

**LICENSE AND OPERATING AGREEMENT
(for Pedestrian Plaza)**

This License and Operating Agreement ("**Agreement**") is made this ___ day of _____, 201_ by and between **THE CITY OF PHILADELPHIA**, through its Department of Streets ("**City**"), and [**LICENSEE**] a [Pennsylvania non profit corporation / entity type] with a primary address at [address], Philadelphia, ("**Licensee**").

Background

A. The City has established a Pedestrian Plaza Program to convert underutilized street segments into public space in accordance with the Pedestrian Plaza Guidelines attached to this Agreement as **Attachment "A."**

B. Licensee desires to establish, operate and maintain a pedestrian plaza located at [location] ("**Plaza Area**") in accordance with the terms of this Agreement and Licensee's Plaza Application attached to this Agreement as **Attachment "B"** ("**Application**") (the pedestrian plaza to be established and maintained on the Plaza Area by Licensee in accordance with this Agreement and the Application is referred to herein as the "**Plaza.**" All references to the Plaza shall include the Plaza Area).

NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement, the City and Licensee, intending to be legally bound by this Agreement, agree as follows:

1. License; Conditions.

A. License. Subject to the terms of this Agreement, the City grants a temporary, nonexclusive, revocable and nonassignable license to Licensee to enter the Plaza Area to establish, operate and maintain a pedestrian plaza in accordance with all Applicable Laws and the terms and conditions of this Agreement, including the Licensee's commitments set forth in the Application.

B. Prior to entering the Plaza Area, Licensee shall acquire written notification from the City's Department of Streets (the "**Department**") that the Plaza Area is properly restricted from vehicular traffic. In addition, prior to entering the Plaza Area to commence installation of the Plaza, Licensee shall secure all necessary permits, licenses, and approvals from all appropriate departments, agencies, boards, or commissions of the City or other governmental entities that may be required by Applicable Law, including, but not limited to, approval from the Philadelphia Art Commission.

2. **Title: AS-IS Condition of Plaza Area.**

A. At all times, the Plaza Area shall remain owned by the City. No legal title or any other interest in real estate shall be deemed or construed to have been created by anything contained in this Agreement.

B. Licensee acknowledges and agrees that they accept this license to enter the Plaza Area in its "AS IS, WHERE-IS, AND WITH ALL FAULTS" condition, including all defects known or unknown, and the City makes no representation or warranty, express or implied, as to (a) any encumbrances, restrictions and conditions which may affect the Plaza Area, (b) the nature or condition of the Plaza Area for installation and operation of the Plaza, and (c) compliance of the Plaza Area with Applicable Law (defined below). Licensee is relying on its own independent investigation of the condition of the Plaza Area in entering this Agreement.

3. **Maintenance Obligations; Use Restrictions; Approvals.**

A. Licensee's Maintenance Obligations. Licensee hereby covenants and agrees, for itself, its successors, and assigns to be fully responsible for the costs of installing, operating and maintaining the Plaza as set forth in this Agreement. Licensee shall use and maintain the Plaza in a wholly safe condition; shall maintain any and all stands, tables, chairs, and other structures, and the grounds adjacent thereto in a clean and trim fashion, free of all waste, rubbish, accumulation of garbage, papers, and debris; shall provide and maintain adequate and proper drainage and not permit any drainage to fall or flow across the footways or roadways; shall permit free and unobstructed ingress and egress to, from, and around the Plaza for the protection or facilitation of pedestrian traffic; shall properly store and dispose of all waste matter and trash in accordance with the City's Recycling and Sanitation regulations and keep the Plaza and surrounding sidewalks free and clear of rubbish, trash and waste materials; and, except as approved in accordance with this Agreement or Applicable Law, shall not permit encroachments upon or obstructions of the streets.

B. City's Maintenance Obligations. The City shall not be required to furnish any services or facilities to the Plaza, or to make any repairs or alterations to the Plaza. The City shall not be responsible for any loss or damage to personal property on the Plaza. Licensee assumes sole responsibility for the operation, maintenance and management of the Plaza.

C. Use Restrictions. Licensee agrees that it shall not: permit any use of the Plaza except as specified in this Agreement; permit anything unlawful on the Plaza; permit a public or private nuisance on the Plaza; permit any Hazardous Substances (defined below) on the Plaza; permit an implied dedication of the Plaza; permit anything that disturbs or damages the surrounding properties; permit vehicle parking on the Plaza; permit any commercial or for-profit activity of any kind on the Plaza except as approved by the Department and in accordance with Applicable Law; permit commercial advertising of

any kind, or non-commercial advertising of any kind without the advance written approval of the Department; permit any structures on the Plaza unless specifically permitted by this Agreement; permit alcoholic beverages or illegal drugs on the Plaza; permit fires on the Plaza; permit personal property to be stored on the Plaza unless specifically permitted by this Agreement; or permit standing water to accumulate on the Plaza Area.

