

## **PARKLET REVOCABLE LICENSE**

THIS IS A PARKLET REVOCABLE LICENSE (hereinafter, "Revocable License" or "License") granted this day of \_\_\_\_\_, 2018, between:

**CITY OF HOLLYWOOD**, a Florida municipal corporation, 2600 Hollywood Boulevard, Hollywood, FL 33021, hereinafter "CITY",

And

**Tipsy Joe Corp. Tipsy Boar – 1906 Harrison Street , Hollywood FL 33020, FEI #, hereinafter "PERMITTEE".]**

WHEREAS, Parklets are an economic and creative solution to the desire for wider sidewalks across the City, particularly in areas with narrow sidewalks or a lack of open space; and

WHEREAS, Parklets are created within current on-street parking spaces within the public right-of-way, typically being built over the parking spaces at the same level as the sidewalk where pedestrian amenities, including, but not limited to, benches, tables, chairs, landscaping, and bicycle racks are then placed; and

WHEREAS, the Community Redevelopment Agency Board of the City of Hollywood, by adoption of Resolution No. 17-40 and No. 2018-30 , adopted and established a one year pilot program for, rates and terms for Parklets Pilot Program; and

WHEREAS, PERMITTEE is the owner or lessee of property located at 1906 Harrison Street, Hollywood, Florida ("Business Location"); and

WHEREAS, PERMITTEE is in the business of Seating Food service and Alcoholic Beverages; and

WHEREAS, PERMITTEE filed an application with the CITY for development, construction, installation, operation and maintenance of a Parklet adjacent to their Business Location consisting of a Parklet platform and Project Improvements for use by the general public and patrons of PERMITTEE'S business; and

WHEREAS, the Department has reviewed PERMITTEE'S Application and approved same subject to the terms and conditions set forth in this Revocable License and subject to execution thereof by PERMITTEE; and

WHEREAS, it is in the best public interests of the CITY to encourage the development of Parklets on a pilot program basis in an attempt to make the Parklets an enhanced pedestrian experience for local residents and tourists with recreation, restaurant, retail and entertainment venues and for the general public; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Revocable License, and other good and valuable considerations, the adequacy and receipt of which are hereby acknowledged, the parties agree as follows:

**1. Recitals.** The foregoing recitals are true and correct and are hereby ratified and confirmed and incorporated herein.

**2. Defined Terms.** The following terms, as used and referred to herein, shall have the meaning set forth below, unless the context indicates otherwise.

*City Manager* means CITY's Chief Executive Officer, its City Manager, or his or her designee.

*Contract Administrator* means the Executive Director of the CRA. In the administration of this Revocable License, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator.

*Day(s)*. In computing any period of time expressed in day( s) in this Revocable License, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

*Department* means the CITY'S Community Redevelopment Agency which is charged with responsibility of administering the Pilot Program for Parklets.

*Director* means the Director of the Department or his or her designee.

*Effective Date* means the effective date of this Revocable License, which shall be the date this License is executed by both CITY and PERMITTEE.

*License Area* means the area described in the approved Parklet Site Plan, such License Area being within a public right-of-way, including air space, within which the Project Improvements shall be constructed, and within which the Parklet shall be operated and maintained for the purpose of accommodating the general public and the patrons of PERMITTEE'S adjacent business.

*Parklet Site Plan* or *Site Plan* means the site plan prepared by PERMITTEE and approved by the CITY and CRA in its proprietary capacity as part of this Revocable License. The Site Plan approval herein is not part of the sovereign governmental approval process associated with building and zoning permits. Approval of the Site Plan does not relieve PERMITTEE of proceeding with all other governmental approvals otherwise applicable to the construction, use and operation of the Project, including building permits under the Florida Building Code and Engineering Permits under the CITY's regulations. A copy of the approved Parklet Site Plan is attached hereto as **Exhibit "A"**. A copy of the approved Parklet Site Plan shall be filed with the Office of the City Engineer.

*Person* means any individual, firm, partnership (general or limited), corporation, company, association, joint venture, joint stock association, estate, trust, business trust, cooperative, limited liability corporation, limited liability partnership, limited liability company or association, or body politic, including any heir, executor, administrator, trustee, receiver, successor or assignee or other person acting in a similar representative capacity for or on behalf of such Person.

*Project* means the construction of Project Improvements for the purpose of accommodating the general public and patrons of PERMITTEE providing an area within which the pedestrian experience along the public right-of-way may be amplified and enhanced by offering an area within which one might sit, rest, recreate or indulge in open air dining and beverage experience. The term *Project* also includes the ongoing obligation of maintenance, repair, operation and removal of the *Project* in accordance with the terms and conditions set forth herein and under the Pilot Program, all of which shall be undertaken at the sole cost and expense of PERMITTEE. The *Project* shall be available to the public at large and to the patrons of PERMITTEE'S adjacent business.

*Project Improvements* means the improvements identified on the approved Parklet Site Plan, which such improvements may, but shall not necessarily include Parklet platform, tables, chairs, umbrellas, and other accessory equipment to the Project, railings, seating, landscape or streetscape elements, soft-hit poles, wheel stops, etc.

