

STANDARD FORM – FOR INFORMATIONAL PURPOSES ONLY

THE CITY OF NEW YORK
DEPARTMENT OF TRANSPORTATION
55 Water Street
New York, New York 10041

[SIDEWALK CAFE OR ROADWAY CAFE]
REVOCABLE CONSENT

WHEREAS, [INSERT CORP ENTITY] (the "Food Service Establishment" or "FSE") has petitioned for a revocable consent to maintain, operate, and use a [Sidewalk Cafe or Roadway Cafe] ("Cafe") in the Borough of [] on real property owned by the City of New York ("City"); and

WHEREAS, the Food Service Establishment is the owner of the real property which is the subject to this revocable consent, or, if not the owner, the Food Service Establishment is the tenant of such real property and has obtained the consent of the owner or an authorized representative of the property management company, of such property to use the adjacent inalienable property for a Cafe, and such owner or property management company's consent, if applicable, is attached hereto as **Exhibit A**; and

[IF APPLICABLE – ROADWAY CAFE ONLY] **WHEREAS**, pursuant to section 19-160(c) of the New York City Administrative Code and section 5-10(n) of chapter 5 of Title 34 of the Rules of the City of New York, a roadway cafe shall not operate on any day from November 30 to March 31, inclusive, and all barriers, furnishings and other decorative elements of a roadway cafe must be removed during such period, except where DOT permits the FSE to occupy the area of the roadway cafe earlier or later than such dates, as prescribed on DOT's website, for the sole purpose of setting up or disbanding the roadway cafe; and

WHEREAS, the New York City Department of Transportation ("DOT") acting through its Commissioner or designated representative ("Commissioner"), has determined pursuant to section 364 of the New York City Charter and sections 19-160, 19-160.1, and 19-160.2 of the New York City Administrative Code, as applicable, that it is appropriate that such revocable consent be granted, subject to the conditions stated herein ("Consent").

NOW THEREFORE, it is hereby agreed:

1. Consent granted. NYC DOT's consent is hereby granted to the Food Service Establishment, an entity registered to do business in the State of New York, having its principal place of business at [], to maintain, operate, and use a Cafe, having an area of [] square feet in front of or adjacent to the property located at [], block [], lot [], in the Borough of [] (the "Property"), in connection with an adjacent food service establishment, the Cafe to be shown on a site plan dated [], a copy of which is attached hereto as **Exhibit B** and made a part hereof.

STANDARD FORM – FOR INFORMATIONAL PURPOSES ONLY

2. Term. This Consent shall be revocable at any time by DOT. A consent shall become effective on the date DOT issues the license to operate the Cafe (the “Approval Date”) and shall expire on the fourth anniversary of the Approval Date (“Expiration 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.

To effectuate the commencement of a renewal term immediately after the initial Expiration Date, the FSE agrees that it will petition DOT in writing for a renewal of the Consent no later than eight months prior to the initial Expiration Date.

3. Annual compensation. (a)(1) The FSE shall pay the City compensation for the Consent hereby granted as described below. Such annual compensation shall be equivalent to the product of the fee rate for sector [] and the square footage of the Cafe, as set forth in section 5-09 of chapter 5 of Title 34 of the Rules of the City of New York (the “Dining Out NYC Rules”). Pursuant to the Dining Out NYC Rules, the annual compensation for this Consent shall be [].

(a)(2) The payment for the first year of a new consent shall be made prior to the Approval Date. The due dates of the subsequent annual payments shall vary depending on the calendar quarter that the Approval Date is within, as set forth below:

Approval Date	Annual Compensation Due Date
Q1: January 1 – March 31	January 1
Q2: April 1 – June 30	April 1
Q3: July 1 – September 30	July 1
Q4: October 1 – December 31	October 1

(a)(3) An invoice setting forth the amount due for each annual payment period shall be sent to the FSE by DOT at least thirty (30) days prior to the date the annual compensation is due.

