

**Exhibit D
Boiler Plate Permit**

**STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES
MAYOR ERASTUS CORNING 2ND TOWER
The Governor Nelson A. Rockefeller
Empire State AC Powell Building
Albany, New York 12242**

REVOCABLE PERMIT

This Agreement (hereinafter referred to as the "Permit," the "Revocable Permit" or the "Agreement"), made and entered into this ___ day of _____ 201_ between The People of the State of New York, acting by and through the Commissioner of the Office of General Services, pursuant to Section 3(13)(a) of the New York State Public Buildings Law, (hereinafter referred to as the "State," "Commissioner" or "OGS"), who has offices at the Mayor Erastus Corning II Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, _____ whose address is _____ (hereinafter referred to as the "Permittee"). The foregoing are hereinafter individually referred to as the "Party" and collectively referred to as the "Parties."

WITNESSETH: In consideration of the mutual covenants, terms, and conditions hereinafter set forth, the Parties hereto agree as follows:

1. OGS does hereby grant unto the said Permittee, a Revocable Permit to use and occupy approximately _____ (___) rentable square feet of space located on the 3rd floor of Adam Clayton Powell, Jr. State Office Building (hereinafter referred to as the "AC Powell Building"), in the City and County of Harlem, State of New York (The foregoing is hereinafter referred to as the "Permit Space") together with the fixtures, improvements and other property of the State located or to be located in the Permit Space. The foregoing is shown on the plan annexed to this Permit and marked as "Exhibit A."
2. The term of this Permit shall be for a period of ___ () ___ months beginning on: _____ (hereinafter referred to as the "Commencement Date") and ending on: _____ (hereinafter referred to as the "Termination Date"). The foregoing is hereinafter collectively referred to as the "Term."
3. The Permittee shall have the right to use and occupy the Permit Space for the purpose of operating a food service operation serving breakfast, lunch and other food and beverage items in a sit down or take out restaurant setting. The foregoing shall be referred to herein as the "Use."

The Permittee shall be permitted to provide Wi-Fi in the Permit Space and to install a security camera or cameras, in compliance with the requirements of this Permit, upon the receipt of the prior, written consent of the State, which shall not be unreasonably withheld, conditioned, or delayed.

4. The Permittee shall operate the Permit Space as follows:

The Permit Space shall be open from 7:00 am to 3:00 pm with limited items available from 3:00 pm to 5:00 pm Mondays through Fridays, excluding State Legal Holidays (the foregoing are hereinafter referred to as the "Normal Business Hours"), or such longer hours as the Permittee may desire (provided that the Permittee shall give OGS advance, written notice, in accordance with Section 33 of this Permit, of such change in hours), and shall remain open as agreed upon by the Parties for events, programs or activities at the AC Powell Building.

The Permittee shall not be required to operate the food service operation during Normal Business Hours if the Permittee is unable to operate as a result of force majeure, casualty, condemnation, periodic inventory (not more than ten (10) days per calendar year), or for permitted alterations. The Permittee shall provide at least ten days' prior, written notice to the State of scheduled closings for inventory or approved alterations. In addition, de minimis late openings and early closings shall not be deemed a violation of this provision; however, OGS must be notified by telephone or by e-mail, within two (2) hours of the decision to close early or open late. The contact for such notification is: XXXXX. Notwithstanding the foregoing, however, OGS may need to close the AC Powell Building for fire alarms, emergencies, etc. In such cases, the Permittee shall close the Permit Space and OGS shall have no liability to the Permittee for such closures.

As used herein, the term "State Legal Holidays" shall mean the calendar of legal holidays as established and maintained by the New York State Department of Civil Service. Annual updates of legal holidays are available at http://www.cs.state.ny.us/attendance_leave/ once you are on the website, scroll down to Calendar of Legal Holidays and click on the applicable year.

Notwithstanding the foregoing, any day that is determined to be a floating holiday by the State shall not be considered to be a State Legal Holiday, but shall be considered to be a normal work day and the Tenant shall provide all services required to be provided by this Permit on such days.

5. The Permittee agrees to pay the following: For the Permit Space, a permit fee (hereinafter referred to as the "Permit Fee") in the amount of XXXXXX Dollars (XXXXXX) per year. Payments shall be made on a monthly basis, on the first day of the month, in the amount of XXXXXX Dollars (XXXXXX).

Percentage Fee in the amount of ____ (____%) on Gross Receipts, as defined below (herein after referred to as the "Percentage Fee").

All Permit Fee payments required by this Permit shall be made by the first (1st) day of each month, and shall be sent to: The New York State Office of General Services, Financial Administration, Empire State Plaza, P.O. Box 2166, Albany, New York 12220.

For purposes of this Permit, "Gross Receipts" shall include the amounts generated from the sale of all foods, beverages, commodities, articles, room rental and services, and the amounts generated from sales of any nature whatsoever at the Permit Space, whether sold for consumption or use in or out of the Permit Space, without deduction for cost of merchandise or rent of any kind whatsoever. Notwithstanding the foregoing, Gross Receipts shall not include refunds to customers, the cost of meals sold to employees of the Permittee, revenue from the sale of such other items as OGS may specifically

designate, and sales taxes, excise taxes or other taxes that are collected from patrons and paid directly to the appropriate governmental agency by the Permittee and the amount of any discount from the regular price of all items sold within the Permit Space as a result of redemption or honoring of coupons or other similar promotions. However, no franchise or capital stock tax or income or similar tax, measured or based on income or profits to the Permittee, or any tax which forms a part of the cost of the Permittee, shall be deducted from Gross Receipts. Gross Receipts shall also not include: taxes or assessments on rent or other charges, if any paid by the Permittee (gross receipts taxes levied on the Permittee in connection with the operation of its business in the Permit Space); sales of the Permittee's own fixtures and equipment; deposits from its customers; receipts from public telephones or stamp machines installed for the benefit of the Permittee's employees; bad debts; delivery charges or any service rendered at cost or approximately at cost for the convenience of customers; promotional offerings and charitable collections; sums and credits received in the settlement of claims for loss of or damage to the merchandise; charges on credit card sales (not in excess of 2% of Gross Receipts in any one calendar year); gift cards (except if and to the extent redeemed at the Permit Space); insurance proceeds received from the settlement of claims for loss of or damage to goods, fixtures and other personal property of the Permittee; service charges payable to the Permittee on accounts receivable; and transfers or exchanges of merchandise for the convenience of customers or between stores or warehouses of the Permittee.

Separate books and records of account shall be maintained in an electronic format for the Permit Space on a uniform basis in accordance with Generally Accepted Accounting Principles ("GAAP"). The Permittee's books and records of account shall be open to inspection and audit by OGS, its designated representatives and consultants, at all reasonable times during Normal Business Hours, as defined in Section 5 of this Permit, upon reasonable advance notice. Notwithstanding anything to the contrary contained in this Permit, the Permittee shall not be required to alter its record-keeping practices or accounting system to conform to OGS's requirements for reporting its sales. In particular, the Permittee shall not be required to keep or produce serially numbered cash register tapes or other voluminous records. The Permittee agrees that it shall keep accurate records in the computer medium then used by the Permittee showing the Permittee's sales, and the Permittee shall produce computer-generated reports based on such records in accordance with the reporting requirements of this Permit. OGS shall keep all such reports confidential.

The Permittee shall promptly offer and make available to OGS, in an electronic format, any internal (company) audits relating to its operations at the Permit Space and shall additionally on an annual basis, within one hundred twenty (120) days after the conclusion of the annual period, provide OGS with a composite fiscal analysis of its operations at the Permit Space. Such submissions shall be sent to The New York State Office of General Services, Assistant Director, Real Estate Planning & Development, The Governor Nelson A. Rockefeller Empire State AC Powell Building, Corning Tower, 26th Floor, Albany, New York 12242 with a copy sent to the New York State Office of General Services, Bureau of Food Services, Room 121, Concourse, Empire State AC Powell Building, Albany, New York 12242

6. The following services and utilities are furnished by OGS as part of this Permit and the cost of the same are included in the Permit Fee:
- (a) From 6:00 a.m. to 6:00 p.m., Mondays through Fridays, excluding State Legal Holidays, conditioned airflow to provide suitable and comfortable levels of heating, air conditioning and ventilation pursuant to the standards adopted by the State for the AC Powell Building.
 - (b) Hot and cold water, of the character furnished by the municipality or utility company supplying the same to and generally available to and used by the State at the AC Powell Building in reasonable quantities for use by the Permittee solely for sanitary purposes associated with the ordinary needs of the Use.
 - (c) From 6:00 a.m. to 6:00 p.m., Mondays through Fridays, excluding State Legal Holidays, electric service distribution equipment, lighting fixtures, and electric service of sufficient amount and quality for the proper lighting of the Permit Space and for the operation of the Permittees Use including, in addition to normal building requirements, electrical services for office equipment, electrical equipment and appurtenances. The State shall have no obligation to increase or change the amount or type of service or equipment and fixtures.

