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a Sole Source License Agreement with Fire Replicas, LLC for the non-exclusive use of city-owned trademarks on replica fire vehicles produced and sold by Fire Replicas, LLC. Fire Replicas, LLC held a non-concession agreement for the purpose of testing the product interest to its distribution channel and customers unique to Fire Replicas, LLC. Fire Replicas has been an existing licensee with NYC & Company for over 6 years and has proved to be a reliable and responsible partner. Given the proven success of the high end replicas products we know it is in the City's best interest to continue a concession agreement and as part of the forward looking concession, NYC & Company Inc./SBS seeks approval of the FCRC to negotiate a concession

agreement with Fire Replicas, LLC that includes the excess revenue from the non-concession agreement. We intend to bring this matter before the FCRC on December 14, 2022 ("Step 1"). Once negotiated and if determined by NYC & Company Inc./SBS to be a significant concession, NYC & Company Inc./SBS and the FCRC will hold a joint public hearing on the proposed Agreement before presenting it to the FCRC for ("Step 2") approval at a second public meeting. If NYC & Company Inc./SBS determines the concession to be non-significant, NYC & Company Inc./SBS will present the fully negotiated Agreement directly (without need for an initial joint public hearing).

**3b. If the selection procedure is a negotiated concession, check the applicable box: ☒ N/A**

*The Agency made a determination that it is not practicable and/or advantageous to award a concession by competitive sealed bidding or competitive sealed proposals due to the existence of a time-sensitive situation where a concession must be awarded quickly because:*

- ☐ The Agency has an opportunity to obtain significant revenues that would be lost or substantially diminished should the agency be required to solicit the concession by competitive sealed bids or competitive sealed proposals and the diminished revenue does not relate only to the present value of the revenue because of the additional time needed to solicit competitive sealed bids or competitive sealed proposals; *[Explain]*
- ☐ An existing concessionaire has been terminated, has defaulted, has withdrawn from, or has repudiated a concession agreement, or has become otherwise unavailable; *[Explain]*
- ☐ The Agency has decided, for unanticipated reasons, not to renew an existing concession in the best interest of the City and requires a substitute/successor concessionaire. *[Explain]*
- ☐ DCAS is awarding a concession to an owner of property adjacent to the concession property, or to a business located on such adjacent property, and has determined that it is not in the best interest of the City to award the concession pursuant to a competitive process because of the layout or some other characteristic of the property, or because of a unique service that can be performed only by the proposed concessionaire. *[Explain]*

**Approved by CCPO:** \_\_\_\_\_ **on** \_\_\_\_/\_\_\_\_/\_\_\_\_.

4. If the Agency has/will request unanimous FCRC approval to waive advance written notice each affected CB/BP that a selection procedure other than CSB or CSP will be utilized, explain the exigent circumstances. *[Explain]* ☒ **N/A**

**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

**(Cal. No. 4)**

**RESOLVED**, that the Franchise and Concession Review Committee (“FCRC”) authorizes the NYC & Company, Inc. on behalf of New York City Department of Small Business Services (“SBS”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a non-exclusive, Sole Source License Agreement with Fire Replicas LLC for the non-exclusive use of city-owned trademarks on merchandise.

**BE IT FURTHER RESOLVED**, that NYC & Company, Inc. on behalf of SBS shall submit the License Agreement SBS proposes to enter into with Fire Replicas LLC to the FCRC for approval.

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

Date: December 14<sup>th</sup>, 2022

Signed: \_\_\_\_\_

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





NYC Parks

**David Cerron**  
Assistant Commissioner  
Business Development &  
Special Events

T 212.360.1397

E david.cerron@parks.nyc.gov

**City of New York  
Parks & Recreation**

The Arsenal  
Central Park  
New York, NY 10065  
[www.nyc.gov/parks](http://www.nyc.gov/parks)

## **MEMORANDUM**

**TO:** Hon. Antonio Reynoso, President of the Borough of Brooklyn  
Michael Racioppo, District Manager, Brooklyn Community Board 6

**FROM:** Phil Abramson, Director of Revenue Communications *PA*

**SUBJECT:** Notice of Joint Public Hearing, December 13, 2022: Intent to award as a concession the maintenance, operation and management of an urban garden at 560 Columbia Street in Red Hook, Brooklyn, to Red Hook Initiative, Inc. Concession No. B126-1-O.

**DATE:** November 28, 2022

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NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and the New York City Department of Parks & Recreation ("NYC Parks") to be held remotely via a Microsoft Teams dial-in on Tuesday, December 13, 2022 at 2:30 p.m. relative to:

INTENT TO AWARD as a concession for the maintenance, operation and management of an urban garden at 560 Columbia Street in Red Hook, Brooklyn ("Licensed Premises"), for a twenty (20) year term, to Red Hook Initiative, Inc. ("Licensee"). All gross receipts received by Licensee will be used exclusively to provide for the maintenance, operation, and management at the Licensed Premises. If the gross receipts received by Licensee for any fiscal year exceed such expenses ("Excess Revenues"), any Excess Revenues shall be used exclusively to pay (i) accumulated expenses incurred in the prior fiscal year that exceeded gross receipts for that fiscal year; or (ii) expenses incurred in any subsequent fiscal year.

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 [frcr@mocs.nyc.gov](mailto:frcr@mocs.nyc.gov). All written testimony must be received by December 9, 2022. 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: 951 976 883 #  
Press # on further prompts

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


- 1) Submit a written request to NYC Parks at [philip.abramson@parks.nyc.gov](mailto:philip.abramson@parks.nyc.gov) from **November 28, 2022** through **December 9, 2022**.
- 2) Download from **November 28, 2022** through **December 12, 2022** on NYC Parks' website. To download a draft copy of the agreement, visit <https://www.nycgovparks.org/opportunities/concessions/rfps-rfbs-rfeis>



NYC Parks

3) Submit a written request by mail to NYC Department of Parks and Recreation, Revenue Division, 830 Fifth Avenue, Room 407, New York, NY 10065. Written requests must be received by **December 2, 2022**. For mail-in requests, please include your name, return address, and Concession # M126-1-O.

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](mailto:DisabilityAffairs@mocs.nyc.gov) or via phone at (646) 872-0231. 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))

<b>AGENCY:</b> <u>New York City Department of Parks and Recreation ("Parks")</u>	<b>RECOMMENDED CONCESSIONAIRE</b> <b>Name:</b> <u>Red Hook Initiative, Inc.</u> <b>Address:</b> <u>767 Hicks Street, Brooklyn, NY 11231</u> <b>Telephone #:</b> <u>(718) 858-6782</u> <input checked="" type="checkbox"/> <b>EIN</b> <input type="checkbox"/> <b>SSN</b> <u>#20-3904662</u> <b>Not-for-Profit Organization</b> <input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b> <b>Certified by DSBS as M/WBE</b> <input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b>	<b>CONCESSION TITLE/ DESCRIPTION:</b> <u>Sole Source License Agreement with Red Hook Initiative, Inc. for the maintenance, operation and management of an urban garden at 560 Columbia Street in Red Hook, Brooklyn ("Licensed Premises").</u>  <b>CONCESSION I.D.#</b> <u>B126-1-O</u>
<b># VOTES required for proposed action</b> <b>= <u>4</u></b> <input type="checkbox"/> <b>N/A</b>		

## LOCATION OF CONCESSION SITE(S\*)

**Address** 560 Columbia Street  
**Borough** Brooklyn **C.B.** 6 **Block #** 607 **Lot #** 1

☐ **N/A** \*Attach additional sheet

## 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 12/08/2021.  
☐ Negotiated Concession\*

## CONCESSION AGREEMENT TERM

**Initial Term:** Twenty (20) Years from Notice to Proceed

**Renewal Option(s) Term:** n/a

**Total Potential Term:** Twenty (20) Years

☐ \* >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**

All gross receipts received by Licensee will be used exclusively to provide for the maintenance, operation, and management at the Licensed Premises (As further detailed in Article 4 pf the Agreement.) If the gross receipts received by Licensee for any fiscal year exceed such expenses ("Excess Revenues"), any Excess Revenues shall be used exclusively to pay (i) accumulated expenses incurred in the prior fiscal year that exceeded gross receipts for that fiscal year; or (ii) expenses incurred in any subsequent fiscal year.

## 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 10/27/2021, which was at least 40 days in advance of the FCRC meeting on 12/08/2021 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 Alexander Han

Title Chief of Concessions

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)**

The New York City Department of Parks and Recreation ("Parks") intends to seek Franchise and Concession Review Committee ("FCRC") approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into a Sole Source License Agreement (the "Agreement") with Red Hook Initiative, Inc. ("Licensee") for the maintenance, operation and management of an urban garden at 560 Columbia Street in Red Hook, Brooklyn ("Licensed Premises").

***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.*

The term of this Agreement shall be twenty (20) years and shall commence on Parks' giving written notice to proceed to Licensee.

All gross receipts received by Licensee will be used exclusively to provide for the maintenance, operation, and management at the Licensed Premises. If the gross receipts received by Licensee for any fiscal year exceed such expenses ("Excess Revenues"), any Excess Revenues shall be used exclusively to pay (i) accumulated expenses incurred in the prior fiscal year that exceeded gross receipts for that fiscal year; or (ii) expenses incurred in any subsequent fiscal year.

**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:**

The Red Hook Recreational Area in Red Hook, Brooklyn, is comprised of multiple parcels of parkland, approximately 58.5 acres in total, bounded by Lorraine Street to the north and the Gowanus Canal to the south and by Osteo Street and Court Street to the west and east, respectively. The parcel of land located at 560 Columbia Street was transferred to Parks in 1934. This parcel was formerly an asphalt ballfield until it was converted to a community garden in 2001 by a not-for-profit entity, Added Value & Herban Solutions ("AVHS"). AVHS operated the community garden at 560 Columbia Street continuously since 2001 but had only two agreements with Parks—one from 2003 to 2008, and the other, as part of Parks' GreenThumb Initiative, from February 24, 2015 until December 31, 2018. On December 19, 2018, AVHS entered into an asset transfer agreement with Red Hook Initiative, Inc. ("RHI"), whereby AVHS staff, programs, the community garden, and the Parks' GreenThumb garden agreement, were absorbed by RHI.

RHI, founded in 2002 as a program of a local hospital and established as an independent 501(c)(3) organization by 2006, is a not-for-profit organization currently engaged in supporting youth development, community building and community hiring in Red Hook, Brooklyn. One of RHI's projects is a youth-focused urban educational garden operated through two sites—one located at 30 Wolcott Street, under the jurisdiction of the New York City Housing Authority, and the other, the abovementioned 2.75-acre community garden site at 560 Columbia Street, under Parks' jurisdiction.

The park at 560 Columbia Street is currently open to the public for passive recreation and education. RHI's operations there include growing produce and herbs, maintaining chickens and beehives, and providing both free and fee-based programs, activities, and events. 560 Columbia Street offers free public workshops such as school/camp workshops for students, garden tours, volunteer opportunities, and seasonal festivals. Public access hours at 560 Columbia Street are generally 9 a.m. to 5 p.m. Tuesdays through Sundays throughout the year, and accessible on Mondays during the growing season. The park offers more activities and programs from April to November, as the weather permits. Members of the public are invited to walk on paths through the garden, enjoy interactive, family-friendly, self-guided tours, relax on park benches, look at interpretive material, observe the bees and chickens, read, rest, paint, etc. In the past, RHI offered cooking workshops and farm produce sampling on Saturdays. RHI also hosted free classes ad hoc, such as Senior Chair Yoga, Zumba, and Bike Repair.

Fee-based activities include some school/camp workshops and corporate volunteer events. Produce is sold through farm stands as well as through a farm share CSA program. 560 Columbia Street also holds an annual plant sale and up to four fundraisers each year. Approximately 20-30 youth apprentices work at 560 Columbia Street for an hourly wage each year. The youth apprentices learn universal job skills such as communication, problem solving, and teamwork, as well as best practices in sustainable gardening and horticulture. In 2021, 560 Columbia Street earned \$41,214: 63% from CSAs, 34% from farm stands, and 3% from other wholesale. RHI anticipates using all funds and fees from revenue generating activities solely to offset costs associated with maintenance, operation, and programming at 560 Columbia Street, expenses which are considered cost-savings for the City.

Overall, in 2021, 619 volunteers donated 1,557 hours of volunteer time to 560 Columbia Street. 560 Columbia Street also welcomed 494 Red Hook public school students for virtual tours, from kindergarten through 5th grade. In-person visits have now resumed, with students enjoying public green space while learning about botany, insect life cycles, compost ecology, soil science, and food justice.

From 2013, AVHS, and now RHI, has hosted a compost program at 560 Columbia Street. In the past, composting occurred on 27,000 square feet of the 2.75-acre site and amounted to collection of 150 tons of organics and food scraps from the local community and local parks. RHI currently only processes material generated on site, including weedy plants, spent crops, scraps from the farm stand, and a limited amount of material dropped in tumblers from local residents. With Parks' approval, RHI intends to continue a non-regional, local composting operation, directly benefitting 560 Columbia Street, the local community, and local parks.

Parks is seeking to enter into a sole source concession agreement with RHI for the 560 Columbia Street location. The Agreement would allow RHI to use, occupy, maintain, and operate the Licensed Premises to provide urban community gardening, recreational, composting, and educational activities, programs, and services for the benefit of the general public. All funds and fees from revenue generating activities will be used solely to offset costs associated with maintenance, operation, and programming at the Licensed Premises.

This is not a major concession as defined by Chapter 7 of the Rules of the City of New York ("Rules"), but excepted under §7-03(b) of the Rules, as the concession at 560 Columbia Street directly furthers an active recreational use. The general public may use the site for activities such as gardening, volunteering and educational opportunities, and walking tours, on a non-discriminatory basis, with or without a fee.

Under this Agreement, RHI is assuming significant responsibilities for maintaining, operating, and managing this parcel of public parkland, at their sole cost and expense, as an urban garden, and is required to provide

recreational and educational activities, events, and programs to the general public in accordance with standards of professional quality, and reasonably satisfactory to Parks. All funds and fees from revenue generating activities will be used solely to offset costs associated with maintenance, operation, and programming at the Licensed Premises. Given RHI's enduring commitment to the Red Hook community and the surrounding area, and its long-standing operation of the site, Parks believes that it is in the best interest of the City to enter into a sole source concession agreement with RHI for the operation and programming of events at 560 Columbia Street, rather than proceed with a competitive solicitation process.