(b) In the event the FSE continues the operation, maintenance, and use of the Cafe after and in spite of the termination or expiration of this Consent, the FSE agrees to pay to the City the compensation as set forth herein at the fee rate in effect at the time of such termination or expiration and in the manner set forth herein. 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 street after the removal of the Cafe. During the period of continued installation, deinstallation, maintenance, repair, use and/or operation of the Cafe, the FSE shall be bound by all of the terms and conditions of this Consent.

(c) In the event that a future consent for this Cafe becomes effective subsequent to the expiration of this Consent, it is understood and agreed that as a condition of such future

STANDARD FORM – FOR INFORMATIONAL PURPOSES ONLY

grant of consent, the fees charged under such consent may be at the fee rate in effect during the period following the Expiration Date.

(d) Late Payment. In the event any payment is not made on or before the date such payment is due, interest on such payment shall apply from the date such payment is due at the rate of one and one-half percent (1 1/2%) per month. If the FSE shall fail to pay such compensation or the interest thereon, if any, the Comptroller may withdraw the amounts thereof from the security fee hereinafter provided for. If the compensation owed exceeds the amount available in the security fee the FSE shall be liable for the shortfall and shall pay such to the City upon demand.

(e) 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.

(f) Food Service Establishment Unable to Operate Cafe. In the event the FSE is unable to operate, maintain, or use the Cafe for a period of at least 60 consecutive days because of (i) roadway work performed or authorized by the City, State or Federal government; or (ii) any other reason not initiated or caused by the FSE or the owner of the Property, DOT may provide a credit to the FSE to reduce the annual payment for the following year. Alternatively, if the Consent shall expire and no renewal will be issued, DOT may provide a reimbursement to the FSE.

To obtain a credit or reimbursement, as applicable, the FSE must notify DOT and submit proof satisfactory to DOT that the FSE is, or was, unable to operate, maintain, or use the Cafe for a period of at least 60 consecutive days and that such inability to operate, maintain, or use the Cafe was not initiated or caused by the FSE or owner of the Property. Such proof should include, but not be limited to, photographs showing the continuous disruption on a weekly basis, work permits valid for at least 60 consecutive days (if applicable), notices of work indicating disruption for a period of at least 60 consecutive days (if applicable), and any other documentation that sufficiently demonstrates the FSE's inability to operate, maintain, or use the Cafe for a period of at least 60 consecutive days.

To calculate the credit or reimbursement, as applicable, DOT will apportion the annual payment on the basis of the number of calendar days in the previous payment period that the FSE was unable to operate, maintain, or use the Cafe.

4. Removal of Cafe. Within no more ten (10) days after the expiration, revocation, or termination of this Consent, the FSE shall remove the Cafe and restore all of the affected street to its proper condition to the satisfaction of DOT. The entire cost of such work shall be borne by the FSE.

If the FSE fails to remove the Cafe and restore such street within the time period stated above, DOT shall have the right to cause the Cafe to be removed and such street to be restored. The cost to DOT of causing such removal and restoration shall be recovered from the security fee as provided for in this Consent. If the cost of removal and/or restoration

STANDARD FORM – FOR INFORMATIONAL PURPOSES ONLY

exceeds the amount available in the security fee, the FSE shall be liable for the shortfall and shall pay such to the City upon demand.

The FSE shall remain under a continuing obligation to comply with the terms and conditions of this Consent including maintaining insurance and indemnifying the City as required in section 20 of this Consent, and maintaining the Cafe until the Cafe is removed. This provision shall apply even if the FSE seeks bankruptcy protection and the contract is rejected by the FSE or any successor to the FSE, including a trustee in bankruptcy, before the Cafe have been removed. Any cost to DOT of causing the removal and/or restoration of such street incurred after the FSE seeks bankruptcy protection shall constitute an administrative claim of the FSE's bankruptcy estate in accordance with applicable bankruptcy laws.

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

6. Food Service Establishment responsible for all costs. The FSE shall pay the entire cost of all work, labor, and material in connection with the Cafe and including but not limited to:

- (a) the installation, maintenance, operation, use, and removal of the Cafe;
- (b) the protection of all structures which shall in any way be disturbed by the maintenance, operation, use or removal of the Cafe; and
- (c) each and every item of the increased cost incurred by the City for the installation of any future structures or repairs or alterations to any existing or future structures on or below the street caused by the presence in the of the Cafe.

