

AMENDMENT TO PERMIT AGREEMENT

BETWEEN

SURF AVENUE PARKING, LLC

AND

**CITY OF NEW YORK
PARKS & RECREATION**

FOR THE RENOVATION, OPERATION AND MAINTENANCE OF PARKING FACILITIES
AT MCU PARK, CONEY ISLAND.

BROOKLYN, NEW YORK

B369-PL

DATED: _____, 2019

AMENDMENT TO PERMIT AGREEMENT (“Amendment”) made this ___ day of _____, 2018, between the City of New York (the “City”) acting by and through the Department of Parks & Recreation (“Parks”), whose address is The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065 and Surf Avenue Parking, LLC (“Surf Avenue” or “ Permitee”), a corporation organized under the laws of the State of Delaware, whose address is 477 South Rosemary Avenue, Suite 319 West Palm Beach, FL 33401.

WHEREAS, the parties to this Amendment are parties to that certain Permit Agreement dated April 7, 2014, (the “Permit” or “Permit Agreement”); and

WHEREAS, the Permit Agreement originally contemplated a one (1) year term with the option of up to four (4) one-year extensions, each of which has been exercised and the last of which shall expire on April 30, 2019;

WHEREAS, Parks is currently evaluating options and planning for the future of the parking lot concession at the MCU Park, Coney Island; and,

WHEREAS, the parties wish to extend the Term of the Permit Agreement for one (1) additional year with the option of one (1) further additional year, to ensure that the public can continue enjoying the concession while Parks works to develop future plans for this concession; and,

WHEREAS, the New York City Economic Development Corporation has undertaken infrastructure work on Surf Avenue and, as a result, the perimeter of the Licensed Premises may, from time to time, be inaccessible for use by the permittee; and,

WHEREAS, the parties desire to amend the terms of the Permit Agreement subject to and in accordance with the terms of this Amendment.

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

1.1 Unless otherwise noted in this Amendment, all capitalized terms in this Amendment shall have the meaning ascribed to them in the Permit Agreement.

1.2 The “TERM” provision of the Cover Sheet of the Permit Agreement is amended by deleting it in its entirety and inserting the following new TERM provision:

TERM: ~~One~~Six (6) years from Notice to Proceed, with the option for one (1) one-year renewal at Parks’ sole discretion.

1.3 The FEE AND PAYMENT TERMS provision of the Cover Sheet of the Permit Agreement is amended by adding:

Operating Year 6: \$153,762.00

Operating Year 7: (if option exercised) \$153,762.00

1.4 Section 6 of the Permit Agreement is amended by deleting the following sentence

“The approved hours for the commencement of operations hereunder are set forth on Exhibit B attached to the Cover Page”

in its entirety and replacing it with the following:

Annexed hereto and made a part hereof as Exhibit B1 is the Schedule of Approved Hours and Fees for Operating Year 6.

1.5 Section 19 of the Permit Agreement is amended by deleting Section 19 in its entirety and inserting the following new Section 19:

19. TOBACCO; ALCOHOL The selling and/or advertisement of cigarettes, cigars, any other tobacco products, non-tobacco smoking products, e-cigarettes, or alcohol is strictly prohibited. It is the Permittee’s responsibility to adhere to and enforce the prohibitions of this Section 19.

1.6 The “PARK/LOCATION IN PARK (“PREMISES”)” term on the Permit Cover Page is amended by deleting it in its entirety and inserting the following new PARK/LOCATION IN PARK (“PREMISES”) term:

Two parking lots near the Stadium. The primary lot (“Primary Lot”), consisting of approximately 808 parking spaces, unless a smaller number of spaces is assigned, is located adjacent to the Stadium between West 19th and West 20th Streets between Surf Avenue and Riegelmann Boardwalk. The second lot, consisting of

approximately 150 parking spaces, unless a smaller number of spaces is assigned, is located between West 21st and West 22nd Streets, between Surf Avenue and Riegelmann Boardwalk. See map annexed hereto as Exhibit A for exact location of parking lots.

1.7 Section 26 is deleted in its entirety and replaced as follows:

(a) Permittee shall maintain Commercial General Liability (“CGL”) insurance in the amount of at least Five Million Dollars (\$5,000,000) per occurrence for bodily injury (including death) and property damage and Five Million Dollars (\$5,000,000) for personal and advertising injury, and if the policy contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to each vending location and the 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 Permit. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be “occurrence based” rather than “claims-made.” Such CGL insurance shall name the City, together with its officials and employees as Additional Insureds with coverage at least as broad as the most recent edition of ISO Form CG 20 26, and the City’s limits shall be no less than the Permittee’s. Such CGL insurance shall be primary and non-contributing to any insurance or self-insurance maintained by the City. A certified copy of this CGL policy or a Certificate of Insurance (evidencing the CGL insurance and the City’s status as additional insured) must be submitted to and accepted by the Commissioner prior to or upon execution of this Permit.