Notwithstanding the foregoing, if the Permittee shall require electric, heating, ventilating or air conditioning service from any utility, mechanical, electrical, communication and other systems at times other than from 6:00 a.m. to 6:00 p.m., Mondays through Fridays, excluding State Legal Holidays, (hereafter referred to as the "After Hours Services"), the State shall furnish such After Hours Services upon reasonable, advance notice from the Permittee (i.e., noon on the day such service is requested, if such service is requested on a Business Day or by noon on the preceding Business Day if such service is requested for a day other than a Business Day), and the Permittee shall pay, as an additional permit fee, the State's then standard charges therefore. The State's standard charges may increase from time to time in relation to increases in the State's costs to furnish such After Hours Services. For purposes of this Permit, a Business Day is defined as Monday through Friday, notwithstanding State Legal Holidays, as that term is defined in Section 4 of this Permit.

- (d) If the Permittee, in accordance with the requirements of this Permit, erects any partitions or makes any improvements which stop, hinder, obstruct or interfere with the cooling of the air within or the heating of the Permit Space, then no such action by the Permittee shall impose any obligations on the State to increase or augment the existing or presently contemplated supply of conditioned airflow for air cooling or for heating, and the Permittee shall not in any such event be relieved of any of its obligations hereunder because a comfortable temperature is not maintained. No consent or approvals given by the State in connection with the erection of partitions, the making of any improvements or the installation of any heating or air conditioning distribution systems shall be or be deemed to be a representation that the work consented to or approved will not stop, hinder, obstruct or interfere with either the cooling of the air within or the heating of the Permit Space, or any portion thereof, or that any system is sufficient or adequate for the distribution of heating or air cooling within the Permit Space. It is hereby understood further that the installation by the Permittee of any equipment which itself requires air cooling or which requires additional quantities of air cooling at the portion of the Permit Space where such equipment is installed, or the concentration in any portion of the Permit Space of such a

number of people so as to require additional quantities of air cooling, shall not impose any obligation on the State to increase the capacity or output of initially existing facilities, equipment or fixtures for the supply of air cooling, and the Permittee shall not in any such event be relieved of any of its obligations hereunder. If the Permittee erects any partitions or makes any improvements subject to this Section without the prior, written consent of the State, then, upon reasonable notice, the Permittee will remove the same, or, at the option of the State, cause the same to be changed to the satisfaction of the State, or the State may affect the removal or change, and the Permittee shall pay the cost thereof to the State on demand.

- (e) The Permittee shall not waste or dissipate air cooling or heating nor draw any of the same into the Permit Space from public areas contiguous thereto.
- (f) The State, upon twenty-four (24) hours' notice to the Permittee (which may be given in person or by telephone), except in the event of an emergency, in which case no notice shall be required, shall have the right to discontinue temporarily the supply of any of the above services when necessary or desirable in the opinion of the State in order to make any repairs, alterations, changes or improvements in the Permit Space or elsewhere in the AC Powell Building or in order to conserve energy including, but not limited, to all systems for the supply of services. The State shall use commercially reasonable efforts to avoid such interference.
- (g) No failure, delay, interruption or reduction in any service or services shall be or shall be construed to be an eviction of the Permittee, shall be grounds for any diminution or abatement of the Permit Fee payable hereunder, or shall constitute grounds for any claim by the Permittee for damages, consequential or otherwise, unless due to the negligent acts of the State or its officers and employees, acting within the course and scope of their employment. If the Permittee shall be in default under any provisions of this Permit beyond any applicable notice and cure periods, the State shall be permitted to cease providing any service or services required to be provided by the State hereunder to the Permittee. The State may only cease providing such services during the period in which the Permittee remains in default hereunder.
- (h) The State shall be under no obligation to supply any service or services if and to the extent and during any period that the supplying of any such service or services or the use of any component necessary therefore shall be prohibited or rationed by any federal, state or municipal law, rule, regulation, requirement, order or direction and if the State deems it in the public interest to comply therewith, even though such law, rule, regulation, requirement, order or direction may not be mandatory on the State as a public agency.
- (i) Anything to the contrary notwithstanding for the purposes of this Permit, the Permittee has reviewed the utility installations and agrees that the currently installed utility systems, i.e. heat and air conditioning, electric and plumbing are adequate for its intended Use.
- (j) Notwithstanding anything contained herein to the contrary, if any utility or service to the Permit Space, which is provided by the State or under the State's control, is interrupted for more than twenty-four (24) hours due to the negligence of the State or its officers and employees, acting within the course and scope of their employment, then the Permittees Permit Fee and all other charges hereunder shall abate during the period such utility or service is interrupted.

- (k) As of the Commencement Date, OGS shall provide the Permittee with a total of two (2) parking spaces, in lots adjacent to the AC Powell Building as determined by OGS Parking Services. The current parking rate, if applicable, shall be paid by the Permittee. OGS reserves the right to change the location of the Permittees parking space(s) as necessary, but in no event shall the total number of parking spaces allocated to the Permittee decrease below the number provided at the Commencement Date. However, in the event that the Permittee no longer needs the parking spaces, it shall notify OGS so that the spaces may be reallocated. The Permittee shall comply with all applicable rules and procedures established by the OGS Bureau of Parking Services.

7. Janitorial and Trash:

The Permittee shall perform and pay all costs for the thorough daily cleaning of those areas of the Permit Space devoted to and available for use and circulation by patrons and guests, all kitchen and food preparation areas, counters, spaces behind counters and areas reserved for the use of the Permittee and its employees, inclusive of floors, walls and ceilings. In addition, the said areas, furnishings and appurtenances are to be spot cleaned as needed but not less than daily. All eating areas shall be neat and clean, and, to that end, continually cleaned by the Permittee's employees. Such eating areas shall include, but not be limited to, tables, counters, seats, floors, ceilings, walls, equipment and furnishings. The Permittee must submit to the BFS a schedule for cleaning each area of the Permit Space.

During all shifts, the Permittee shall regularly monitor, and promptly pick up trash in the Permit Space. The Permittee shall furnish trash collection equipment adequate for the Permit Space and shall promptly, as needed, but no less than at the end of the Business Day, as that term is defined in Section 7(c) of this Permit, remove all garbage, debris, and trash from the interior of the Permit Space, at its own expense, and deliver the same to a designated area within the loading dock located at the 625 Broadway Building (hereinafter referred to as the "Food Service Dumpster Area").

OGS and the Permittee shall comply with local recycling laws enacted under General Municipal Law § 120-aa, requiring that solid waste be separated into recyclable, reusable or other components as well as OGS source-separation guidelines. OGS and the Permittee acknowledge the value of composting and shall, whenever practicable, work to encourage composting in the Permit Space and at the 625 Broadway Building.

During the Term of this Permit, OGS shall furnish and/or contract for rubbish removal in the Food Service Dumpster Area on the loading dock at the AC Powell Building, kitchen exhaust cleaning, grease trap and drain cleaning, and pest maintenance (hereinafter the "OGS Services"). As of the Commencement Date, the Permittee shall pay OGS, as additional rent, the amount of _____ Dollars (\$_____) annually for the cost of the OGS Services. Such payment shall be made on a monthly basis, in the sum of _____ Dollars (\$_____.00). In the event that OGS' costs for providing the OGS Services increase during the Term, due to any rate increases and surcharges instituted by service contractors, the Permittee's costs will proportionately increase. Advance, written notice of such increases shall be provided by OGS in compliance with Section 34 of this Permit. OGS shall provide

the Permittee with a monthly invoice and documentation setting forth and justifying the costs of the OGS Services. The Permittee will pay the cost of the OGS Services to OGS within thirty (30) calendar days of receipt of an invoice and documentation. Payments shall be sent to: OGS Financial Administration, Empire State Plaza, P.O. Box 2166, Albany, New York 12220. Notwithstanding the foregoing, the Permittee shall have the right to audit such invoices and supporting documentation, during the twelve months after the same were received. In the event that after an audit the Permittee determines that an adjustment should be made, the Permittee shall contact the OGS BFS and the OGS Permit Audit Unit and the Permittee shall work to reach agreement on any adjustments. Any adjustments shall be made within thirty (30) days after agreement is reached by OGS and the Permittee. In the event that the Parties cannot reach agreement, the dispute shall be finally determinable by the Commissioner of OGS.