*Parklet* means the platform installed by a Permitte over parking spaces adjacent to a sidewalk area upon which tables, chairs, umbrellas, landscaping, benches and other accessory components may be placed to create an enhanced pedestrian experience for the general public where the Permittee has a business adjacent to the Parklet and where the sales and service of food and beverages may be made available to patrons.

*Permit(s)* means permits issued under the Florida Building Code, CITY Engineering Permits, and includes permits issued by any other governmental authority having subject matter jurisdiction over the relevant component of the Project.

*Z.L.D.R.* means the CITY's Zoning and Land Development Regulations.

### **3. Revocable License.**

(a) The CITY grants unto the PERMITTEE a Revocable License for the purpose of constructing, installing, operating, maintaining and removing the Parklet and Project Improvements within a public right-of-way under authority of CRA Resolution No. 17-40 and R-2018-30 establishing a Pilot Program for Parklets, subject to the terms and conditions set forth herein.

(b) At all times the License granted herein for the Project shall be subordinate and inferior to the CITY's superior interest in maintaining the public right-of-way underlying the Parklet. In the event that any conflicts should ever arise between the CITY's superior interest as aforesaid and the Project, then, in that event, the rights of the CITY's uses and obligation of maintaining the public right-of-way for its superior intended purpose shall prevail over that of PERMITTEE and PERMITTEE shall not be entitled to any compensation for interference with its Project.

(c) PERMITTEE shall not be entitled to any compensation for loss of this License through revocation.

**4. Term.** Unless extended by other action of the City Commission, the term of this Revocable License under this Pilot Program for Parklets shall expire six (6) months from the date of adoption.

**4.1** In the event that the Revocable License for the License Area granted herein shall (a) ever conflict with a superior municipal interest of the CITY or public, or (b) at any time the CITY requires the use of the License Area for a superior conflicting municipal purpose or (c) determines that continuation of the License for the License Area granted herein is no longer in the best public interest, all as determined by the City Commission after at least fifteen (15) advance notice to PERMITTEE that the matter will be considered by the City Commission, then, in that event, the License granted herein for the respective License Area shall be terminable, in whole or in part, at the will of the City Commission.

**4.2** In the event PERMITTEE is in violation of any material term or condition of this Revocable License, as reasonably determined by the City Manager, or the license granted herein or the actions of PERMITTEE or any of its agents, servants, employees, guests or invitees or the agents servants, employees, guests or invitees of any of PERMITTEE's contractors, subcontractors or independent contractors conflict with a superior municipal interest of the CITY or the public, or at any time the CITY requires the use of the License Area or adjacent publicly dedicated thoroughfare(s) for a superior conflicting municipal purpose, or continuation of the License granted herein as to the License Area is no longer in the best public interests, all as reasonably determined by the City Manager, then, upon advance written notice to PERMITTEE of not less than seventy-two (72) hours where PERMITTEE is given an opportunity to be heard on the matters by the City Manager, the authority granted by this License as the License Area may be temporarily revoked or suspended by the City Manager for a period not exceeding fourteen (14) days.

**4.3** In the event that emergent conditions arise within the License Area that present an imminent threat to the health, safety or welfare of Persons or property, the City Manager may temporarily suspend this Revocable License, in whole or in part, for a period not to exceed fourteen (14) days. In such a circumstance notice shall be provided to PERMITTEE pursuant to the provisions of Section 13, Emergencies, of this Revocable License. In the event the condition persists for a period of seven (7) days, then this Revocable License may be temporarily suspended for a period in excess of fourteen (14) days by action of the City Commission.

**4.4** This Revocable License may also be revoked or terminated pursuant to the terms of Section 25.

## **5. Cost Recovery; Lost Revenue Recovery Fee and Fees.**

**5.1 Annual Inspection Fees.** [This subsection is intentionally deleted for the purposes of the Pilot Program.] LICENSEE agrees to pay to CITY for each year of the License Term, commencing with the Effective Date hereof and continuing annually on the first day of October of each year thereafter, an annual inspection fee to be determined by

the City Manager which such fee shall be based on the CITY'S reasonable projected cost of periodically inspecting the License Area for compliance with the terms and conditions set forth in this License over the then current fiscal year (October 1 through September 30).

**5.2 Cost Recovery Fee.** For each parking meter space that is taken out of service in the formation and operation of a Parklet, PERMITTEE shall pay to the City a Lost Revenue Recovery Fee of \$8/day per parking meter taken out of service. Payment of the Cost Recovery Fee shall be a condition precedent to this Revocable License taking effect. That portion of the Lost Revenue Recovery Fee that is unearned by the end of the term shall be refunded to the PERMITTEE.

**5.3 Recovery of Additional Costs of Administration.** In addition to the annual inspection fees set forth above, LICENSEE shall also be obligated to pay additional fees to the CITY amounting to the recovery of reasonable costs incurred by CITY in the administration, monitoring and enforcement of the License, including, but not limited to, staff time incurred in the examination of the Site Plan and plans and specifications for the Project Improvements, inspections to determine if the construction is proceeding in accordance with the plans and specifications approved by the Office of the City Engineer, and reasonable cost of CITY attorneys' services associated with the preparation and administration of the Revocable License and any amendments thereto and including enforcement of the terms thereof.

