

License Number:

**PUSHCART PROGRAM**

USE & OCCUPANCY LICENSE – RAILROAD PROPERTIES

BY AND BETWEEN

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

AND

\_\_\_\_\_.

*Summary of Terms*

**Licensee Name:** \_\_\_\_\_

**Type of Entity** (e.g., corporation, sole proprietorship): \_\_\_\_\_

**Licensee’s Contact Person:** \_\_\_\_\_

**Licensee’s Mailing address:** \_\_\_\_\_

**Licensee’s Phone Number:** \_\_\_\_\_

**Licensee’s email Address:** \_\_\_\_\_

**Term of Permit:** January 1, 2008 to December 31, 2008

**Location of Premises:** \_\_\_\_\_ Station

**Monthly License Fee Payable to MBTA:** \_\_\_\_\_ (\$ \_\_\_\_ .00) Dollars per month, in advance, for each month of this permit or any extension thereto.

**Administrative Fee Payable to MBTA:** WAIVED

WITNESSETH

WHEREAS, the MBTA owns and operates the rapid transit system and commuter rail system in the Metropolitan Boston Region; and

WHEREAS, the MBTA has established a program which gives small business an opportunity to operate vending stands at designated locations, commonly known as the Pushcart Program: and

WHEREAS, Licensee is ready, willing and able to operate a high quality vending stand and desires to participate in the Pushcart Program; and

WHEREAS, the MBTA desires Licensee's participation in the Pushcart Program;

NOW, THEREFOR in consideration of the mutual covenants and agreements contained herein and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the MBTA and Licensee, hereby covenant and agree each with the other to be bound, each to the other for the performance and obligations contained herein.

**1. Use and Occupancy License**

The Massachusetts Bay Transportation Authority, a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts, established and existing pursuant to Chapter 161A of the Massachusetts General Laws, with a usual place of business at 10 Park Plaza, Boston, Massachusetts (hereinafter referred to as "MBTA" or "Licensor"), and \_\_\_\_\_, with an address at \_\_\_\_\_, Massachusetts, its employees, consultants and contractors, (hereinafter referred to as "LICENSEE"), hereby enter into this use and occupancy license agreement (the "License") granting LICENSEE the right and privilege to enter upon, use and occupy a portion of certain property of the MBTA identified as \_\_\_\_\_ Station in \_\_\_\_\_, Massachusetts, as shown on Exhibit A attached hereto and incorporated herein, (hereinafter referred to as the "Premises") for the purposes and subject to the terms and conditions described herein during the Term of this License.

**2. General Conditions**

- 2.1 **Date:** January 1, 2008
- 2.2 **Licensee:** \_\_\_\_\_
- 2.3 **Term:** One year beginning January 1, 2008; except that the MBTA may terminate this Agreement at any time with thirty (30) days written notice.
- 2.4 **Occupancy Fee:** \$ \_\_\_\_ .00 per month payable in advance on the first day of each month without demand, based on an annual fee of \$ \_\_\_\_ .00.
- 2.5 **Administrative Fee:** \$150.00
- 2.6 **Premises:** A certain space for LICENSEE's mobile pushcart within the \_\_\_\_\_ Station, located on the MBTA's \_\_\_\_\_ Line, as shown in Exhibit A attached hereto.
- 2.7 **Scope of Use and Occupancy Agreement:**  
To use and occupy the Premises with a commercial vehicle in a designated location at the discretion of the

MBTA Railroad Operations Department, solely for the purpose of serving the items listed in Exhibit C to the commuter rail passengers from 5:00AM to 10:00AM, Monday through Friday only, and for no other purpose, subject to the remainder of this Agreement, including Exhibit B attached hereto and incorporated herein. No construction or improvements are permitted hereunder without the express written consent of the MBTA, which may include additional terms and conditions.

LICENSEE understands and agrees to the following:

- LICENSEE's vehicle will self contain utilities necessary to conduct business.
- LICENSEE shall not impede MBTA customer access to or within the station.
- LICENSEE may not store the vehicle on the premises while not operating.
- LICENSEE shall not bring propane tanks onto MBTA Property for any purpose.
- LICENSEE shall only sell those items listed in Exhibit C and no other items. If LICENSEE desires to add new products for sale, LICENSEE shall first submit a revised Exhibit C to the MBTA and receive the MBTA's approval before offering new items for sale.
- LICENSEE shall provide the MBTA with copies of current permits, licenses and authorizations required by all local, state and federal laws and regulations.
- LICENSEE is responsible for trash removal and shall provide a trash receptacle for customer use. LICENSEE shall remove all trash from the Premises as often as needed, but not less than daily..
- If the designated location proves to interfere with traffic or customer flow, the LICENSEE will need to relocate the trailer to a different location within the station, at Railroad Operations request, and possibly to a different station. If the new location is not satisfactory to LICENSEE, LICENSEE may terminate this License at its sole discretion.
- LICENSEE agrees that if two (2) payments by check for the License Fee are returned for insufficient funds in any calendar year, LICENSEE shall thereafter pay by certified check or money order.