The Permittee shall be solely responsible for supplying all cleaning equipment, materials and supplies needed to properly maintain and clean the Permit Space as required. Should the Permittee fail or refuse to clean the Permit Space to the reasonable satisfaction of OGS, the Parties agree that OGS shall be authorized and empowered, after two (2) Business Days' notice and the Permittee's failure to cure (except in the event of an emergency, where no notice and cure period shall be provided), to cause the Permit Space to be properly cleaned, charging the Permittee, who shall be solely liable thereafter, one hundred and fifty percent (150%) of the expenses incurred for such service, as liquidated damages and not a penalty.

Governor Paterson's Executive Order 4 ("EO-4"), which was continued by Governor Cuomo's Executive Order 2, directs all state agencies and authorities to purchase green products and promote sustainability. EO-4, a copy of which is annexed hereto as Exhibit "B," directs state agencies and authorities to develop and implement specific projects, programs and policies designed to reduce the public health and environmental impacts of the activities and operations of the agency or authority, including: the reduction or elimination of the use and generation of toxic substances, pollution and waste; the reduction, reuse, recycling and composting of solid waste; and maximizing the use of environmentally preferable or "green" commodities, services and technology.

In an effort to assist state agencies and authorities in complying with these directives, the Interagency Committee on Sustainability and Green Procurement (hereinafter referred to as the "Interagency Committee") has approved specifications for Industrial/Institutional Cleaning Products and Hand Soap/Cleaner. These specifications, along with other approved specifications, can be found at: <http://ogs.ny.gov/EO/4/ApprovedSpecs.asp>. In order to comply with these directives, the Permittee has agreed to make careful selection of effective janitorial cleaning products and equipment that reduce or eliminate the health and environmental risks from the use or release of toxic substances and minimize the risks of the discharge of pollutants into the environment.

In addition, EO-4 requires state agencies and authorities, to the maximum extent practicable, to purchase janitorial paper and other paper supplies, including but not limited to bathroom tissue and paper towels, that are processed chlorine-free and composed of 100% post-consumer recycled content. EO-4 also requires state agencies and authorities, to the extent practicable, to implement effective programs to source separate recyclable materials, including paper, metal, glass, and plastic that will maximize materials recovery and reduce waste. The Permittee agrees to work to meet these requirements by, to the

maximum extent practicable, making careful selection of janitorial paper and other paper supplies including but not limited to bathroom tissue and paper towels, in order to use products that are composed of 100% post-consumer recycled content and shall be processed chlorine-free.

Additional information on these requirements and EO-4 are available through OGS upon request.

The Permittee acknowledges an understanding of these state policies and pledges to cooperate with the State in their implementation.

During all shifts, the Permittee shall regularly monitor, and promptly pick up trash in the Permit Space. The State shall furnish trash collection equipment adequate for the Permit Space and the Permittee shall promptly, as needed, but no less than at the end of the Business Day, as that term is defined in Section 6(c) of this Permit, remove all garbage, debris, and trash from the interior of the Permit Space, at its own expense, and deliver the same to a designated area within dock "M" located at the AC Powell Building (hereinafter referred to as the "Food Service Dumpster Area").

OGS and the Permittee shall comply with local recycling laws enacted under General Municipal Law § 120-aa, requiring that solid waste be separated into recyclable, reusable or other components as well as OGS source-separation guidelines. OGS and the Permittee acknowledge the value of composting and shall, whenever practicable, work to encourage composting in the Permit Space and at the AC Powell Building.

During the Term of this Permit, OGS, at its sole cost and expense, shall furnish and/or contract for rubbish removal from the Food Service Dumpster Area, kitchen exhaust cleaning, grease trap and drain cleaning, and pest maintenance (hereinafter referred to as the "OGS Services").

8.

- (a) The Permittee shall be required to provide and maintain the highest standard of quality of service. The Permittee shall provide supervisors and employees in sufficient numbers at all times to deliver all services properly and efficiently and to meet all of the standards for the Use allowed by this Permit. The Parties shall work together in good faith to address any OGS concerns regarding such service. The Permittees personnel shall have the experience and background generally acceptable in the food service field for the positions which they hold. The Permittee shall conduct its operation in an orderly manner and so as not to annoy, disturb or be offensive to others at the AC Powell Building. The Permittee shall use all reasonable efforts to control the conduct, demeanor and appearance in the Permit Space of its officers, members, employees, agents, representatives, contractors, customers, guests, invitees and those doing business with it and outside the Permit Space, but elsewhere at the AC Powell Building, of its officers, members, employees, representatives and contractors. The Permittee shall require employees to be clean, courteous, helpful, efficient, and neat in appearance at all times. The Permittee shall not employ any persons in or about the Permit Space who use improper language or act in a loud, boisterous or otherwise improper manner. The Permittee agrees to take prompt and appropriate action with regard to complaints about the conduct of its employees and that upon objection from OGS concerning the conduct, demeanor or appearance of its officers, members, employees, agents, representatives, contractors, customers, guests, invitees and those doing business with it, the Permittee shall immediately take all reasonable steps

necessary to remove the cause of the objection.

The Permittee shall retain active, qualified, competent and experienced managers and supervisors to oversee and administer its Use. At least one person employed specifically in the role of Manager, Assistant Manager or Shift Supervisor must be on duty during all shifts of operation. Management and supervisory personnel shall have food service management experience and maintain an active Food Handlers' or ServSafe Certification.

- (b) The Permittee shall provide its employees at the Permit Space with distinctive, clean and similar uniforms that will create at all times a neat and tidy public image. All employees engaged in the preparation or handling of food shall be trained and shall be required to meet all health regulations regarding food handling and preparation.
- (c) The Permittee is strongly encouraged, to the maximum extent practical consistent with legal requirements, to utilize MWBE suppliers in the fulfillment of the terms of this Permit.
- (d) The Permittee will implement all reasonable programs, to the extent that the Permittee is reasonably able to do so, designed to reduce the public health and environmental impacts of its activities and operations, including but not limited to: reducing or eliminating the use and generation of toxic substances, pollution and waste; to the maximum extent practical, consistent with legal requirements reducing, reusing, recycling and composting solid waste; increasing energy efficiency; increasing the use of renewable energy sources; conserving water and other natural resources; and maximizing the use of environmentally preferable "green" commodities, services, and technology. The Permittee will maintain complete compliance with state laws, regulations, OGS requirements and all Executive Orders (to the same extent as an entity legally bound by such orders) mandating energy conservation, green procurement and agency sustainability. In no case, shall polystyrene products be used by the Permittee.
- (e) The Permittee shall not commit any nuisance in the Permit Space, or do or permit to be done anything which may result in the creation or commission of a nuisance in the Permit Space, and the Permittee shall not cause or permit to be caused or produced upon the Permit Space, or to permeate or emanate therefrom, any unusual, noxious or objectionable smokes, gases, vapors, odors, or objectionable noises. Notwithstanding the foregoing, OGS acknowledges and agrees that typical odors associated with the Permittees permitted Use shall not be deemed objectionable.
- (f) The Permittee shall not keep, maintain, place or install in the Permit Space any fixtures or equipment other than those listed as part of Exhibit "F" to this Permit, without the prior, written approval of OGS. The Permittee shall not keep, maintain, place or install in the Permit Space any fixtures or equipment the use of which is not consistent with and required for the Use allowed by this Permit as set forth herein and the Permittee shall not use or connect any equipment or engage in any activity or operation in the Permit Space which will cause or tend to cause an overloading of the capacity of any existing or future utility, mechanical, electrical, communication or other systems or portions thereof, in the Permit Space or elsewhere at the AC Powell Building, nor shall the Permittee do or permit to be done anything which may interfere with the effectiveness or accessibility thereof. OGS agrees that the Permittees proposed Use shall not violate the provisions of this paragraph. OGS's agreement however shall neither be deemed to be nor construed as constituting a waiver of any of its rights or remedies herein contained.