**D. PUBLIC HEARING [☐ N/A – Subject award NOT a significant concession]<sup>1</sup>**

**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 11/28/2022, 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 11/28/2022, 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 in the 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 11/28/2022.

☒ Brooklyn Courier Life, a NYC local newspaper published in the affected borough(s) on 12/02/2022 and 12/09/2022.

☒ Brooklyn Daily Eagle, a NYC local newspaper published in the affected borough(s) on 12/02/2022 and 12/09/2022.

**2. Public Hearing Date, Exception to Public Hearing Requirement**

☒ A Public Hearing was conducted on 12/13/2022.

**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.



**CITY OF NEW YORK  
FRANCHISE AND CONCESSION REVIEW COMMITTEE**

**(Cal. No. x)**

**RESOLVED**, that the Franchise and Concession Review Committee authorizes the New York City Department of Parks and Recreation ("Parks") to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into a Sole Source License Agreement ("Agreement") with Red Hook Initiative, Inc. ("Licensee") for the maintenance, operation and management of an urban garden at 560 Columbia Street in Red Hook, Brooklyn ("Licensed Premises"). All gross receipts received by Licensee will be used exclusively to provide for the maintenance, operation, and management at the Licensed Premises. If the gross receipts received by Licensee for any fiscal year exceed such expenses ("Excess Revenues"), any Excess Revenues shall be used exclusively to pay (i) accumulated expenses incurred in the prior fiscal year that exceeded gross receipts for that Fiscal Year; or (ii) expenses incurred in any subsequent fiscal year. The term of this Agreement shall be twenty (20) years and shall commence on Parks' giving written notice to proceed to Licensee.

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

December 14, 2022

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

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

**LICENSE AGREEMENT**

**BETWEEN**

**RED HOOK INITIATIVE, INC.**

**AND**

**CITY OF NEW YORK  
DEPARTMENT OF PARKS & RECREATION**

**FOR MAINTENANCE, OPERATION AND MANAGEMENT OF  
AN URBAN GARDEN AT**

**560 COLUMBIA STREET  
BROOKLYN, NEW YORK**

**DATED: \_\_\_\_\_, 2022**

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This **SOLE SOURCE LICENSE AGREEMENT** (“License Agreement” or “Agreement” or “License”) made this \_\_\_\_\_ day of \_\_\_\_\_, 2022, between the City of New York (the “City”), a municipal corporation of the State of New York acting by and through the Department of Parks & Recreation (“Parks”), whose address is The Arsenal, 830 Fifth Avenue, New York, NY 10065, and Red Hook Initiative, Inc. (“Licensee” or “RHI”), a not-for-profit corporation whose address is 767 Hicks Street, Brooklyn, New York 11231 (collectively, the “Parties”).

**W I T N E S S E T H:**

**WHEREAS**, Parks, pursuant to Section 533 of the New York City Charter, has jurisdiction over Parklands of the City and facilities therein;

**WHEREAS**, the Commissioner of Parks (“Commissioner”), pursuant to Section 533 of the New York City Charter, is charged with the responsibility to manage, maintain, and operate parks and recreational facilities under Parks’ jurisdiction, and has the authority to plan, develop, conduct and enter into arrangements with private organizations for their participation in the improvement of their community by undertaking the maintenance and operation of parks for the benefit of the public;

**WHEREAS**, the Commissioner has jurisdiction of a 2.75-acre parcel of parkland located at 560 Columbia Street (Block 607, Lot 1) in Brooklyn, as shown in **Exhibit A**, attached hereto, (“Licensed Premises” or “Premises”);

**WHEREAS** the Commissioner desires to ensure the best use of the Licensed Premises and desires to encourage the participation of interested not-for-profit organizations in providing supplemental services, including maintenance, recreational and educational programs and services, for the benefit of the public;

**WHEREAS** the Licensed Premises was formerly an asphalt ballfield until it was converted and operated as a community garden in 2001 by a not-for-profit entity, Added Value & Herban Solutions (“AVHS”);

**WHEREAS**, AVHS had two previous agreements with Parks, one from 2003 to 2008, and the other, as part of Parks’ GreenThumb Initiative, from February 24, 2015 until December 31, 2018;

**WHEREAS**, on December 19, 2018, AVHS entered into an asset transfer agreement with Red Hook Initiative whereby AVHS staff, programs, the community garden, and the Parks’ GreenThumb garden agreement, were absorbed by RHI;

**WHEREAS** RHI, founded in 2002, and established as an independent 501(c)(3) organization by 2006, is a not-for-profit organization engaged in youth development, community building and community hiring in Red Hook, Brooklyn;

**WHEREAS** Licensee and Parks intend to develop an effective public/private partnership through which Licensee, under the review and approval of the Commissioner, will undertake substantial responsibility for public programming, operation, and maintenance of the Licensed Premises;

**WHEREAS** Licensee's programming at the Licensed Premises has engaged thousands of people of the Red Hook community and has provided educational and youth empowerment activities to students and the general public;

**WHEREAS**, Licensee, wishes to use, occupy, maintain, and operate the Licensed Premises for the public's benefit by offering free educational and recreational programs to the public;

**WHEREAS**, Licensee, also desires to operate fee-based educational and recreational programs as further described herein, and maintain and operate the Licensed Premises in accordance with the terms set forth herein;

**WHEREAS** Parks sought approval of the Franchise and Concession Review Committee ("FCRC"), who has authorized Parks to use different procedures to enter into this License Agreement with Licensee;

**WHEREAS**, on December 8, 2021, the Franchise and Concession Review Committee ("FCRC") authorized Parks to enter into a Sole Source License Agreement with Licensee for the operation of an urban garden at 560 Columbia Street, in Red Hook, Brooklyn in order to program events, empower youth, and engage with the greater Red Hook community; and

**WHEREAS** Parks and Licensee desire to enter into this License Agreement specifying rights and obligations with respect to the maintenance, operation, and management of the Licensed Premises.

**NOW THEREFORE**, in consideration of the promises and mutual covenants contained herein, the City and Licensee hereby do agree as follows:

## **ARTICLE 1: GRANT OF LICENSE**

**1.1** Parks hereby grants to Licensee and Licensee hereby accepts from Parks this License to use, occupy, maintain, and operate the Licensed Premises as shown in **Exhibit A**, attached hereto, to provide urban community gardening, recreational, composting, and educational activities, programs, and services for the benefit of the general public, in accordance with the terms and conditions set forth herein, and to the Commissioner's reasonable satisfaction. All funds and fees from revenue generating activities will be used solely to offset costs associated with maintenance, operation, and programming at the Licensed Premises.

**1.2** Licensee is hereby authorized to:

(a) design and maintain all plants, structures, installations, and equipment, including, but not limited to, all raised plant beds, planters, tables, benches, sheds, solar panels, rain capture systems,

and other Parks-approved structures and ornamental items, in a safe and orderly condition for the purpose of growing vegetables, fruits, plants, and other produce;

(b) provide free and fee-based activities and programs for the general public at the Licensed Premises, such as community cooking classes and student workshops;

(c) hold seasonal festivals, plant sales, produce stands, and community-supported agriculture (CSA) programs;

(d) conduct youth apprentice programs and community volunteering activities;

(e) operate a non-regional, local composting program, which shall directly benefit the Licensed Premises, the local community, and local area parks only; and

(f) hold Special Events, as defined in Section 2.1(i) below, for which the Licensee may receive reasonable fees.

**1.3** Licensee shall obtain all applicable permits, approvals, and other licenses required by federal, New York State (“State”) and City laws, rules, regulations, and orders, which are or may become necessary to operate the Licensed Premises in accordance with the terms of this License. Whenever any act, consent, approval, or permission is required of the City, Parks, or the Commissioner under this License, the same shall be valid only if it is, in each instance, in writing and signed by the Commissioner or the Commissioner’s duly authorized representative. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon the City, Parks, the Commissioner, or their agents, unless the same is, in each instance, in writing and duly signed by the Commissioner or the Commissioner’s duly authorized representative.

**1.4 No Lease.** It is expressly understood that the City has title to the Licensed Premises and no land, building, space, improvement, or equipment is leased or otherwise conveyed to the Licensee. Licensee has the right to occupy and operate the Licensed Premises during the Term of the License only so long as each and every term and condition in this License is strictly and properly complied with (subject to applicable notice and cure periods) and so long as this License is not terminated by the Commissioner in accordance with this License.

**1.5 Full and Free Access.** Licensee shall, at all times, provide free access to the Licensed Premises to the Commissioner or the Commissioner’s representatives and to other City, State, and federal officials having jurisdiction, for inspection and any other lawful purposes. The Commissioner, Commissioner’s representatives, and such other officials, including the New York City Police Department (“NYPD”) and the New York City Fire Department (“FDNY”), shall have the right to enter and be present at the Licensed Premises, and to observe Licensee’s operations.

## **ARTICLE 2: DEFINITIONS**

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

(a) “Alteration” means (excepting ordinary repair and maintenance):

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

(ii) any work affecting the plumbing, heating, electrical, water, mechanical, ventilating, or other systems of the Licensed Premises.

(b) “City” means the City of New York, its departments, and political subdivisions.

(c) “Capital Improvements” means all construction, reconstruction, or renovation of the Licensed Premises, and shall include architectural and design fees necessary to implement the Capital Improvements. Capital Improvements shall also include all Alterations and Additional Fixed Equipment, as defined in Section 2.1(g) below, 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 also include those activities described in Article 6 herein.

(d) “Comptroller” means the Comptroller of the City of New York.

(e) “Excess Revenue(s)” means, for any Fiscal Year, the positive difference, if any, between Licensee’s Gross Receipts for such Fiscal Year and expenses for such Fiscal Year.

(i) “Fiscal Year” means the period beginning each July 1 during the Term and ending June 30 of the following calendar year.

(f) “Expendable Equipment” means all equipment and property of Licensee, other than Fixed and Additional Fixed Equipment and shall include the following:

- (i) a greenhouse;
- (ii) a high tunnel;
- (iii) three (3) metal shipping storage containers;
- (iv) two (2) open-air wooden sheds;
- (v) a wooden storage shed;
- (vi) a canopy tent;
- (vii) two (2) mobile cooler units; and
- (viii) a chicken coop and run.

(g) “Fixed Equipment” means any property affixed in any way to the Licensed Premises existing at the time the Notice to Proceed is given, whose removal would damage the Licensed Premises.

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

(ii) “Fixed and Additional Fixed Equipment” means Fixed Equipment and Additional Fixed Equipment jointly and severally.

(h) (i) “Gross Receipts” includes, without limitation, all funds or receipts of any kind received by Licensee from or in connection with its operations and programming at the Licensed Premises, without deduction or set-off of any kind, from the sale or provision of goods 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. Gross Receipts shall include any orders placed or made at the Licensed Premises, although delivery of merchandise or services may be made outside, or away from the Licensed Premises, and shall include all receipts of Licensee for services to be rendered or orders taken at the Licensed Premises for services to be rendered by Licensee outside thereof. For example, if Licensee receives a \$1,000 deposit for services to be provided at a later date, the deposit must be reported at the time of payment, regardless of when the service is provided. All sales made or services rendered

from the Licensed Premises shall be construed as made and completed therein even though payment therefor may be made at some other place and although delivery of merchandise sold, or services rendered upon the Licensed Premises may be made other than at the Licensed Premises.

(ii) Gross Receipts also includes all sales made by other operator(s) using the Licensed Premises under a properly authorized sublicense or subcontract agreement, as provided in Article 23 of this License Agreement, provided that Gross Receipts shall also include the 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, unless otherwise approved in writing by Parks.

(iii) Gross Receipts shall include sales made for cash or credit (credit sales shall be included in Gross Receipts as of the date of the sale) regardless of whether the sales are paid or uncollected, it being the distinct intention and agreement of the Parties that all sums received by Licensee shall be included in Gross Receipts, provided however that any gratuities transmitted by Licensee or any sublicensee directly or indirectly to employees shall not be included within Gross Receipts. For purposes of this subsection (iii):

(a) With respect to non-catered food and beverages service, a "Gratuity" shall mean a charge that: (i) is separately stated on the bill or invoice given to Licensee's customer or otherwise proffered by the customer, (ii) is specifically designated as a gratuity, or purports to be a gratuity, and (iii) Licensee receives and pays over in total to its employees (other than management) who are primarily engaged in the serving of food or beverage to guests, patrons or customers, including but not limited to, wait staff, bartenders, captains, bussing personnel and similar staff who are paid a cash wage as a "food service worker" pursuant to NY Labor Law Section 652(4). Licensee shall provide documentation reasonably satisfactory to Parks to prove that Gratuities were paid to employees in addition to their regular salaries and were otherwise in accordance with the foregoing provisions. Such documentation shall be signed and verified by an officer of the Licensee. "Regular Salary" for purposes of this subsection shall mean the set hourly wage for the applicable employee.

(b) With respect to catered events, a "Gratuity" shall be an amount no greater than 20% of the catering food and beverage sales for the event, provided that such Gratuity is a charge that: (i) is separately stated on the bill or invoice given to Licensee's customer, (ii) is specifically designated as a gratuity, or purports to be a gratuity, and (iii) is paid over by Licensee in total to its employees (other than management) who actually provide services at the event, and who are primarily engaged in the serving of food or beverages to guests, patrons or customers, including, but not limited to, wait staff, bartenders, captains, bussing personnel, and similar staff. Licensee shall provide documentation reasonably satisfactory to Parks to prove that Gratuities were paid to employees in addition to their regular salaries, and were otherwise in accordance with the foregoing provisions. "Regular Salary" for purposes of this subsection shall mean the set hourly wage for the applicable employee. Such documentation shall be signed and verified by an officer of the Licensee.

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



(v) Gross Receipts shall also include Licensee's income from short-term facility agreements and sublicense or subcontracting fees and commissions Licensee receives in connection with all services provided by Licensee's subcontractors or sublicensees. Gross Receipts shall further include all fees received by Licensee in connection with Special Events.

(i) "Special Events" means special events as defined in 56 RCNY §1-02, permitted by Parks at the Licensed Premises.

(j) "Year" or "Operating Year" means the period between the Commencement Date (or its anniversary in any year other than Year 1) and the day before the anniversary of such date in the immediately following calendar year.

