

## LICENSE AGREEMENT

License Agreement (the “**Agreement**”), dated as of February 20, 2018, by and between Charles Henry Properties, LLC (“**Licensor**”), a Limited Liability Company having an address at \_\_\_\_\_, and Metropolitan Sutton Associates LLC (“**Licensee**”), having an address at 330 East 56 Street, New York, NY 10011 (the “**MSA Property**”).

### WITNESSETH

**WHEREAS**, Licensee must by law examine the facade of the MSA Property in accordance with the Façade Inspection Safety Program commonly known as Local Law 11, which examination includes the performance of various work and improvements (the “**Work**”) to the MSA Property as detailed in the plans and description on the Site Safety Logistic Plan dated December 11, 2017 and approved January 11, 2018 (the “**SSP**”), a copy of which is attached as Exhibit A; and

**WHEREAS**, Licensors are the owners of the adjoining property located at 336 East 56 Street, New York, NY 10011, (the “**CHP Property**”); and

**WHEREAS**, Licensee desires to obtain a license and easement for Licensee and its consultants, contractors and agents to enter and have access to the CHP Property for the purposes of installing protection in the form of a sidewalk bridge and shed in the front of the CHP Property, as well as protection to the roof of the CHP Property, as detailed in the SSP (said protections referred to as respectively the “**Front Protection**”, “**Roof Protection**”, and collectively the “**Protection Work**”), so as to provide protection of the CHP Property against damage caused by the Licensee’s Work; and

**WHEREAS**, Licensor is willing to grant such license and easement subject to the terms, provisions and conditions in this Agreement;

**NOW THEREFORE**, the parties, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **License**. Licensee is hereby granted a license to enter upon the CHP Property to install and maintain scaffolding and a shed protection for the front of the CHP Property referenced above as the “Front Protection” as well as protection to the roof of the CHP Property referenced above as “Roof Protection”. Subject to compliance with the terms and conditions set forth herein, Licensor hereby grants a revocable license to Licensee and its consultants, contractors, agents and employees (the “**Licensee Parties**”) to enter upon the portions of Licensor’s premises as described in Exhibit “A,” being limited to the front of the building and the roof of Licensor’s premises (the “**License Areas**”) and expressly limited to such areas and for the sole purpose of the Front Protection and Roof Protection.

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The Front Protection shall be in the form of a sidewalk bridge and shed installed and described in Exhibit A. The Roof Protection will be protection to the Licensor's roof as also described in Exhibit A.

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## 2. License Fee.

a. Front Protection. The term of the license for the Front Protection shall be for a twelve month period, commencing as of February 1, 2018, but may be extended by the Licensee for up to an additional six months upon showing of good cause, which must include a showing that the Licensee has worked diligently to complete the work within the initial period. The license fee for the initial six months shall be \$1,000 per month for the Front Protection or \$6,000, which shall paid to Licensor upon execution of this Agreement. The license fee for an extension period shall be \$1,500 per month for the Front Protection to be prepaid in advance upon the granting of an extension. If Licensee completes all the work in less time than the license period, then a prorated portion of the extension fee shall be refunded by Licensor to Licensee. The term of the license for the Front Protection shall end on the last day that the Front Protection is fully restored as provided in Paragraph 5(d) of this Agreement and the Roof Protection is completely removed from the Front Protection.

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b. Roof Protection. The term of the license for the Roof Protection shall be for a twelve month period, commencing as of February 1, 2018, but may be extended by the Licensee for up to an additional six months upon showing of good cause, which must include a showing that the Licensee has worked diligently to complete the work within the initial period, but in no event shall the license term for the Roof Protection extend beyond eighteen (18) months. The license fee for the initial six (6) months shall be \$500 per month for the Roof Protection or \$3,000, which shall be paid upon execution of this Agreement. The License Fee for an extension period shall be \$750 per month for the Roof Protection, to be prepaid in advance upon the granting of an extension. If Licensee completes all the work in less time than the license period, then a prorated portion of the extension fee shall be refunded by Licensor to Licensee. The Roof Protection shall be installed within three (3) weeks of the date of execution of this Agreement. The license term for the Roof Protection shall end on the last day that the Roof Protection is fully restored as provided in Paragraph 5(d) of this Agreement and the Roof Protection is completely removed.