[IF ENCLOSED SIDEWALK CAFE, replace with the below]

- (a) the installation, maintenance, operation, use, and removal of the Cafe;
- (b) the protection of all structures which shall in any way be disturbed by the maintenance, operation, use or removal of the Cafe;
- (c) each and every item of the increased cost incurred by the City for the installation of any future structures or repairs or alterations to any existing or future structures on or below the street caused by the presence in the of the Café;
- (d) any and all changes in sewers or other subsurface structures necessitated by the construction, operation, use or removal of the Cafe, including the laying or relaying of pipes, conduits, sewers or other structures;
- (e) the replacing or restoring of the pavement in the affected sidewalk which may be distributed during the construction, maintenance, operation, use or removal of the Cafe; and

STANDARD FORM – FOR INFORMATIONAL PURPOSES ONLY

(f) the inspection of all work during the construction, maintenance, operation, use or removal of the Cafe as herein provided which may be required by the FSE or any other City agency having jurisdiction.

7. Operation requirements. Prior to the commencement of any operation of the Cafe, the FSE 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 DOT or any other City agency having jurisdiction. The FSE 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. FSE shall operate and manage all aspect of the Cafe in accordance with section 5-10 of the Dining Out NYC Rules, which are attached hereto as **Exhibit C**.

[IF ENCLOSED SIDEWALK CAFE, replace with the below]

Construction and operation requirements. (a) Prior to the commencement of any alteration, operation or removal of the Cafe, the FSE shall obtain, at its sole cost and expense, any and all licenses, permits or other forms of approval or authorize which may be required by FSE or any other City agency having jurisdiction. The FSE 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 this Consent. FSE shall operate and manage all aspect of the Cafe in accordance with section 5-10 of the Dining Out NYC Rules, which are attached hereto as **Exhibit C**.

(b) The FSE shall submit to DOT plans, signed and sealed by a registered design professional, which shall include and show in detail the method of the construction of any alteration or removal of the Cafe and the mode of protection or changes in all structures required by the alteration or removal of the same.

Upon completion of the work, the FSE shall furnish to DOT and to any other City agency having jurisdiction, plans, signed and sealed by a registered design professional, showing accurately and distinctly the location, size, and type of construction, and complete dimensions of the altered Cafe and the location and dimensions of all substructures encountered during the progress of the work.

8. City's access paramount. The FSE shall allow to the City access under or above any part of the Cafe, which are now or may be hereafter placed in the affected street by the City.

If, in DOT's sole discretion, DOT at any time decides to replace, alter or otherwise gain access to any structure located in or on the street that is affected by the Cafe, DOT shall have the right to break through or remove all or any portion of the Cafe. The cost to DOT of breaking through or removing the Cafe shall be recovered from the security fee as provided for in this Consent. If the cost of breaking through or removal exceeds the amount available in the security fee, the FSE shall be liable for the shortfall and shall pay such to the City upon demand.

STANDARD FORM – FOR INFORMATIONAL PURPOSES ONLY

9. Cafe subject to City's supervision. (a) The Cafe and any fixtures laid therein shall be maintained, operated, and used subject to the supervision and control of the proper authorities of the City. The Cafe shall be open at all times to the inspection of all government authorities having jurisdiction. FSE shall secure and protect the Cafe for which this Consent has been granted. Whenever such Cafe is to be disturbed by (i) the milling and paving of any street; (ii) a street improvement project undertaken by DOT, the City, or its contractor; or (iii) planned or emergency utility work the FSE shall, upon receipt of a written notice from the City, remove or otherwise protect its Cafe, and all fixtures connected therewith or attached thereto, where necessary. All such removal, protection, or related activities required by this section shall be at the sole cost and expense of the FSE. The City will endeavor to provide a thirty (30) day notice of such requirements but reserves the right to require action sooner in cases of emergency.