- (g) The Permittee shall not overload any floor, roadway, passageway, pavement or other surface or any wall, partition, column or other supporting member, or any elevator or other conveyance, in the Permit Space or at the AC Powell Building and the Permittee shall be responsible for the costs of repairs, replacements or rebuilding any such damage caused by overloading.
- (h) The Permittee shall not do or permit to be done any act or thing upon the Permit Space or at the AC Powell Building which will invalidate or conflict with any insurance policies covering the Permit Space, or any part thereof, or the AC Powell Building, or any part thereof, or which, in the commercially reasonable opinion of OGS, may constitute an extra hazardous condition, so as to increase the risks normally attendant upon the operations contemplated by this Permit, and the Permittee shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, orders and directions of the National Fire Protection Association and the New York Fire Insurance Rating Organization, and of any other board or organization exercising or which may exercise similar functions, which may pertain or apply to the operations of the Permittee in the Permit Space, and the Permittee shall, subject to and in accordance with the provisions of this Permit, make any and all improvements, alterations or repairs of the Permit Space that may be required at any time hereafter by any such present or future rules, regulations, requirements, orders or directions, and if by reason of any failure on the part of the Permittee to comply with the provisions of this Permit any insurance rate on the Permit Space or any part thereof of the AC Powell Building or any part thereof shall at any time be higher than it otherwise would be, then the Permittee shall pay to OGS, as an item of additional permit fee, that part of all insurance premiums paid by OGS which shall have been charged because of such violation or failure by the Permittee, but no such payment shall relieve the Permittee of its other obligations under this paragraph. Notwithstanding the foregoing, OGS represents to the Permittee that, to OGS's knowledge, the Permittees permitted Use hereunder shall not cause such an increase or invalidation of any insurance on the AC Powell Building.
- (i) The Permittee shall not sell merchandise depicting or referencing the State of New York, any agency or property thereof or the Great Seal without the express prior, written consent of the OGS.
9. Except with the prior, written consent of OGS, which consent shall not be unreasonably conditioned, withheld or delayed and so long as such consent is not inconsistent with the AC Powell Building standards and regulations, the Permittee shall not erect, maintain or display any signs, advertising, posters or similar devices at or on the exterior parts of the Permit Space, or in the Permit Space so as to be visible through the windows, glass walls or exterior doors thereof. Notwithstanding the foregoing, OGS shall have no approval rights over Permittees interior menu board or other similar interior signage which is professionally prepared and in keeping with the interior signage at Permittees other locations. Upon the expiration or termination of the Permit, the Permittee shall remove, obliterate or paint out, as OGS may direct, any signs, advertising, posters or similar devices, and in connection therewith shall restore the area affected to the same condition as of the Commencement Date.
10. OGS's delivery obligations hereunder shall mean delivery of the Permit Space in its "as is" condition as of the Commencement Date.

11.

- (a) Except as herein expressly provided, during the Term of this Permit, the Permittee shall not without the prior, written approval of the State, which shall not be unreasonably withheld, conditioned or delayed, erect any structures, make any improvements or do any other construction work in the Permit Space or elsewhere at the AC Powell Building, or alter, modify, or make additions, improvements or repairs to or replacements of any structure now existing or built at any time, or install any fixtures (other than trade fixtures removable without irreparable injury to the Permit Space); and in the event any construction, improvement, alteration, modification, addition, repair or replacement is made without such consent, then, upon reasonable notice, the Permittee will remove the same, or, at the option of the State, cause the same to be changed to the reasonable satisfaction of the State, or the State may affect the removal or change, and the Permittee shall pay the cost thereof to the State, as additional permit fee, on demand. The State shall either approve or disapprove, with reasonable explanation for such disapproval, any such plans submitted to the State, within twenty (20) days of submission. If the State fails to approve or disapprove within such time frame, the Permittee shall again submit such plans to the State and the State shall have an additional period of seven (7) days to either approve or disapprove, with reasonable explanation for such disapproval, or such plans shall be deemed approved. Notwithstanding anything contained herein to the contrary, the State shall have no approval rights over interior, non-structural alterations that do not affect any building systems and which cost less than \$50,000 in the aggregate, except for signage which will be approved in accordance with Section 9 of this Permit.
- (b) In the event that pursuant to the requirements of this Permit, the Permittee is required or permitted to perform construction, finishing, decorating, alteration or improvement work to the Permit Space or to make repairs thereto, all of the same shall be made or performed strictly in accordance with the following terms and conditions.
- (1) The Permittee shall, to the extent allowed under the law, indemnify and hold harmless the State, its officers, agents and employees, against the following distinct and several risks, whether they arise from acts or omissions of the Permittee, of the State, their officers, agents and employees or of third persons, or from acts of God or of the public enemy, or otherwise excepting only risks to the extent resulting from the negligence of the State or its officers or employees, acting within the course and scope of their employment:
- (i) The risk of loss or damage to all such construction, finishing, decorating, alteration, improvement or repair work prior to the completion thereof. In the event of such loss or damage, the Permittee shall forthwith repair, replace and make good the work without cost to the State.
- (ii) The risk of death, injury or damage, direct or consequential to the State, its officers, agents and employees, and to its or their property, arising out of or in connection with the performance of the work. The Permittee shall indemnify the State, its officers, agents and employees, for all such deaths, injuries and damages, and for all loss suffered by reason thereof.

- (iii) The risk of claims and demands, just or unjust, by third persons against the State, its officers, agents and employees arising or alleged to arise out of the performance of the work. The Permittee shall indemnify the State, its officers, agents and employees, against and from (and shall reimburse the State for the State's costs or expenses, including reasonable legal expenses, incurred in connection with the defense of) all such claims and demands.
- (2) All work done pursuant to this Section shall be done in accordance with drawings and specifications to be submitted to and approved by the State prior to the commencement of the work, except as otherwise set forth herein, shall be done to its reasonable satisfaction and shall be subject to its inspection during the progress of such work and after completion thereof; and the Permittee shall redo or replace, at its own expense, any work not reasonably approved by the State. Unless otherwise expressly provided herein, all workmanship and materials are required to be "first class."
- (3) The Permittee shall pay all claims lawfully made against it by its contractors, subcontractors, material men and workmen and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of the work and shall cause its contractors and subcontractors to pay all such claims lawfully made against them.
- (4) The Permittee shall procure and maintain comprehensive public liability insurance, or, if the work is to be done by an independent contractor, the Permittee shall require such contractor to procure and maintain such insurance in the name of the contractor, in either case, in limits not lower than those set forth for such categories of insurance in Section 19 of this Permit, naming The People of the State of New York, The New York State Office of General Services and their officers, agents, and employees as an additional insured, and if not so set forth, then as may be reasonably specified in advance by the State.
- (5) As soon as such construction, finishing, decorating, alteration or improvement or repair shall have been completed to the reasonable satisfaction of the State, then title thereto and property therein shall immediately and without execution of any further instrument vest in the State (excluding personal property, trade fixtures and equipment), and all such construction, finishes, decorations, alterations, improvements or repairs shall thereupon become and thereafter be part of the Permit Space and on request the Permittee shall execute such documents confirming the same as the State may require. The Permittee remains liable for any liens filed against the Permit Space for the construction activities permitted herein.

- (6) The Permittee shall pay all taxes, import duties, examination fees, excise and other charges which may be assessed, levied, exacted or imposed on its property, operations or occupancy hereunder, or any property whatsoever which may be received at the Permit Space or on the gross revenues or income therefrom and shall make all applications, reports and returns required in connection therewith. If any bond or other undertaking shall be required by any governmental authority in connection with any of the operations of the Permittee or any property received or exhibited by the Permittee at the Permit Space, the Permittee shall furnish the same and pay all other expenses in connection therewith.
- (7) Any and all articles of personal property, including, without limitation, business and trade fixtures, machinery, equipment, cabinet work, furniture, and movable partitions, owned or installed by the Permittee are and shall remain the property of the Permittee, and may be removed by them at any time during the Permit Term, extension or holdover period, but the Permittee shall not be required to remove them at the end of the Permit Term, Renewal Term, extension or holdover period unless they so elect, provided that if such business and trade fixtures, machinery, equipment, cabinet work, furniture, and movable partitions are removed, the cost of repairing any damage to the Building arising from such removal shall be paid by the Permittee. No such installations or removals shall be made without the prior, written approval from OGS and all installations and removals shall be made under direct OGS supervision. In no event shall the Permittee remove, or be required to remove, any restrooms, flooring, ceilings, electrical, or HVAC systems.
- 12.
- (a) The State, by its officers, employees, agents, representatives and contractors shall have the right at all reasonable times upon reasonable advance notice (except in an emergency situation) to enter upon the Permit Space for the purpose of inspecting the same, for observing the performance by the Permittee of its obligations under this Permit, and for the doing of any act or thing which the State may be obligated or have the right to do under this Permit or otherwise. The Permittee upon request from the State shall demonstrate or operate any equipment, appliances, fixtures or machinery used in connection with its operations hereunder.
- (b) Without limiting the generality of the foregoing, the State, by its officers, employees, representatives and contractors, shall have the right, for the benefit of the Permittee or for the benefit of others at the AC Powell Building, to maintain initially existing and future utility, mechanical, electrical, communication and other systems or portions thereof on the Permit Space and to enter upon the Permit Space at all reasonable times upon reasonable advance notice, to make such repairs, alterations and replacements as may, in the reasonable opinion of the State, be deemed necessary or advisable and, from time to time, to construct or install over, in, under or through the Permit Space new lines, pipes, mains, wires, conduits, equipment and other such encroachments and to use the Permit Space for access to other portions of the AC Powell Building not otherwise conveniently accessible, provided, however, that such repair, alteration, replacement, construction or access shall not unreasonably interfere with the Use of the Permit Space by the Permittee.