c. The license fee is in addition and without prejudice to any rights which Licensor may have under applicable law and Section 881 of the Real Property Actions and Proceedings Law. In the event such a proceeding is filed, (i) any amounts paid hereunder to Licensor shall be credited against any amounts determined to be due to Licensor; and (ii) Licensee retains the right to maintain that no such fees are or were warranted by law or fact, and if Licensee is successful in establishing the foregoing in said proceeding, this Agreement shall be rescinded in full.

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3. If the Protection Work is completed and actual damages are owed to the Licensor, those amounts will be due in addition to any license fees hereunder. If Licensor receives any violations resulting from any actions of the Licensee, those violations will be promptly removed and paid for at the expense of the Licensee, including any reasonable legal fees or costs that are directly related thereto.

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4. Plan Review; Oversight. Licensee represents and warrants that the plans attached as Exhibit "A" show the Protection Work.

a. Licensor, its agents, employees, contractors, consultants and representatives shall have the right to review all plans and specifications for the Front Protection and Roof Protection at the office of Licensee at 330 East 5<sup>th</sup> Street, upon reasonable prior notice, during business hours on business days, as may be necessary to determine, in Licensor's reasonable opinion, whether any of the Front Protection and Roof Protection could have any adverse effect on the structural integrity of the Licensor's building, including the foundation.

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b. Licensor, its agents, employees, contractors, consultants and representatives shall have the right, without the imposition of any obligations or responsibilities as a result thereof, to accompany and observe the Licensee Parties during the installation of the Front Protection and Roof Protection, subject to the following: (i) Licensor and its aforesaid agents shall be subject to reasonable safety and security precautions imposed by Licensee; (ii) Licensor shall have waived this right if Licensor or its aforesaid agents impede, frustrate or interfere with the Work during any period of accompaniment and observation by acting in an unreasonable manner; and (iii) Licensor shall remain liable for any intentional or grossly negligent actions by Licensor and its aforesaid agents that are not waivable at law.

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c. No consent by Licensor, if such consent is required hereunder, and no oversight by Licensor, its agents, employees, contractors, consultants or other representatives, if such oversight is required hereunder, shall constitute an assumption by Licensor, its agents, employees, contractors, consultants or other representatives of any of any liability for the Front Protection and Roof Protection to which the same relates, the accuracy, suitability or soundness of such plans and specifications or other information or their conformity with applicable law or a limitation on the rights of Licensor or the obligations of Persons performing such the Front Protection and Roof Protection, and the Licensee shall remain solely responsible therefor.

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5. Licensee's Warranties, Covenants and Agreements. Licensee warrants, covenants and agrees as follows:

a. Performance of Work. The Front Protection and Roof Protection shall be installed and maintained at Licensee's sole cost and expense, in a good, orderly, safe and workmanlike manner in accordance with all applicable laws and in such manner as will not violate any warranties in effect with respect to the Licensor's property (provided that Licensor informs Licensee of any such warranties prior to execution

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of this Agreement) and will minimize interference with Licensor's use of the property. Licensee and the Licensee Parties shall take commercially reasonable measures to prevent any material damage to the CHP Property. Without limiting the generality of the foregoing, (i) all persons involved in or performing any portion of the Work shall at all times be appropriately supervised, licensed and insured; (ii) Licensee shall ensure that the construction space is secured at all times during the term of this License so there will be no increased risk to Licensor or occupants of Licensor's property of crime or unauthorized entry onto the Licensor's property as a result of Licensee's use thereof; it being understood and agreed by Licensee that all security and safety measures taken by Licensee or its contractors or required by Licensee to be taken by its contractors on and for the MSA Property shall be taken by Licensee and its contractors with respect to the CHP Property to the extent such measures are consistent with good practice or required by the Building Code or other law, rule or regulation; and (iii) Licensee shall be solely responsible for the appropriate handling, storage and disposal of all materials generated during the Work, including but not limited to any hazardous materials. The work done by Licensee shall not interfere in any unlawful manner with the fire escapes on the CHP Property.