### **ARTICLE 3: TERM AND TERMINATION**

**3.1** This License shall become effective upon Parks giving the Licensee a written Notice to Proceed following registration with the Comptroller. The Term of the concession shall commence upon the date in the written Notice to Proceed ("Commencement Date") and unless terminated sooner in accordance with this Agreement, shall terminate twenty (20) years from the Commencement Date ("Expiration Date"). The period between the Commencement Date and the Expiration Date shall be referred to as the "Term."

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

**3.3** Parks may terminate this License or any sublicense for cause as follows:

(a) Should Licensee breach or fail to comply with any of the provisions of this License or any federal, State or local law, rule, regulation or order affecting this License or the Licensed Premises with regard to any and all matters, Commissioner shall, in writing, order Licensee to remedy such breach or comply with such provision, law, rule, regulation or order, and in the event that Licensee fails to comply with such written notice or commence, in good faith and with due diligence, efforts to comply with such order within thirty (30) days from the mailing or facsimile transmission thereof, subject to unavoidable delays beyond the reasonable control of Licensee, as determined by the Commissioner, then this License shall immediately terminate. In the event such breach or failure to comply cannot be remedied within such thirty (30) day period due to reasons beyond Licensee's control, as determined by the Commissioner, the cure period shall be extended for such period as may be reasonably necessary in the Commissioner's judgment to cure such breach. If said breach or failure to comply is corrected, and a repeated violation of the same provision, law, rule, regulation or order follows thereafter, Commissioner, by notice in writing, may revoke and terminate this License, such revocation and termination to be immediately effective on the mailing thereof.

(b) The following shall constitute events of default for which this License may be terminated on one (1) days' written notice: the appointment of any receiver of Licensee's assets; the making of a general assignment for the benefit of creditors; the occurrence of any act which operates to deprive Licensee permanently of the rights, powers and privileges necessary for the proper conduct and operation of this License; the levy of any attachment or execution which substantially interferes with

Licensee's operations under this License and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty (60) days.

(c) Nothing contained in paragraphs (a) or (b) above shall be deemed to imply or be construed to represent an exclusive enumeration of circumstances under which Commissioner may terminate this License.

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

**3.5** In the event the Commissioner terminates this License for reasons related to Section 3.3 above, any property of the Licensee on the Licensed Premises may be held and used by the Commissioner 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 the City and without resort to any judicial proceeding by the City. Upon the expiration or sooner termination of this License, the City, in accordance with law, reserves the right to take immediate possession of the Licensed Premises.

**3.7** Licensee shall, upon the expiration or sooner termination of this License, remove all personal possessions from the Licensed Premises and leave the Licensed Premises in as good or better condition as at the Commencement Date, reasonable wear and tear excepted. Licensee acknowledges that any personal property remaining on the Licensed Premises after the expiration or sooner termination of this License is intended by Licensee to be abandoned. Licensee shall remain liable to the City for any damages, including lost revenues and the cost of removal or disposal of property, should Licensee fail to remove all possessions from the Licensed Premises during the time prescribed in this Agreement.

**3.8** If this License is terminated as provided herein, and/or upon the expiration of the License, Parks may, without notice, re-enter and repossess the Licensed Premises using such force for that purpose as may be necessary without being liable to indictment, prosecution, or damages therefor and may dispossess Licensee by summary proceedings or otherwise, without court order or other judicial approval.

**3.9** If this Agreement is terminated as provided in Section 3.3 above, Parks may complete all repair, maintenance and construction work required to be performed by Licensee hereunder and may repair and alter any portion(s) of the Licensed Premises in such manner as Parks may deem necessary or advisable without relieving Licensee of any liability under this Agreement or otherwise affecting any such liability, and/or relicense the Licensed Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer period. Parks shall in no way be responsible or liable for any failure to relicense any portion(s) of the Licensed Premises or for any failure to collect any fees due on any such relicensing, and no such failure to relicense or to collect fees shall operate to relieve Licensee of any liability under this Agreement or to otherwise affect any such liability.

**3.10** No receipt of moneys by Parks from Licensee after the termination of this Agreement, or after the giving of any notice of the termination of this Agreement, shall reinstate, continue, or extend the Term or affect any notice theretofore given to Licensee, or operate as a waiver of Parks' right to recover possession of the Licensed Premises by proper remedy. After the service of notice to terminate this Agreement or the commencement of any suit or summary proceedings or after a final order or judgment for the possession of the Licensed Premises, Parks may demand, receive and collect any 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 Parks, on account of Licensee's liability hereunder.

#### **ARTICLE 4: MAINTENANCE & OPERATION**

**4.1** Licensee, at its sole cost and expense, shall operate and maintain the Licensed Premises as an urban garden, and provide recreational and educational activities, events, and programs to the general public in accordance with the terms herein, and in such manner as the Commissioner shall prescribe, and as permitted by, and in compliance with, all laws, rules, regulations and orders of government agencies having jurisdiction. Licensee will operate, maintain, and deliver program services in accordance with standards of professional quality, and reasonably satisfactory to the Commissioner. Licensee accepts the Licensed Premises "as is," in whatever condition it may be on the date the License is fully executed. Parks makes no representations or warranty of fitness for license purposes. Licensee assumes all risk in the operation of this License.

(a) In accordance with all applicable City, State, and federal laws, rules, regulations, and approvals, the Licensee may sell produce such as plants, vegetables, fruits, herbs, eggs, honey, and other agricultural products only at the Licensed Premises, and solely for the purposes of supporting the maintenance and operation of the Licensed Premises.

(b) All services, items and merchandise and all rates, fees and prices, or changes thereto, to be charged by Licensee for any goods, rights, or services provided pursuant to the operation of this License are subject to prior written approval by Parks, in advance of each Operating Year during the Term of the License, which approval shall not be unreasonably withheld or delayed.

(c) The Licensed Premises shall be open to the general public from 9 AM to 5 PM Tuesdays through Sundays throughout the Year, and Mondays from 9 AM to 5 PM from April 1st through November 30th each Year ("Approved Hours"). Licensee may only operate at the Licensed Premises as set forth herein. All hours of operation are subject to Parks' prior written approval, which approval shall not be unreasonably withheld or delayed. At its sole discretion, but based upon written request from Licensee, Parks may allow changes to Licensee's Approved Hours. If the Commissioner grants the request, Licensee shall continue to be responsible for all other obligations under the Agreement.

(d) Licensee shall, at its sole cost and expense, print, frame and prominently display in a place and manner designated by the Commissioner, the Approved Hours and rates, fees, and prices for programs, activities, and events. Annexed hereto as **Exhibit D** is the **Schedule of Approved Hours and Rates, Fees, and Prices** for the commencement of operations hereunder.

(e) Licensee, at its sole cost and expense, shall secure the services of a competent manager or director and such other employees, agents, volunteers, or contractors acceptable to the Commissioner as may be necessary to ensure the proper maintenance and operation of the Licensed Premises.

(f) For all programs in which Licensee enrolls participants, such as apprenticeships, workshops and demonstrations, Licensee shall keep and maintain records of applicants and participants. Licensee will provide Parks with any enrollment information upon request.

**4.2** Licensee shall comply with all national safety guidelines and federal, State and City laws, rules and regulations related to the operation and maintenance of the Licensed Premises, including, but not limited to, any necessary licenses, permits and approvals from Parks, the New York City Department of Environmental Protection (“DEP”), the New York City Department of Sanitation (“DSNY”), New York City Department of Buildings (“DOB”) and the New York City Department of Health and Mental Hygiene (“DOHMH”). The Licensee shall at all times operate the Licensed Premises in accordance with the provisions of any and all required licenses or permits. Licensee shall, throughout each Operating Year during the Term, take all measures necessary to provide a safe environment for the public at the Licensed Premises.

**4.3** Licensee, at its sole cost and expense, shall obtain, possess, and display prominently at the Licensed Premises all approvals, permits, licenses, and certificates (including amendments thereto) that may be required for the operation and maintenance of the Licensed Premises in accordance with all applicable federal, State, and City laws, rules, and regulations. Licensee shall operate and occupy the Licensed Premises in accordance with all applicable law and shall, at its sole cost and expense, obtain all approvals, licenses, permits and certificates (including amendments thereto) that may be required to operate the Licensed Premises in accordance with applicable law, including any necessary Certificates of Operation, Place of Assembly and Certificate(s) of Occupancy. Licensee shall at all times operate the Licensed Premises in accordance with the provisions of any required licenses or permits. In the event that, at the Commencement Date or at any time during the Term, Licensee does not have a Certificate of Occupancy because one is not legally required, then Licensee shall obtain a “Letter of No Objection” from DOB. Furthermore, in the event that, at the Commencement Date, or at any time during the Term, Licensee does not have a Certificate of Occupancy, where required, and does not have a “Letter of No Objection,” Licensee may conduct its operations in temporary structures that have been approved by Parks. Licensee shall obtain any necessary licenses and permits for such temporary structures before the commencement of operations. However, if in such situations, Licensee nonetheless chooses not to conduct such operations in temporary structures, then such operations shall not take place unless and until Licensee has obtained the necessary certificate(s) of occupancy, if required, or “Letter(s) of No Objection,” to the extent applicable and required by DOB.

**4.4** Pursuant to this License, and subject to the terms and conditions set forth herein, Licensee shall, at its sole cost and expense, operate and maintain the Licensed Premises as follows:

(a) Grow any fruits and vegetables that are available for human consumption using best practices that minimize the likelihood of contact with potentially contaminated soil. This shall be done by growing all such vegetable, herb or fruit bearing plants or trees in raised beds and placing semi-permeable barriers between these areas and surrounding soil. Alternative methods for meeting this requirement are subject to prior written approval by Parks;

(b) Design and install a plant garden and thereafter maintain such garden and all plants, produce, vegetables, fruits, herbs, structures, installations, and equipment contained therein (including, but not limited to, all raised plant beds, planters, tables, benches, sheds, solar panels, rain capture systems, and other Parks-approved structures and ornamental items) in a safe and orderly

condition, and in conformance with all applicable City, State, and federal laws, rules, and regulations;

- (c) Nurture and develop the plants in the Licensed Premises, including watering, fertilizing, pruning, weeding, and harvesting as required;
- (d) Fill each raised bed back to the top with a couple inches of compost and spread a couple inches of new woodchips over the garden paths;
- (e) Keep all seating areas, pathways, and other areas with exposed soil covered in mulch (i.e., wood chips), grass, or another ground cover;
- (f) Operate a Composting Program (as defined in Section 4.5) during Approved Hours.

#### **4.5 Compost Program:**

(a) The Licensee is permitted to operate and maintain a non-regional, local compost program only, which shall directly benefit the Licensed Premises, the local community, and local area parks (“Compost Operations”). Compost Operations shall take place on no larger than 27,000 square feet of the Licensed Premises (“Compost Area”).

(b) Compost material shall consist of residential food and yard waste, and organic waste generated from operations at the Licensed Premises, and through contributions primarily from parks in the Red Hook area, and wood chips from Parks and Greenwood Cemetery (“Compost Material”). Compost Material will be collected, free of charge, at the License Premises only.

(c) Compost Operations shall consist of building windrows using Compost Material, turning windrows, and sifting finished compost. Compost Materials must be processed through manual labor; the use of machinery for Compost Operations is prohibited, unless approved in writing by Parks.

(d) Compost Operations includes the use of the following temporary structures at the Licensed Premises (“Compost Structures”):

- (i) two (2) large wooden sheds
- (ii) one (1) gated storage area
- (iii) one (1) shed for forced aeration system
- (iv) one (1) large tunnel for covering sifted compost and tools
- (v) two (2) large solar panels
- (vi) one (1) shipping container for storing hardware for solar panels

Compost Structures must be maintained in accordance with applicable City, State, and federal laws, rules, and regulations. Licensee is required to obtain a Temporary Certificate of Occupancy for the installation and operation of temporary structures, to the extent applicable and required by DOB.

(e) The Licensee shall register its Composting Operations with appropriate City and State agencies, including, but not limited to DEP and DSNY, and provide Parks with copies of its registrations. The Licensee’s Composting Operations must be in conformance with all applicable City, State, and federal laws, rules, and regulations.

(f) The Composting Area must be maintained meticulously. The Licensee shall not create or permit creation of danger to the neighborhood, whether through inadequate sanitation (including accumulation of garbage), existence of a fire hazard, or any other condition that may cause harm to the Licensed Premises or other persons or property in its vicinity.

(g) The Licensee shall, at its sole cost and expense, provide signage, consistent with the requirements in Article 19 for its Composting Operations, including, but not limited to, the placement of signage related to any hazardous or off-limit areas.

(h) The Licensee is prohibited from selling or distributing finished compost for fees, donation, or services.

(i) The Licensee shall not alter its Composting Operations, including the scope and size of the Composting Area, or install additional Composting Structures without Parks' prior written approval. Alteration of Licensee's Composting Operations without Parks' prior written approval shall be a material breach of this Licensed Agreement, and basis for termination of this License.

**4.6** The Licensee shall not use any pesticides (organic, inorganic, or otherwise) in the course of operating and maintaining the Licensed Premises, except for targeted rat baiting in problem areas. Licensee shall provide pest control services to keep the Licensed Premises in a clean and safe condition. Pest control methods chosen by Licensee shall be in accordance with Parks' rules, all applicable City, State, and federal laws, rules, and regulations, as well as methods acceptable to the New York State Department of Environmental Conservation ("DEC") before implementation. The Licensee shall follow all Integrated Pest Management (IPM) pest control practices. 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 Administrative Code of City of New York, and limit the environmental impact of its pesticide use.

**4.7** Licensee shall, at its own cost and expense, perform, or cause third parties to perform maintenance, and in cooperation with Parks, make repairs to the Premises to the Commissioner's reasonable satisfaction in accordance with the standards set forth herein. Licensee shall perform all such maintenance and repair in a good and workmanlike manner. Licensee shall use its best efforts to achieve compliance with the rating standards for all enumerated categories set forth in the **Parks Inspection Program (PIP) Manual** attached hereto as **Exhibit E** and incorporated herein by reference.