- (c) In the event that any property of the Permittee shall obstruct the access of the State, its employees, agents or contractors to any of the existing or future utility, mechanical, electrical, communication and other systems and thus shall interfere with the inspection, maintenance, repair or modification of any such systems, the Permittee shall use reasonable efforts to move such property as reasonably requested by the State, in order that access may be had to the system or part thereof for its inspection, maintenance repair, or modification.
 - (d) Nothing in this section shall or shall be construed to impose upon the State any obligations to construct or maintain or to make repairs, replacements, alterations or additions, or shall create any liability for any failure so to do. The Permittee is and shall be in exclusive control and possession of the Permit Space and the State shall not in any event be liable for any injury or damage to any property or to any person happening on or about the Permit Space or for any injury or damage to the Permit Space or any property of the Permittee or of any other person located therein or thereon. Notwithstanding the foregoing, subject to the availability of lawful appropriations and consistent with Section 8 of the New York State Court of Claims Act, the State shall hold the Permittee harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of the State or of its officers or employees when acting within the course and scope of their employment with respect to this section.
 - (e) At any time and from time to time during Normal Business Hours, as that term is defined in Section 4 of this Permit, within the six (6) months next preceding the expiration of the Term, the State, by its agents and employees, whether or not accompanied by prospective permittees, occupiers or users of the Permit Space, shall have the right to enter thereon for the purpose of exhibiting and viewing all parts of the same.
 - (f) The Permittee shall not make any unreasonable claim or demand for damages based upon the exercise of any or all of the foregoing rights by the State or others. The State shall not be subject to consequential damages.
13. Subject to the other provisions of this Section, in the event this Permit or the interest or estate of the Permittee under this Permit shall be transferred to, pass to or devolve upon, by operation of law or otherwise, or if the Permittee shall sell, convey, transfer or assign this Permit or any Permit Fee due under this Permit, or if for any reason there shall be a change in the manner in which the Permit Fee reserved hereunder shall be paid to the State, prior, written notice of such change shall be given immediately by the Permittee to the State, in compliance with Section 33 of this Permit. Such notice shall include submission of properly completed and executed Consent to Assignment Form, attached hereto as Exhibit "C," and all necessary documentation (Substitute W-9, attached hereto as Exhibit "D," and the Retail Disclosure Sheet, attached hereto as Exhibit "E,"). No assignment of this Permit shall be made without the prior approval of OGS as required by Section 138 of the New York State Finance Law, provided such approval shall not be unreasonably withheld, conditioned or delayed. Copies of these forms may be obtained through a written request per Section 33 of this Permit. The consent required by this Section shall not be unreasonably withheld, conditioned or delayed. When making such requests, the Permittee should allow ample time for the review and approval of the same by the State, the New York State Attorney General and OSC.

In addition, in the event that the Permittee changes its name, but not its federal identification number, the Permittee is required to notify the State of the change within ten (10) business days of the effective date of such change. The Permittee shall submit a Permittee Change of Address Form, attached to this Permit as Exhibit "G," to OGS in accordance with Section 33 of this Permit. The Permittee shall also be responsible for making all necessary changes to its profile in the Statewide Financial System by contacting the Statewide Financial System Vendor Management Unit. The web address for the Statewide Financial System is: http://www.osc.state.ny.us/vendor_management/.

14. The waiver or breach of any of the covenants under this Permit by either Party shall not be deemed a waiver of any subsequent breach thereof.
15. In the event the Permit Space or any part thereof shall be damaged or destroyed or made unusable by any cause whatsoever, a pro rata rebate shall be allowed to the Permittee of the Permit Fee paid under this Permit. OGS shall not be required or obligated to repair or restore the Permit Space, and the Permittee hereby waives any right whatsoever to re-enter or reoccupy the Permit Space. The Permittee will have no further obligation to pay the Permit Fee for the balance of the Term.
16. It is expressly understood and agreed that in case the Permit Space shall be deserted, or if default be made in the payment of the Permit Fee or any part thereof, or if the Permittee shall sell, assign, sublet or mortgage this Permit, or if default be made in the performance of any of the covenants and agreements in this Permit contained on the part of the Permittee to be kept and performed, or if the Permittee, after notice by OGS, shall fail to comply with any federal, state, or local law, ordinance, rule or regulation applicable to said Permit Space, or if the Permittee shall file a petition in bankruptcy or be adjudicated a bankrupt or make an assignment for the benefit of creditors, or take advantage of any insolvency act, OGS may, at any time thereafter, terminate this Permit and the Term thereof, on giving to the Permittee or the legal representatives of the Permittee and any person occupying the Permit Space, five (5) days' notice in writing of its intention so to do, in compliance with Section 33 of this Permit, and upon the giving of such notice, this Permit and the Term thereof shall terminate, expire and come to an end on the date fixed in such notice as if said date were the date originally fixed in this Permit for the termination or expiration thereof. Such notice addressed to the Permit Space may be given by mail to the Permittee, or the legal representatives of the Permittee or any person occupying the Permit Space.
17. In addition to any other remedies which OGS may have, OGS may apply for and obtain an injunction to enforce OGS' rights.
18. OGS shall not be liable for any damage to personal property or injury by elements or rain or storm water, which may be sustained by the Permittee or other person or for any damage or injury resulting from the carelessness, negligence or improper conduct on the part of any person, or by reason of the breaking, leakage or obstruction of the water or soil pipes, or other leakage in or about any structure on the Permit Space.

19. **Prior to the Commencement Date of this Permit, the Permittee shall be required to procure, at its sole cost and expense, all insurance required by this section.** During the Term of this Permit, the Permittee shall maintain in force, at its sole cost and expense policies of insurance as required by this section. All insurance required by this section shall be written by companies licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York and that have an A.M. Best Company rating of "A-," Class "VII" or better. If, during the term of a policy, the carrier's A.M. Best rating falls below "A-," Class "VII," the insurance must be replaced, on or before the renewal date of the policy, with an insurer licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The Permittee shall deliver to OGS evidence of the insurance required by this section in a form acceptable to OGS. Policies must be written in accordance with the requirements of the paragraphs below, as applicable. Acceptance and/or approval by OGS does not, and shall not be construed to, relieve the Permittee of any obligations, responsibilities or liabilities under this Permit.

The Permittee shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the Term of this Permit.

General Conditions

- A. **Conditions Applicable to Insurance.** All policies of insurance required by this section shall comply with the following requirements:
1. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from the Permittee are specified below in Paragraph B-*Insurance Requirements*.
 2. **Policy Forms.** Except as otherwise specifically provided herein, or agreed to in writing by OGS, all policies of insurance required by this section shall be written on an occurrence basis.
 3. **Certificate of Insurance/Notices.** The Permittee shall provide OGS with a Certificate or Certificate of Insurance, in a form satisfactory to OGS (i.e., an ACORD certificate), prior to the Commencement Date, and thereafter, within thirty (30) days after renewal or within three (3) business days of request. Certificates shall reference the Permit number and shall name the New York State Office of General Services, Assistant Director, Real Estate Planning & Development, The Governor Nelson A. Rockefeller Empire State AC Powell Building, Corning Tower, 26th Floor, Albany, New York 12242 as the certificate holder.

Policies shall be written so as to include the requirements for notice of cancellation contained in the New York State Insurance Law. The Permittee shall provide OGS with a copy of any written notice of cancellation or non-renewal received from an insurer along with proof of replacement coverage that complies with the requirements of this section within ten (10) business days of receipt.