## **6. Parklet Site Plan Approval Process.**

(a) PERMITTEE shall prepare and submit plans to the CITY and CRA for approval of a Parklet Site Plan for the proposed initial construction of improvements and placement of tables, chairs, umbrellas and equipment for the Project within the License Area. The Parklet Site Plan shall be a drawing showing the layout and dimensions of the License Area and adjacent public property as well as portions of the PERMITTEE's Business Location adjacent to the License Area, and including the structures located thereon, proposed location, size and number of tables, chairs, umbrellas, location of doors, location of trees, trash receptacles, landscaping, utility boxes and irrigations system and any other proposed Project Improvements. After initial approval, any changes to the Parklet Site Plan shall be approved by the Department who may grant or deny such approval in his sole and unfettered discretion. The Parklet Site Plan shall show all existing improvements and landscaping and shall delineate the boundaries of the License Area.

(b) PERMITTEE shall submit to the Department for approval photographs, drawings or manufacturers' brochures fully describing the appearance of all proposed tables, chairs, umbrellas or other objects relating to the open air dining and beverage service that may be conducted within the License Area. The tables, chairs, umbrellas and other objects provided as part of the Project shall be of a quality, design, materials and workmanship to ensure the safety and convenience of its users and shall be compatible with the uses in the immediate vicinity. The material and color of the tables, chairs and umbrellas shall be subject to approval by the Department. Approval by the Department under this subparagraph (b) may occur after Parklet Site Plan approval. After initial approval any changes in the material, workmanship or color of the tables, chairs and umbrellas shall be approved by the Department who may grant or deny such approval in its sole and unfettered discretion.

(c) The Department shall review the materials in subparagraphs (a) and (b) above and grant approval, approval with conditions or denial. Approval of the Parklet Site Plan under this Paragraph shall not relieve PERMITTEE of the obligation of securing all required governmental permits necessary for construction of the Project Improvements, to the extent required, which such permits may include, but are not necessarily limited to Building Permits under the Florida Building Code and Engineering Permits under the CITY'S regulations,. A copy of the approved Parklet Site Plan shall be placed and remain on file in the Office of the City Engineer.

(d) In the event PERMITTEE desires to make modifications to the Project Improvements or Parklet Site Plan, such proposed modifications shall be submitted to the Department review and approval as set forth above. Approval of such Parklet Site Plan or Project modifications shall be granted, granted with conditions or denied by the Department who may grant or deny such approval in his sole and unfettered discretion.

**7. Construction of Improvements.** The License Area shall be used as the site for the construction, maintenance and operation of the Project Improvements and Project, and shall be used for no other purpose whatsoever, unless otherwise approved by the City Commission of CITY. PERMITTEE shall construct the Project in accordance with the following terms and conditions:

(a) PERMITTEE shall prepare a construction plans and specifications based on the Parklet Site Plan approved by the CITY in accordance with the provisions set forth in Paragraph 6 above. The construction plans and specifications shall be in accordance with the CITY's Engineering Standards and shall be submitted to the Office of the City Engineer for approval prior to submission of same to the appropriate government officials for issuance of applicable permits in accordance with applicable governmental regulations, including, but not limited to the Florida Building Code, the CITY's Unified Land Development Regulations, applicable CITY Codes, CITY Engineering regulations and standards and the terms and conditions of the Pilot Program for Parklets, including the terms and conditions set forth in this Revocable License.

(b) After approval by the Office of the City Engineer, the construction plans and specifications shall be submitted by PERMITTEE to the appropriate governmental officials for review and issuance of all applicable building and engineering permits in accordance with the laws, regulations and rules of all governmental entities with jurisdiction over the construction of the Project improvements. A copy of the approved plans and specifications shall be placed and remain on file in the Office of the City Engineer.

(c) PERMITTEE shall obtain all applicable building permits, engineering permits and approvals for the construction of the Project and commence construction upon issuance of such permits. Such construction shall be completed without unreasonable delay.

(d) PERMITTEE shall be responsible for all costs and fees associated with the planning, permitting and construction of the Project. The PERMITTEE agrees that the location and finish grades of the improvements shown on the Parklet Site Plan will be indicated on the site and approved by CITY prior to commencement of construction.

(e) PERMITTEE agrees that it will replace any and all landscaping and public improvements which are damaged as a result of the construction of the Project utilizing the same quality of materials and workmanship as approved by the Office of the City Engineer.

**8. As-built Plans.** PERMITTEE agrees to provide "as-built" plans to the Office of the City Engineer certifying the location of all components of the Project Improvements. In the event any components of the Project Improvements are constructed in whole or in part outside the License Area or not in compliance with the approved Parklet Site Plan, the PERMITTEE shall be required to remove those offending components and relocate same within the License Area in accordance with the approved Parklet Site Plan. PERMITTEE shall have a continuing obligation under this Paragraph to supply "as-built" plans to the Office of the City Engineer as to any alterations or renovations of within the Parklet Area after initial completion of construction.

### **9. Project Operation and Conditions.**

(a) The Project shall be operated for the purpose of accommodating the public in general without charge and the patrons of PERMITTEE and may include providing open air dining and beverage service opportunities, provided, however, that nothing herein shall be construed as a prohibition as to PERMITTEE from charging for the sale or service of food or beverage within the Parklet Area. The Project shall be available to the public at large and not designated primarily for patrons of PERMITTEE.

