

APPROVAL AS TO FORM AND CERTIFICATION AS TO LEGAL AUTHORITY
OF A REVOCABLE CONSENT AGREEMENT
BY STANDARD TYPE OF CLASS

Agency: Consumer Affairs

REVOCABLE CONSENT AGREEMENT: Enclosed Sidewalk Café

I hereby approve as to form and certify as to legal authority the annexed revocable consent agreement by standard type of class. This approval is valid for one year and for the maximum of 250 consents.

The above approval is made on the express understanding that the substantive language of the subject revocable consent agreements will not be altered or changed in any way without prior submission to the office of the Corporation Counsel for approval, provided, however, that blank spaces in the revocable consent agreements requiring names, dates, locations, dollar amounts or other similar details may be completed.

Sharon Cantor 4/23/19
ACTING CORPORATION COUNSEL

2019 - 026921

The foregoing approval is hereby extended for a maximum of 250 consents for a period of 60 days from the April 22, 2020 expiration date of original approval.

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY

Sharon Cantor
ACTING CORPORATION COUNSEL

DATE 4/16/2020

2020-019849

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Sharon Cantor 4/23/19
ACTING CORPORATION COUNSEL

2019 - 026921

The City of New York
Department of Consumer Affairs
42 Broadway
New York, New York 10004

ENCLOSED SIDEWALK CAFE
REVOCABLE CONSENT AGREEMENT

WHEREAS, «Corp_Name» ("Grantee") has petitioned for a <<NewRenewalModified>> consent to construct and/or maintain, operate and use an enclosed sidewalk cafe located at «Address», in the Borough of «Borough» and

WHEREAS, Grantee is the owner of the real property which is the subject of this consent, or, if not the owner, Grantee is the tenant of such real property and has obtained the consent of the owner of such property to use the adjacent inalienable property for a sidewalk cafe, and such owner's consent, if applicable, is attached hereto as Schedule A; and

WHEREAS, the New York City Department of Consumer Affairs ("Grantor"), acting through the Commissioner of Consumer Affairs ("Commissioner"), has determined that it is appropriate that such consent be granted, subject to the conditions stated herein;

IT IS HEREBY AGREED:

1. Consent granted. The consent of Grantor is hereby granted to the Grantee, an entity registered to do business in the State of New York, having its principal place of business at «Address», «City_State_Zip», to construct and/or maintain, operate, and use an enclosed sidewalk cafe structure ("Structure"), having an area of «Square_Footage» square feet, consisting of «Tables_Spelled» («Tables») tables and «Chairs_Spelled» («Chairs») chairs, in front of the premises having a street address of «Address», in the Borough of «Borough», in conjunction with an abutting restaurant, the Structure to be as shown on a plan dated «Plans_Date», a copy of which is attached hereto and made a part hereof, upon the terms and conditions which follow:

2. Term. This consent shall continue only during the pleasure of the Grantor and shall be revocable at any time by the Grantor, and shall expire on «Exp_Date», ("Expiration Date"). The Grantee agrees that not later than «Exp_Date_Minus_6_Mos», it will petition the Grantor in writing for either a renewal or discontinuance thereof.

If this is a new or modified consent, such privilege shall become effective on the date of final approval of this consent by the Mayor ("the Approval Date"). Pursuant to the New York City Charter, this consent shall not be implemented until it is registered with the Comptroller of the City of New York ("Comptroller").

If this is a renewal consent, such privilege shall become effective on the day after the expiration of the previous term of this privilege or the date that Grantor files the petition for

a renewal, whichever is later. The date of final approval of the renewal consent by the Mayor shall also be referred to as the Approval Date.

3. Annual compensation. (a) The Grantee shall pay into the treasury of the City of New York ("City") as compensation for the privilege hereby granted the following:

For each year during which this consent is in effect, the annual compensation shall be calculated pursuant to the rate schedule for sidewalk cafes set forth in the rules of the Department of Consumer Affairs.