2.8 **Notices:**

**MBTA:**

Real Estate Department  
Massachusetts Bay Transportation Authority  
10 Park Plaza, Room 5720  
Boston, Massachusetts 02116  
Attn: Director of Real Estate

and:

MBTA Railroad Operations Department  
45 High Street  
Boston, Massachusetts 02110  
Attn: Director

and:

DESIGNATED REPRESENTATIVE:  
Transit Realty Associates, LLC  
77 Franklin Street-9<sup>th</sup> floor  
Boston, Massachusetts 02110  
Attn: General Counsel

and

MBTA Revenue Department  
21 Arlington Street, Bldg #2, 2<sup>nd</sup> fl  
Charlestown, Massachusetts 02129  
Attn: Supervisor of Parking

**LICENSEE:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. **Fee**

The rights contained in this Agreement are granted for good and valuable consideration, including, without limitation, the Occupancy Fee and Administrative Fee.

4. **Terms and Conditions of Agreement**

This Agreement is subject to the following terms and conditions:

#### 4.1 Scope of Use and Occupancy

(a) Scope of Use and Occupancy

Subject to the terms and conditions in this Agreement, the LICENSEE, its agents, employees, contractors, subcontractors and/or representatives are hereby granted the right to enter upon, use and occupy the Premises for the purposes more fully described in Paragraph 2.7.

(b) Utilities

LICENSEE acknowledges that there may be surface and subsurface utilities on and adjacent to the Premises and agrees to exercise extreme caution in performance of any activity. LICENSEE shall comply with Massachusetts General Laws, Chapter 82, Section 40 (said statute also known as the “Dig Safe” law) and the regulations promulgated pursuant thereto. Including, but not limited to, the Code of Massachusetts Regulations, more particularly, 220 CMR 99.00 et seq. Any damage to any utilities on or near the Premises caused by LICENSEE shall be the sole responsibility of LICENSEE including but not limited to railroad utilities, facilities and appurtenances thereto, caused by LICENSEE shall be the sole responsibility of LICENSEE. The MBTA, without being under any obligation to do so and without waiving the LICENSEE’s obligation hereunder, may repair any utilities damaged by the LICENSEE immediately and without notice in case of emergency. In the event the MBTA exercises such right, the LICENSEE shall pay to the MBTA immediately upon demand all of the MBTA’s cost of performing such repairs plus a fee equal to twenty-five percent of the MBTA’s cost of performing such repairs to reimburse the MBTA for its administrative costs.

LICENSEE shall not have any right to connect to any utility serving MBTA property. If the MBTA grants permission to LICENSEE to use MBTA utilities, LICENSEE agrees to pay an equitable share for the cost of such utility and agrees that the MBTA may submeter such utility at LICENSEE’s sole cost and thereafter LICENSEE shall either pay the provider of such utility directly or pay the MBTA for the amount so submetered.

(c) Subordination to MBTA’s Operating Requirements

The activities permitted hereby shall be subordinate to the requirements of the MBTA in maintaining and operating a transportation system and may be stopped or delayed, at any time, in response to each requirement. The MBTA shall not be responsible for any damages incurred by LICENSEE as a result of any such stoppage or delay.

(d) Environmental Cooperation

If, as a result of LICENSEE’s activities permitted hereunder, “oil” or

“hazardous materials”, as those terms are defined in Massachusetts General Laws Chapter 21E (“Chapter 21E”) and the regulations promulgated pursuant thereto, the Massachusetts Contingency Plan, 310 CMR 40.0000 et seq. (the “MCP”) (collectively, “Hazardous Materials”) are discovered on the Premises and pursuant to the remainder of this Agreement, the LICENSEE is not responsible for the remediation of the Hazardous Materials that were discovered, then LICENSEE agrees to cooperate with the MBTA in the determination of the party liable for the remediation of the Premises under applicable Federal and/or state law. Such cooperation may include the temporary adjustment of the rights granted to LICENSEE hereunder. The MBTA shall not be responsible for any damages incurred by the LICENSEE as a result of said temporary adjustment.