**4.8** Licensee, at its sole cost and expense, shall repair any space within the Licensed Premises, which is damaged by Licensee, its employees, agents, contractors, volunteers, invitees, or members of the public. All such damage shall be immediately reported to Parks. Parks must approve, in writing, any and all necessary repairs prior to commencement of the repair. Licensee shall not be responsible for the structural repair of public sidewalks, retaining walls, and exterior fencing at the Licensed Premises that has not been installed or caused to be installed by Licensee, including the wrought-iron fence, tall chain link fence, and four gates to the Licensed Premises.

**4.9** Licensee, at its sole cost and expense, shall be responsible for all daily maintenance of the Licensed Premises, including, but not limited to, maintaining the Licensed Premises in a safe, clean, and orderly condition, and taking care of all plants, equipment and structures contained therein, including, but not limited to, all fences (to the extent not otherwise covered by Section 4.8 above), raised plant beds, planters, tables, benches, sheds, solar panels, rain capture systems, and other Parks-approved structures and ornamental items. Such maintenance shall also include, but not be limited to:

(a) cleaning and maintaining all walkways, sidewalks, passageways, curbs, and all pavements and structures, and facilities in the Licensed Premises, clean and free from garbage, debris, and other obstructions;

(b) cleaning and maintaining all portable bathrooms in the Licensed Premises;

(c) removing or painting over graffiti as appropriate to the nature of the surface and per Parks' instruction, within forty-eight (48) hours of notice of such graffiti;

(d) cleaning and prevent clogging of drains, sewers and catch basins on the Licensed Premises; and

(e) promptly notifying Parks of any damages to trees at the Licensed Premises, provided however, that the Licensee shall not prune, cut down, replant, or remove any trees from the Licensed Premises, nor undertake any planting or landscaping without Parks' prior written approval.

**4.10** Parks agrees to remove snow and ice from the Licensed Premises. However, in the event that Parks can no longer remove snow and ice from the Licensed Premises, the Licensee shall perform this duty. In performing their duties under this Section, the Parties shall comply with all applicable City, State, and federal laws, rules, and regulations.

**4.11** Licensee shall not cause nor permit accumulation of garbage or debris in the Licensed Premises, nor overgrowth of vegetation or plant material. Licensee shall not commit or cause any waste of or to the Licensed Premises. The orderly creation or use of compost shall not be considered garbage or wasting of the Licensed Premises. Licensee, at its own cost and expense, shall remove all rubbish generated by the operations of this License from the Licensed Premises and adjacent surrounding area. Licensee shall provide easily accessible Parks approved waste and recycling receptacles, which shall be emptied as needed. All waste, garbage, refuse, rubbish, and litter, collected upon the Licensed Premises and along the perimeter of the Licensed Premises, without regard for its source, shall be collected, bagged, and recycled. Parks agrees to remove bagged garbage from the Licensed Premises. However, in the event that Parks can no longer remove bagged garbage from the Licensed Premises, the Licensee shall perform this duty. In performing their duties under this Section, the Parties shall comply with all applicable City, State, and federal laws, rules, and regulations.

**4.12** Licensee must provide Americans with Disabilities Act ("ADA") accessibility throughout the Licensed Premises. The Licensee shall also comply with all City, State, and federal requirements to provide safe and accessible recreational, cultural, and educational opportunities for everyone, including persons with disabilities. Licensee is encouraged to exceed accessibility requirements whenever possible and not simply provide the minimum level required. Such accessibility shall be clearly indicated by signs and included in all of Licensee's advertising.

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

**4.14** Licensee shall periodically inspect the Licensed Premises and shall promptly notify Parks of any known hazardous condition(s) and institute reasonable measures to protect the public from harm, including, but not limited to, the erection of warning signs and temporary barriers. Necessary repairs to remedy such unsafe or emergency condition(s) shall be made by the Licensee or Parks, as the case may be, in accordance with the allocation of responsibility for minor and major repairs otherwise set forth in this Section 4.14. Should Commissioner, in Commissioner's sole judgment, decide that an unsafe or emergency condition exists on the Licensed Premises, Licensee, after receipt

of written notification of such facts from Commissioner, shall have twenty-four (24) hours to correct such unsafe or emergency condition. During this period, the Commissioner may require a partial or complete suspension of use of the affected area. If Licensee believes that such unsafe or emergency condition cannot be corrected within said period of time, the Licensee shall notify the Commissioner in writing and indicate the period within which such condition shall be corrected. The Commissioner, in Commissioner's sole discretion, may then extend such period of time in order to permit Licensee to cure under such terms and conditions as appropriate.

**4.15** (a) Licensee shall immediately notify Parks' personnel of any unusual conditions that may develop in the course of the operation of this License of which Licensee becomes aware, such as but not limited to, injury, death, property damage, theft, fire, flood, casualty, and substantial damage of any character. Licensee shall prepare and provide to Parks reports of major accidents or unusual incidents occurring at the Licensed Premises in a format reasonably acceptable to the Commissioner. Licensee shall immediately notify Parks, in writing, of any claim for injury, death, property damage, or theft, which may be asserted against Licensee with respect to the Licensed Premises. Licensee shall also designate a person to handle all such claims, including all claims for loss or damage including all insured claims for loss or damage pertaining to the operations of the Licensed Premises, and Licensee shall notify Parks in writing as to said person's name and address.

(b) In the absence of an event of emergency, Licensee may, upon Parks' prior written Approval, close the Licensed Premises in whole or in part, as is necessary for maintenance, repair, renovation, or the discharge of the Licensee's responsibilities under this License Agreement.

**4.16** This License may be suspended in full or in part upon written notice from Parks due to circumstances as determined by the Commissioner, including acts of God, future pandemics, epidemics, other states of emergency declared by the City, State or federal government, riots, civil commotion, strikes, fire or other casualty. Such suspension shall be immediately effective upon the mailing, facsimile, or hand delivery thereof. In the event of such notice, Licensee shall cease operations to the extent required by the notice. Licensee may propose and submit for the Commissioner's approval a plan to equitably address the impact of the closure. Parks, the City, and their officials, employees, and agents shall not be liable for damages to Licensee in the event that operations under this License are fully or partially suspended.

**4.17** Licensee shall operate the Licensed Premises in accordance with all applicable FDNY Codes.

**4.18** Notwithstanding anything to the contrary, Parks makes no representations that there is adequate storage space at the Licensed Premises. Licensee shall be responsible, at its sole cost and expense, for obtaining any additional storage space required for operation of the concession granted hereby. The Licensee shall not store any equipment or supplies at the Licensed Premises without the prior written approval of Parks, which shall not be unreasonably withheld. No item shall be placed upon any public space, including the ground adjacent to the Licensed Premises without Parks' prior written approval (which shall not be unreasonably withheld or delayed). Licensee shall secure and store all outdoor equipment, if any, on a nightly basis and anytime its operations at the Licensed Premises are closed.

**4.19** Parks will be responsible for maintaining two (2) light poles at the Licensed Premises. However, in the event that Parks can no longer maintain the two (2) light poles, the Licensee shall



perform this duty. Notwithstanding the above, the Licensee shall, at its sole cost and expense, provide additional safe and environmentally efficient lighting throughout the Licensed Premises, as required. The Licensee shall replace bulbs for such additional lighting within ten (10) days of reported outages.

**4.20** Animals, such as bees and chickens, are allowed to reside on the Licensed Premises only when in conformance with all applicable City and State rules, regulations, and guidelines, including those promulgated by Parks and DOHMH.

**4.21** Any installation of temporary public artworks and murals are subject to the Parks' prior written approval (which shall not be unreasonably withheld or delayed). No permanent structures or murals or other permanent works of art may be built in the Licensed Premises without the prior written approval from Parks, and, where applicable, DOB and/or the New York City Public Design Commission ("PDC").

## **ARTICLE 5: ALTERATIONS**

**5.1** (a) The Licensee may alter the Licensed Premises only in accordance with the requirements of subsection (b) of this Section. Alterations shall become property of the City, at its option, upon their attachment, installation, or affixing.

(b) In order to alter the Licensed Premises, the Licensee must:

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

(ii) ensure that work performed, and Alterations made on the Licensed Premises are undertaken and completed in accordance with submissions approved pursuant to Section 5.1(b)(i), in a good and workmanlike manner, and within a reasonable time; and

(iii) notify the Commissioner of completion of, and making final payment for, any Alteration within ten (10) days after the occurrence of said completion or final payment.

(c) The Commissioner may, in her discretion and upon prior written notice to Licensee, make repairs, alterations, decorations, additions or improvements to the Licensed Premises at the City's expense, but nothing herein shall be deemed to obligate or require the Commissioner to make any repairs, Alterations, decorations, additions, or improvements, nor shall this provision in any way affect or impair Licensee's obligation herein in any respect.

## **ARTICLE 6: CAPITAL IMPROVEMENTS**

**6.1** The City has final authority over all capital projects and programs undertaken at the Licensed Premises, and the Licensee has final authority over deciding the capital projects and programs for which it will raise money from private donors and/or expend its own funds.

**6.2** Consistent with the notion of a public-private partnership and in an effort to efficiently allocate applicable resources, the Licensee and Parks shall annually coordinate the preparation of operating, expense, fundraising, and capital budgets, including any amendments, for the Licensed Premises. Additionally, the Licensee and Parks shall review and consult with each other concerning operating assumptions, major fundraising projects, budget allocations, maintenance, operation, program priorities, requests for proposals, or expressions of interest.

**6.3** The Licensee will regularly update Parks on any potential capital projects the Licensee contemplates advancing, including, but not limited to, capital projects stemming from any master plan. Parks will in good faith work with the Licensee in order to seek City capital support for capital projects that both Parties have approved.

**6.4** If the Licensee seeks to pursue a capital project within the Licensed Premises, Licensee shall, in writing, request the written approval of Parks and obtain the necessary permits as well as any additional City approvals, permits, and authorizations, and shall comply with such other processes that may be necessary prior to the development and implementation of such project. Parks shall respond to such a request thirty (30) days after either receipt thereof or receipt of any additional information requested by Parks as necessary to make a decision. Licensee shall coordinate all activities related to such project with Parks.

**6.5** Subject to all legal requirements including but not limited to written approval of Parks and the New York City Office of Management and Budget (“OMB”) and in compliance with all applicable prevailing wage requirements, the Licensee may enter into contracts for approved Parks capital projects and may supplement Parks and/or other public capital funds with Licensee funds for the development of such approved projects.

**6.6** If Parks intends to pursue a capital project within the Licensed Premises, Parks will, within a reasonable period of time, review and consult with Licensee and include Licensee in the scoping of such capital project, including the location, nature and development thereof and its impact on the Licensed Premises. Licensee shall be given a reasonable period of time to raise any concerns with Parks in connection with any such proposed capital project and Parks shall use its reasonable best efforts to address such concerns.

**6.7** To guarantee prompt payment of moneys due to a contractor or her or his subcontractors and to all persons furnishing labor or materials to the contractor or her or his subcontractors in the prosecution of any Capital Improvement Project with an estimated cost exceeding two hundred fifty thousand dollars (\$250,000), Licensee shall post or cause to be posted a payment bond or other form of undertaking approved by Parks in the amount of one hundred percent (100%) of the cost of such Capital Improvement Project before commencing such work. Such bond or other undertaking shall be in a form acceptable to Parks. For purposes of this provision, a “Capital Improvement Project” shall mean a set of Capital Improvements that are reasonably related in time and purpose as determined by Parks in its sole discretion.

## **ARTICLE 7: FIXED AND EXPENDABLE EQUIPMENT**

**7.1** Licensee shall, at its sole cost and expense and to the reasonable satisfaction of the Commissioner, acquire, provide, replace, or repair, install or affix, if necessary, all equipment and materials necessary for the successful operation of this License, and put, keep, repair, preserve and maintain in good order all equipment found on, placed in, installed in or affixed to the Licensed Premises. Licensee shall be responsible for the regular maintenance and repair of Fixed and Additional Fixed Equipment on the Licensed Premises and for keeping such Fixed and Additional Fixed Equipment in good operating condition, normal wear and tear excepted.

**7.2** At its option, the City has title to all Fixed Equipment on the Premises as of the Commencement Date on the Notice to Proceed. Title to any Additional Fixed Equipment and to all construction, renovation, or improvements made to the Licensed Premises shall vest in and belong to the City at the City's option, which option may be exercised at any time after the substantial completion of the affixing of said equipment or the substantial completion of such construction, renovation, or improvement. To the extent the City chooses not to exercise such option, it shall, at the termination or expiration of this License, be the responsibility of Licensee, at its sole cost and expense and to the satisfaction of the Commissioner, be responsible for removing such equipment and restoring the Licensed Premises to Parks in a condition as good as or better than at the commencement of the Term.

**7.3** Licensee shall supply at its own cost and expense all Expendable Equipment required for the proper operation of this License, and repair or replace same at its own cost and expense when reasonably requested by Commissioner. Licensee must acquire and use for the purpose intended any Expendable Equipment, which the Commissioner reasonably determines, is necessary to the operation of this License.

**7.4** Title to all Expendable Equipment obtained by Licensee shall remain with Licensee, and Licensee shall remove such equipment at the termination or expiration of this License. In the event that such equipment remains in the Licensed Premises following such termination or expiration, the Commissioner may treat such property as abandoned and charge all costs and expenses incurred in the removal thereof to Licensee.

**7.5** Licensee acknowledges that it is acquiring this License to use the Licensed Premises and Fixed Equipment thereon solely in reliance on its own investigation, that no representations, warranties, or statements have been made by the City concerning the fitness thereof, and that by taking possession of the Licensed Premises and Fixed Equipment, Licensee accepts them in their present condition "as is."

**7.6** The equipment to be removed by Licensee pursuant to this Agreement shall be removed from the Licensed Premises in such a way as shall cause no damage to the Licensed Premises, ordinary wear and tear excepted. Notwithstanding its vacating and surrender of the Licensed Premises, Licensee shall remain liable to City for any damage it may have caused to the Licensed Premises.