The compensation for the year ending February 28, 2020 is hereby set at «Consent_Fee_for_20».

The compensation for the year ending February 28, 2021 and, if applicable, every year thereafter that this consent is effective, shall be adjusted to reflect the change in the seasonally adjusted consumer price index for December of each year as published by the U.S. Department of Labor.

The Grantee acknowledges that amendments to Title 6 of the Rules of the City of New York Section 2-45, pertaining to rates for sidewalk café consents, may become effective during the term of this consent and the Grantee agrees that when such amendments shall become effective, the Grantee shall adhere to the amended rule(s).

(b)(1) Annual payments shall be made in advance before the first day of March of each year, except that payment for the first year of a new consent shall be made after the consent is registered with the Comptroller and the Grantor has issued the fully executed version of this agreement to the Grantee.

(2) Notwithstanding Paragraph 3(b)(1) above, annual payments may be paid in up to four quarterly installments with the second installment due before the first day of June, the third installment due before the first day of September, and the fourth installment due before the first day of December, except that the annual compensation shall not be payable in installments by any holder of a consent who has failed to make timely payment of at least two installments for any one year under such an agreement.

(3)(a)(i) In the event a Grantee utilizing the quarterly payment plan requests the termination of the revocable consent, to be effective on or before June 30 during the first year of the agreement, the Grantee will not be obligated to make any further installment payments after the termination date, provided the Grantee has removed the Structure and restored all of the sidewalk affected thereby to its proper condition to the satisfaction of the City agencies having jurisdiction thereof, and the request for termination has been approved by the Grantor. The Grantee shall be responsible for quarterly payments that come due before the request for termination has been approved by the Grantor. (ii) In the event a Grantee utilizing the quarterly payment plan requests the termination of the revocable consent, to be effective on or before June 30 during the second year of the agreement, the Grantee will not be obligated to make further installment payments after the termination date, provided the Grantee has removed the Structure and restored all of the sidewalk affected thereby to its proper condition to the satisfaction of the City agencies having jurisdiction thereof, and the request for termination has been approved by the Grantor. The Grantee shall be responsible for quarterly payments that come due before the request for termination has been approved by the Grantor. (iii) In the event a Grantee

utilizing the quarterly payment plan requests the termination of the revocable consent after June 30th during the first year of the agreement, but before the start of the second year of the agreement, the effective date of the termination shall be February 28th of the second year of the agreement, and the Grantee will not be obligated to make further payments after the termination date provided the Grantee has removed the Structure and restored all of the sidewalk affected thereby to its proper condition to the satisfaction of the City agencies having jurisdiction thereof, and the request for termination has been approved by the Grantor. The Grantee shall be responsible for quarterly payments that come due before the request for termination has been approved by the Grantor.

SECTION (3)(b)(i) APPLIES TO RENEWAL PETITIONS ONLY:

(3)(b)(i) In the event a Grantee utilizing the quarterly payment plan requests the termination of the revocable consent, to be effective on or before June 30 during the third year of the agreement, the Grantee will not be obligated to make further installment payments after the termination date, provided the Grantee has removed the Structure and restored all of the sidewalk affected thereby to its proper condition to the satisfaction of the City agencies having jurisdiction thereof, and the request for termination has been approved by the Grantor. The Grantee shall be responsible for quarterly payments that come due before the request for termination has been approved by the Grantor. (ii) In the event a Grantee utilizing the quarterly payment plan requests the termination of the revocable consent, to be effective on or before June 30 during the fourth year of the agreement, the Grantee will not be obligated to make further installment payments after the termination date, provided the Grantee has removed the Structure and restored all of the sidewalk affected thereby to its proper condition to the satisfaction of the City agencies having jurisdiction thereof, and the request for termination has been approved by the Grantor. The Grantee shall be responsible for quarterly payments that come due before the request for termination has been approved by the Grantor. (iii) In the event a Grantee utilizing the quarterly payment plan requests the termination of the revocable consent after June 30th during the second year of the agreement, but before the start of the third year of the agreement, the effective date of the termination shall be February 28th of the third year of the agreement, and the Grantee will not be obligated to make further payments after the termination date provided the Grantee has removed the Structure and restored all of the sidewalk affected thereby to its proper condition to the satisfaction of the City agencies having jurisdiction thereof, and the request for termination has been approved by the Grantor. The Grantee shall be responsible for quarterly payments that come due before the request for termination has been approved by the Grantor. (iv) In the event a Grantee utilizing the quarterly payment plan requests the termination of the revocable consent after June 30th during the third year of the agreement, but before the start of the fourth year of the agreement, the effective date of the termination shall be February 28th of the fourth year of the agreement, and the Grantee will not be obligated to make further payments after the termination date provided the Grantee has removed the Structure and restored all of the sidewalk affected thereby to its proper condition to the satisfaction of the City agencies having jurisdiction thereof, and the request for termination has been approved by the Grantor. The Grantee shall be responsible for quarterly payments that come due before the request for termination has been approved by the Grantor.

(c) In the event the Grantor or other authorized governmental body revises the rate of compensation payable to the City for the construction, maintenance, operation, and use of sidewalk cafes, the Grantee shall pay as compensation the amounts due in accordance with such revisions. If the compensation payable by the Grantee is increased, the Grantee shall have the option, upon thirty (30) days' prior written notice to the City, to terminate this consent provided the Grantee has removed the Structure and restored all of the sidewalk affected thereby to its proper condition to the satisfaction of the City agencies having jurisdiction thereof; the Grantee's obligation to pay compensation at the revised rate shall continue up to the date of such satisfactory removal and restoration.

(d) In the event the Grantee continues the construction, maintenance, operation, and use of the Structure after and in spite of the termination or expiration of the consent, the Grantee agrees to pay to the City the compensation as set forth herein at the rate in effect at the time of such termination or expiration and in the manner set forth herein, together with all taxes it would have been required to pay had its construction, maintenance, operation, and use been duly authorized. Such payments shall not be deemed to constitute an extension of this consent and all of the City's rights shall remain in full force and effect notwithstanding such payments. Such rate of compensation shall continue up to the date of the restoration of the sidewalk after the removal of the Structure. During the period of continued construction, maintenance, operation, and use of the Cafe, the Grantee shall be bound by all terms and conditions of this consent.

(e) In the event any payment is not made on or before the date such payment is due, interest will be charged at the rate of one and one-half percent (1½%) per month. If the Grantee shall fail to pay such compensation or taxes, or the interest thereon, if any, the Comptroller may withdraw the amounts thereof from the security fund hereinafter provided for. If the compensation or taxes owed exceeds the amount available in the security fund, the Grantee shall be liable for the shortfall, and shall pay such to the City upon demand.

(f) In the event the Grantee utilizes the quarterly payment plan, interest will be charged at the rate of one and one-half percent (1½%) per month. If the Grantee shall fail to pay such compensation or taxes, or the interest thereon, if any, the Comptroller may withdraw the amounts thereof from the security fund hereinafter provided for. If the compensation or taxes owed exceeds the amount available in the security fund, the Grantee shall be liable for the shortfall, and shall pay such to the City upon demand.

(g) The compensation provided herein shall not be considered in any manner in the nature of a tax, but shall be in addition to any and all taxes of whatsoever kind or description now or hereafter required to be paid under any local law of the City or by any law of the State of New York.

4. Removal of Structure. Within ten (10) days after the revocation or termination of this consent, the Grantee shall remove the Structure and restore all of the sidewalk affected thereby to its proper condition to the satisfaction of the City agencies having jurisdiction thereof. The entire cost of such work shall be borne by the Grantee.