(e) Remediation Obligation of the LICENSEE

Whenever LICENSEE is liable for remediation costs for Hazardous Materials on the Premises (or on MBTA owned land abutting the Premises) pursuant to this Agreement (including, but not limited to, obligations that stem from the indemnifications herein stated below in Section 4.2) or pursuant to State or Federal law, then upon written demand of the MBTA, LICENSEE shall conduct, at LICENSEE’s sole cost and expense (or, at the MBTA’s election, reimburse the MBTA for the cost and expense incurred by the MBTA in connection with the MBTA’s conduct of), all response actions required by Chapter 21E and the MCP with respect to the Hazardous Materials (including the hiring of a Licensed Site Professional) discovered on the Premises or on MBTA owned land abutting the Premises. Any such response action, if performed by LICENSEE, shall be performed in accordance with Chapter 21E, the MCP, any other applicable statutes and regulations, and in accordance with plans and specifications approved by the MBTA, shall be completed in a timely manner to the reasonable satisfaction of the MBTA, and shall allow the MBTA to use the Premises, and/or adjacent or contiguous property, for its present use and for any future transportation use. LICENSEE shall also be responsible for the reasonable costs incurred by the MBTA in hiring consultants to review, supervise and inspect any plans, specifications, proposed method of work, installation, operation and results.

**4.2 Indemnification and Release of MBTA**

- (a) LICENSEE shall indemnify, defend (at the option of the MBTA) and save the MBTA harmless from and against any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys’ expenses and fees), causes of action, suits, claims, demands or judgments of any nature whatsoever including, without limitation, those related to Hazardous Materials that may be imposed upon, incurred by, or asserted against the MBTA by reason of any of the following occurrences:

- (1) the activities of the LICENSEE hereunder or the exercise by the LICENSEE of any rights or privileges hereby granted; or
  - (2) the placement or accidental release of any Hazardous Materials onto the Premises (or other property of the MBTA adjacent to the Premises) by LICENSEE or its employees, agents, contractors or consultants or by the employees, agents, or consultants of LICENSEE's contractors or subcontractors (whether prior to or subsequent to the Term hereof) or the presence of Hazardous Materials as a result of the migration from land now or previously owned, leased, occupied or operated by LICENSEE or for which the LICENSEE is a potentially responsible party as defined under Chapter 21E; or
  - (3) the discovery of Hazardous Materials arising from the activities of LICENSEE during the Term hereof (and all extensions thereof) on the Premises or on land owned by the MBTA adjacent to the Premises; or
  - (4) any use, condition or occupation of the Premises or any part thereof by LICENSEE; or
  - (5) any failure of LICENSEE to perform or comply with any of the terms hereof, or of any contracts, agreements or restrictions, statutes, laws, ordinances or regulations affecting the activities or any part thereof.
- (b) LICENSEE has inspected the Premises and decided that the Premises are suitable for the uses LICENSEE contemplates. LICENSEE assumes all the risk of entry on to the Premises.
- (c) LICENSEE hereby releases the MBTA from any responsibility for LICENSEE's losses or damages related to the condition of the Premises, and LICENSEE covenants and agrees that it will not assert or bring, nor cause any third-party to assert or bring, any claim, demand, lawsuit or cause of action (whether by way of original claim, cross claim, counterclaim, contribution claim, indemnification claim, third-party claim or fourth-party claim, or any other claim) (hereinafter "Claims") against the MBTA, including, without limitation, claims for response actions, response costs, assessments, containment removal and remedial costs, governmental oversight charges, including any overhead or response action costs incurred or assessed by DEP, fines or penalties, permit and annual compliance fees, reasonable attorney and expert fees, natural resource damages, property damages, including diminution in property value claims, and personal injury damages and damages related to a person's death relating to, or arising from, the condition of the Premises.

- (d) In clarification of the above release and covenants of defense and indemnification, and not in limitation of them, LICENSEE shall indemnify, defend (at the option of the MBTA) and save the MBTA harmless from and against any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys' expenses and fees), causes of action, suits, claims, demands or judgments related to the injury, illness or death of any employee of LICENSEE or of an employee of LICENSEE's contractors or consultants; except if the "Claim" arose because of the MBTA's grossly negligent or willful misconduct. It shall not be grossly negligent to allow access to the Premises that are in substantially the condition they were in when LICENSEE inspected the Premises before accepting this Agreement.