## **ARTICLE 8: UTILITIES**

**8.1** Parks makes no representations regarding the adequacy of utilities currently in place at the Licensed Premises. Parks will be responsible for paying utility costs for gas, electricity and all water and sewer charges that DEP assesses for water use from hydrants and/or from on-site water installation incurred on or in connection with the uses of the Licensed Premises, and will maintain all meters in good repair during the Term. However, in the event that Parks can no longer pay for utility costs for gas, electricity, and all water and sewer charges at the Licensed Premises, the Licensee shall perform this duty. Except for the utilities provided by Parks, Licensee shall, at its sole cost and expense, directly pay for all other utility costs associated with the operations of the Licensed Premises, including but not limited to the installation, use, and maintenance of telephones and internet service at the Licensed Premises during the Term. Licensee shall not undertake the installation of any new utility lines without first having obtained all necessary permits and approvals from Parks and such other federal, State, or City agencies or entities as have jurisdiction over the

operation of the Licensed Premises. Licensee shall adhere to all DEP directives and restrictions regarding drought and water conservation issues during Term. Licensee is strictly prohibited from unauthorized use of utilities used, operated, or owned by the City, without the prior written approval of Parks. In performing duties under this Section, the Parties shall comply with all applicable City, State, and federal laws, rules, and regulations.

## **ARTICLE 9: PERSONNEL**

**9.1** All experts, consultants, volunteers, and employees of the Licensee who are employed by Licensee to perform work under this License are neither employees of the City nor under contract to the City, and Licensee alone is responsible for their work, direction, compensation, and personal conduct while engaged under this License. Nothing in this License shall impose any liability or duty on the City for acts, omissions, liabilities or obligations of Licensee or any person, firm, company, agency, association, corporation, or organization engaged by Licensee as expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent or for taxes of any nature including but not limited to unemployment insurance, workers' compensation, disability benefits and social security.

**9.2** Licensee will notify Parks in writing within ten (10) days after any appointments to or resignations from any officer, including, but not limited to, the position(s) of any Executive Officer, including the President and Vice President of the Licensee. In addition, Licensee will notify Parks in writing, within ten (10) days after the occurrence, of any change in the individuals who serve as directors and officers of Licensee's Board of Directors.

**9.3 Background Checks.** For purposes of Sections 9.3 and 9.4, the word "personnel" means each employee and volunteer whose duties and responsibilities relate primarily to working with children or in close proximity to children. Licensee will be responsible for the recruitment and screening of appropriate personnel and verification of credentials, references, and suitability for working with children. Licensee agrees to comply with all Parks' written guidelines and procedures concerning the screening and employment of personnel including:

(a) Substantiating credentials, including, but not limited to, School-Age Child Care (SACC) Certification in accordance with the New York Codes, Rules, and Regulations ("NYCRR") under 18 NYCRR 414;

(b) Conducting reference checks;

(c) Conducting criminal background checks as outlined in the **Background Checks Rider**, annexed hereto as **Exhibit F**

(d) Licensee agrees not to hire or retain any personnel who refuse to:

- (i) Provide the names of references;
- (ii) Provide documentation of credentials; and
- (iii) Provide other requested information, which may bear on the applicant's fitness to work with or in close proximity with children.

(e) Licensee agrees not to hire or retain any personnel:

(i) To the extent disclosed by a background check consistent with § 296 of the New York State Executive Law and § 8-107 of the Administrative Code of the City of New York, whose criminal convictions record directly bears on their fitness to work with or in close proximity with children, or whose employment would involve an unreasonable risk to the safety or welfare of children, subject to and consistent with Article 23-A of the New York State Correction Law; and

(ii) Who has been the subject of an indicated child abuse and maltreatment report on file with the State Central Registry, or the subject of an ongoing investigation concerning a child abuse and maltreatment report on file with this Registry.

**9.4** 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.

**9.5** As a Licensee of the City, the Licensee must comply with the Earned Sick Time Act, also known as the **Paid Sick Leave Agreement Rider** attached in **Exhibit G**.

## **ARTICLE 10: PROGRAMMING AND PERMITS**

### **10.1 Programming.**

(a) Licensee is solely responsible for the coordination of Licensee's public and/or private events.

(b) **Free Programming.** Subject to applicable laws, rules and regulations and the Commissioner's supervision and prior written approval (which shall not be unreasonably withheld or delayed), the Licensee, as part of its mission, during Approved Hours (as defined above in Section 4.1) shall provide services, recreational, and educational programs at the Licensed Premises to the general public free of charge, in areas such as education, gardening, and other areas as may be approved in writing by the Commissioner. These services or programs cannot be revenue generating, but where appropriate, the Licensee may receive donations to offset the costs of such services and programming.

(i) Licensee shall provide for the benefit of the general public free of charge, the various programs set forth in **Exhibit B** during each Operating Year. Licensee is solely responsible for the coordination of Licensee's programming.

(c) **Fee-Based Programming.** Licensee may offer Fee-Based Programming to offset the cost of providing Free Programming. Licensee shall offer the Fee-Based Programs set forth in **Exhibit C**.

(i) Licensee may, upon the Commissioner's written approval, amend the programs, previously approved schedule of programs and fees, and may impose other reasonable fees which shall be consistent with the purposes of this Agreement.

(d) **Special Events.** All Special Events on any portion of the Licensed Premises must be approved in advance in writing by the Commissioner or the Commissioner's designee, which approval shall not be unreasonably withheld or delayed. Licensee shall give the Commissioner at least thirty (30) days (or such lesser period as approved by Parks) advance written notice of any tentatively scheduled Special Event. Special Events may not restrict public access to the Licensed Premises, unless otherwise approved in accordance with this Section 10.1(d).

(e) Licensee's right to provide such services and programming and to retain revenue through fees and other charges as described herein shall be subject to all City authorization, approvals, permits and compliance with other processes, which may be necessary but shall not be unreasonably withheld or delayed.

(f) Licensee must account for any funds from services and programming at the Licensed Premises under Article 12 (Revenues & Accounts) of this Agreement. Licensee must account for any funds from services, any donations, grants, proceeds, and funds collected from programming, services, and events in compliance with Article 12 (Revenues & Accounts) of this License Agreement. All donations, proceeds, grants, and funds shall be used solely for the operation, maintenance, use, and repair of the Licensed Premises.

(g) All aspects of programming at the Licensed Premises must comply with Parks' rules and regulations, including, but not limited to obtaining ancillary permits where applicable. Licensee is responsible for securing all ancillary permits required by outside agency regulations, including but not limited to NYPD Amplified Sound permits, DOB structural or temporary place of assembly permits, DOHMH permits and FDNY permits. The Licensee shall, at all times, operate the Licensed Premises in accordance with the provisions of any and all required licenses or permits.

(h) Any sound or music equipment shall be operated in accordance with the Rules of the City of New York, Title 56 RCNY §1-05(d), the Administrative Code of the City of New York, Title 24, Chapter 2, and only at times and at a sound level acceptable to the Commissioner. Licensee must make every effort to ensure that any and all sounds and/or music from its operation of the Licensed Premises is in such a manner so as to avoid or minimize disturbance or discomfort to the surrounding community. Amplified sound and music must not exceed the decibel level allowed by City noise regulations.

(i) Licensee shall be responsible for payment of all fees or royalties to ASCAP, BMI or such other entities as may be required for any music or music programming during its programming.

(j) Licensee shall provide, at its sole cost and expense, all staff, equipment, furniture, materials and supplies necessary for the administration and operation of its programs and events at the Licensed Premises.

(k) **Fundraising.** Subject to the Commissioner's, or her/his designees' prior written approval (which shall not be unreasonably withheld or delayed), Licensee shall be permitted to use portions of the Licensed Premises for a maximum of four (4) fundraising events per Year that are reasonably expected to attract more than twenty (20) attendees, or which will result in the closing of any portion of the Licensed Premises to the public during regular hours of operation. Such fundraising events will be limited to traditional fundraising functions, such as fundraising dinners, or fundraising cocktail parties. The Licensee shall be permitted to serve alcohol at such fundraising events with prior written approval from Parks and the appropriate license(s) from the State Liquor Authority (SLA) and all other agencies having jurisdiction. Alcoholic beverages may only be served in the immediate vicinity of the Licensed Premises and/or in a cordoned-off area if exterior seating is proposed and must be consumed on the Licensed Premises within designated areas. Licensee shall use its best efforts to provide Parks with no less than sixty (60) days (or such lesser period as may be acceptable to Parks) prior written notice of any such activities. Proceeds from such fundraisers will be used solely to benefit the Licensed Premises, or such other uses as Parks may approve.

(l) Licensee must account for any funds from fundraising pursuant to Article 12 of this Agreement.

## **10.2 Permits – Licensee.**

(a) Licensee must obtain a Parks' permit for any event or activity:

(i) where attendance will be over twenty (20) people (except activities in accordance with Licensee's normal day-to-day programming set forth in **Exhibits B and C**), or

(ii) constituting Special Events, including, without limitation, fundraising benefits festivals, gala events and Special Events having program or event sponsor(s). The Licensee shall use reasonable efforts to provide Parks with no less than thirty (30) days (or lesser period as shall be acceptable to Parks) prior written notice of any proposed event.

(b) Licensee shall use reasonable efforts to provide Parks with no less than sixty (60) days (or lesser period as shall be acceptable to Parks) prior written notice of any proposed services and programming where the Licensee derives and retains revenues through fees or other charges (excluding Licensee's normal day-to-day programming set forth in **Exhibit C**).

(c) Notwithstanding anything herein to the contrary, Licensee is permitted to park one vehicle at the Licensed Premises.

## **ARTICLE 11: INTELLECTUAL PROPERTY**

**11.1** (a) Except as described in subparagraph (b) below, all intellectual property rights in the Licensed Premises' name, signage, structures, historical location, monuments, or other items or material that depict, are sited in, or refer to the Licensed Premises and any other names, trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property (i) developed or designed by the City or its employees, contractors, or others on the City's behalf, or (ii) in the case of trademarks, used by the City in commerce unless Licensee is a prior user of any trademark in commerce are the property of the City ("City IP"). To the extent that Licensee uses any City IP in the course of performing its non-profit activities ("Licensee Activities"), Licensee shall obtain Parks' prior written permission and approval for this use. In the event that Parks grants permission for the Licensee to use the City IP for non-commercial purposes, then Parks grants and will grant a non-exclusive, royalty-free, worldwide, non-transferrable and non-sublicensable license to Licensee to make non-commercial use of, display and maintain City IP for the Licensee's Activities in support of the Licensed Premises. To the extent that Parks' prior permission and approval had already been obtained to use City IP, it will be continued as previously agreed upon, subject to the use and monetary restrictions contained in this subparagraph (a).

(b) Any and all trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property rights that Licensee has or acquires that meet the following requirements ("Licensee Specific IP") are the property of Licensee: such intellectual property (i) was created by or on Licensee's behalf, its employees, contractors, or others, other than at the City or Parks' specific direction, and (ii) includes no City IP (as defined in subparagraph (a) above) unless Parks grants prior written permission and approval for the use of City IP for use within Licensee's Specific IP. The Licensee Specific IP shall be used exclusively in connection with Licensee's Activities, as shall Licensee's ability to use any City IP that is incorporated into Licensee Specific IP with the City's permission. Any revenue that Licensee derives from the use, licensing, or other exploitation of Licensee Specific IP shall be used during the Term of this Agreement exclusively in connection with Licensee Activities, but this restriction shall terminate on the expiration or termination of this Agreement. Licensee in this Agreement grants a non-exclusive, royalty-free, worldwide, non-transferrable and non-sublicensable license to the City and Parks to make use of, display and maintain Licensee Specific IP. Parks shall make no commercial use of Licensee Specific IP (e.g., merchandise sales, licensing or other use intended to, or which does generate revenue) without the Licensee's prior written approval.

(c) All goodwill associated with the City IP, or the Licensee Specific IP shall be the exclusive property of its respective owner and neither party shall take any actions inconsistent with such rights. Each party recognizes and acknowledges that the City IP and Licensee Specific IP are the exclusive property of the other and they communicate in the public, worldwide, a reputation for high standards of quality and services, which reputation and goodwill have been and continue to be unique to the owner. Each party further recognizes and acknowledges that all trademarks, service marks, trade names and service names included in the City IP and Licensee Specific IP have acquired secondary meaning in the mind of the public. Neither the City IP, nor the Licensee Specific IP shall be used in connection with any illegal, illicit, or immoral purpose or activity, or in any manner, which could be inconsistent with, or damaging to the owner's name and reputation. Either party shall have the right to terminate this Agreement, upon written notice if any part of the City IP or Licensee Specific IP is used by the other party in connection with any illegal, illicit, or immoral purpose or activity. If any of the City IP or Licensee Specific IP is used by the other party in any way which, in the reasonable judgment of the owner, is inconsistent with or damaging to the owner's name or reputation, the owner shall notify the other party in writing and, before exercising the right of termination provided for in this subparagraph (c), shall provide three (3) business days following receipt of such notice to the other party to immediately cease and halt all such uses.

(d) During the Term, each party may make only the uses described in subparagraphs (a) and (b) above. Each party acknowledges and agrees that all use of and goodwill in the City IP or Licensee Specific IP shall inure to the benefit of its owner. Neither the City, nor Licensee shall acquire any rights in the Licensee Specific IP or City IP, respectively, by virtue of any use it makes of it or any portion of it.

(e) The Parties will not use the name or logos of the other party, its subsidiaries or affiliates in any sales or marketing publication or advertisement without prior full disclosure of such use and the written consent of the other party, such consent not to be unreasonably withheld or delayed.

(f) All provisions of this Article 11 will survive any termination of this Agreement except as otherwise set forth in this Article.

## **ARTICLE 12: REVENUES & ACCOUNTS**

**12.1** (a) Licensee shall maintain, and shall cause any sublicensee to maintain, a revenue control system to ensure the accurate and complete recording of all revenues, in a form and manner acceptable to the City. This revenue control system must maintain detailed sales information from each sales transaction. Specifically, sales information must be recorded electronically, via a computerized point-of-sale system, and must include, but is not limited to, details on each sales transaction, the item(s) sold, time, date of sale and price of the item sold. Regarding Licensee's Special Events, Licensee must also document each of Licensee's Special Events via signed sequentially pre-numbered contracts that capture event information, including the time and date of the event, the number of attendees and required payment. Licensee shall also establish a dedicated bank account for all deposits related to this concession's generated revenue. Additionally, all books and records maintained pursuant to this License Agreement shall be conveniently segregated from other business matters of Licensee and shall include, but not be limited to: all federal, state and local tax returns and schedules of 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, and sales books; and duplicate bank deposit slips and bank statements. All accounting and internal control related records shall be maintained for a minimum of ten (10) years after the date of creation of the record.