If the Grantee fails to so remove the Structure and so restore such sidewalk within the time period stated above, Grantor shall have the right to cause the Structure to be removed and such sidewalk to be restored. The cost to Grantor of causing such removal and restoration shall be recovered from the security fund as provided for in this consent. If the cost of removal and/or restoration exceeds the amount available in the security fund, the Grantee shall be liable for the shortfall, and shall pay such to the City upon demand.

5. Restrictions against transfer. This consent is for the exclusive use of the Grantee and solely for the purpose hereinabove mentioned and shall not, either in whole or in part, be sold, assigned, leased or sublet in any manner, nor shall title thereto, or right, interest or property therein pass to or vest in any other person or entity whatsoever, either by the acts of the Grantee or by operation of law, without the express written consent of the Grantor, which consent may be withheld by the Grantor in its sole discretion.

6. Grantee responsible for all costs. The Grantee shall pay the entire cost of all work, labor and material in connection with the Structure, including:

- (a) the construction, maintenance, operation, use, and removal of the Structure;
- (b) the protection of all structures which shall in any way be disturbed by the construction, maintenance, operation, use or removal of the Structure;
- (c) any and all changes in sewers or other subsurface structures necessitated by the construction, maintenance, operation, use or removal of the Structure, including the laying or relaying of pipes, conduits, sewers or other structures;
- (d) the replacing or restoring of the pavement in the affected sidewalk which may be disturbed during the construction, maintenance, operation, use or removal of the Structure;
- (e) each and every item of the increased cost of the installation of any future structures or repairs or alterations to any existing or future structures caused by the presence in the sidewalk of the Structure;
- (f) the inspection of all work during the construction, maintenance, operation, use or removal of the Structure as herein provided which may be required by the Grantor or any other City agency having jurisdiction.

7. Construction and operation requirements. (a) Prior to the commencement of any construction, alteration, operation or removal of the Structure, the Grantee shall obtain, at its sole cost and expense, any and all licenses, permits or other forms of approval or authorization which may be required by Grantor or any other City agency having jurisdiction. The Grantee shall perform all the duties which may be imposed by those agencies as conditions of such forms of approval or authorization, provided such conditions are not inconsistent with the provisions of this consent.

(b) The Grantee shall submit to the Grantor working plans which shall include and show in detail the method of construction of the Structure and the mode of protection or changes in all structures required by the construction, alteration or removal of the same.

Upon the completion of the work the Grantee shall furnish to the Grantor and to any other City agency having jurisdiction, plans of such character as may be directed, showing accurately and distinctly the location, size and type of construction, and complete dimensions of the Structure erected or installed under this consent; also the location and dimensions of all substructures encountered during the progress of the work.

8. City's access paramount. The Grantee shall allow to the City a right of way under or above any part of the Structure for any and all structures which are now or may be hereafter placed in the affected sidewalk by the City.

If, in the exercise of the sole discretion of the Grantor, the Grantor at any time decides to replace, alter or otherwise gain access to any structure located in or on the sidewalk that is affected by the Structure, the Grantor shall have the right to break through or remove all or any portion of the Structure. The cost to the Grantor of breaking through or removing all or any portion of the Structure shall be recovered from the security fund as provided for in this consent. If the cost of breaking through or removal exceeds the amount available in the security fund, the Grantee shall be liable for the shortfall, and shall pay such to the City upon demand.

9. Structure subject to City's supervision. The Structure and any fixtures laid therein shall be constructed, maintained, operated, and used subject to the supervision and control of the proper authorities of the City. The Structure shall be open at all times to the inspection of all the authorities having jurisdiction.

10. Consent subject to rights of abutting property owners. This consent is subject to whatever right, title or interest the owners of abutting property or others may have in and to the affected sidewalk.

11. No rights conveyed. The Grantee acquires no right, title or interest in the space permitted to be occupied herein and it is expressly understood that said occupancy is considered temporary.

12. Maintenance of Structure. The Grantee agrees to maintain the Structure in good, clean condition and shall not allow it to deteriorate, become unsightly, or develop

into a dangerous condition or a condition which is not in the best interests of the general public.