(b) PERMITTEE shall preserve and protect all existing trees and plantings in the public right-of-way within the immediate vicinity of the Parklet. PERMITTEE shall be required to replace or mitigate entirely at PERMITTEE's expense, any damage to the public right-of-way or private property as a result of the Parklet construction, installation, placement, operation, maintenance or removal.

(c) General landscape maintenance attendant to the Parklet should be performed on a regular basis at the PERMITTEE's sole cost and expense.

(d) Awnings, umbrellas and other decorative material accessory to the Parklet shall be fire retardant, pressure treated or manufactured of fire resistive material.

(e) Tables, chairs, umbrellas and any objects accessory to the Parklet shall be maintained in a clean and attractive appearance, shall be in good state of repair at all times and shall be maintained in accordance with the approved maintenance plan and shall keep the landscaping and plants in a good, healthy and vibrant condition.

(f) The Parklet shall be maintained in a neat and orderly appearance at all times and the area shall be cleared of all debris on a periodic basis during the day, and again at the close of each business day in compliance with the approved maintenance plan.

(g) The City may require the PERMITTEE to provide additional services beneath the Parklet platform, including but not limited to pest abatement service and clearing of catch basin grates to allow proper storm drainage. No Parklet shall impede drainage.

(h) No portion of any object placed within the Parklet boundary shall extend into the adjacent pedestrian sidewalk.

(i) No Parklet accessory shall be more than eight-four (84) inches in height above the highest point of the abutting sidewalk.

(j) If the Parklet includes planters, the planters must be placed within the Parklet boundaries but must be secured to ensure that they do not move on un-level sidewalk, no planters with wheels are to be permitted.

(k) Tables, chairs, umbrellas and any other items accessory to the Parklet shall be of a quality, design, materials, and workmanship both to ensure the safety and convenience of the users and to be compatible with the uses in the immediate vicinity of the Parklet.

(l) No advertising signs or business identification signs shall be permitted within the Parklet Area except for that signage which has been submitted to and approved by the CITY.

(m) No table or chair nor any other part of the Project may be attached, chained, or in any manner affixed to any tree, post or other fixture within the Parklet Area.

(n) If found necessary for the protection of health, safety and welfare of the public, the City Manager or his designee may require PERMITTEE to immediately remove or relocate all parts of the tables, chairs, umbrellas and equipment within the Parklet Area. If PERMITTEE fails to remove or relocate the tables, chairs and umbrellas as requested within a reasonable time as determined by the City Manager, given the circumstances at hand, CITY may remove or relocate same in emergency situations and the cost thereof shall be borne by PERMITTEE.

(o) Permittee is responsible for the costs associated with removal of the Parklet platform and accessories.

(p) The CITY and its officers and employees shall not be responsible for Parklet or Parklet components relocated during emergencies.

(q) Amplified or non-amplified music may be permitted within the Parklet Area, upon recommendation of the Department and subject to the approval of the City Manager, or his designee, as to the hours at which the music may be played, the volume settings, placement of speakers and any other facet of the projection of the music.

(r) PERMITTEE shall, at its sole cost and expense, remove the tables, chairs and umbrellas from the Parklet Area at the close of PERMITTEE'S business each day, provided the tables, chairs and umbrellas are set back in the Area by the opening of business the following day, except for inclement weather.

(s) Parklets shall not be permitted in front of a fire hydrant, over a manhole, public utility valve or cover. A clearance of fifteen (15) feet shall separate Parklets from fire hydrants.

(t) Parklets shall be required to have soft-hit posts, wheel stops and barriers on all edges of the Parklet platform.



(u) The Parklet shall be constructed and installed to conform to all applicable codes, rules and regulations including the Florida Building Code, City of Hollywood's Zoning and Land Development Regulations, City's Code of Ordinances, Americans with Disabilities Act ("ADA") and other applicable federal, state or county laws or regulations.

(v) No Parklet shall be designed or installed in such a manner as to result in a violation of the Code of Ordinances regard to view triangles, as outlined in Section 155.12(D)(1).

(w) There shall be a thirty-six (36) inch wide clear path between the Parklet and the abutting on abutting sidewalks for pedestrians at all times.

**10. ADA.** LICENSEE shall have the continuing obligation of compliance with the Americans With Disabilities Act, as same may be amended from time to time, with respect to the Project as it is applicable.

**11. Condition of License Area.** LICENSEE accepts the License Area in an "AS IS" condition as of the Effective Date of this Revocable License. If LICENSEE finds any conditions altered after an initial inspection of the License Area, which have a material adverse effect on the Project, CITY shall be notified immediately.

**12. Compliance with Regulations of Public Bodies.** PERMITTEE shall, at its sole cost and expense, construct, operate, maintain and repair the Project and perform such acts and do such things as shall be lawfully required by any public body having jurisdiction over the License Area and Project in order to comply with health and sanitary requirements, fire hazard requirements, zoning requirements, building code requirements, CITY Engineering Standards, environmental requirements and other similar regulatory requirements.