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

(c) Licensee, or any sublicensee, shall open and/or continue to maintain an account or sub-account, accounted for separately and apart from all other funds, at a bank located within the City of New York, insured by the Federal Deposit Insurance Corporation ("Special Account"). There shall be deposited in the Special Account all revenues ("Operating Revenues") collected in connection with or resulting from the rights and privileges granted to Licensee hereunder, including, but not limited to, any funds collected in connection with Fee-Based Programming. Licensee may withdraw Operating Revenues from the Special Account to expend for ordinary and necessary expenses directly attributable to Licensee's operation of the Licensed Premises, including programming expenses and operating, managing, maintaining, and repairing the Licensed Premises consistent with this License. No withdrawals shall be made from the Special Account other than as provided for in this License. The administration of the Special Account is subject to the inspection and audit record keeping provisions set out in Articles 13, 14, and 15 herein. Operating Revenues do not include funds collected or received by Licensee (such as grants, donations, bequests, and contributions) other than in the course of Licensee's use or operation of the Licensed Premises. Licensee's use of such other revenues is governed by applicable law.

### **ARTICLE 13: FINANCIAL RECORDS AND REPORTS**

**13.1** (a) Licensee will use all Gross Receipts, including Excess Revenue (as defined in Section 2.1(f)), exclusively to provide for the management, maintenance, operation, and programming at the License Premises.

(b) On or before the thirtieth (30th) day following the end of each quarter of each Operating Year, Licensee, or any sublicensee, shall submit to Parks, in a form satisfactory to Parks, a statement of Gross Receipts, signed and verified by an officer of the Licensee, reporting any Gross Receipts generated from operations under this License Agreement. Licensee shall indicate on its statement of Gross Receipts whether or not these amounts are inclusive of sales tax collected.

(c) Licensee, or any sublicensee, is solely responsible for the payment of all federal, State, and local taxes applicable to the operation of the Licensed Premises. With the exception of federal, State and City sales tax, no such applicable taxes, including but not limited to the New York City Commercial Rent Tax, may be deducted from Gross Receipts.

**13.2** On or before the sixtieth (60th) day following the end of each Operating Year, Licensee, and any sublicensee, shall submit to Parks, in a form satisfactory to Parks, a detailed income and expense statement pertaining to operations under this License for the preceding period of July 1st to June 30th, signed and verified by an officer of Licensee.

**13.3** Licensee shall account for any Excess Revenue for any Fiscal Year and any disbursements therefrom in a report to Parks in a clearly identifiable manner. Any Excess Revenue shall be used exclusively to pay: (i) accumulated expenses incurred in the prior Fiscal Year that exceeded Gross Receipts for that Fiscal Year; or (ii) expenses incurred in any subsequent Fiscal Year, subject to submission to Parks of the report described in this Section.

**13.4 (a) Financial Statement:** Licensee shall furnish to the Commissioner or Commissioner's designee an annual report in conformance with GAAP and its tax return for each Year during the Term, including but not limited, to the Licensee's 990 filings. Such statements shall include the salaries of all paid staff. Such statements shall, if they involve amounts over ten thousand dollars (\$10,000.00), be prepared by an independent Certified Public Accountant retained at the cost and expense of the Licensee. Such annual statement shall be submitted to the Commissioner or Commissioner's designee no later than ninety (90) days after the close of each Year of the Term of this License Agreement.

(b) Licensee shall furnish to Parks a copy of Licensee's Form 990, as filed with the Internal Revenue Service. Such Form 990 shall be submitted to the Commissioner no later than the final filing deadline as mandated by the Internal Revenue Service during the Term of this License Agreement.

**13.5 Monthly Operations Report:** The Licensee shall furnish to Parks a monthly report to be submitted within seven (7) days of the previous month's end. The report shall include, but not be limited to, operations activities (repairs, maintenance, etc.), capital projects and alterations, upcoming public programs and events, future/ongoing initiatives, personnel, incidents/unusual activity, inquiries or publications from press and media, and other relevant information that should be reported to Parks.

**13.6 LL28 Report:** Pursuant to the amendment to Local Law 28 of 2008 as codified in the Administrative Code Title 18 § 18-134, the form of which is in **Exhibit H**, the Licensee shall provide to Parks, in a form acceptable to Parks, data concerning any funds that the Licensee has expended at the Premises for the preceding period of July 1st to June 30th no later than October 31st each year. All information furnished to Parks shall be accurate, and correct in all material respects and sufficient to give Parks a true and accurate picture of the funds expended by the Licensee at the Premises.

**13.7 Annual Operating Budget and Operating Plan:** Prior to the start of each Year, Licensee will submit to the Commissioner or Commissioner's designee for review and written approval, its park operations budget and capital budget, which shall include all costs associated with the Licensed Premises' maintenance and operations. The Licensee shall describe in reasonable detail the amounts proposed to be allocated, but not limited, to general maintenance, public art, public programs, concessions, and communications, including salaries and benefits of any employee primarily engaged in those activities.

**13.8 Annual Meeting with Parks:** Licensee and Parks shall conduct an annual budget and operations coordination meeting before the start of Licensee's Year to review the Licensee's "Annual Operating Budget and Operating Plan".

**13.9 Board Meetings:** Licensee covenants and agrees that it shall maintain its corporate existence under the laws of the State of New York as a not-for-profit corporation and shall maintain its tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. Licensee will provide notice to the Commissioner or Commissioner's designee of all meetings, hearings and proceedings of Licensee's Board of Directors, and will make available for consultation any of its officers and employees whose work relates to the performance of this License.

#### **ARTICLE 14: RIGHT TO AUDIT**

**14.1** Parks, the Comptroller and other duly authorized representatives of the City shall have the right to examine or audit the records, books of account and data of the Licensee for the purpose of examination, audit, review or any purpose they deem necessary. Licensee shall also permit the inspection by Parks, the Comptroller, or other duly authorized representatives of the City of any equipment used by Licensee, including, but not limited to, point of sale systems, and all reports or data generated from or by the point-of-sale system, cash registers and recording machines, and all reports or data generated from or by the equipment. Licensee shall cooperate fully and assist Parks, the Comptroller, or any other duly authorized representative of the City in any examination or audit thereof. In the event that the Licensee's books and records, including supporting documentation, are situated at a location fifty (50) miles or more from the City, the records must be brought to the City for examination and audit, or Licensee must pay the food, board, and travel costs incidental to two (2) auditors conducting such examination or audit at said location.

**14.2** Licensee's failure or refusal to permit Parks, the Comptroller or any other duly authorized City representative 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 Parks to terminate this License following the giving of notice and expiration of applicable cure periods pursuant to Section 3.3(a) hereof.

**14.3** Notwithstanding the foregoing, the Parties acknowledge and agree that the Comptroller's powers, duties, and obligations under the New York City Charter shall not be diminished, compromised, or abridged in any way.

#### **ARTICLE 15: RETENTION OF RECORDS**

**15.1** Licensee agrees to retain all books, records, and other documents relevant to each Year covered by this Agreement for ten (10) years after the termination of this Agreement. City, State, and federal auditors shall have full access to and the right to examine any of said materials during this period, upon reasonable prior notice.

#### **ARTICLE 16: INSPECTIONS AND AUDITS**

**16.1** Licensee will make available, upon reasonable prior notice, at its principal place of business, for audit, inspection or removal of copies by Parks, the Comptroller, and a Parks-authorized independent auditor, Licensee's books and records relating to the performance of this Agreement, including, but not limited to, the following:

- (a) Revenue and expenditures, annual budget, bi-weekly payroll recap, fringe benefits, books, accounts, canceled checks, and all other fiscal records;
- (b) Staff and salary roster, including salary changes and adjustments;
- (c) Internal and external audits completed within the last three (3) years;
- (d) Minutes of meetings of the Board of Directors;
- (e) Programs, research, and other reports and publications in connection with Licensee's responsibilities at the Licensed Premises pursuant to this Agreement; and

(f) Registration and attendance records of Licensee's sponsored programs and any other matters relating to the performance of and compliance with this Agreement, or with any laws or regulations governing the Licensee's conduct under this Agreement.

**16.2** Licensee will establish and maintain accurate records and accounts, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this License and any revenue generated pursuant to this Agreement. Such records and accounts shall conform to generally accepted accounting principles ("GAAP").

**16.3** Licensee shall use accounting and internal control methods and procedures and keep additional books and records as may be reasonably prescribed by Parks or the Comptroller. Parks or the Comptroller shall have the right to examine Licensee's record keeping procedures before the commencement of the Term, and at any other subsequent time to assure that the procedures are adequate to reveal the true, correct and entire business conducted by Licensee.

**16.4** Licensee's failure or refusal to furnish any of the statements required to be furnished under this Section within thirty (30) days after its due date, the failure or refusal to maintain adequate internal controls or to keep any of the records required by this Paragraph after receiving Parks or the Comptroller's prior written notice, or the existence of any unexplained discrepancy, as disclosed by audit conducted by Parks or the Comptroller, the results of which are provided by written notice to Licensee in each instance, shall be presumed to be a failure to substantially comply with the terms and conditions of this License and a default under this Agreement, which shall entitle Parks, at its option, to terminate this License.

**16.5** Licensee shall make available to the Comptroller, and Parks' auditor, on demand, all books, records, documents, and correspondence pertaining to the License Agreement, for the purpose of examination, audit, review, or any purpose deemed necessary by the Comptroller and Parks; provided, however, that Licensee shall not be obligated to make available for examination or copying the identities of Licensee's donors.

**16.6** Notwithstanding the foregoing, the Parties acknowledge and agree that the Comptroller's powers, duties and obligations under the New York City Charter shall not be diminished, compromised or abridged in any way.

## **ARTICLE 17: PROHIBITIONS ON USE**

**17.1 Nuisance and Waste.** Licensee shall not create or suffer to be created any nuisance or danger to the public safety or public property in, on or about the Premises and shall not commit or cause any waste, damage, disfigurement, or injury to the Premises.

### **17.2 Smoking, Alcohol, Firearms, Packaging**

(a) No drugs or alcohol may be grown, produced, used, consumed, stored, sold, or distributed at the Licensed Premises. Notwithstanding the foregoing, alcohol is permitted at the Licensed Premises pursuant to Sections 10.1(k) and 17.2(c) of this License Agreement, and/or with prior written approval from Parks.

(b) Smoking of any tobacco product, non-tobacco smoking product, use of electronic cigarettes, and the presence of firearms are strictly prohibited at the Licensed Premises. Licensee shall adhere to and enforce this policy.

(c) Service of alcohol at the Licensed Premises is strictly prohibited without Parks' prior written approval (which shall not be unreasonably withheld or delayed) and the appropriate license(s) from the State Liquor Authority (SLA) and all other agencies having jurisdiction, as applicable. Licensee must make all efforts to keep alcohol consumption discrete.

(d) Licensee shall not use, in its operations, any polystyrene packaging or food containers. Additionally, Licensee is prohibited from selling any beverages in glass bottles. All beverages must be in non-glass, shatterproof containers, except when table service or catered events are approved by Parks. Licensee shall not, in its operations, sell single-use rigid plastic bottles containing a beverage with a capacity of twenty-one (21) fluid ounces or less. Plastic bottle alternatives, such as aluminum or boxed containers, are permitted.

**17.3 No Combustibles and Inflammables.** Except for properly stored fuels in accordance with FDNY regulations, such as gasoline, butane, propane, or other properly stored solvents used for operation of farm equipment such as trimmers, mowers, and tillers, as well as for DOHMH-approved cooking equipment for public workshops and educational demonstrations and/or other equipment necessary for the operation of the Licensed Premises for Licensee's approved programming, Licensee shall not use or permit the storage of any kerosene, illuminating oils, candles, oil lamps, turpentine, benzene, naphtha, or other similar substances or explosives of any kind or any other substance or thing prohibited in the standard policies of fire insurance companies in the State of New York

**17.4** Licensee shall adhere to and enforce the prohibitions contained in this Article 17.

## **ARTICLE 18: SECURITY**

**18.1** Pursuant to a plan approved in writing by Parks, Licensee shall, at its sole cost and expense, be responsible for all security for the Licensed Premises year-round. Licensee shall be responsible for providing or causing there to be provided appropriate security for any Special Events or activities undertaken pursuant to this License. Licensee, at its own expense, may install locks, door controls, security cameras, intercom system and/or alarm systems for the Licensed Premises provided that all keys and/or codes for such locks and systems are provided to Parks.

**18.2** The City shall not be responsible for any loss or damage to any property of Licensee or any other person that is used or stored at the Licensed Premises.

**18.3** Licensee shall be responsible for securing all entrances and exits at times when the Licensed Premises is not open to the public.

## **ARTICLE 19: SIGNAGE**

**19.1** The design and placement of all signage, including signage which includes Licensee's name, trade name(s) and/or logos, is subject to Parks' prior written approval.

**19.2** Licensee shall display signs needed to guide and inform the public as to the name, location, purpose, hours of operation, and any related fees for the use of the Licensed Premises. Signs shall be maintained in good condition and repair and shall also include the Parks' logo following the design guidelines set by Parks, unless Parks otherwise approves in writing, and may indicate that the Licensee in cooperation with Parks maintains the Licensed Premises through a License Agreement.

**19.3** Licensee at its sole cost and expense shall post throughout the Licensed Premises such signs as may be necessary to direct patrons to its services and facilities. The signs shall include the necessary wording and arrows to appropriately direct patrons. Licensee shall obtain necessary approvals or permits from any governmental agency having jurisdiction over any nearby highways, streets, or other specified location contemplated for the placement of any signs off-site of the Licensed Premises.

**19.4** Licensee shall maintain all graphics in a first-class condition, and promptly clean all vandalized or damaged signs or replace such vandalized or damaged signs with new signs that match other installed signs. An overall signage plan for the Licensed Premises is subject to the Commissioner or Commissioner's designee's written approval. Signage at the entrances will acknowledge Parks, and elsewhere where mutually agreed by the Licensee and the Commissioner.

**19.5** Any and all signage is subject to Parks' prior written approval, and subject, as required, to approval by DOB and PDC. Signage shall comply with ADA standards. The design, placement, content of all signage, including signage which includes Licensee's name, trade name(s) and/or logo(s), as well as the amount of signage placed and/or installed is subject to Parks' prior written approval.

## **ARTICLE 20: APPROVALS**

**20.1** Licensee is solely responsible for obtaining all government approvals, permits and licenses required by federal, State and City laws, regulations, rules, and orders to fulfill this License. Parks shall provide Licensee with reasonable cooperation in obtaining the necessary approvals, permits, and licenses.