E. Approvals by City. Unless otherwise stated in this Agreement or in accordance with Applicable Law, any review, approval, permission, or consent that Licensee is required to obtain from the City under this Agreement shall not be valid or effective unless obtained from the Commissioner of the Department of Streets or the Commissioner's designee (the "**Commissioner**"). The review, approval, or consent by the Commissioner of any plans, specifications, work or materials submitted or performed by Licensee under this Agreement does not constitute any representation, warranty, or guarantee by the City as to the quality or substance of the matter reviewed or approved or its compliance with Applicable Laws. Licensee must use its own independent judgment as to the accuracy and quality of all such matters and its compliance with Applicable Laws. Review, approval, or consent by the Commissioner under this Agreement does not constitute any review, approval, consent, license or permit otherwise required under Applicable Laws by any City department, board, commission, or official.

4. **Compliance with Applicable Laws; Hazardous Substances.**

A. Applicable Laws. "**Applicable Laws**" shall mean all applicable present and future Federal, State and City laws, ordinances, orders, rules, regulations, guidelines and requirements.

B. Hazardous Substances. "**Hazardous Substance**" shall mean: (a) asbestos, flammables, volatile hydrocarbons, industrial solvents, explosives, chemicals, radioactive material, petroleum, petroleum products and by-products, natural gas, synthetic gas, and shall include but not be limited to, substances defined as "hazardous substances", "hazardous wastes", "toxic substances", "pollutants" or "contaminants" as those terms are defined in any of the Applicable Laws; and (b) any and all other materials or substances that any government entity shall determine from time to time are harmful, toxic, or dangerous.

5. **Entry on Plaza By City; City Inspection.** The City may enter the Plaza Area at any time, for any reason, including inspecting the Plaza and/or Plaza Area. Nothing contained in this Section shall create a duty on the City to make any repairs or do any work on the Plaza. City inspections shall not be a representation, guaranty, or warranty by the City to Licensee, as to Licensee's compliance with the terms of this Agreement or Applicable Laws.

6. **Insurance.**

A. Licensee shall procure and maintain, at its sole cost and expense, insurance for the Plaza of the types and minimum limits of coverage specified below. All insurance shall be procured from reputable insurers who are acceptable to the City and authorized to do business in the Commonwealth of Pennsylvania. All insurance required herein shall be written on an “occurrence” basis and not a “claims-made” basis.

(i) WORKERS COMPENSATION AND EMPLOYERS LIABILITY

- (a) Workers Compensation: Statutory limits
- (b) Employers Liability: \$100,000 each
Accident - Bodily Injury by Accident; \$100,000 Each
Employee - Bodily Injury by Disease; and \$500,000
Policy Limit -Bodily Injury by Disease.
- (c) All States coverage and Pennsylvania Endorsement.

(ii) GENERAL LIABILITY INSURANCE

- (a) Limit of liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability;
- (b) Coverage: Premises operations; blanket contractual liability; personal injury liability (employee exclusion deleted); products and completed operations; independent contractors; employees and volunteers as additional insureds; cross liability; and broad form property damage (including loss of use liability).

B. The City of Philadelphia, its officers, employees, and agents, shall be named as additional insureds on all policies required hereunder except the Workers Compensation and Employers Liability. All such policies shall include an endorsement stating that the coverage afforded to these parties as additional insureds will be primary to any other coverage available to them.

C. Certificates of insurance evidencing the required coverage shall be submitted to the Department and the City’s Risk Manager (1515 Arch Street, 14th Floor, Philadelphia, Pennsylvania 19102) within ten (10) days after the execution date of this Agreement. Licensee shall furnish certified copies of the original policies of all insurance required under this Agreement, at any time, within ten (10) days after written request by the City.

D. All insurance policies shall provide for a least thirty (30) days prior written notice to be given to the City in the event coverage is materially changed, cancelled, or not renewed. At least ten (10) days prior to the expiration of each policy, Licensee shall deliver to the City a certificate or certificates evidencing a replacement policy to become effective immediately upon the termination of the previous policy.

E. From time to time, but in any event not more frequently than every year, the City may adjust and Licensee shall comply with such adjustments to the amounts, types, and deductibles of insurance coverage required to reflect changed circumstances affecting insurance requirements.