Certificates of Insurance shall:

- Be in the form acceptable to OGS (i.e.: an ACORD Certificate);
- Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by this Permit;
- Refer to this Permit by number;
- Be signed by an authorized representative of the referenced insurance carriers; and
- Contain the following language in the Description of Operations/Locations/Vehicles section: The People of the State of New York, The New York State Office of General Services and their officers, agents, and employees are included as an additional insured on endorsement CG 20 10 11 85 (or endorsements that provide equivalent coverage), General liability coverage is provided on Commercial General Liability Coverage Form CG 00 01 01 (or a form that provides equivalent coverage). Insurance is primary and non-contributory to other insurance available to OGS. A waiver of subrogation is granted in favor of The People of the State of New York, The New York State Office of General Services. All policies shall be written so as to include the requirements for notice of cancellation contained in the New York State Insurance Law.

Only original documents (a Certificate and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.

4. **Primary Coverage.** All insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to OGS. Any other insurance maintained by OGS shall be excess of and shall not contribute with the Permittees insurance.
5. **Breach for Lack of Proof of Coverage.** The Term of this Permit shall not commence if the coverage provisions and limits of the policies provided by the Permittee do not meet the provisions and requirements of this section or proof of compliance is not provided to OGS. In addition, the failure to comply with the requirements of this section at any time during the Term of this Permit shall be considered a breach of the terms of the Permit and shall allow OGS to avail itself of all remedies available under this Permit or at law or in equity.
6. **Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above \$100,000.00 are subject to approval from OGS. Such approval shall not be unreasonably withheld, conditioned or delayed. The Permittee shall be solely responsible for all claim expenses and loss payments with the deductibles or self-insured retentions.

7. **Subcontractors.** Prior to the commencement of any work by a subcontractor, the Permittee shall require such subcontractor to procure policies of insurance as required by this section and maintain the same in force during the term of any work performed by that subcontractor.
8. **Waiver of Subrogation.** For the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance required below, the Permittee shall cause to be included of each of its policies a waiver of the insurer's right to recovery or subrogation against The People of the State of New York, The New York State Office of General Services and their officers, agents, and employees. A Waiver of Subrogation Endorsement evidencing such coverage shall be provided to OGS within three (3) days of request.
9. **Additional Insured.** For the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance required below, the Permittee shall cause to be included of each of its policies ISO form CG 20 10 11 85 (or a form or forms that provide equivalent coverage) naming as additional insureds: The People of the State of New York, The New York State Office of General Services and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to OGS prior to the Commencement Date and within three (3) days of request.

B. Insurance Requirements: The Permittee shall, at its own expense, obtain and maintain in full force and effect during the Term of this Permit, the following insurance with limits not less than those described below, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

1. **Commercial General Liability Insurance** covering the liability of the Permittee for bodily injury, property damage and personal/advertising injury arising from all work and operations under this Permit. The limits under such policy shall not be less than the following:
 - Each Occurrence Limit-\$1,000,000.00
 - General Aggregate Limit-\$2,000,000.00
 - Products/Completed Operations Limit-\$2,000,000.00
 - Personal Advertising Injury Limit-\$1,000,000.00
 - Damage to Rented Premises Limit-\$500,000.00
 - Medical Expenses Limit-\$5,000.00

Coverage shall include, but not be limited to, the following:

- Premises liability;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
- Defense and/or indemnification obligations, including obligations assumed under this Permit;

- Cross liability for additional insureds; and
- Explosion, collapse and underground hazards.

If at any time during the Term of this Permit, the Permittee owns more than one location, the policy shall contain an endorsement to the effect that the aggregate limit in the policy shall apply separately to each location owned by the Permittee.

- 2. Comprehensive Business Automobile Liability Insurance** covering liability arising out of any automobile used in connection with performance under this Permit, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least \$2,000,000.00 each accident. The limits may be provided through a combination of primary and umbrella liability policies. If performance under this Permit shall require the removal of hazardous waste from the AC Powell Building or the Permit Space or other transporting of hazardous materials, pollution liability coverage for covered autos shall be provided by Form CA 9 48 03 06 or Form CA 00 12 03 06 and the Motor Carrier Act Endorsement (MCS90) shall be attached to the policy.

In the event that the Permittee does not own, lease or hire any automobiles used in connection with performance under this Permit, the Permittee does not need to obtain Comprehensive Business Automobile Liability Insurance, but must attest to the fact that the Permittee does not own, lease or hire any automobiles used in connection with performance under this Permit on a form provided by OGS. If, however, during the Term of the Permit, the Permittee acquires, leases or hires any automobiles that will be used in connection with performance under this Permit, the Permittee must obtain Comprehensive Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to OGS within ten (10) days following the date the coverage is bound.

- 3. Commercial Property Insurance** covering the Permit Space (*including coverage for property of others so that the policy insures State owned equipment*) in an amount not less than the Full Insurable Value of the Permit Space covering, at a minimum, the perils insured under the ISO Basic Causes of Loss Form CP 10 10. Full Insurable Value shall mean actual replacement cost of the real property (exclusive of the cost of non-insurable portions thereof, such as excavation, foundations and footings). ***The policy must include OGS as a loss payee on the property on which OGS maintains an insurable interest.***

20. WORKERS' COMPENSATION INSURANCE & DISABILITY BENEFITS COVERAGE

Sections 57 and 220 of the New York State Workers' Compensation Law require the heads of all municipal and state entities to ensure that businesses applying for leases, permits, licenses or contracts have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original issuances and renewals, whether the governmental agency is having the work done or is simply issuing the lease, permit, license or contract. **Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of this Permit.** Therefore, prior to the Commissioner executing this Permit, the Permittee must submit proof to OGS that it has workers' compensation and disability benefits coverage as required by the New York State Workers' Compensation Law, or proof that it is legally exempt from obtaining such coverage in compliance with the New York State Workers' Compensation Law. Proof of compliance must be submitted on one of the forms designated by the New York State Workers' Compensation Board. **An ACORD form is not acceptable proof of New York State workers' compensation or disability benefits insurance coverage.**

Proof of Compliance with the Workers' Compensation Coverage Requirements:

In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to workers' compensation coverage, the Permittee shall provide one of the following forms to OGS prior to execution of the Permit by the Commissioner:

- A) Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the New York State Workers' Compensation Board's website (www.wcb.ny.gov);
- B) Form C-105.2 (9/07), *Certificate of Workers' Compensation Insurance*, sent to OGS by the Permittees insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to OGS upon request; or
- C) Form SI-12, *Certificate of Workers' Compensation Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office, or Form GSI-105.2, *Certificate of Participation in Workers' Compensation Group Self-Insurance*, available from the Permittees Group Self-Insurance Administrator.

Proof of Compliance with the Disability Benefits Coverage Requirements:

In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to disability benefits, the permittee shall provide one of the following forms to OGS prior to execution of the Permit by the Commissioner:

- A) Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the New York State Workers' Compensation Board's website (www.wcb.ny.gov);

B) Form DB-120.1, *Certificate of Disability Benefits Insurance*, sent to OGS by the Permittees insurance carrier upon request; or

C) Form DB-155, *Certificate of Disability Benefits Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office. An instruction manual clarifying the New York State Workers' Compensation Law requirements is available for download at the New York State Workers' Compensation Board's website, <http://www.wcb.ny.gov>. Once on the site, click on the Employers/Businesses tab and then click on Employers' Handbook.

Proof of compliance shall be submitted to The New York State Office of General Services, Assistant Director, Real Estate Planning & Development, The Governor Nelson A. Rockefeller Empire State AC Powell Building, Corning Tower, 26th Floor, Albany, New York 12242.

21.

(a) It is further understood and agreed that if at any time during the Term, OGS shall need the Permit Space for any use necessary and convenient to the performance of its public purposes, OGS may terminate this Permit by giving to the Permittee, or the legal representatives of the Permittee, or any person occupying the Permit Space, thirty (30) days' written notice, in compliance with Section 33 of this Permit, of its intention so to do, and upon the giving of such notice, this Permit and the Term thereof shall terminate, expire and come to an end on the date fixed in such notice, as if said date were the date originally fixed in this Permit for the termination or expiration thereof.