LICENSEE shall obtain a written release of liability similar to the one in this Section 4.2(d) [and including the language of Section 4.2(c)] in favor of the MBTA from each of LICENSEE's consultants and contractors before they enter onto the Premises for purposes of construction or repair, if such use is allowed.

- (e) LICENSEE shall be notified, in writing, by the MBTA within a reasonable time from the MBTA's receipt of the assertion of any claim against the MBTA of the assertion of any claim against it that LICENSEE has agreed to indemnify above (the "Indemnified Claim").
  - (1) If the MBTA decides to itself conduct the defense of an Indemnified Claim against it or to conduct any other response itself, LICENSEE shall reimburse the MBTA for all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by the MBTA in connection with the MBTA's defense of the Indemnified Claim against it and/or the conduct of all response actions, including, without limitation, those required by Chapter 21E and the MCP.
  - (2) If the MBTA decides to have LICENSEE defend the Indemnified Claim or handle the response action, the MBTA shall notify LICENSEE of that decision in writing and the LICENSEE shall bear the entire cost thereof and shall have sole control of the defense of any Indemnified Claim and all negotiations for its settlement or compromise provided that the MBTA is fully indemnified by the LICENSEE and provided further that the settlement or compromise shall not include the admission of guilt (or comparable plea), wrongdoing or negligence or the permitting or imposition of civil or criminal penalties or indictments, or the entering of consent decrees or orders of any kind by the LICENSEE on behalf of the MBTA or any other action that would materially prejudice the rights of the MBTA without the MBTA's express written approval. The MBTA shall cooperate with the LICENSEE in the defense of

any Indemnified Claim.

If any response action due to the presence of Hazardous Waste or the threat of release of Hazardous Waste onto the Premises (or other property of the MBTA, which abuts the Premises) is performed by LICENSEE, the response action shall be performed in accordance Section 4.1 (e) herein.

- (f) LICENSEE shall provide to the MBTA reasonable financial assurance in a form satisfactory to the MBTA guaranteeing LICENSEE's performance of the obligations set forth in Section 4. of this Agreement.

For purposes of this Section 4, LICENSEE's indemnification shall run in favor of the MBTA, which shall include the MBTA and its directors, officers, employees, agents, successors and assigns, and the Massachusetts Bay Commuter Railroad ("MBCR"), National Railroad Passenger Corporation ("AMTRAK"), and any private parking lot operator.

The provisions of Sections 4.1 and 4.2 shall survive the termination or expiration of this Agreement.

#### **4.3 Insurance**

Prior to entry hereunder, LICENSEE and its consultants and contractors shall provide the MBTA, the Massachusetts Bay Commuter Railroad ("MBCR"), National Railroad Passenger Corporation ("AMTRAK"), and any private parking lot operator with a certificate or certificates of insurance and shall, during the term hereof, renew and replace any expired certificate, evidencing the insurance of the activities permitted hereunder, and LICENSEE's covenant of indemnification hereinabove, with companies that are reasonably acceptable to the MBTA, as stated below, in which LICENSEE and others hereinafter specified are either additional insureds as their interests may appear or named insureds and which provide minimum liability coverage as follows:

- (a) Commercial General Liability Insurance  
Insuring the LICENSEE, the MBTA, the Premises and all activities allowed hereunder as well as LICENSEE's indemnification obligations contained in Section 4 with minimum liability coverage for personal injury, bodily injury and property damage with limits not less than One Million Dollars (\$1,000,000.00) covering all work performed must also be provided. Such insurance shall be written on an occurrence basis (as opposed to a claims made basis). These policies shall name the MBTA as an additional insured.
- (b) Worker's Compensation Insurance  
Insuring all persons employed by LICENSEE in connection with any work done on or about the Premises with respect to which claims for

death or bodily injury could be asserted against the MBTA or the Premises with limits of liability of not less than those required by Massachusetts General Laws Chapter 152, as amended. The policy shall contain a clause waiving the right of subrogation in favor of the MBTA. Each of LICENSEE's subcontractors and consultants shall have similar policies covering their employees.

- (c) Railroad Protective Liability Insurance –Intentionally omitted
- (d) Automobile Liability Insurance – Intentionally omitted.

The required insurance coverages hereinbefore specified shall be placed with insurance companies licensed by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and having a Best's rating of B+ or better, shall be taken out before the Contract is commenced and be kept in full force and effect throughout the term of the Contract, shall be primary to and non-contributory to any insurance or self-insurance maintained by the MBTA, and shall require that the MBTA be given at least 30 days advance written notice in the event of any cancellation or materially adverse change in coverage. All such required insurance, with the possible exception of Pollution Liability Insurance, shall be written on an occurrence basis form, as opposed to a claim made basis form.