**13. No Property or Contract Right.** PERMITTEE expressly acknowledges that pursuant to the terms hereof, it gains no property or contract right to the continued maintenance of the Project or improvements within the License Area, other than as expressly set forth in Paragraph 3. PERMITTEE further acknowledges that the License granted herein is revocable at the will of the CITY and in the CITY'S sole and unfettered discretion, subject to the terms and conditions hereof.

**14. Repairs and Maintenance.** [This section intentionally deleted as provisions already incorporated in other conditions.]

**15. Emergencies.** If an emergency situation arises with respect to the License Area where the License Area or any condition thereof presents an imminent threat to the health or safety of Persons or property, the CITY shall make reasonable efforts to provide telephone and fax or email notice to the PERMITTEE's Contact Person. If, following that notice, PERMITTEE fails to take timely action to correct the emergency situation, and allowing the emergency situation to continue would pose an imminent threat to health or safety to Persons or property, CITY may undertake such limited actions as are necessary to eliminate the emergency; and CITY shall be entitled to recover its reasonable costs of cure from PERMITTEE in accordance with provisions hereof. For the purposes of this Paragraph, PERMITTEE'S Contact Person shall be \_\_\_\_\_; address \_\_\_\_\_; telephone number \_\_\_\_\_ (office) and \_\_\_\_\_(cell); fax number \_\_\_\_\_ and e-mail address: \_\_\_\_\_. In the event the PERMITTEE's Contact Person or any other information pertaining to the PERMITTEE's Contact Person shall change, such change shall be provided to the City Engineer in writing.

**16. Alterations and Modifications.** PERMITTEE may, at its sole cost and expense, at any time and from time to time, make such changes, alterations, modifications, replacements, improvements or additions in and to the License Area, and the structures and improvements thereon, including the demolition of any structure or improvements that hereinafter may be situated or erected within the License Area, provided, however, that amendments to the Site Plan and the plans and specifications for any such change, alteration, replacement, improvement or addition shall be approved by the City Manager who may grant or deny approval in his sole and unfettered discretion.

**17. Damage to Public Property.** In the event the construction, operation, maintenance, repair, demolition or reconstruction of the Project or License Area or any portion(s) thereof cause(s) any damage whatsoever to any public property, then PERMITTEE shall be responsible for the cost of repair and shall, at City's option, make said repairs or reimburse CITY for the cost of same.

**18. Taxes, Assessments; Operating Costs and Utility Charges.**

(a) PERMITTEE shall pay or cause to be paid all real estate taxes, assessments and other similar payments, usual or unusual, extraordinary as well as ordinary, which shall during the term be imposed upon, become due and payable, or become a lien upon the Project or License Area or any part thereof, but specifically limited to such taxes or assessments which accrue after the Effective Date hereof, by virtue of any present or any future law of the United States of America or of the State of Florida or of any county or municipal authority. PERMITTEE shall, upon request, exhibit receipt for such payments to the CITY annually. Further, subject to subparagraph (b) below, as of the Effective Date hereof, PERMITTEE shall pay or cause to be paid all operating expenses, such as those for light, electricity, charges for water, and all costs attributable to the maintenance and operation of all improvements to be erected upon the License Area or landscaping within the License Area.

(b) PERMITTEE shall have the right to review, by legal proceedings, any taxes, assessments or other charges imposed upon it. If any such taxes, assessments or other charges shall be reduced, canceled, set aside or to any extent discharged, the PERMITTEE shall pay the amount that shall be finally assessed or imposed against the License Area or Project or adjudicated to be due and payable on any disputed or contested items.

(c) If, as a result of any legal proceedings pursuant to the provisions of subparagraph (b) hereof, there is any reduction, cancellation, setting aside or discharge of any tax or assessment, the refund shall be payable to PERMITTEE, and if such refund be made to the CITY, then and in that event the CITY shall regard such refund as held in trust for the benefit of PERMITTEE and shall immediately pay over the same to the PERMITTEE. The term "legal proceedings" as used in this Paragraph shall be construed to include appropriate appeals from any judgments, decrees or orders, or certiorari proceedings.

(d) PERMITTEE shall be responsible for securing separate meters or billing for all utilities consumed within the License Area. PERMITTEE agrees to promptly pay when due all operating,

construction, maintenance and servicing charges, expenses and costs, including telephone, gas, electricity, cable, telecommunications, water, and all other expenses incurred in the use and operation of the Project. The accrual of utilities and operating costs under this subparagraph prior to termination of the Revocable License shall survive the termination of the Revocable License and remain the obligation of the PERMITTEE.

### **19. Removal, Restoration and Bonding.**

Except as may otherwise be expressly provided herein, it is agreed that upon termination of this Revocable License, in whole or in part, PERMITTEE shall remove all or any part of the Project Improvements and any components thereof upon revocation or termination of this License as aforesaid and upon demand of CITY for removal of all or any part of the Project Improvements and PERMITTEE shall restore the surface of the such License Area to the conditions that existed prior to PERMITTEE's installation of all or any of the Project Improvements within such License Area. Such removal shall be at PERMITTEE's sole cost and expense. In the event PERMITTEE fails to begin to remove all or any part of the Project improvements contemplated herein with ten (10) days after written demand by the City, the CITY is hereby authorized to remove such Project Improvements that interfere with the easement rights or the public's use of dedicated rights-of-way and restore the License Area to the conditions that existed prior to the PERMITTEE's construction of Project Improvements, and all reasonable costs associated with the removal and restoration thereof shall be fully reimbursed by PERMITTEE. Notwithstanding the foregoing, PERMITTEE shall have the obligation to immediately begin the process of removing any or all of the Project Improvements within the respective License Area upon termination, in whole or in part, of this License.