(b) Whenever the Cafe is to be disturbed by parades, marathons, road races, bicycle tours, or certain multi-block festivals that are security sensitive in nature, including but not limited to the Thanksgiving Day Parade, the Five Boro Bike Tour, the New York City Marathon and San Gennaro Feast, the FSE shall, upon receipt of a written notice from the City, remove the Cafe and all fixtures connected therewith or attached thereto, or temporarily cease operation of the Cafe, as directed by the City. All such removal or related activities required by this section shall be at the sole cost and expense of the FSE. The City will endeavor to provide a thirty (30) day notice of such requirements but reserves the right to require action sooner, as necessary.

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 street.

11. No rights conveyed. The FSE 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. The FSE agrees that the Cafe will be kept clean, well-maintained and clear of trash, debris, graffiti, vermin, food scraps, and unsanitary conditions and in compliance with the Dining Out NYC Rules.

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

14. Unconditional right of revocation. The FSE expressly agrees that the DOT 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 FSE shall remain responsible for the full performance of all the terms and conditions contained herein to be performed up to the time of said termination, and the FSE's obligation to pay compensation shall continue up to the date of

STANDARD FORM – FOR INFORMATIONAL PURPOSES ONLY

the removal of the Cafe and restoration of all of the street affected to the satisfaction of the City.

15. Security Fee. This Consent is contingent upon the express condition that in advance of the Approval Date, the FSE shall deposit with the Comptroller of the City the sum of [REDACTED] Dollars (\$ [REDACTED]), 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 which may be due the City in connection with the Cafe, including due to the maintenance, operation, use, abandonment, or removal of the Cafe.

In case of default in the performance by FSE of any of such terms and conditions, DOT 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 FSE, and shall collect the cost thereof from the security fee, or in case of default in the payment of the annual compensation or in the payment of any other sum of money which may become due to the City in connection with the Cafe, DOT shall collect the same, with interest, from the security fee after ten (10) days' notice in writing to the FSE.

In case of any drafts made upon the security fee, the FSE shall, upon ten (10) days' notice in writing, pay to the Comptroller of the City a sum of money sufficient to restore the fund to the original amount and in default of the payment thereof, this Consent may be terminated, at the option of DOT.

If the amount deposited in the security fee is insufficient to cover any costs to DOT or any sum of money due to DOT, the FSE 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 Cafe has been removed and all of the affected street 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 fee shall be repaid to FSE 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. Relationship with the City. The FSE 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 FSE to receive a consent.

17. Discrimination prohibited. Pursuant to applicable laws prohibiting discrimination in employment, the FSE agrees that it will not engage in any unlawful discrimination against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status or sexual orientation with respect to all

STANDARD FORM – FOR INFORMATIONAL PURPOSES ONLY

employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment.

18. Compliance with applicable laws, regulations and rules. The FSE shall comply with all applicable laws, regulations, rules, and guidelines now in effect or which may hereafter be adopted or promulgated.

19. Insurance and indemnification.

(a) Indemnification

i. To the fullest extent permitted by law, the FSE shall indemnify, defend and hold the City, its officials, and employees (the "Indemnitees") harmless from, all liabilities, obligations, 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 or related to any operations under this Consent, or by reason of any defect or deterioration of the Cafe 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 FSE 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 FSE, such Indemnitees shall be partially indemnified by the FSE to the fullest extent permitted by law.

ii. The FSE 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.

iii. The FSE 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.

iv. The FSE 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 FSE, including but not limited to injuries or damages resulting from the acts or omissions of any of its employees, agents, servants, contractors, subcontractors, sublessees or any other person.

v. The FSE 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"). Except as may be agreed by the City as part of this Consent, FSE shall not cause or permit,

STANDARD FORM – FOR INFORMATIONAL PURPOSES ONLY

or allow any of the FSE’s personnel 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) Insurance.

i. Commercial General Liability Insurance. During the term of this Consent, FSE shall maintain Commercial General Liability insurance in the amount of at least One Million Dollars (\$1,000,000) combined single limited per occurrence and in the amount of at least Two Million Dollars (\$2,000,000) aggregate limit. This insurance shall protect the insureds from claims for property damage and/or bodily injury, including death that may arise from any of the operations under this Agreement. 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 Commercial General Liability insurance shall name the City, 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 2026.