The MBTA, MBCR, AMTRAK and any parking lot operator, if any shall be named as an additional insured under the Commercial General Liability Insurance Policy. The Workers' Compensation and Employers' Liability Insurance Policies shall include a waiver of subrogation in favor of the MBTA which precludes these insurers from being able to make any subrogation claims against the MBTA. All such required insurance shall not contain any exclusions for acts of terrorism, and shall fully cover any acts of terrorism, irrespective of whether such acts of terrorism are caused by domestic or foreign terrorists, and irrespective of whether such acts of terrorism are certified or non-certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act of 2002. All such insurance as is required of the Contractor shall be provided by or on behalf of all subcontractors to cover their operations performed. The Contractor shall be held responsible for any modifications, deviations or omissions in the compliance with these requirements by the subcontractors. At the inception date of the Contract and throughout the term of the Contract, the MBTA shall be provided with certificates of insurance evidencing that such insurance policies are in place and provide coverage as required.

#### **4.4 Compliance with Laws**

LICENSEE shall comply with, and shall cause all activity performed on the Premises to comply with all applicable Federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances.

LICENSEE shall also be responsible for obtaining any and all Federal, state, and/or local permits and/or approvals necessary to carry out the activities permitted hereunder.

**4.5 Non-Exclusive Use**

The MBTA makes no representations or warranty, express or implied, that the LICENSEE shall have sole or exclusive use of the Premises under this Agreement. In the event other leases, licenses or easements have been or are granted, the LICENSEE shall be responsible for coordinating its work and activities with that of other occupants; except that no new license or easement shall substantially negatively impact LICENSEE's operations. Notwithstanding the preceding, if the MBTA grants a license or easement to install a utility or telecommunications conduit, LICENSEE's operations may be temporarily impacted and LICENSEE may either terminate this Agreement or negotiate a fair adjustment. The MBTA shall not be liable for delays, obstructions, or like occurrences affecting the LICENSEE, arising out of the work of the MBTA or other occupants.

LICENSEE's rights herein are granted subject to easements and rights of record and existing leases and agreements.

**4.6 No Warranty**

LICENSEE accepts the Premises "As Is" and the MBTA makes no warranty, express or implied, as to the condition of the Premises.

**4.7 Termination**

At the termination of this Agreement, LICENSEE agrees to restore the Premises to the condition it was in at the commencement of the term hereof, and to remove all of LICENSEE's personal property and debris from the Premises. Should LICENSEE not perform such restoration at the end of the Term, the MBTA may perform any and all necessary restoration at the sole expense of the LICENSEE. Any personal property not so removed shall, at the option of the MBTA, either become the property of the MBTA or be removed by the MBTA and disposed of without any liability in the MBTA for such removal and disposition, all at the sole expense of LICENSEE.

**4.8 Assignment**

LICENSEE shall not, without the prior written consent of the MBTA, transfer or assign this Agreement or any part hereof. Such consent may be withheld in the

sole discretion of the MBTA.

**5. Notices**

All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms hereof (hereinafter "Notice"), shall be in writing and shall be deemed to have been properly given when deposited in registered or certified United States mail, postage prepaid, return receipt requested, addressed, as described in Section 2.8 or when delivered by messenger or overnight mail service to the correct addressee. Notice shall be deemed received when actually received or when the proffered Notice has been refused by the Addressee. The signature of an employee, servant or agent of the Addressee shall be determinative on the issue of actual receipt.

LICENSEE and the MBTA shall, at any time and from time to time, have the right to specify as their proper addresses for purposes of this Agreement any other address or addresses giving fifteen (15) days' written notice thereof to the other party.

**6. Default and Termination**

(a) Termination for Non-Payment

In the event that LICENSEE shall neglect or fail to pay the Agreement Fee, Administrative Fee or any other sum herein specified to be paid upon the due date hereunder, LICENSEE shall be in default and the MBTA shall have the right at any time thereafter to terminate this Agreement by giving LICENSEE two (2) weeks written notice of the MBTA's decision to terminate for non-payment ("Termination Notice"). LICENSEE shall not be entitled to cure any such default by tendering payment after the expiration of the two (2) week grace period which starts upon LICENSEE or LICENSEE's servants, agents or employee's receipt of (or refusal to accept) the MBTA's Termination Notice.