**20. Damage and Destruction.** PERMITTEE shall not by its possession, use, occupancy, operation, maintenance or repair of the respective License Area, suffer or permit any damage to the License Area or to the adjacent real property. If during the term of this Revocable License PERMITTEE becomes aware that the Project Improvements within the License Area has been damaged, destroyed or deteriorated in whole or in part by fire, casualty, obsolescence, failure to maintain or any other cause, and whether or not such destruction or damage is covered by any insurance policy on the Project, PERMITTEE shall give to CITY immediate notice thereof, and PERMITTEE shall:

(a) seek the necessary Permits and approvals from CITY and any other regulatory agency with jurisdiction over the License Area, Project Improvements or adjacent real property to repair, replace and rebuild the same or cause the same to be repaired, replaced or rebuilt as nearly as possible to their original condition; or

(b) to the extent that such destruction or damage affected the Project Improvements within the License Area or real property adjacent thereto, or any part thereof, if PERMITTEE elects to remove such Project Improvements, PERMITTEE shall seek the Permits and approvals, if any, required for such removal and cause such Project Improvements to be removed from the respective License Area and return the License Area to the condition that existed prior to the Effective Date of this Revocable License.

**21. License, not Lease.** It is acknowledged and stipulated by and between the parties hereto that this Revocable License shall not be deemed a lease of the License Area by CITY but rather a license granted to PERMITTEE by CITY for the nonexclusive possession, use, occupancy, operation,

maintenance, repair and replacement, from time to time, of the License Area for the conduct of the Project under the terms and conditions stated herein.

## **22. Indemnity.**

(a) PERMITTEE shall protect, defend, indemnify and hold harmless the CITY, its officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses, including reasonable attorney's fees actually incurred, or liabilities of every kind, nature or degree arising out of or in connection with the rights, responsibilities and obligations of PERMITTEE under this Revocable License, conditions contained therein, the location, construction, repair, maintenance use or occupancy by PERMITTEE of the License Area or Project, or the breach or default by PERMITTEE of any covenant or provision of this Revocable License except for any occurrence arising out of or resulting from the intentional torts or gross negligence of the CITY, its officers, agents and employees. Without limiting the foregoing, any and all such claims, suits, causes of action relating to personal injury, death, damage to property, defects in construction, rehabilitation or restoration of any of the License Area by PERMITTEE, alleged infringement of any patents, trademarks, copyrights or of any other tangible or intangible personal or real property right by PERMITTEE, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court by PERMITTEE, is Included in the indemnity.

(b) PERMITTEE further agrees that upon proper and timely notice to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and agrees to bear all other costs and expenses related thereto even if the claim is groundless, false or fraudulent and if called upon by the CITY, PERMITTEE shall assume and defend not only itself but also the CITY in connection with any claims, suits or causes of action, and any such defense shall be at no cost or expense whatsoever to CITY, provided that the CITY (exercisable by the CITY's Risk Manager) shall retain the right to select counsel of its own choosing. This indemnification shall survive termination, revocation or expiration of the Revocable License and shall cover any acts or omissions occurring during the term of the Revocable License, including any period after termination, revocation or expiration of the Revocable License while any curative acts are undertaken.

**23. Insurance.** At all times while this Revocable License is in effect, the PERMITTEE, at its expense, shall keep or cause to be kept in effect the following:

### **(a) Commercial General Liability**

#### **(1) Limits of Liability**

##### **Bodily Injury and Property Damage Liability**

Each Occurrence	\$1,000,000.00
General Aggregate Limit	\$2,000,000.00
Products/Completed Operations	\$1,000,000.00
Personal and Advertising Injury	\$1,000,000.00

#### **(2) Endorsements Required**

City of Hollywood listed as additional insured  
Waiver of Subrogation  
Contingent & Contractual Liability  
Premises & Operations Liability

**(b) Employer's Liability**

**(1) Limits of Liability**

\$100,000.00 for bodily injury cause by an accident, each accident

\$100,000.00 for bodily injury caused by disease, each employee

\$500,000 for bodily injury caused by disease, policy limit

(d) PERMITTEE shall deliver to CITY's Risk Manager duplicate copies of all insurance policies required herein and proof of full payment thereof within ten (10) days after the Effective Date hereof. From time to time, PERMITTEE shall procure and pay for renewals of insurance required herein before it expires. PERMITTEE shall deliver to CITY the renewal policy at least twenty (20) days before the existing policy expires. All of the policies of insurances provided for in this Revocable License:

(i) Shall be in the form and substance approved by the Department of Financial Services State of Florida ("DOFS");

(ii) Shall be issued only by companies authorized to conduct business by DOFS;

(iii) Shall be with a carrier having an AM Best's Rating of not less than A-, Class VII;

(iv) Shall provide that they may not be canceled by the insurer for ten (10) days after service of notice of the proposed cancellation upon CITY and shall not be invalidated as to the interest of CITY by any act, omission or neglect of PERMITTEE.