**20.2** Whenever any act, consent, approval, or permission is required of the City, Parks, or the Commissioner under this License, the same shall be valid only if it is, in each instance, in writing and signed by the Commissioner or her duly authorized representative; provided that, in each case, such act, consent, approval, or permission shall not to be unreasonably withheld or delayed. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon the City, Parks, the Commissioner, or their agents, unless the same is, in each instance, in writing and duly signed by the Commissioner or her duly authorized representative.

## **ARTICLE 21: SPONSORSHIP AGREEMENTS, PUBLICATIONS, ADVERTISING AND PUBLICITY**

**21.1** Licensee must obtain Parks' prior written approval before entering into any marketing plan or sponsorship agreement and must account for any funds from these agreements under Article 12 (Revenues & Accounts) of this Agreement. If Licensee breaches this provision, the City shall take any action that the City may deem necessary to protect the City's interests. The Licensee shall not accept sponsorship of any kind on behalf of any kind of alcohol, firearms, tobacco products, non-tobacco smoking product, or electronic cigarettes.

**21.2** The display, placement or promotion of alcohol, firearms, tobacco products, non-tobacco smoking product and electronic cigarettes shall not be permitted at the Licensed Premises. The sale and/or advertisement of cigarettes, cigars, any other tobacco products or electronic cigarettes or non-

tobacco smoking products at the Licensed Premises is strictly prohibited. Licensee shall adhere to and enforce this policy.

**21.3** The Licensee may establish programs or brochures for activities at the Licensed Premises, subject to Parks' prior approval. Licensee shall have the right to print or to arrange for the printing of programs or brochures containing promotional matter for the Licensee's programs and sponsorship acknowledgments, except for promotional matter and sponsorship acknowledgments that, in the Commissioner's sole discretion, are indecent, in obvious bad taste, demonstrate a lack of respect for public morals or conduct, or adversely affects the reputation of the Licensed Premises, Parks, or the City. The Commissioner shall have prior approval as to design and distribution of all promotional materials and sponsorship acknowledgments. All requests for consent by the Licensee shall be directed to Christine Dabrow, Chief Marketing and Development Officer (or any successor thereto, or any other person as the Commissioner may designate).

**21.4** (a) Licensee shall make good faith efforts to provide notice to the public about the opportunity to participate in Licensee's programs. Good faith efforts shall include, but not be limited to, advertising in local newspapers, and other community publications, posting posters, notifying neighborhood residents, public and private schools, and community civic groups. Licensee shall obtain the Commissioner's prior written approval for any advertisement or promotional material concerning the Licensed Premises.

(b) If in the Commissioner's discretion any release, advertisement, or statement made to the public relating to the Licensee's programs offered at the Licensed Premises are incorrect or unacceptable for any reason, Licensee agrees to alter or cease such release, advertisement, or statement as directed by the Commissioner in writing.

(c) Revenue from sponsorships shall be included in Gross Receipts, whether in cash or as discounts against purchase price of materials, equipment, or commodities.

## **ARTICLE 22: DONOR RECOGNITION**

**22.1** The Licensee may propose donor recognition agreements for Parks' approval. All forms of recognition are subject to Parks' prior written approval (which shall not be unreasonably withheld or delayed), including approval over the size, quantity, and term, and are subject to applicable laws, rules, and regulations. All revenues from donor recognition shall be restricted for the maintenance and operation of the Licensed Premises, accounted for separately and apart from all other funds as required by Article 12 (Revenues & Accounts) of this Agreement.

## **ARTICLE 23: PROHIBITION AGAINST TRANSFER; ASSIGNMENTS AND SUBLICENSES**

**23.1** (a) Licensee shall not sell, transfer, assign, mortgage, sublicense or encumber any interest provided for herein, ten percent (10%) or more of the shares of or interest in Licensee, or consent, allow or permit any other person or party to use any part of the Licensed Premises, buildings, space or facilities covered by this License, nor shall this License be transferred by operation of law, unless approved in advance in writing by Commissioner, it being the purpose of this Agreement to grant this License solely to Licensee herein named.

(b) Should Licensee choose to assign or sublicense the management and operation of any element of the Licensed Premises to another party, the Licensee shall seek the approval of the Commissioner by submitting a written request including proposed assignment documents as provided herein. All sublicensees shall be subject to the same internal control requirements as the Licensee. All terms and conditions of sublicense agreements and operations, including payment to the City, are subject to Parks' proper written approval (which shall not be unreasonably withheld or delayed). The Commissioner may request any additional information deemed necessary, and Licensee shall promptly comply with such requests.

(c) The term "assignment" shall be deemed to include any direct or indirect assignment, sublet, sale, pledge, mortgage, transfer of or change in ten percent (10%) or more in the stock or voting control of or interest in Licensee, including any transfer by operation of law. No sale or transfer of the stock of or interest in Licensee or its nominee may be made under any circumstance if such sale or transfer will result in a change of control of Licensee violative of the intent of this Article 23.

**23.2** No assignment or other transfer of any interest in this 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 ten percent (10%) or more of the stock or voting control of Licensee in the Licensed Premises without the prior written consent of Commissioner (which shall not be unreasonably withheld or delayed). Licensee shall present to the Commissioner 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 indicating that the proposed assignee or sublicensee has a financial net worth acceptable to the Commissioner together with a certification that it shall provide management control acceptable to the Commissioner for the management and operation of the Licensed Premises. The constraints contained herein are intended to assure the City that the Licensed Premises are operated by persons, firms and corporations which are experienced and reputable operators and are not intended to diminish Licensee's interest in the Licensed Premises.

**23.3** No consent to or approval of any assignment or sublicense granted pursuant to this Section 23.3 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.

**23.4** In the event that Parks authorizes Licensee to enter into a sublicense for operations at the Licensed Premises, the terms and conditions of any such sublicense shall be subject to the prior written approval of Parks. Any such sublicense which is authorized hereunder shall be subject and subordinate to the terms and conditions of this License and Licensee shall require the sublicensee to acknowledge in writing that it received a copy of this License and that it is bound by same. All provisions of this License applicable to Licensee with respect to the renovation, operation and maintenance of the Licensed Premises shall be equally applicable to any sublicensee. Licensee shall require any sublicensee to agree in writing that it will comply with Parks' directives and the provisions of this License applicable to Licensee with respect to the renovation, operation, and maintenance of the Licensed Premises, including, but not limited to, obtaining insurance required of Licensee under this License Agreement and indemnifying the City as set forth in Article 28 herein, and shall be responsible for assuring such compliance. If any sublicensee does not comply with this License insofar as applicable to it, Parks may direct Licensee to terminate that sublicensee's operations. No sublicense may be assigned without the prior written consent of Parks. Any



subsequent sublicense agreement(s) will be subject to the terms and conditions as set forth in this License.

**23.5** Licensee and proposed assignee/transferee shall comply with all applicable PASSPort procedures in connection with any such assignment/transfer.

#### **ARTICLE 24: PARKS CONSTRUCTION**

**24.1** (a) Parks reserves the right to perform construction or maintenance work at the Licensed Premises deemed reasonably necessary by the Commissioner in the Commissioner's sole discretion, at any time during the Term. The Licensee agrees to cooperate with Parks and to accommodate by providing public and construction access through the Licensed Premises. Parks shall use its best efforts to give Licensee at least fourteen (14) days prior written notice of such work and not interfere substantially with Licensee's operations or use of the Licensed Premises. Parks may temporarily close a part of, or all of the Licensed Premises for a Parks purpose, as determined by the Commissioner.

(b) In the event that the Licensee must close the Licensed Premises for the purposes provided for in this License because of such Parks' work, then Licensee may propose and submit for the Commissioner's 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. Licensee shall be responsible for the security of all Licensee's property prior to Parks' construction work. Parks shall be solely responsible for claims, damages, or injury resulting from its work hereunder, except to the extent such claims, damages and injury are caused by the negligence or intentional tortious acts or omissions of Licensee.

#### **ARTICLE 25: COMPLIANCE WITH LAWS**

**25.1** Licensee shall comply and cause its employees, agents, and volunteers to comply with all laws, rules, regulations, and orders now or hereafter prescribed by the Commissioner, and to comply with all laws, rules, regulations and orders of any City, State or federal agency or governmental entity having jurisdiction over operations of the License and the Licensed Premises and/or Licensee's use and occupation thereof.

**25.2** Licensee shall not use or allow the Licensed Premises, or any portion thereof to be used or occupied for any unlawful purpose or in any manner violative of a certificate pertaining to occupancy or use during the Term of this License.

#### **ARTICLE 26: NON-DISCRIMINATION**

**26.1** Licensee shall not unlawfully discriminate against any employee, applicant for employment, volunteer, youth apprentice, or patron because of race, creed, color, national origin, age, sex, handicap, marital status, or sexual orientation. Licensee shall comply with the Americans with Disabilities Act ("ADA") and regulations pertaining hereto as applicable. Any violation of this Section 26.1 shall be a material breach of this License.

**26.2** All advertising for employment shall indicate that Licensee is an Equal Opportunity Employer.

## **ARTICLE 27: NO WAIVER OF RIGHTS**

**27.1** No acceptance by Commissioner of any compensation, fees, penalty sums, charges, or other payments in whole or in part for any periods after a default of any terms and conditions herein shall be deemed a waiver of any right on the part of the Commissioner to terminate this License. No waiver by the Commissioner of any default on the part of Licensee in the performance of any of the terms and conditions herein shall be construed to be a waiver of any other or subsequent default in the performance of any of the said terms and conditions.

## **ARTICLE 28: INDEMNIFICATION**

### **28.1 Licensee Responsibility**

(a) The Licensee shall be solely responsible for the safety and protection of its employees, agents, servants, volunteers, sublicensees, contractors, and subcontractors, and for the safety and protection of the employees, agents, or servants of its contractors, sublicensees, or subcontractors.

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

(c) The 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, volunteers, sublicensees, contractors, subcontractors, or any other person.

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

### **28.2 Indemnification and Related Obligations**

(a) To the fullest extent permitted by law, the 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 the Licensee itself had been negligent, except to the extent caused by the gross negligence or willful misconduct of City and its officials and employees) and/or the 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 the Licensee, the City and its officials and employees shall be partially indemnified by the Licensee to the fullest extent permitted by law.

(b) The 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 the Licensee's obligations to obtain and maintain insurance under this License, nor (ii) adversely affected by any failure on the part of the City or its officials and employees to avail themselves of the benefits of such insurance.

## **ARTICLE 29: INSURANCE**

### **29.1 Licensee's Obligation to Insure**

(a) From the date this License is executed through the date of its expiration or termination, the Licensee shall ensure that the types of insurance indicated in this Article are obtained and remain in force, and that such insurance adheres to all requirements herein. The City may require other types of insurance and/or higher liability limits and other terms if, in the opinion of the Commissioner, Licensee's operations warrant it.

(b) The Licensee is authorized to undertake or maintain operations under this License only during the effective period of all required coverage.

### **29.2 Commercial General Liability Insurance**

(a) The Licensee shall maintain Commercial General Liability insurance in the amount of at least Two Million Dollars (\$2,000,000) per occurrence for bodily injury (including death) and property damage and Two Million Dollars (\$2,000,000) for personal and advertising injury. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Licensed Premises and such per-location aggregate shall be at least Five Million Dollars (\$5,000,000). This insurance shall protect the insureds from claims that may arise from any of the operations under this License. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 00 01, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be "occurrence" based rather than "claims-made."

(b) The Commercial General Liability insurance shall name the City, together with its officials and employees, as an Additional Insured for claims that may arise from any of the operations under this Agreement. Coverage shall be at least as broad as the most recent edition of ISO Form CG 20 26 and CG 20 37, and the limits for the City shall be no lower than Licensee's. "Blanket" or other forms are also acceptable if they provide the City, together with its officials and employees, with coverage at least as broad as ISO Form CG 20 26 and CG 20 37.

### **29.3 Workers' Compensation Insurance, Employers Liability, and Disability Benefits Insurance**

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

**29.4 Commercial Automobile Liability Insurance** With regard to all operations under this Agreement, the Licensee shall maintain or cause to be maintained Commercial Automobile Liability insurance in the amount of at least \$1,000,000 each accident (combined single limit) for liability arising out of the ownership, maintenance, or use of any owned, non-owned or hired vehicles. Coverage shall be at least as broad as the most recent edition of ISO Form CA 00 01. If vehicles are used for transporting hazardous materials, such Commercial Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

**29.5 Property Insurance**

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

(b) This Section 29.5 does not require coverage for damage caused by flooding.

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

(d) In the event of any loss to any of the Concession Structures, the 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, the Licensee shall also (i) take all appropriate actions in a timely manner to adjust such claim on terms that provide the City with the maximum possible payment for the loss, and (ii) either provide the City with the opportunity to participate in any negotiations with the insurer regarding adjustments for claims or, at the Commissioner’s discretion, allow the City itself to adjust such claim.

**29.6 Liquor Law Liability Insurance** In the event the Licensee or any sublicensee or contractor shall serve alcohol on the Premises, the Licensee shall carry or cause to be carried liquor law liability insurance in an amount not less than Two Million Dollars (\$2,000,000) per occurrence, and name the City, together with its officials and employees, as additional insured. Such insurance shall be effective prior to the commencement of any such service of alcohol and continue throughout such service. The Commissioner may increase or decrease the limit(s) if the Commissioner reasonably believes that the nature of such operations merits an increase or decrease.

## **29.7    General Requirements for Insurance Coverage and Policies**

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

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

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

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

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

(f) All required policies, except for Workers’ Compensation insurance, Employers Liability insurance, and Disability Benefits insurance, shall contain an endorsement requiring that the issuing insurance company endeavor to provide the City with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both the Commissioner, City of New York Department of Parks and Recreation, Arsenal, 830 Fifth Avenue, New York, NY 10065, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Such notice is to be sent at least thirty (30) days before the expiration, cancellation, or termination date, except in cases of non-payment, where at least ten (10) days written notice would be provided.

(g) All required policies, except Workers’ Compensation, Employers Liability, Disability Benefits shall include a waiver of the right of subrogation with respect to all insureds and loss payees named therein.