(b) In addition, if any one or more of the following events shall occur, that is to say:

1. The Permittee shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all its property; or
2. By order or decree of a court the Permittee shall be adjudged bankrupt or an order shall be made approving a petition filed by any of the creditors or, if the Permittee is a corporation by any of the stockholders of the Permittee, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or
3. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Permittee and shall not be dismissed within thirty (30) days after the filing thereof; or
4. The Term hereunder or the interest or estate of the Permittee under this Permit shall be transferred to, pass to or devolve upon, by operation of law or otherwise, any other person, firm or corporation without the consent of OGS, to the extent required hereunder; or

5. The Permittee, if a corporation, shall, without the prior consent of OGS, make a change that results in a change in the Federal Identification Number of the Permittee by becoming (i) a possessor or merged corporation in a merger; or (2) a constituent corporation in a consolidation; or (3) a corporation in a dissolution; or
6. The Permittee is a partnership, and the said partnership shall be dissolved as the result of any act or omission of its partners or any of them, or by operation of law or by order or decree of any court having jurisdiction or for any other reason whatsoever; or
7. By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all the property of the Permittee, or any execution or attachment shall be issued against the Permittee or any of its property, whereupon possession of the Permit Space shall be taken by someone other than the Permittee, and any such possession or control shall continue in effect for a period of fifteen (15) calendar days; or
8. Any lien is filed against the Permit Space because of any act or omission of the Permittee and is not removed or bonded against to stay the effect of the lien, within thirty (30) calendar days; or
9. The Permittee shall voluntarily abandon, desert, vacate or discontinue its operations (excluding permitted closures as set forth herein) in the Permit Space, or, after exhausting or abandoning any right of further appeal, the Permittee shall be prevented for a period of thirty (30) calendar days by action of any governmental agency from conducting its operations on the Permit Space, regardless of the fault of the Permittee; or
10. The Permittee shall fail duly and punctually to pay the Permit Fee or to make any other payment required hereunder within seven (7) days after written notice that same is due to OGS; or
11. The Permittee shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Permit on its part to be kept, performed, or observed, within thirty (30) calendar days after receipt of notice of default thereunder from OGS except where fulfillment of its obligation requires activity over a period of time, and the Permittee shall have commenced to perform whatever may be required for fulfillment within thirty (30) calendar days after receipt of notice and continues such performance without interruption except for causes beyond its control; or
12. If this Permit shall require a guarantor of one or more of the Permittees obligations under this Permit and any of the events described in subparagraphs (1), (2), (3) or (7) above shall occur to or with respect to the guarantor (whether or not they shall also occur to or with respect to the Permittee);

Then, upon the occurrence of any such event or at any time thereafter during the continuance thereof, OGS may by five (5) calendar days' notice, in compliance with Section 33 of this Permit, terminate this Permit, such termination to be

effective upon the date specified in such notice. Such right of termination and the exercise thereof shall be and operate as a conditional limitation.

Notwithstanding anything to the contrary contained in this Permit, OGS shall also have the right to terminate this Permit in accordance with the following:

- i. **For Cause:** For a material breach that remains uncured for more than thirty (30) calendar days or any other specified period after written notice has been provided to the Permittee, in accordance with Section 33 of this Permit, this Permit may be terminated by the Commissioner, at the Permittees expense where the Permittee becomes unable or incapable of performing or meeting any requirements or qualifications set forth in this Permit, or for non-performance, or upon a determination that the Permittee is non-responsible. Such termination shall be upon written notice to the Permittee, in accordance with Section 16 of this Permit. In such event, the Commissioner may complete the requirements of this Permit in any manner it may deem advisable and pursue available legal or equitable remedies for breach.
- ii. **For Convenience:** By written notice, provided in accordance with Section 33 of this Permit, this Permit may be terminated at any time by convenience upon sixty (60) calendar days' written notice or other specified period without penalty or other early termination charges due. The Permittee shall use due diligence and provide outstanding deliverables.
- iii. **For violation of Sections 139-j and 139-k of the State Finance Law:** The Commissioner reserves the right to terminate this Permit in the event that it is found that certification filed by the Permittee in accordance with Section 139-k of the State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise his/her termination right by providing written notification to the Permittee in accordance with Section 33 of this Permit.
- iv. **For Non-Responsibility:** The Permittee agrees that if it is found by the State that the Permittees responses to the Retail Disclosure Sheet were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate this Permit. Upon written notice to the Permittee, and a reasonable opportunity to be heard with appropriate OGS officials, this Permit may be terminated by the Commissioner or his or her designee at the Permittees expense where the Permittee is determined by the Commissioner or his or her designee to be non-responsible. In such event, the Commissioner or his or her designee may complete the Permit in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach. In no case shall such a termination of the Permit by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the vendor as a result of such a termination.
- v. **Upon Conviction of Certain Crimes:** The Commissioner reserves the right to terminate the Permit in the event that it is found that a member, partner, director or officer of the Permittee is convicted of one or more of

the following: Bribery involving Public Servants and Related Offenses as defined in Article 200 of the New York State Penal Law; Corrupting the Government as defined in Article 496 of the New York State Penal Law or Defrauding the Government as defined in Section 195.20 of the New York State Penal Law.

- a. If any of the events enumerated in paragraph (b) of this section shall occur prior to the Commencement Date of the Term, the Permittee shall not be entitled to enter into possession of the Permit Space under this Permit and OGS upon the occurrence of any such event or at any time thereafter during the continuance thereof by twenty-four (24) hours' notice may cancel the interest of the Permittee under this Permit, such cancellation to be effective upon the date specified in such notice.
 - b. No acceptance by OGS, of the Permit Fee, fees, charges or other payments in whole or in part for any period or periods after a default in any of the terms, covenants and conditions to be performed, kept or observed by the Permittee shall be deemed a waiver of any right on the part of OGS to terminate this Permit.
 - c. No waiver by OGS of any default on the part of the Permittee in performance of any of the terms, covenants or conditions hereof to be performed, kept or observed by the Permittee shall be or be construed to be a waiver by OGS of any other or subsequent default in performance of any of the said terms, covenants and conditions.
 - d. The rights of termination described above shall be in addition to any other rights of termination provided in this Permit and in addition to any rights and remedies that OGS would have at law or in equity consequent upon any breach of this Permit by the Permittee, and the exercise by OGS of any right of termination shall be without prejudice to any other such rights and remedies.
 - e. The Permittee shall not interpose any non-compulsory counterclaims in any summary proceeding or action for non-payment of Rent which may be brought by OGS.
 - f. The Permittee shall not be subject to any consequential damages as a result of a Permittee default hereunder, other than with respect to a holdover by Permittee.
22. It is further understood and agreed that this Permit may be cancelled and terminated by the Permittee; provided that thirty (30) days prior to the effective date of such cancellation and termination, written notice of the intention to terminate is provided to OGS, in compliance with Section 33 of this Permit, addressed to The OGS Bureau of Real Estate Planning and Development, 26th Floor, Corning Tower, Empire State AC Powell Building, Albany, NY 12242 with a copy to The OGS Bureau of Food Services, Concourse, Room 130, GNAR ESP, Albany, New York 12242.

23. This Permit shall be of no force or effect unless and until approved by the Commissioner of OGS, the Attorney General, and the Office of the State Comptroller, and delivered by the Permittee by OGS.
24. OGS does covenant that the Permittee, on paying the said Permit Fee and performing the covenants, terms and conditions aforesaid, shall and may peaceably and quietly have, hold and enjoy the said Permit Space for the Term aforesaid, subject to the provision of this Permit.
25. If the Permit is terminated pursuant to the provisions of this Permit, the prepaid Permit Fee will be pro-rated and the Permittee has no further obligations to pay Permit Fee for the balance of the Term.
26. The Permittee will have no right to remain in possession of all or any part of the Permit Space after the expiration of the Term. If the Permittee remains in possession of all or any part of the Permit Space after the expiration of the Term, with the express or implied consent of OGS: (a) such tenancy will be deemed to be a periodic tenancy from month to month only; (b) such tenancy will not constitute a renewal or extension of this Permit for any further term; and (c) such tenancy may be terminated by OGS upon the earlier of thirty (30) days' prior, written notice, provided in compliance with Section 33 of this Permit, or the earliest date permitted by law. In such event, the monthly Permit Fee will be increased to an amount equal to 150% of the monthly Permit Fee payable during the last month of the Term, and any other sums due under this Permit will be payable in the amount and at the times specified in this Permit. Such month-to-month tenancy will be subject to every other term, condition, and covenant contained in this Permit.
27. The Permittee shall observe and obey (and compel its officers, members, employees, agents, representatives, contractors, guests, invitees and those doing business with it to observe and obey) all reasonable rules and regulations to be promulgated by OGS to govern the conduct of the private retail and business Permit at the AC Powell Building and all reasonable amendments and supplements to said rules and regulations, as may from time to time and throughout the Term be promulgated by OGS for reasons of safety, health or preservation of property, or for the maintenance of the good and orderly appearance of the Permit Space and the AC Powell Building for the safe and efficient operation of the AC Powell Building. OGS agrees that such original Rules and Regulations governing the conduct of retail and business tenancies shall not be applicable or effective with relation to the Permittee until fifteen (15) calendar days after the same have been furnished to the Permittee, and that, except in cases of emergency, it will give notice, in compliance with Section 33 of this Permit, to the Permittee of every such further rule or regulation adopted by it at least fifteen (15) calendar days before the Permittee shall be required to comply therewith. In the event of a conflict between any such rules and regulations and the provisions of this Permit, the provisions of this Permit shall prevail. No changes or amendments to the rules and regulations shall materially increase Permittees obligations hereunder or materially decrease Permittees rights hereunder.
28. The Fixed and Non-Fixed State Equipment/Fixture Inventories are attached hereto as Exhibit "F." The Permittee shall verify the accuracy of the inventories and execute receipts for all listed food services equipment, furniture, fixtures, utensils, tables and chairs, and for such additional equipment as may be provided in the Commissioner's discretion.