F. Licensee shall furnish the City with proof that the premiums for all insurance required hereunder have been paid in full. Such proof shall be provided in writing at the time of the delivery of the certificate of insurance.

G. In the event Licensee fails to cause such insurance to be maintained, City shall not be limited in the proof of any damages which City may claim against Licensee or any other person or entity to the amount of insurance premium or premiums not paid or incurred and which would have been payable upon such insurance, but City shall also be entitled to recover as damages for such breach the uninsured amount of any loss and damages, expenses of suit, and costs, including without limitation, reasonable cancellation fees, suffered or incurred during any period when Licensee shall have failed or neglected to provide insurance as required herein.

H. The insurance requirements set forth herein shall in no way be intended to modify, limit, or reduce the indemnifications made in this Agreement by Licensee to City, its officers, employees, and agents, or to limit Licensee's liability under this Agreement to the limits of the policies of insurance required to be maintained by Licensee hereunder.

7. **Indemnification; Release.**

A. Licensee agrees to defend, indemnify, and save the City, its departments, commissions, boards, officers, employees or agents, harmless from and against all actions, causes, suits, demands, losses, and liabilities, including the cost of litigation and attorneys fees, by reason of injury (including death) to persons and damage to property in any way arising in connection with this Agreement or rights granted to Licensee hereunder; provided that nothing herein contained shall be deemed to confer upon any third person any right against City, or to vest in said third person any cause of action against City, or to authorize any such person to institute any such suit or suits against City, its departments, commissions, boards, officers, employees or agents.

B. In consideration of the license extended to Licensee by this Agreement, Licensee, and for Licensee's heirs, successors, and assigns and all persons

claiming through any of them (collectively, including Licensee the “**Releasing Parties**”) do hereby remise, quitclaim, release and forever discharge, the City, its departments, commissions, boards, officers, employees or agents, from any and all, and all manner of, actions and causes of action, suits, claims, and demands whatsoever in law or in equity which the Releasing Parties may have against the City its departments, commissions, boards, officers, employees or agents, relating in any way whatsoever to any condition on the Plaza Area, or relating in any way to Licensee’s entry onto the Plaza Area, or Licensee’s use of the Plaza Area.

8. Relocation; Termination of this Agreement.

A. Relocation. Licensee understands and agrees that it shall, upon request of the Department, relocate the perimeter of the Plaza, and/or remove and/or relocate within the Plaza, property including chairs, tables, or underground structures, either publicly or privately owned, and that Licensee will absorb all costs and expenses necessary for the performance of such relocation work.

B. Termination.

(1) Both the City and Licensee may terminate this Agreement upon thirty (30) days written notice to the non-terminating party at any time, with or without cause. Licensee shall further agree that upon receipt of such notice from the Department, Licensee shall vacate the Plaza and leave it in a clean condition, clear of all property and debris and restore the Plaza Area to the satisfaction and approval of the Department within thirty (30) days after receiving such notice. The City shall not be liable to Licensee for any compensation, reimbursement or other expenses related to this Agreement.

(2) Licensee agrees that in the event the Plaza is not removed from the Plaza Area and/or if the Plaza Area is not restored to its original condition, the City shall have the right and privilege, at its option, of removing said Plaza, and restoring the footway to its original condition and in event of the City so doing, Licensee shall pay to the City, within thirty (30) days written notice or demand, the costs expended by the City in such removal and/or restoration.

9. Notice.

All notices, requests, and other communications under this License shall be in writing and shall be sent by United States registered or certified mail, return receipt requested, postage prepaid, or by overnight or hand delivery service with receipt requested, or by facsimile followed by hard copy forwarded as aforesaid and addressed to Licensee as provided on the first page of this License and to the City as follows:

If to City: Department of Streets
Attn: Commissioner

Municipal Services Building, 7th Floor
Philadelphia, PA 19102

With a copy to: Managing Director's Office
Attn:
Municipal Services Building, 14th Floor
Philadelphia, PA 19102

With a copy to: City of Philadelphia Law Department
Attn: Divisional Deputy City Solicitor, Real Estate
1515 Arch Street, 17th Floor
Philadelphia, PA 19102

If to Licensee: _____

or to such other individual and/or address as the party to receive notice may from time to time designate by written notice to the other party in the manner above described.

10. **Miscellaneous.**

A. **Entire Agreement.** This Agreement represents the entire agreement between the City and Licensee. No oral representations, whenever made, by any City official, employee or agent, shall be effective to modify this Agreement.

B. **Standard City Provisions.** Licensee shall comply with the City's Standard City Provisions contained in **Attachment "C."**

C. **Governing Law.** This Agreement shall be governed in accordance with the laws of the Commonwealth of Pennsylvania. The parties to this Agreement agree to submit to the jurisdiction of the courts, whether federal or state, located in Philadelphia, Pennsylvania.