## **29.8    Proof of Insurance**

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

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

(c) For all insurance required under this Article other than Workers Compensation, Employers Liability and Disability Benefits, the 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. All such Certificates of Insurance shall be accompanied by either a duly executed **"Certification by Insurance Broker or Agent"** in the form required by the Commissioner, attached hereto as **Exhibit I**, or certified copies of all policies referenced in such Certificate of Insurance.

(d) Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of all policies required under this License. Such Certificates of Insurance shall comply with subsections (b) and (c) directly above.

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

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

## **29.9    Miscellaneous**

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

(b) Licensee shall require its construction contractors that perform construction on the Licensed Premises to maintain Commercial General Liability Insurance in accordance with Section 29.2, and such insurance shall include the City, including its officials and employees, as an additional insured with coverage at least as broad as ISO Forms CG 20 26 and 20 37. In the event 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).

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

(d) Where notice of loss, damage, occurrence, accident, claim, or suit is required under a policy maintained in accordance with this Article, the Licensee shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this License (including notice to Commercial General Liability insurance carriers for events relating to the Licensee's own employees) in the time required by the insurance policy. For any policy where the City is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. The Licensee shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

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

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

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

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

(i) In the event the Licensee receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, the Licensee shall immediately forward a copy of such notice to both the Commissioner, City of New York Department of Parks and Recreation, Arsenal, 830 Fifth Avenue, New York, NY 10065, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Notwithstanding the foregoing, the Licensee shall ensure that there is no

interruption in any of the insurance coverage required under this Article.

### **ARTICLE 30: WAIVER OF COMPENSATION**

**30.1** 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 described aforesaid.

**30.2** Licensee further expressly waives any and all claims for compensation, loss of profit, or refund of its investment, if any, or any other payment whatsoever, in the event this License is terminated by the Commissioner sooner than the fixed Term because the Licensed Premises are required for any park or other public purpose, or because the License was terminated or revoked for any reason as provided herein.

### **ARTICLE 31: INVESTIGATIONS**

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

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

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

(1) The Commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days written notice to the parties



involved to determine if any penalties should attach for the failure of any person to testify.

(2) If any non-governmental party to the hearing requests an adjournment, the Commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Section 31.1 (d) below without the City incurring any penalty or damages for delay or otherwise.

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

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

(ii) The cancellation or termination of any and all existing City contracts, leases, permits, or licenses that the refusal to testify concerns and that have not been assigned as permitted under this License, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

(d) The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Section 31.1(d) (i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in Sections 31.1(d) (iii) and (iv) below in addition to any other information that may be relevant and appropriate.

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

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

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

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

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

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

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

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

(f) In addition to and notwithstanding any other provision of this License, the Commissioner or agency head may in his or her sole discretion terminate this Agreement upon not less than three (3) days written notice in the event Licensee fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment, or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose that may be related to the procurement or obtaining of this agreement by the Licensee, or affecting the performance or this Agreement.

### **ARTICLE 32: CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE**

**32.1** This Agreement shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Licensee, and shall be governed by and construed in accordance with the laws of the State of New York.

**32.2** Any and all claims asserted by or against the City arising under this License or related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Courts") or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect, this Agreement and its intent, the Licensee agrees:

(a) If the City initiates any action against the Licensee in Federal Courts or in New York State Courts, service of process may be made on the Licensee either in person, wherever such Licensee may be found, or by registered mail addressed to the Licensee at its address set forth in this License, or to such other address as the Licensee may provide to the City in writing; and

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

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

**32.4** If the Licensee commences any action against the City in a court located other than in the City and State of New York, upon request of the City, the Licensee shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court

where the action is initially brought will not or cannot transfer the action, the Licensee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

### **ARTICLE 33: WAIVER OF TRIAL BY JURY**

**33.1** (a) Licensee hereby waives trial by jury in any action, proceeding, or counterclaim brought by the City against Licensee in any matter related to this License.

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

(c) No action shall lie or be maintained against the City by Licensee upon any claims based upon this License unless such action shall be commenced within six (6) months of the termination or conclusion of this License, or within six (6) months after the accrual of the cause of action, whichever first occurs.

(d) In the event any claim is made, or any action brought in any way relating to this Agreement herein other than an action or proceeding in which the Licensee and the City are adverse parties, Licensee shall diligently render to the City without additional compensation any and all reasonable assistance that the City may reasonably require of Licensee.

### **ARTICLE 34: CUMULATIVE REMEDIES - NO WAIVER**

**34.1** The specific remedies to which the City may resort under the terms of this License are cumulative and are not intended to be exclusive of any other remedies or means of redress to which it may be lawfully entitled in case of any other default hereunder. The failure of the City to insist in any one or more cases upon the strict performance of any of the covenants of this License, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenants or option.

### **ARTICLE 35: INDEPENDENT STATUS OF LICENSEE**

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

### **ARTICLE 36: CONFLICT OF INTEREST**

**36.1** Licensee represents and warrants that neither it nor any of its directors, officers, members, partners or employees, trustees, or volunteers has any interest, nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. Licensee further represents and warrants that in the performance of this License no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City, nor any person whose salary is payable,

in whole or part, from the City treasury, shall participate in any decision relating to this License which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly, interested nor shall any such person have any interest, direct or indirect, in this License or in the proceeds thereof.

#### **ARTICLE 37: PROCUREMENT OF AGREEMENT**

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

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

#### **ARTICLE 38: NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES**

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

#### **ARTICLE 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.

#### **ARTICLE 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.

#### **ARTICLE 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.

#### **ARTICLE 42: MODIFICATION OF AGREEMENT**

**42.1** This License constitutes the whole of the agreement between the Parties hereto, and no other representation made heretofore shall be binding upon the Parties hereto. This License may be modified from time to time by agreement in writing, but no modification of this License shall be in effect until such modification has been agreed to in writing and duly executed by the party or parties affected by said modification.

#### **ARTICLE 43: NOTICES**

**43.1** Where provision is made herein for notice or other communication to be given in writing, the same shall be given by hand delivery or by mailing a copy of such notice or other communication by certified mail, return receipt requested, addressed to Commissioner or to the attention of Licensee at their respective addresses provided at the beginning of this License, or to any other address that Licensee shall have filed with the Commissioner. Notices may also be given by electronic mail to the electronic mail addresses for each party provided at the beginning of this License.

#### **ARTICLE 44: LICENSEE ORGANIZATION, POWER AND AUTHORITY**

**44.1** Licensee and the individual executing this License on behalf of Licensee each represents and warrants that Licensee is a not-for-profit corporation duly organized, validly existing and in good standing under the laws of the State of New York and has the power and authority to enter into this License and perform its obligations hereunder. This is a continuing representation and warranty.

#### **ARTICLE 45: MISCELLANEOUS**

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

#### **ARTICLE 46: ENTIRE AGREEMENT**

**46.1** This License constitutes the entire agreement between the parties and cannot be changed, modified or terminated orally, but only by an instrument in writing executed by the Commissioner and the Licensee.

#### **ARTICLE 47: COUNTERPARTS**

**47.1** This License may be executed in counterparts, each of which shall be an original and all of which counterparts taken together shall constitute one and the same License.

**[Signature Page Follows]**

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

**NEW YORK CITY DEPARTMENT  
OF PARKS & RECREATION**

**RED HOOK INITIATIVE**

By: \_\_\_\_\_

Iris Rodriguez-Rosa  
First Deputy Commissioner

By: \_\_\_\_\_

Morgan Monaco  
Executive Director

**APPROVED AS TO FORM AND CERTIFIED AS TO LEGAL AUTHORITY**

\_\_\_\_\_  
Acting Corporation Counsel

\_\_\_\_\_  
Date

[illegible]

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me personally came Iris Rodriguez-Rosa to me known and known to me to be the First Deputy Commissioner for the New York City Department of Parks & Recreation, and the said person described in and who executed the foregoing instrument, and s/he acknowledged that s/he executed the same in her/his official capacity and for the purpose mentioned therein.

**Notary Public**

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF )

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me personally came Morgan Monaco, who being duly sworn by me did depose and say that s/he is the Executive Director of Red Hook Initiative and that s/he executed the foregoing instrument in her/his official capacity and for the purposes mentioned therein.

**Notary Public**

## EXHIBIT A: LICENSED PREMISES

560 Columbia Street  
Red Hook, Brooklyn



Legend



Denotes Licensed Premises

0 125 250 Feet



City of New York Department of Parks and Recreation

(© 2022) by the City of New York Department of Parks and Recreation. May not be reproduced without consent. This map has been prepared in whole or in part using secondary data. Data accuracy is limited by the scale and accuracy of the original sources. Site-specific conditions should be field-verified. For equal accuracy refer to the maps that established parkland acquisition maps.



**EXHIBIT B: FREE PROGRAMMING**

<b>Program</b>	<b>Days/week</b>	<b>Weeks/year</b>	<b>Estimated Number of Annual Participants</b>
Passive recreation and education	6 (December 1 <sup>st</sup> through March 31 <sup>st</sup> ); 7 (April 1 <sup>st</sup> through November 30 <sup>th</sup> )	52	1000
School workshops	2	21	350
Volunteer opportunities	2	33	250
Fall Harvest Festival	1	1	750
Ad hoc fitness, wellness, botanical, and other workshops	As scheduled	As scheduled	200

### **EXHIBIT C: FEE-BASED PROGRAMMING**

<b>Programs</b>	<b>Fees</b>
School workshops (private)	\$250-500 per workshop
Corporate/institutional volunteer groups	\$35-75 per person and/or lump sum in-kind donation of materials and supplies
Community Supported Agriculture (CSA)	<p>Sliding scale per household income</p> <p>Level 1: Household income under \$45,000 Full share: \$330 (approximately \$15/week) Small share: \$215 (approximately \$9.75/week)</p> <p>Level 2: Household income: \$45,000-\$65,000 Full share: \$440 (approximately \$20/week) Small share: \$286 (approximately \$13/week)</p> <p>Level 3: "Market" Rate Household Income \$65,000 and higher Full share: \$550 (approximately \$25/week) Small share: \$358 (approximately \$16.25/week)</p> <p>Level 4: "B"- Level, aka Benefactor Level, to support Level 1 and 2 shares Household Income: any Full share: \$660 (approximately \$30/week) Small share: \$429 (approximately \$19.50/week)</p>
Garden Stand	Prices vary depending on item
Fundraisers	Ticket prices will depend on specifics of the event
Plant Sale	Prices vary depending on item

## **EXHIBIT D: SCHEDULE OF APPROVED HOURS AND RATES, FEES, AND PRICES**

### **Hours**

- The Licensed Premises is open to the public Tuesday through Sunday from 9 AM to 5 PM, and accessible on Mondays from 9 AM to 5 PM from April 1st through November 30th each Year
  - The Licensed Premises Garden Stand is open on Saturdays, 10 AM-2 PM, June through November each Year
  - The CSA runs on Saturdays, 10 AM-1 PM, June through November each Year

### **Fees**

- Produce is sold at or below fair market value for the growing season. Licensee accepts cash, debit/credit, Venmo, SNAP, FMNP, FreshConnect and DOHMH Health Bucks

**EXHIBIT E: PARKS INSPECTION (PIP) MANUAL**

## **EXHIBIT F: BACKGROUND CHECKS RIDER**

1. Recruitment; Screening; Fingerprinting: Licensee shall be responsible for the recruitment and screening of employees and volunteers performing work under the Agreement, including the verification of credentials, references, experience and skills necessary for working with clients and participants. Where consistent with State and federal law, if directed by the Department of Parks and Recreation (“Department”), Licensee will undertake the fingerprinting of employees and volunteers, including applicants, in accordance with instructions from the Department.
2. Convictions, Non-Pending Arrests and Criminal Accusations, and Pending Arrests: Licensee shall comply with Subdivisions 15 and 16 of Section 296 the New York Executive Law, Article 23-A of the New York Correction Law, and Subdivisions 11 and 11-a of the Admin Code. Such laws pertain to unlawful discriminatory employment practices in connection with individuals with convictions, non-pending arrests or criminal accusations, and/or pending arrests.
3. Review of Decision: Where practicable, Licensee shall provide for the review by a supervisor employed by Licensee of a decision not to hire based on convictions, non-pending arrests or criminal accusations, and/or pending arrests.
4. Consultation with the Department: Licensee may consult with the Department regarding the application of this section.

## **EXHIBIT G: PAID SICK LEAVE AGREEMENT RIDER**

### **Introduction and General Provisions**

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

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

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

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

The PSLL is summarized below for the convenience of the Concessionaire.

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

Pursuant to the PSLL and the Rules:

### **Applicability, Accrual, and Use**

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

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

provided at the greater of the employee's regular hourly rate or the minimum wage. Employers are not required to provide more than forty hours of sick time to an employee in any Year.

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

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

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

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

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

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

### Exemptions and Exceptions

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

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

### Retaliation Prohibited

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

### Notice of Rights

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

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

### Records

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



### Enforcement and Penalties

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

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

### More Generous Policies and Other Legal Requirements

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

**EXHIBIT H: LL28 REPORT**

**FORM OF REPORT UNDER NEW YORK CITY ADMINISTRATIVE CODE**  
**SECTION 18-134**

<b>Local Law 28 of 2008 Partnership Reporting Form</b>						
<b>Reporting Period: July 1 - June 30</b> <b>Fiscal Year: 20[●]</b>						
<b>Partner</b>	<b>Park Location</b>	<b>Borough</b>	<b>Fiscal Year-end</b>	<b>Total Spending – Maintenance and Operations</b>	<b>Total Spending – Programming</b>	<b>Total Spending – Capital</b>
Red Hook Initiative	560 Columbia Street	Brooklyn				

## **EXHIBIT I: CERTIFICATION BY INSURANCE BROKER OR AGENT**

### **Instructions to New York City Agencies, Departments, and Offices**

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

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

-- OR --

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

**CITY OF NEW YORK**  
**CERTIFICATION BY INSURANCE BROKER OR AGENT**

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

\_\_\_\_\_  
[Name of broker or agent (typewritten)]

\_\_\_\_\_  
[Address of broker or agent (typewritten)]

\_\_\_\_\_  
[Email address of broker or agent (typewritten)]

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

\_\_\_\_\_  
[Signature of authorized official, broker, or agent]

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

State of .....)

) ss.:

County of .....)

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
NOTARY PUBLIC FOR THE STATE OF \_\_\_\_\_