ii. Workers’ Compensation, Employers Liability, and Disability Benefits Insurance. FSE shall maintain Workers’ Compensation insurance, Employers Liability insurance, and Disability Benefits insurance on behalf of, or with regard to, all employees involved in the FSE’s operations under this Consent, and such insurance shall comply with the laws of the State of New York.

iii. Commercial Automobile Liability Insurance. If automobiles are utilized with regards to operations under this Consent, FSE shall maintain or cause to be maintained Commercial Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA 00 01. If vehicles are used for transporting hazardous materials, such Business Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

iv. Liquor Law Liability Insurance. In the event FSE serves alcohol, FSE shall carry liquor law liability insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence and name the City, together with its officials and employees, as additional insured. Such insurance shall be effective prior to the commencement of any such service of alcohol and continue throughout such service of alcohol.

STANDARD FORM – FOR INFORMATIONAL PURPOSES ONLY

v. General Requirements for Insurance Coverage and Policies.

- a) Policies of insurance required under this consent shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A- / VII, a Standard & Poor's rating of at least A, a Moody's Investors Service rating of at least A3, a Fitch Ratings rating of at least A- or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department.
- b) Policies of insurance required under this Consent shall be primary and noncontributing to any insurance or self-insurance maintained by the City.
- c) Wherever this Consent requires that insurance coverage be "at least as broad" as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the FSE can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.
- d) The City's limits of coverage for all types of insurance required under this Consent shall be the greater of (i) the minimum limits set forth in this Consent or (ii) the limits provided to FSE under all primary, excess and umbrella policies covering operations under this Consent.
- e) All required policies, except Workers' Compensation, Employers Liability, and Disability Benefits insurance, shall include a waiver of the right of subrogation with respect to all insureds and loss payees named therein.
- f) There shall be no self-insurance program or self-insured retention with regard to any insurance required under this Consent unless approved in writing by the Commissioner. Under no circumstances shall the City be responsible for the payment of any self-insured retention (or any other aspect of a self-insurance program). Further, the FSE shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Consent, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.
- g) All required policies, except for Workers' Compensation insurance, Employers Liability insurance, and Disability Benefits insurance, shall contain an endorsement requiring that the issuing insurance company endeavor to provide the City with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both the Commissioner, City of New York Department of Transportation, 55 Water Street, New York, NY 10041, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Such notice is to be sent at least (30) days before the expiration, cancellation or termination date, except in cases of non-payment, where at least ten (10) days written notice would be provided.

vi. Proof of Insurance. Prior to or at the same time as the FSE submits an executed version of this Consent or at such time as required by the Commissioner, the FSE shall submit proof of insurance acceptable to the Commissioner. For all insurance required under this Article other than Workers Compensation, Employers Liability, and Disability

STANDARD FORM – FOR INFORMATIONAL PURPOSES ONLY

Benefits insurance, FSE shall submit (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), and (b) a duly executed Certification by Insurance Broker or Agent in the form required by the Commissioner, attached hereto as **Exhibit D**. In addition, prior to the expiration date of all policies, the FSE 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.

For Workers' Compensation, Employers Liability Insurance, and Disability Benefits insurance policies, the FSE shall submit one of the following:

- a) Form C-105.2, Certificate of Workers' Compensation Insurance;
- b) Form U-26.3, State Insurance Fund Certificate of Workers' Compensation Insurance;
- c) Form SI-12, Certificate of Workers' Compensation Self-Insurance;
- d) Form GSI-105.2, Certificate of Participation in Worker's Compensation Group Self-Insurance;
- e) Form DB-120.1, Certificate of Disability Benefits Insurance;
- f) Form DB-155, Certificate of Disability Benefits Self-Insurance;
- g) Form CE-200, Affidavit of Exemption;
- h) Other forms approved by the New York State Workers' Compensation Board.

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

The FSE shall promptly 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.

vii. Miscellaneous.