(b) During the term of the Permit, Permittee shall also carry statutory limits of Worker’s Compensation, Employer’s Liability and Disability Benefits Insurance. Permittee must submit proof of valid Workers’ Compensation Insurance, Employer’s Liability, and Disability Benefits Insurance in the following acceptable forms: (1) C105-C; (2) State Insurance Fund Form No. U-26.3; (3) New York State Workers’ Compensation Board Form No. DB-120.1; (4) equivalent or successor forms used by the New York State Workers’ Compensation Board; (5) or other proof of insurance in a form acceptable to the Commissioner of Parks. If Permittee is or intends to be exempt from the requirements of the New York State Worker’s Compensation Law, Permittee must submit Certificate of Exemption Form No. CE-200.

(c) If vehicles are to be used in connection with the concession granted hereby, Permittee shall carry Business Automobile Liability insurance in the amount of One Million Dollars (\$1,000,000) each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned or hired vehicles.

(d) Permittee shall maintain all-risk property insurance covering all the parking gates and any revenue control equipment on the property at a value reasonably determined by Parks. Such insurance, if required, shall include coverage for, among other risks, damage cause by flooding. If for any reason it does not, the concessionaire shall purchase separate flood insurance. Such insurance shall be "occurrence" (rather than "claims-made") based and shall designate Permittee as Named Insured and the City as Loss Payee as their interests may appear.

(e) The City may require other types of insurance and/or higher liability limits and other terms if, in the opinion of the Commissioner, the proposed program warrants it.

(f) For each policy required under this Permit, except for Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, Permittee shall file a Certificate of Insurance with Parks upon signing this Permit and as a condition of issuance of this Permit. All Certificates of Insurance shall be (i) in a form acceptable to the City and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (ii) accompanied by the endorsement in Permittee's general liability policy by which the City has been made an additional insured pursuant to Section 26. All Certificate(s) of Insurance shall be accompanied by either a duly executed "Certification by Insurance Agent or Broker" in the form attached as Exhibit E or copies of all policies referenced in the Certificate of Insurance. If complete policies have not yet been issued, binders are acceptable until such time as the complete policies have been issued, at which time such policies shall be submitted.

(g) Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Section.

(h) Permittee shall provide the City with a copy of any policy required under this Section upon the demand for such policy by the Commissioner or the New York City Law Department.

(i) Acceptance by the Commissioner of a certificate or a policy does not excuse the Permittee from maintaining policies consistent with all provisions of this Section (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

1.8 Section 27(a) is deleted in its entirety, and replaced as follows:

To the fullest extent permitted by law, Permittee shall indemnify, defend and hold the City, its officials and employees harmless against any and all claims (even if the claims are without merit), liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements) arising out of or related to any of the operations under this Permit and/or Permittee's failure to comply with the law or any of the requirements of this

Permit. Insofar as the facts or law relating to any of the foregoing would preclude the City, or its officials or employees from being completely indemnified by Permittee, the City, its officials and employees shall be partially indemnified by Permittee to the fullest extent permitted by law.

1.9 Except as amended by this Amendment, the Permit Agreement shall remain in full force and effect. In the event of any inconsistency between the terms of this Amendment and the Permit Agreement, the terms of this Amendment shall govern and prevail in all instances.

1.10 This Amendment may be executed in several counterparts, which shall constitute one and the same instrument.

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

CITY OF NEW YORK
PARKS & RECREATION

SURF AVENUE PARKING, LLC

By: _____

By: _____

Name:

Name:

Title:

Title:

Dated: _____

Dated: _____

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY

Acting Corporation Counsel

STATE OF NEW YORK)

)ss:

COUNTY OF NEW YORK)

On this __ day of _____, 2019 before me personally came _____ to me known, and known to be the _____ of the City of New York Department of Parks & Recreation, and the said person described in and who executed the forgoing 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 NEW YORK)

On this __ day of _____, 2019 before me personally came _____ to me known, and known to be the _____ of Surf Avenue Parking, LLC, and the said person described in and who executed the forgoing instrument and (s)he acknowledged that (s)he executed the same in her/his official capacity and for the purpose mentioned therein.

Notary Public

EXHIBIT B1
Schedule of Approved Hours and Fees
[to be provided upon effective date]

EXHIBIT E

Instructions to New York City Agencies, Departments, and Offices

All certificates of insurance (except certificates of insurance solely evidencing Worker's 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.