(e) In any case where the original policy of any such insurance shall be delivered to the PERMITTEE, a duplicate original of such policy shall thereupon be delivered to CITY. All insurance policies shall be renewed by PERMITTEE and certificates evidencing such renewals, bearing endorsements or accompanied by other evidence of the receipt by the respective insurance companies of the premiums thereon, shall be delivered to CITY, at least twenty (20) days prior to their respective expiration dates.

(f) If PERMITTEE fails to obtain and maintain insurance as provided in this Revocable License and such failure shall continue for a period of fifteen (15) days after notice by CITY, may, but shall not be obligated to, effect and maintain any such insurance coverage and pay premiums therefor, with the ultimate cost and expense thereof to be the responsibility of PERMITTEE.

(g) The obligation of collection upon the insurance policies furnished and provided for by PERMITTEE, or obtained by CITY by reasons of the failure of PERMITTEE to obtain them, shall be upon PERMITTEE, but CITY shall cooperate in such collection (but without expense to CITY) in such reasonable degree as may be requested by PERMITTEE.

(h) CITY does not in any way represent that the types and amounts of insurance required hereunder are sufficient or adequate to protect PERMITTEE's or Contractor's interests or liabilities but are merely minimum requirements established by CITY's Risk Management Division. CITY reserves the right to require any other insurance coverages that CITY deems necessary depending upon the risk of loss and exposure to liability.

**24. Material Defaults.** Any one or more of the following events are deemed to be a material default for which the Revocable License may be revoked or terminated:

(a) PERMITTEE shall default in making payment to CITY of any cost or fees, as and when the same shall become due and payable, and such default in payment shall continue for a period of thirty (30) days after notice by CITY; or

(b) PERMITTEE shall fail to pay any tax, assessment, rate or charge or other governmental imposition or any other charge or lien against the Project or License Area which PERMITTEE is required to pay, at least thirty (30) days prior to the expiration of any grace period allowed by law or by the governmental authority imposing the same and such default shall continue for a period of fifteen (15) days after notice by CITY; or

(c) PERMITTEE shall file a petition to be declared bankrupt, or insolvent or be adjudicated or declared bankrupt or insolvent by any court, or PERMITTEE files for reorganization under the Federal Bankruptcy Act, or for the appointment of a receiver or trustee for all of PERMITTEE's property; or PERMITTEE enters into an arrangement with creditors; or if PERMITTEE's creditors institute Bankruptcy proceedings or receivership proceedings which are not dismissed within one hundred eighty (180) days after same are instituted. However, this provision has no effect so long as all of the other provisions of this License are being performed; or

(d) PERMITTEE fails to repair, replace or maintain the Project or License Area in accordance with the terms of this License and such failure continues for a period of five (5) days after notice by CITY; or

(e) PERMITTEE fails to cure a default under Paragraph 9 and such default shall continue for a period of three (3) days from the time of notice of the violation; or

(f) PERMITTEE fails to cure a default under Paragraph 10 (b) (alcoholic beverages) or Paragraph 10(f) (amplified or non amplified music) and (i) such default shall continue for a period of one (1) hour from the time of notice of the violation and (ii) there are three such defaults in any moving sixty (60) day period; or

(g) PERMITTEE shall default in complying with any other agreement, term, covenant or condition of this License and such default in compliance shall continue for a period of three (3) days after notice by CITY specifying the claimed default.

(h) If any act falls within more than one of the above subparagraphs, for the purpose of revocation or termination of this License, it shall be treated under the subparagraph with the shorter grace or cure period. Upon the occurrence of a material default as set forth above, CITY may revoke or terminate this License by giving notice thereof to PERMITTEE, in which event PERMITTEE shall immediately quit and surrender to the CITY the Project and License Area and each and every part thereof, and CITY may re-take possession of the License Area.

**25. Remedies of CITY.** In the event the PERMITTEE fails to cure any default listed above within the time so provided, CITY may revoke or terminate this License or CITY has the option and right to take such action which was required to be taken by the PERMITTEE at PERMITTEE's sole cost and expense. PERMITTEE shall then be liable for payment to the CITY for all reasonable and

**26. Requirement for Notice.** PERMITTEE shall give CITY prompt written notice of any occurrences, incidents, or accidents on, in, over and above the License Area.

(a) Except as provided in subparagraph (c) below, whenever it is provided herein that notice, demand, request or other communication shall or may be given to, or served upon, either of the parties by the other, or either of the parties shall desire to give or serve upon the other any notice, demand, request or other communication with respect hereto or with respect to any matter set forth in this Revocable License, each such notice, demand, request or other communication shall be in writing and any law or statute to the contrary notwithstanding shall not be effective for any purpose unless the same shall be given by mailing the same by registered or certified mail, postage prepaid, return receipt requested, addressed to the party at the address set forth below, or at such other address or addresses and to such other person or firm as CITY or PERMITTEE may from time to time designate by notice as herein provided.