[Remainder of page left blank intentionally; signature page attached.]

IN WITNESS WHEREOF, the City and Licensee have caused this Agreement to be executed, as of the date written in the heading of this Agreement.

LICENSOR:

APPROVED AS TO FORM:
Shelley R. Smith, City Solicitor

THE CITY OF PHILADELPHIA through
its Department of Streets

Per: _____
Deputy City Solicitor

By: _____
Clarena Tolson
Commissioner

LICENSEE/LICENSEE:

Name

Print

ATTACHMENT "A"

PEDESTRIAN PLAZA PROGRAM GUIDELINES

ATTACHMENT "B"

LICENSEE'S APPLICATION

ATTACHMENT "C" STANDARD CITY PROVISIONS

Defined Terms.

Capitalized terms used in this Attachment and not defined in this Attachment shall have the meanings ascribed to them in the Agreement.

Audit of Affairs.

During the term of this Agreement, the City Controller shall have the right to audit the affairs of the Licensee to the extent required under Section 6-400 of the Home Rule Charter. In order to facilitate such an audit, upon prior reasonable notice, the Licensee must provide the Controller with reasonable access to the Licensee's books and financial records.

Fair Practices.

Licensee agrees, in performing this Agreement, to comply with the provisions of the Fair Practices Ordinance of The Philadelphia Code (Chapter 9-1100) and the Mayor's Executive Order No. 4-86, as they may be amended from time to time, both of which prohibit, inter alia, discrimination against persons with AIDS in employment and services.

No Prohibited Gifts to City Officials.

A. Pursuant to Executive Order 003-11, no official or employee in the Executive and Administrative Branch of the City shall solicit or accept, directly or indirectly, anything of value, including any gift, gratuity, favor, entertainment or loan from any of the following sources: (i) A person seeking to obtain business from, or who has financial relations with, the City; (ii) A person whose operations or activities are regulated or inspected by any City agency; (iii) A person engaged, either as principal or attorney, in proceedings before any City agency or in court proceedings in which the City is an adverse party; (iv) A person seeking legislative or administrative action by the City; or (v) A person whose interests may be substantially affected by the performance or nonperformance of the official's or employee's official duties.

B. Licensee understands and agrees that it shall not offer anything of value to any City official or employee under circumstances where the receipt of such item would violate the provisions of this Executive Order.

Nondiscrimination.

A. This Agreement is entered into under the terms of the Philadelphia Home Rule Charter and in its performance; Licensee shall not discriminate nor permit discrimination against any person because of race, color, religion, national origin or sex. In the event of such discrimination, the City may terminate this Agreement or exercise any other remedy provided to the City in this Agreement or at law or in equity. The foregoing shall not be construed to limit or restrict the City's right to terminate this License as set forth in the Agreement.

B. In accordance with Chapter 17-400 of The Philadelphia Code, Licensee agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, or privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes a substantial breach of this License entitling the City to immediately terminate this Agreement or exercise all rights and remedies provided in this Agreement or otherwise available at law or in equity.

C. Licensee further agrees to cooperate with the Commission on Human Relations in any manner that the said Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of The Philadelphia Code.

Office of Economic Opportunity Participation. The City desires that Licensee, in its contracting activities, employ *Good Faith Efforts* to use firms owned by minority persons, women and disabled persons (M/W/DSBEs) during the term of this Agreement. Mayoral Executive Order 02-05 defines *Good Faith Efforts* as those efforts, the scope, intensity and appropriateness of which are designed and performed to achieve meaningful participation of M/W/DSBEs. In furtherance of this objective, Licensee is encouraged to solicit M/W/DSBEs listed in the City's Registry of M/W/DSBEs for those services and supplies that are needed to establish, operate and maintain the Plaza. Office of Economic Opportunity Staff are available at (215) 683-2080 to assist Licensee with finding such M/W/DSBEs.

Certification of Non-Indebtedness. Licensee hereby certifies and represents that Licensee is not currently indebted to the City and will not at any time during the Term of this license (including any extensions or renewals of this Agreement) be indebted to the City for or on account of any delinquent taxes (including but not limited to taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. In addition to any other rights or remedies available to the City at law or in equity, Licensee acknowledges that any breach or failure to conform to this certification may, at the option of the City, result in the immediate termination of this Agreement. Any breach or failure to conform to the aforesaid certifications shall constitute a default by the Licensee and entitle the City to exercise any rights or remedies available to it under this License, and at law and in equity.