The FSE shall require its contractors, if any, that perform Cafe installation services at the Property to maintain Commercial General Liability Insurance in accordance with this Section 19, and such insurance shall include the City, including its officials and employees, as an Additional Insured with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37. In the event the FSE requires any other entity, by contract or otherwise, to procure insurance with regard to any operations under this Consent and requires such entity to name the FSE as an Additional Insured under such insurance, the FSE shall ensure that such entity also name the City, including its officials and employees, as an Additional Insured (with coverage for Commercial General Liability insurance at least as broad as ISO form CG 20 26).

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

STANDARD FORM – FOR INFORMATIONAL PURPOSES ONLY

Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Consent, the FSE 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 FSE'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 FSE 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.

The FSE's failure to secure and maintain insurance in complete conformity with this Section 19, or to give the insurance carrier timely notice on behalf of the City, or to do anything else required by this Section 19 shall constitute a material breach of this Consent. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

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

The insurance coverage required herein shall not relieve the FSE of any liability under this Consent, 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 Consent or the law.

In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Section 19, the FSE shall at all times fully cooperate with the City with regard to such potential or actual claim.

Apart from damages or losses covered by Workers' Compensation Insurance, Employers Liability Insurance, Disability Benefits Insurance, or Commercial Automobile Insurance, the FSE 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 19 (whether or not such insurance is actually procured or claims are paid thereunder) or any other liability insurance applicable to the operations of the FSE and/or its employees, agents, or servants of its contractors or subcontractors.

20. Investigation Clause

20.01 The parties to this Consent agree to cooperate fully and faithfully with any investigation, audit or inquiry relative to this Consent conducted by a State of New York (State) or City of New York (City) governmental agency or authority that is empowered

STANDARD FORM – FOR INFORMATIONAL PURPOSES ONLY

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 Consent or when it is the subject of the investigation, audit or inquiry.

20.02 A hearing shall be convened in accordance with section 21.03 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 Consent, 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 Consent, 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.

20.03 (a) The Commissioner or agency head whose agency is a party in interest to this Consent 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 Consent pending the final determination pursuant to section 21.05 below without the City incurring any penalty or damages for delay or otherwise.

20.04 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 any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this consent, 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.

20.05 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)

STANDARD FORM – FOR INFORMATIONAL PURPOSES ONLY

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 21.04 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 21.03(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.

20.06 (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.

21. Additional Charges Prohibited. The FSE is hereby prohibited from imposing any additional or special charge on patrons for service in the Cafe area.

22. Sidewalk may not be obstructed. The FSE shall neither encumber nor obstruct the sidewalk adjacent to the Cafe, nor allow same to become obstructed or encumbered, and

STANDARD FORM – FOR INFORMATIONAL PURPOSES ONLY

shall remove all snow, ice or litter thereon at its sole cost and expense and keep same in good repair.

23. Severability and Headings. The clauses and provisions of this Consent 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 Consent.

24. Modification or amendment. This Consent constitutes the entire consent between the parties hereto and no other representation made heretofore shall be binding upon the parties hereto. This Consent may not be modified or amended except by written consent executed by the parties. A petition to modify a revocable consent shall be reviewed and approved pursuant to Sections 5-02(d) and 5-07 of the Dining Out NYC Rules.

25. No Discrimination. FSE shall not unlawfully discriminate against any customer, employee or applicant for employment because of race, creed, sex, color, sexual preference or orientation, national origin, disability, or any other protected class of individuals as defined by City, State or Federal laws, rules or regulations. All advertising for employment shall indicate that FSE is an Equal Opportunity Employer.

26. Waiver of Jury Trial. FSE hereby expressly waives trial by jury in any action, proceeding, or counterclaim brought by either of the parties against the other in any matter directly or indirectly related to this Consent.

27. Choice of Law/Consent to Jurisdiction and Venue.

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

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

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

STANDARD FORM – FOR INFORMATIONAL PURPOSES ONLY

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

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

(e) All disputes arising out of this Consent shall be interpreted and decided in accordance with the laws of the State of New York.

28. No Claim Against Officials, Agents, or Employees. No claim whatsoever shall be made by the FSE against any officials, agents, or employees of the City for, or on account of, anything done or omitted in connection with this Consent.