AS TO CITY: Dr. Wazir Ishmael, City Manager  
2600 Hollywood Blvd, Room 421  
Hollywood , Florida 33020

With copy to: Douglas R. Gonzales, City Attorney  
2600 Hollywood Boulevard, Room 407  
Hollywood, Florida 33020

AS TO PERMITTEE:

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With copy to:

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(c) As to activities under Paragraph 15, Emergencies, Paragraph 9 (I) (alcoholic beverages), Paragraph 9 (r) (amplified or non-amplified music), notice need not be given in accordance with subparagraph (a) above, but notice shall be sufficient if given to the contact person pursuant to Paragraph 15, Emergencies, or, in the absence or unavailability of the contact person, then to any shift manager of PERMITTEE's tenants that are providing open air dining and beverage service within the License Area.

**28. Assignment, Pledge, Security Interest.** PERMITTEE shall not voluntarily, involuntarily or by operation of law, assign, sell, pledge, grant a security interest, or in any manner transfer the License or any interest therein or grant any right to the License Area without the prior written consent of CITY, which such consent PERMITTEE may be granted or withheld in its absolute discretion.

**29. Compliance with Laws and Regulations.** PERMITTEE shall comply with all applicable statutes, laws, ordinances, rules, regulations and lawful orders of the United States of America, State of Florida, City of Hollywood, and of any other public authority that may be applicable to this Revocable License and the possession, use, occupancy and maintenance of the License Area and the conduct of the Project permitted herein.

**30. Public Entity Crime Act.**

(a) PERMITTEE represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to CITY, may not submit a bid on a contract with CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to CITY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with CITY, and may not transact any business with CITY in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for Category Two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by CITY pursuant to this Agreement, and may result in debarment from CITY'S competitive procurement activities.

(b) In addition to the foregoing, PERMITTEE further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as



a "public entity crime" regardless of the amount of money involved or whether B-CYCLE has been placed on the convicted vendor list.

**31. Independent Contractor.** As between CITY and PERMITTEE, PERMITTEE is an independent contractor under this Revocable License. Services provided by PERMITTEE pursuant to this Agreement shall be subject to the supervision of PERMITTEE. In providing such services, neither PERMITTEE nor its agents shall act as officers, employees, or agents of CITY. No partnership, joint venture, or other joint relationship is created hereby. CITY does not extend to PERMITTEE or PERMITTEE'S agents any authority of any kind to bind CITY in any respect whatsoever.

**32. Joint Preparation.** Each party and its counsel have participated fully in the review and revision of this Revocable License and acknowledge that the preparation of this Revocable License has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The language in this Revocable License shall be interpreted as to its fair meaning and not strictly for or against any party.

**33. Interpretation of Revocable License; Severability.** This Revocable License shall be construed in accordance with the laws of the State of Florida. If any provision hereof, or its application to any person or situation, is deemed invalid or unenforceable for any reason and to any extent, the remainder of this Revocable License, or the application of the remainder of the provisions, shall not be affected. Rather, this Revocable License is to be enforced to the extent permitted by law. The captions, headings and title of this Revocable License are solely for convenience of reference and are not to affect its interpretation. Each covenant, term, condition, obligation or other provision of the Revocable License is to be construed as a separate and independent covenant of the party who is bound by or who undertakes it, and each is independent of any other provision of this License, unless otherwise expressly provided. All terms and words used in this Revocable License, regardless of the number or gender in which they are used, are deemed to include any other number and other gender, as the context requires.

**34. Successors.** This Revocable License shall be binding on and inure to the benefit of the parties, their successors and assigns.

**35. No Waiver of Sovereign Immunity.** Nothing contained in this Revocable License is intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity may be applicable.

**36. No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Revocable License. None of the parties intend to directly or substantially benefit a third party by this Revocable License. The parties agree that there are no third party beneficiaries to this Revocable License and that no third party shall be entitled to assert a claim against any of the parties based on this Revocable License. Nothing herein shall be construed as consent by any agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.

**37. Non-Discrimination.** PERMITTEE shall not discriminate against any Person in the performance of duties, responsibilities and obligations under this Revocable License because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

**38. Termination.** In the event of emergency, either party may cancel this Revocable License during the term hereof upon twenty-four (24) hours written notice to the other party of its desire to terminate this Revocable License.

**39. Records.** Each party shall maintain its own respective records and documents associated with this Revocable License in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees of non-compliance with that law.

**40. Entire Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Revocable License that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

**41. Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this License and, therefore, is a material term hereof. Any party's failure to enforce any provision of this License shall not be deemed a waiver of such provision or modification of this License. A waiver of any breach of a provision of this License shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this License.

**42. Governing Law.** This Revocable License shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Revocable License any controversies or legal problems arising out of this Revocable License, and any action involving the enforcement or interpretation of any rights hereunder, shall be brought exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Revocable License shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device.

**43. Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Revocable License if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds alone on the part of PERMITTEE be deemed Force Majeure.

**44. Recording.** This Revocable License shall be conditioned upon recordation of the Revocable License in the Public Records of Broward County, Florida. CITY shall record the Revocable License, subject to PERMITTEE reimbursing CITY for the cost thereof. A copy of the recorded

Revocable License shall be provided to PERMITTEE and filed with the City Clerk's Office of the City of Hollywood.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.