(b) Default of Terms and Conditions

LICENSEE shall also be in default if LICENSEE:

- (1) fails to perform or observe any of the other covenants or agreements contained in this instrument and on its part to be performed or observed, or
- (2) makes any assignment for the benefit of creditors or files petition for relief under bankruptcy law, or
- (3) has a bankruptcy petition filed against it that is not dismissed within sixty (60) days, or
- (4) has its estate taken by process of law, proceeding in bankruptcy or insolvency or otherwise,

and if such defaults continue after two (2) weeks' written notice given by the MBTA to LICENSEE to cure, the MBTA may terminate this Agreement by

written notice to LICENSEE and/or deny access to the Premises and expel LICENSEE and those claiming through or under LICENSEE and remove LICENSEE's effects from the Premises without prejudice to any remedies which might otherwise be available for such breach of covenant, and, upon entry as aforesaid, the rights of LICENSEE created by this Agreement shall terminate. LICENSEE agrees to pay any expense including reasonable attorneys' fees incurred by the MBTA in enforcing any of LICENSEE's obligations hereunder.

In the event this Agreement is terminated pursuant to this Paragraph 6, the MBTA shall retain the Agreement Fee as partial damages, without prejudice to its right to claim additional damages as a result of the breach.

( c ) The MBTA may terminate the LICENSE without cause upon thirty (30) days notice to LICENSEE.

**7. Holding Over**

If LICENSEE desires to continue to use and occupy the Premises as defined in the Scope of Use and Occupancy after the end of the Term of this Agreement, the resulting Agreement shall be on a month-to-month basis. Such Agreement may be terminated by either Party at any time by providing the other Party with thirty (30) days prior written notice of termination. During such extended term, LICENSEE shall be bound by all applicable provisions of this Agreement. During the first year of the extended term, LICENSEE shall pay an Occupancy Fee based on an annual fee equal to the annualized Occupancy Fee in Section 2.4 increased by the percentage increase in the Consumer Price Index for the Boston Metropolitan Area ("CPI) during the Term. Each year thereafter the annual fee will increase from the fee paid in the prior year by the percentage increase in the CPI during said prior year. If the MBTA terminates the Agreement in the middle of an annual term, LICENSEE shall be entitled to a refund of a proportionate share of any portion of the Occupancy Fee it has already pre-paid for the then current year.

**8. Work in Harmony**

LICENSEE agrees that in any work performed in or about the Premises, it will employ only labor that can work in harmony with all elements of labor being employed by the Railroad Companies and the MBTA.

**9. Promotional Material**

LICENSEE shall not, without the prior written approval of the MBTA, refer to the MBTA in any promotional matter or material, including, but not limited to advertising, letterheads, bills, invoices and brochures.

**10. Nondiscrimination**

With respect to its exercise of all rights and privileges herein granted, LICENSEE shall undertake affirmative action as required by Federal and state laws, rules and regulations

pertinent to Civil Rights and Equal Opportunity unless otherwise exempted therefrom. LICENSEE agrees that it shall comply with any and all required affirmative action plans submitted pursuant to the directives of any Federal agency and in accordance with applicable Federal Law and applicable state laws, rules and regulations.

LICENSEE shall not discriminate against any person, employee or applicant for employment because of race, color, creed, national origin, age, sex, sexual orientation, disability or Vietnam era veteran status in its activities at the Premises, including without limitation, the hiring and discharging of employees, the provision or use of services and the selection of suppliers, contractors, or subcontractors.

LICENSEE shall use reasonable efforts to contact, encourage and utilize minority and female business enterprises in the procurement of materials and service under this Agreement.

**11. Taxes**

LICENSEE shall be solely responsible for the payment of any taxes, levies, betterments or assessments, fees or charges, whether in existence on the date hereof or becoming applicable during the Term, which may be assessed against LICENSEE or the MBTA which are directly attributable to LICENSEE'S installations in, or use of, the Premises, or any personal property or fixtures of LICENSEE located thereon (collectively referred to as "Taxes"). LICENSEE shall pay all Taxes directly to the taxing authority before delinquency and before any fine, interest or penalty shall become due or be imposed by operation of law for their nonpayment. Such payments shall constitute an additional Agreement Fee hereunder.

LICENSEE may contest, in good faith for its own account and at its own expense, the validity or amount of any Taxes, provided LICENSEE shall indemnify the MBTA against any resulting loss, cost and expense. LICENSEE shall not permit a lien or encumbrance on the Premises by reason of failure to pay any Taxes.

**12. No Third Party Beneficiaries**

This Agreement shall not be construed to create any third party beneficiary rights in favor of any other parties (except the explicit rights granted to the Railroad Companies) or any right or privilege for the benefit of any other parties.