13. No alienation of City's rights. It is expressly understood that the grant of the consent herein will not alienate or diminish the absolute right of the City to reenter into full possession of the sidewalk space described herein for any reason whatsoever, free of any encumbrance or obligation, upon the expiration of this consent or upon its revocation and cancellation.

14. Unconditional right of revocation. The Grantee expressly agrees that the Grantor may unconditionally revoke this consent and terminate the period thereof at any time without liability, at will, any provision herein to the contrary notwithstanding. In the event of such revocation and termination, the Grantee shall remain liable for the due and full performance of all the terms, covenants and conditions contained herein to be performed up to the time of said termination, and the Grantee's obligation to pay compensation shall continue up to the date of the removal of the Structure and restoration of all of the sidewalk affected thereby to the satisfaction of the City agencies having jurisdiction thereof.

15. Security fund. This agreement is contingent upon the express condition that in advance of the Approval Date, and before anything is done in exercise of the privilege conferred hereby, the Grantee shall deposit with the Comptroller the sum of Four Thousand Dollars (\$4,000), in such form as shall be acceptable to the Comptroller, which fund shall be security for (a) the performance of all the terms and conditions of this consent, and (b) the payment of all sums of money (including taxes) which may be due to the City in connection with the Structure, including due to the maintenance, operation, use, abandonment, or removal of the Structure.

In case of default in the performance by Grantee of any of such terms and conditions, the Grantor shall have the right to cause the work to be done and the materials to be furnished for making the necessary changes or repairs, after ten (10) days' notice to the Grantee, and shall collect the cost thereof from the security fund, or in case of default in the payment of the annual charge or in the payment of any other sum of money (including taxes) which may become due to the City in connection with the Structure, including due to the maintenance, operation, use, abandonment or removal of the Structure, the Grantor shall collect the same, with interest, from the security fund after ten (10) days' notice in writing to the Grantee.

In case of any drafts so made upon the security fund, the Grantee shall, upon ten (10) days' notice in writing, pay to the Comptroller a sum of money sufficient to restore the fund to the original amount and in default of the payment thereof, the consent hereby given may be cancelled and annulled, at the option of the Grantor.

If the amount deposited in the security fund is insufficient to cover any costs to the Grantor or any sum of money due to the Grantor, the Grantee shall be liable for the shortfall and shall pay such to the City upon demand.

Upon the termination or revocation of this consent, and at such time as the Structure has been removed and all of the sidewalk affected thereby has been restored to its proper condition to the satisfaction of the City agencies having jurisdiction thereof, in accordance with the terms of this consent, any amount remaining in the security fund shall be repaid to Grantee without interest.

No action or proceeding or rights under the provisions of this section shall affect any other legal rights, remedies or causes of action belonging to the City.

16. Notice required before work commences. Grantee shall give notice, in writing, to the Grantor and any other City agency having jurisdiction of its intention to begin the work hereby authorized at least forty-eight (48) hours before such work commences.

17. Discrimination prohibited. Pursuant to applicable laws prohibiting discrimination in employment, the Grantee agrees that it will not refuse to hire or employ, nor bar or discharge from employment, nor discriminate against any persons in compensation or in terms, conditions or privileges of employment because of age, race, creed, color, national origin, disability, sex, marital status, or real or perceived sexual orientation.

18. Compliance with applicable laws, regulations and rules. The Grantee shall strictly comply with all applicable laws, regulations and rules now in force or which may hereafter be adopted.

19. Relationship with the City. The Grantee affirms and declares that it is not in arrears to the City upon any debt, contract or taxes and that it is not a defaulter, as a 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 the Grantee to receive a consent.