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

[Remainder of the page intentionally left blank]

STANDARD FORM – FOR INFORMATIONAL PURPOSES ONLY

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

DOT:
NYC DEPARTMENT OF TRANSPORTATION

By: _____

Name:
Title:

Accepted and agreed to:
Food Service Establishment:

By: _____
(Signature)

(Print Name of Signatory)

(Title)

(Date)

The foregoing consent is hereby approved.
Eric L. Adams, Mayor

By: _____

Name: _____
Title: Director, Mayor's Office of Contract Services

Dated, New York _____, 20__

**ACKNOWLEDGMENT BY
NEW YORK CITY DEPARTMENT OF TRANSPORTATION**

State, City and County of New York, ss.:

On the ____ day of _____, in the year _____, before me, the undersigned, personally appeared _____, 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 whom the individual(s) acted, executed the instrument.

Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT BY FOOD SERVICE ESTABLISHMENT

State, City, and County of New York, ss.,

On the ____ day of _____ in the year 20____ before me, the undersigned, personally appeared _____, 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

Exhibit A

[Property Owner Consent]

FORM

Exhibit B

[Site Plan]

FORM

Exhibit C

[Dining Out NYC Rules – Operation and Management Requirements]

§ 5-10 Operation and Management Requirements.

Upon approval by the Department of a license granted pursuant to this chapter, a licensee must operate and manage all aspects of a sidewalk cafe or roadway cafe in accordance with this section.

(a) Maintenance.

(1) Sidewalk cafes and roadway cafes must be kept clean, well-maintained, and clear of trash, debris, graffiti, vermin, food scraps, and unsanitary conditions. A licensee must also keep clean the area of the roadway extending one and one-half (1 ½) feet distance beyond any roadway cafe on all sides of such roadway cafe.

(2) A licensee may not store trash within a sidewalk cafe or roadway cafe, except that in roadway cafes rigid receptacles with tight-fitting lids as referenced in subdivision (b) of section 1-02.4 of Title 16 of the Rules of the City of New York are permitted.

(3) If flooring is utilized as part of a roadway cafe, such flooring shall be lifted for cleaning on a regular basis, but not less than weekly.

(b) Hours of Operation. Sidewalk cafes, other than enclosed sidewalk cafes, and roadway cafes may operate only during the following hours and days:

Sunday, 10 a.m. to midnight
Monday, 8 a.m. to midnight
Tuesday, 8 a.m. to midnight
Wednesday, 8 a.m. to midnight
Thursday, 8 a.m. to midnight
Friday, 8 a.m. to midnight
Saturday, 8 a.m. to midnight

(c) Alcohol Consumption. No beer, alcoholic or spirituous liquors shall be served at a sidewalk cafe or a roadway cafe, unless permitted by the New York State Liquor Authority.

(d) No Smoking. Smoking or using electronic cigarettes is prohibited within sidewalk cafes and roadway cafes pursuant to subdivision (c) of section 17-503 of the Administrative Code.

(e) Advertising. No advertising sign, picture, flag, banner, side curtain or other device, including an illuminated or non-illuminated sign, shall be placed or painted on or affixed to any awning, screen or other appurtenance used in connection with a sidewalk cafe or roadway cafe, except that the name of the restaurant, the logo of the restaurant, the menu and information on the services provided by the restaurant, and the name and logo of any sponsors of the restaurant's amenities may be painted, imprinted or otherwise displayed, in accordance with any applicable requirements of the New York City Zoning Resolution and the following requirements:

STANDARD FORM – FOR INFORMATIONAL PURPOSES ONLY

(1) Names and logos shall be limited to ten (10) percent of the surface area of the surface on which they are displayed.

(2) Names and logos may be painted onto barriers, or otherwise physically attached and secured to the barriers, provided that any signs attached to the barriers shall be no more than one (1) inch in depth. Menus and hours of operation may not be painted on or physically affixed to the barriers or any vertical screening.

(3) On overhead coverings, umbrellas, and awnings, names and logos must be physically adhered to the fabric.

(4) Any sign, picture, flag, banner, side curtain or other device used to display a name or logo may not be illuminated, flashing, or moving.