The Permittee shall be responsible for 50% of the maintenance, repairs of all such Fixed and Non-Fixed State Equipment/Fixtures as detailed in the attached Exhibit C. All replacements to the Non-Fixed State Equipment/Fixtures that are not deemed to be Permit Space Improvements, as defined below, shall remain property of the Permittee. The Permittee shall be solely responsible for 100% of the cost of maintenance and repair of Permit Space Improvement equipment. The Permittee shall advise the OGS BFS prior to replacing or disposing of any Fixed or Non-Fixed State Equipment or Fixtures. The term "Permit Space Improvements" shall mean alterations made to the Permit Space in order to customize it for the specific needs of the Permittee, including painting, installation of partitions, flooring, light fixtures, plumbing fixtures, fire prevention equipment, exhaust systems and walk-in coolers including condensing units, fans, motors, and evaporators, and shall include the items listed on the Fixed State Equipment/Fixture Inventory.

The Permittee, at its own cost, shall be solely responsible for the daily cleaning, and maintenance and reimbursement for repairs of all OGS Fixed and Non-Fixed State Equipment/Fixtures. Listed in Exhibit "C" annexed to this Permit. OGS equipment that is not in working order must be reported to the OGS BFS. The BFS with the assistance of an equipment service technician will evaluate the feasibility of the repair. If repairable, the BFS will contact the repair company to request and authorize a repair. At no time shall the Permittee authorize a service repair for any OGS equipment. The Permittee will be required to reimburse the State (100%) of the State's cost incurred for the preventative maintenance of, and repairs to the food service equipment listed in Exhibit "C" hereto. The OGS BFS will invoice the Permittee for the Permittee's share of such preventative maintenance and repair costs on a monthly basis, and the Permittee shall remit payment no later than thirty (30) days after its receipt of such invoices.

When the Permittee is replacing or adding equipment, the Permittee shall advise OGS prior to any such changes. [All equipment used in the Permit Space must be of commercial grade and installed in a workmanlike manner. Any electrical appliance must be connected directly to an electrical outlet or fused power strip. Extension cords with multi plug adapters, splices or repairs are prohibited.](#)

29. OGS shall be responsible for repairs, replacements and maintenance related to: (a) the upkeep of the roof, roof membrane and roof systems (gutters, downspouts and the like), foundation, exterior walls, interior structural walls, and all structural components of the Permit Space and the AC Powell Building, and (b) the maintenance and repair of all parking areas, loading docks, sidewalks, landscaping and drainage systems on the property and all utility systems (including mechanical, electrical, and HVAC systems) and plumbing systems which serve the AC Powell Building as a whole and not a particular permittee or permittees permit space.
30. New York State businesses have a substantial presence in state contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, permittees are strongly encouraged and expected to consider New York State businesses, including small,

minority- and women-owned business enterprises, in the fulfillment of the requirements of permits. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Permittees also needs to be aware that OGS will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Utilizing New York State businesses in state permits will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the Permittee and its New York State business partners. New York State businesses will promote the contractor's optimal performance under the Permit.

The State expects permittees to provide maximum assistance to New York businesses in their use of State permits. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

31. OGS conducts a review of prospective permittees to provide reasonable assurances that the permittee is responsive and responsible. The Retail Disclosure Sheet, attached hereto as Exhibit "E" is designed to provide information to assess a permittees responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. The Permittee agrees to fully and accurately complete the Retail Disclosure Sheet. The Permittee acknowledges that the State's execution of the Permit will be contingent upon the State's determination that the Permittee is responsible, and that the State will be relying upon the Permittees responses to the Retail Disclosure Sheet when making its responsibility determination.

In order to assist the State in determining the responsibility of a permittee prior to the award of a permit, the Permittee must complete and certify (or recertify) the Retail Disclosure Sheet no more than six (6) months prior to the date of execution of the permit. The Permittee should become familiar with all of the requirements of the Retail Disclosure Sheet in order to accurately complete the Retail Disclosure Sheet.

The Permittee agrees that if it enters into this Permit with OGS, it shall at all times during the Term remain responsible. The Permittee agrees, if requested by the Commissioner or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

32. The following appendices, exhibits, schedules and form are being attached and made part of the Permit:

Exhibit "A"	Area plan (Section 1)
Exhibit "B"	Executive Order No. 4 (Section 7)
Exhibit "C"	Consent to Assignment Form (Section 13)
Exhibit "D"	Substitute W-9 (Section 13)
Exhibit "E"	Retail Disclosure Sheet (Sections 13 and 31)
Exhibit "F"	Proprietary Equipment.
Exhibit "G"	Permittee Change of Address Form
Schedule A	Cleaning Standards (Section 7)
Appendix A	Standard Clauses for New York State Contracts

The above constitutes the entire agreement of the Parties on the subject matter hereof and may not be changed, modified, discharged or extended except by written instrument duly executed by the State and the Permittee and approved by the New York State Attorney General, as to form, and the Office of the State Comptroller. The Permittee agrees that no representations or warranties shall be binding upon the State unless expressed in writing in this Agreement.

In the event of a conflict between the terms of this Permit and the exhibits, schedules and form hereto, the terms of the Permit shall control. In the event of a conflict between the terms of this Permit (including the exhibits, schedules and form) and Appendix A hereto, the terms of Appendix A shall control.

33.

- (a) Notices, requests, permissions, consents and approvals given or required to be given to or by either Party under this Agreement, shall not be effective unless they are given in writing, and all such notices and requests shall be delivered to the Party or a duly designated officer or representative of such Party, via certified mail return receipt requested; via hand delivery; or via reputable overnight carrier such as Federal Express. Until further notice, the State hereby designates the Commissioner, and the Permittee designates XXXXXX, as its respective officer or representative upon whom notices and requests may be served, and the State designates its office at the New York State Office of General Services, Real Estate Planning and Development, Corning Tower, 26th Floor, GNARESP, Albany, New York 12242, and the Permittee designates its office at XXXXXX as their respective offices where notices and requests may be served.

- (b) If any notice is mailed or delivered, the giving of such notice shall be complete upon receipt, or, in the event of a refusal by the addressee, upon the first tender of the notice to the addressee or at the permitted address. If any notice is sent by telegraph, the giving of such notice shall be complete upon receipt or, in the event of a refusal by the addressee, upon the first tender of the notice by the telegraph company to the addressee or at the address thereof.
34. AND IT IS MUTUALLY UNDERSTOOD AND AGREED that the covenants and agreements contained in the within Permit shall be binding upon the Parties hereto and upon their respective successors and legal representatives.
35. The Permittee acknowledges and agrees that the terms and provisions of Appendix A, Standard Clauses for New York State Contracts, attached hereto and forming a part of this Agreement, shall be incorporated herein and constitute fully effective and binding obligations upon the Permittee.

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The Permittee certifies that all information provided to the State of New York with respect to Retail Disclosure Sheet and State Finance Law §139-k is complete, true and accurate. The State reserves the right to terminate this Permit in the event it is found that the certification filed by the Permittee in accordance with New York State Finance Law § 139-j or 139-k was intentionally false or intentionally incomplete. Upon such finding, the State may exercise its termination right by providing written notification to the Permittee in accordance with the written notification terms of the Permit.

IN WITNESS WHEREOF, the Parties hereto have caused this Permit to be executed in duplicate originals the day and year first written above.

Corporate Seal

XXXXXX

BY: _____

Name: _____

Title: _____

Date: _____

STATE OF NEW YORK

COUNTY OF _____

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 whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

Printed Name: _____

My Commission Expires:

THE PEOPLE OF THE STATE OF NEW YORK

Commissioner of General Services

BY: _____
RoAnn M. Destito

APPROVED AS TO FORM
Eric T Schneiderman
Attorney General

BY _____
Assistant Attorney General

Date: _____

APPROVED:

Thomas P. DiNapoli
State Comptroller

BY: _____

Date: _____