20. Insurance and indemnification. (a) To the fullest extent permitted by law, the Grantee shall indemnify, defend and hold the City, its officials, agents, servants and employees (the "Indemnitees") harmless from, all liabilities, obligations, fines, damages, penalties, claims, charges and expenses relating to alleged or actual injury (or death) to any person or damage to any property (including, without limitation, reasonable attorneys' fees and disbursements) ("Damages") that may be imposed upon, incurred by or asserted against any of the Indemnitees arising out of work performed pursuant to this consent, by reason of any defect or deterioration of the Structure, or out of any operations under this consent, or otherwise in connection with this consent, whether or not the Damages are due to the negligence of the City, its officials, agents, servants or employees. It is a condition of this consent that the Grantee shall indemnify the Indemnitees for whatever Damages may arise from this consent or any operations relating thereto, provided that if the facts or law relating to any of the foregoing would preclude any of the Indemnitees from being completely indemnified by the Grantee, such Indemnitees shall be partially indemnified by the Grantee to the fullest extent permitted by law.

The Grantee shall be solely responsible for the safety and protection of its officials, agents, servants, employees, contractors, and subcontractors, and for the safety and protection of the officials, agents, servants or employees of its contractors and subcontractors in connection with any and all operations under this consent.

The Grantee 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 consent.

The Grantee 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 consent, whether or not due to the negligence of the Grantee, including but not limited to injuries or damages resulting from the acts or omissions of any of its officials, agents, servants, employees, contractors, subcontractors or any other person.

The Grantee shall conduct operations under this consent in compliance with, and shall not cause or permit 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 operations under this consent (collectively "Environmental Laws"). Grantee shall not cause or permit, or allow any of the Grantee's officials, agents, servants, employees, contractors, and subcontractors to cause or permit any Hazardous Materials to be brought upon, stored, used, generated, treated or disposed of on any property in connection with operations under this consent. 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) During the entire term of this consent, the Grantee shall maintain Commercial General Liability insurance protecting the insureds from claims for property damage and/or injury, including death, that may arise or allegedly arises from construction, maintenance, operation or use of the Structure and any other structure hereby authorized. The policy of insurance shall be provided by a company that may lawfully issue such policy and have an A.M. Best rating of at least A- / "VII," a Standard and Poor's rating of at least A, a Moody's Investors Service rating of at least A3, a Fitch Ratings rating of at least A-, a Demotech 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. This insurance shall be, at a minimum, \$1,000,000 per occurrence and \$2,000,000 aggregate. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, "occurrence" based rather than "claims-made," and name the City of New York, together with its officials and employees, as an Additional Insured with coverage at least as broad as the most recent edition of ISO Form CG 20 26 or ISO Form CG 20 12.

The Grantee acknowledges that amendments to Title 6 of the Rules of the City of New York Section 2-57, pertaining to insurance requirements for licensed sidewalk cafés, may become effective during the term of this consent and the Grantee agrees that when such amendments shall become effective, the Grantee shall adhere to the amended rule(s).

At the same time as the Grantee submits an executed version of this agreement, the Grantee shall submit proof of insurance acceptable to the Commissioner. This shall include (a) a Certificate of Insurance certifying the issuance and effectiveness of such insurance with the specified minimum limits and the company code issued to the insurance company by the National Association of Insurance Commissioners (the NAIC number), (b) the additional insured endorsement(s) naming the City as an Additional Insured, and (c) a duly executed Certification by Insurance Broker or Agent in the form required by the Commissioner, attached hereto. In addition, prior to the expiration date of all policies, the Grantee shall submit proof satisfactory to the Commissioner of either renewals of such policies or the issuance of new policies in compliance with the requirements herein.

Acceptance by the Commissioner of proof of insurance or any other action or inaction by the Commissioner or the Grantor does not waive Grantee's obligation to ensure that insurance fully consistent with the requirements herein is secured and maintained, nor does it waive Grantee's liability for its failure to do so.

The Grantee shall be obligated to provide the City with a copy of any policy of insurance required hereunder upon request by the Commissioner or the New York City Law Department.

Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this agreement, the Grantee shall notify in writing all insurance carriers that issued potentially responsive policies of any such event (including notice to Commercial General Liability insurance carriers for events relating to the Grantee's own employees) no later than 20 days after such event. 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 Grantee 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.

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

The insurance coverage required herein shall not relieve the Grantee of any liability under this agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this agreement or the law.

The Grantee waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any liability insurance required under this Section 20 (whether or not such insurance is actually procured or claims are paid thereunder) or any other liability insurance applicable to the operations of the Grantee.

21. INVESTIGATION CLAUSE

21.01. The parties to this agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry relative to this agreement conducted by a State of New York (State) or City of New York (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 this agreement or when it is the subject of the investigation, audit or inquiry.

21.02. A hearing shall be convened in accordance with section 20.03 below if (a) 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 concerning the award of, or performance under, this agreement, 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; or (b) any person refuses to testify concerning the award of, or performance under, this agreement, 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.

21.03. (a) The commissioner or agency head whose agency is a party in interest to this agreement shall convene a hearing, upon not less than five (5) days' written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

(b) If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend this agreement pending the final determination pursuant to section 20.05 below without the City incurring any penalty or damages for delay or otherwise.

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

- (a) The disqualification for a period not to exceed five (5) years from the date of an adverse determination of 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
- (b) The cancellation or termination of this City agreement, that the refusal to testify concerns and providing that it has not been assigned as permitted under this agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City 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.

21.05. The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below in addition to any other information which may be relevant and appropriate.

- (a) The parties' 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.
- (b) 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.
- (c) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

- (d) The effect a penalty may have on an unaffiliated and unrelated party or entity that has significant interest in an entity subject to penalties under section 20.04 above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in section 20.03.(a) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

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

(b) 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.

(c) 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.

(d) 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.

22. Additional charges prohibited. The Grantee is hereby prohibited from imposing any additional or special charge on patrons for service in the sidewalk cafe area.

23. Sidewalk may not be obstructed. The Grantee shall neither encumber nor obstruct the sidewalk in front of the Structure, nor allow same to become obstructed or encumbered, and shall remove all snow, ice or litter thereon at its sole cost and expense and keep same in good repair.

24. Sale of goods or merchandise prohibited. No goods or merchandise shall be sold from within the Structure without the prior written permission of the Grantor. All public communication services, including but not limited to, public pay telephone services, web telephones, public internet terminals, Wi-Fi access points and other telecommunications services shall be installed, maintained, and removed in accordance with all laws, rules, and regulations adopted by the City of New York and shall be provided only by a person or entity franchised by the City of New York to provide such service.

25. Severability and Headings. The clauses and provisions of this Revocable Consent Agreement are intended to be severable. The unconstitutionality or

unconscionability of any term, clause or provision shall in no way defeat the effect of any other term, clause or provision.

Section and other headings are inserted for convenience only and shall not be used in any way to construe the terms of this Agreement.

In Witness Whereof, the parties hereunder have caused this revocable consent to be executed.

GRANTOR:
DEPARTMENT OF Consumer Affairs
OF THE CITY OF NEW YORK

By: _____
Alba Pico
Deputy Commissioner

Accepted and agreed to:
GRANTEE:

«corp name» _____

By: _____
(Signature of Owner or Officer)

(Print Name of Signatory)

corp. seal here

Title: _____

The foregoing consent is hereby approved.

BILL DE BLASIO, MAYOR

BY: _____
Daniel Symon, Director
Mayor's Office of Contract Services

Dated, New York _____, 20____

Approved as to form and certified as to legal authority
by Sharon Cantor, Acting Corporation Counsel,
per attached letter.

**ACKNOWLEDGMENT BY GRANTOR, NEW YORK CITY DEPARTMENT OF
CONSUMER AFFAIRS**

State of New York)
) ss:
County of New York)

On the _____ day of _____ in the year 20____ before me, the undersigned, personally appeared Alba Pico, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public or Commissioner of Deeds