**13. Entire Agreement**

This Agreement contains the entire agreement of the parties hereto with respect to the subject matter hereof, and no representations, inducements, promises, or agreements, oral or otherwise, between the parties hereto with respect to the subject matter hereof not embodied herein shall be of any force or effect.

**14. Governing Law**

This Agreement shall be construed and interpreted under and pursuant to the laws of the

Commonwealth of Massachusetts, and the Massachusetts and Federal conflict of laws provisions shall not be applied if the result is that other than Massachusetts law shall govern.

**15. Successors and Assigns**

The provisions of this Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.

**16. Limitation On Damages**

The MBTA shall not be liable to LICENSEE for any loss of business or any indirect, incidental, special, consequential or exemplary damages or lost profits unless specified herein.

**17. Termination of Prior Agreements**

The execution of this Agreement shall terminate any prior agreements that may exist between the parties.

**18. Special Provisions**

Special Provisions to this Agreement, if any, are attached as Exhibit D hereto and incorporated herein. In any instances where any Special Provision shall conflict with preceding provisions of the Agreement or Exhibits attached hereto; the Special Provisions shall prevail.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this \_\_\_\_\_ day of \_\_\_\_\_.

**OWNER:**  
**MASSACHUSETTS BAY**  
**TRANSPORTATION AUTHORITY**

**LICENSEE:**  
\_\_\_\_\_

By: \_\_\_\_\_  
Mark Boyle  
Director of Real Estate

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

**PLAN OF PROPERTY**

## EXHIBIT B

### SCOPE OF USE AND OCCUPANCY

(1) **Use of the Premises.**

The Premises shall be used solely for the purposes described in Paragraph 2.7.

LICENSEE shall have control of the Premises; except that the MBTA may enter the Premises at any time with forty-eight (48) hours notice to LICENSEE (except in case of emergency when the MBTA shall give whatever notice is feasible.)

LICENSEE shall operate and maintain the Premises and its installations thereon in a safe manner and immediately notify the MBTA if any problem occurs which may result in a safety hazard. If any unsafe situation should occur, LICENSEE will correct the situation by eliminating any safety hazard immediately or, if the situation cannot be reasonably cured immediately, then in such longer time as is reasonably required, and in all such unsafe situations, MBTA Railroad Operations Safety Procedures shall be followed

(2) **Special Requirements for Construction, Repairs and Maintenance of Premises.**

In the event that LICENSEE is entitled to construct anything on the Premises, LICENSEE shall provide at least ten (10) days prior written notice of its intent to enter the Premises for such purpose to the MBTA'S Railroad Operations Department and the Railroad Companies.

In addition, prior to beginning the construction, installation, repair or maintenance, LICENSEE shall submit a plan and detailed specifications (including the materials to be used) and the proposed methods of performing the work, or any part thereof (the "Plan") to the MBTA. LICENSEE shall not begin construction until the Plan has been approved by the MBTA. Such approval may be withheld in the MBTA's sole discretion. The Scope of Use and Occupancy for said construction, repairs, maintenance, operation and/or replacement will be more fully defined in the approved Plan, which approved Plan will automatically be incorporated herein by reference and made part of this Agreement. The LICENSEE shall also provide the MBTA with a detailed schedule of times when LICENSEE, its employees, contractors, subcontractors, or agents would like to be on the Premises to undertake the Scope of Use and Occupancy (the "Access Plan"). The MBTA, and MBCR have full power to make a final determination of when LICENSEE may be on the Premises as it is necessary to coordinate the work of all those desiring or having the right to access to the Premises.

Unless entry is made pursuant to an Access Plan approved by both the MBTA and MBCR, LICENSEE agrees to give each time it desires entry, at least seven (7) days' prior written notification to the MBTA (except in cases of emergency when notice shall be given to the MBTA and the Railroad Companies as quickly as possible) of its need to access the Premises for all work to be performed under this Agreement by contacting Ron Ross currently at 617-222-3635 and Mohamed Warsame at Kenney Parking System, currently at 617-212-9850, likely it will be that LICENSEE can gain access at the times requested. LICENSEE shall present evidence of the required insurance coverage before each entry. In the case of an

emergency, LICENSEE shall as soon as possible contact the MBTA Control Center at 617-222-5278

No activities permitted herein may be performed by LICENSEE except as approved in writing by the MBTA; and no method of repair, maintenance, or construction shall be used by LICENSEE except with prior written approvals or written approvals received in the field from the MBTA's representatives at the time the work is performed.