(f) Heaters. Heating units utilized in a sidewalk cafe or roadway cafe must comply with all applicable laws, rules, and regulations and must be approved for use in such sidewalk cafe or roadway cafe by the New York City Department of Buildings and New York City Fire Department. Such heating units may only be located within the area of the sidewalk cafe or roadway cafe for which the revocable consent and license to operate such cafe has been granted.

(g) Good Order. Every licensee shall be held strictly accountable for the maintenance of good order in the sidewalk cafe or roadway cafe and the proper conduct of their patrons, including the prevention of excessive congregation of such patrons within or immediately adjacent to such sidewalk cafe or roadway cafe. A licensee must provide adequate service to maintain the tables in the sidewalk cafe or roadway cafe and the adjacent street in a manner that ensures good order and cleanliness.

(h) Accessibility. A sidewalk cafe and roadway cafe must be directly accessible to persons with physical disabilities. The design of such cafe shall comply with applicable requirements of the Americans with Disabilities Act and rules promulgated thereunder, and applicable requirements of the New York City Building Code.

(i) Noise.

(1) A licensee must comply with the New York City Noise Control Code, Chapter 2 of Title 24 of the Administrative Code, as applicable, including all restrictions and prohibitions relating to unreasonable noise pursuant to subdivisions (a) and (a-1) of section 24-218 of the Administrative Code.

(2) No musical instruments or sound reproduction or amplification devices shall be operated or used within a sidewalk cafe or roadway cafe, except where authorized pursuant to a street activity permit issued pursuant to chapter 1 of Title 50 of the Rules of the City of New York.

(3) Where practicable, the Department may refer community noise disputes to alternative dispute resolution through the Mediating Establishment and Neighbor Disputes NYC program (MEND NYC), or a successor program.

(j) Lighting. Lighting shall illuminate only within the sidewalk cafe or roadway cafe.

(k) Secure Cafe.

(1) During hours when a sidewalk cafe or roadway cafe is not operating, the licensee must secure all furnishing and decorative elements of such sidewalk cafe or roadway cafe, such as tables and chairs, using a cable or other locking system. Such secured furnishings or decorative elements may not impede or block access to utility infrastructure or assets (e.g., utility access covers, vent poles, control cabinets, etc.).

(2) Umbrellas and overhead coverings, if utilized, must be secured during inclement weather, including high wind conditions or heavy snow events.

(l) Furnishing Zone. No portion of a sidewalk cafe or roadway cafe shall be located in the furnishing zone and no items associated with such sidewalk or roadway cafe shall be placed or stored in the furnishing zone.

(m) Service. A licensee must ensure that employees serve patrons solely from within the perimeters of such sidewalk cafe or roadway cafe.

(n) Roadway Cafe Operating Season.

(1) A roadway cafe shall not operate on any day from November 30 to March 31, inclusive. All barriers, furnishings and other decorative elements of a roadway cafe must be removed during such period except as authorized pursuant to paragraph (2) of this subdivision.

(2) Notwithstanding paragraph (1) of this subdivision, a ground floor restaurant for which a revocable consent and license for a roadway cafe have been granted pursuant to this chapter may:

(i) Occupy the area of the roadway cafe beginning on a date prescribed by the Department on its website that is earlier than March 31, for the purpose of setting up the roadway cafe prior to commencement of operation of the roadway cafe, provided that such date shall be no earlier than March 24 of each year; and

(ii) Occupy the area of the roadway cafe until a date prescribed by the Department on its website that is later than November 30, for the purpose of disbanding the roadway cafe, provided that such date shall be no later than December 7 of each year.

(o) Abandonment. A sidewalk cafe or roadway cafe must be used and occupied for outdoor dining. When not used and occupied for outdoor dining for thirty (30) consecutive days or more, except in accordance with subdivision (n) of this section, they must be removed from the sidewalk and roadway by the licensee.

(p) License Availability. A licensee shall retain on the premises of a sidewalk cafe or roadway cafe a copy of the license issued for such cafe, and upon request by an employee of the Department or other city agency, shall make available such copy of such license for inspection.

Exhibit D

Certificates of Insurance

Instructions to New York City Agencies, Departments, and Offices

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