If at any time during the work of repairs and maintenance, the MBTA or an affected Railroad Company should, in its sole and absolute discretion, deem flagmen, watchmen, communications/signaling personnel, electric traction personnel, inspectors assigned to construction crews, and/or other measures, including but not limited to train re-routing, desirable or necessary to protect its operations, its property or its employees or other persons on or near the Premises, the MBTA and/or a Railroad Company shall upon notice to LICENSEE (where such notice is feasible) have the right to place such personnel, including personnel of the MBTA's or the Railroad Company's agents or to take such measures, at the sole cost and expense of LICENSEE. Such cost and expense shall include the current wages and fringe benefits due and owing to such personnel in and for the performance of such measures. LICENSEE hereby covenants and agrees to bear the full cost and expense thereof and to reimburse the MBTA and/or the Railroad Company within thirty (30) days of receiving an itemized, written invoice for such reimbursement. The MBTA's or a Railroad Company's failure to furnish such personnel or take such measures shall not relieve LICENSEE of any obligation or liability it might otherwise have assumed, and shall not give rise to any liability to LICENSEE on the part of the MBTA or the Railroad Companies. Upon being notified that the personnel or measures referred to in the first sentence of this Paragraph have been deemed desirable or necessary by the MBTA and/or a Railroad Company, LICENSEE shall not commence or continue construction or repair measures, as the case may be, unless and until such personnel or measures are in place.

If LICENSEE shall deem any requirement for flagging or the like by the MBTA or a Railroad Company or one of their agents for supervision of the activity hereunder as unreasonable, LICENSEE shall nevertheless pay for such flagging and the like, but shall take exception in writing thereto as an unreasonable requirement in each instance. The parties agree to review such exceptions at the times of billings for such services and attempt to adjust them as the MBTA may deem appropriate. This reimbursement is in addition to the Agreement Fee and Administrative Fee required hereunder.

LICENSEE shall comply with all applicable MBTA Railroad Operations Directorate requirements including, but not limited to, those identified as "III Insurance Specifications" Railroad Operations Directorate, Specifications, May 1994". To the extent that there is an irreconcilable conflict between the aforementioned requirements and this Agreement, the terms and conditions contained in the MBTA Railroad Operations Directorate Procedures shall control unless the requirements in this Agreement are more strict.



## EXHIBIT D

### MBTA Pushcart Program Vendor Management Rules and Regulations

LICENSEE shall at all times comply with the MBTA's current policy and applicable requirements for security and anti-terrorism as the same may be amended from time to time:

- LICENSEE must submit a complete list of prospective employees who are interested in working on MBTA property.
- LICENSEE must submit a completed Access Privilege application for each prospective employee. Authorization prior to employment on MBTA property.
- LICENSEE must obtain approval from the MBTA Transit Police Department for every prospective employee, based upon Access Privilege Application, prior to authorizing employment on MBTA property.
- LICENSEE must notify, immediately, in writing when employees leave your company.
- LICENSEE must relinquish MBTA-issued photo identification cards of any/all obsolete/terminated employees.
- LICENSEE and employees must display the MBTA-issued photo-ids at all times while on MBTA property.
- LICENSEE's employees are not allowed on MBTA property except as required for their work and are not allowed on MBTA property before or after service hours unless explicitly, contractually required to be there.
- LICENSEE's employees are forbidden from carrying firearms on MBTA property.
- LICENSEE must be able to provide upon request any background documents about employees that might be pertinent to how an employee may behave on MBTA property.
- LICENSEE and employee must be available for security training and follow-up.
- LICENSEE is responsible for monitoring/auditing your employees on MBTA property.
- LICENSEE must be able to provide upon request any background documents about employees that might be pertinent to how an employee may behave on MBTA property.
- LICENSEE may be given keys for restrooms and agrees to return such key(s) promptly upon request or upon the termination or expiration of this License.
- LICENSEE shall not permit the presence or use of alcohol or illegal drugs on MBTA property by LICENSEE or any employee of LICENSEE.
- LICENSEE shall not conduct its business so as to attract rodents to the Premises and agrees to take affirmative steps to prevent rodents from entering the Premises.
- LICENSEE agrees that any use not expressly permitted hereunder is prohibited.
- LICENSEE acknowledges that storage facilities are not included in the Licensed Premises unless expressly permitted hereunder. Any storage area shall be paid for separately by LICENSEE.

- LICENSEE agrees that cigarettes may not be sold on MBTA property and selling cigarettes will be cause for LICENSEE to lose his or her license.