b. Staging and Equipment. Licensee shall not: (i) stage any equipment or materials needed for the Work on the CHP Property; (ii) allow its contractors to leave equipment or materials for the Front Protection and Roof Protection unattended on the CHP Property or overnight, except in areas that are suitable for such purposes; or (iii) leave any work areas unsupervised while any work is being performed or unprotected at any other time. Notwithstanding the foregoing, any equipment or materials brought into the Licensor's property by Licensee Parties shall be at their own and sole risk.

c. Additional Conditions of Access. Licensee shall not use the Licensor's building to gain access to the construction space.

d. Restoration. Upon completion of the term of this Agreement, the Licensee shall return Licensor's property to its existing original condition and remove any and all materials used by Licensee as well as any resultant debris from the Licensed Area at Licensee's sole expense. Licensee shall be responsible to Licensor for any actual damages, including without limitation any damage to property or interference with the use of Licensors' property which Licensors may suffer as a result of the granting of this license. Licensee will promptly reimburse Licensor for any such damages. It is expressly understood and agreed that Licensor shall incur no cost or expense of any kind or nature, direct or indirect, in connection with the license granted hereunder or the work to be performed by Licensee under this Agreement. Licensee's obligations to remove the Protection Work shall survive the termination of this Agreement. All costs associated with installation, maintenance and removal of Front Protection and Roof Protection from the License Areas shall be paid by Licensee.

e. Insurance. Licensee shall maintain at its sole cost and expense, at all times during the performance of the Protection Work, the insurance coverage as set forth in this

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Agreement, which must be the following coverages and limits (and require similar coverages and limits for contractors and subcontractors: Commercial general liability, including premises, prod/comp/ops; contractual liability, workers' compensation and employers' liability, business, automobile, including HNOA umbrella liability. The amount limits shall be Two Million Dollars per occurrence, Four Million Dollars in the aggregate, One Million Dollars per employee, One Million Dollars per CSL per accident, and with an umbrella policy of no less than Nine Million dollars. All insurance must be written with financially responsible carriers. Licensee shall provide evidence of the Licensee Parties' comprehensive general liability insurance with limits as set forth in insurance certificates attached as Exhibit "B". Certificates of Insurance must name Licensor as a certificate holder as well as Claude Simon. Said certificates must be delivered upon execution of this Agreement. This Agreement shall not be effective until the policy satisfying the foregoing is delivered to Licensor and approved by Licensor's insurance advisors.

- f. All damage or injury to the License Areas, caused by or resulting from any negligent acts or omissions of Licensee or the Licensee Parties shall be repaired promptly by Licensee at its sole cost and expense, to the condition existing immediately prior to such injury or damage.

6. Termination.

- a. This Agreement grants to Licensee a revocable license to access the Licensor's property and does not constitute the granting of an easement or any other interest in real estate.
- b. If any of the following "Events of Default" occur, Licensor shall have the right to terminate this Agreement upon five (5) business days written notice to Licensee:
  - i. Licensee fails to cure any monetary default or Insurance Default within ten (10) business days after notice to Licensee thereof; or
  - ii. Licensee fails to cure any non-monetary default within ten (10) business days after notice thereof; except in connection with a non-monetary default which is not susceptible of cure within said ten-day period (excluding an Insurance Default), in which event the time to cure the same shall be extended for such time as shall be reasonably necessary to cure such default, provided that Licensee shall commence the cure within such ten (10) business day period and prosecutes such cure diligently and on a reasonably continuous basis to completion.
- c. Licensee acknowledges and agrees that termination of the License granted herein does not relieve it of any of its obligations, covenants, undertakings, and duties hereunder, all of which shall survive such termination, unless expressly provided otherwise herein. Without limiting the generality of the foregoing, Licensee shall be solely responsible for all costs incurred by it in connection with any such

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termination, including but not limited to termination fees and surcharges Licensee may owe to its contractors, subcontractors, consultants or other third parties.

7. **Indemnification.** Licensee shall indemnify, defend (using counsel reasonably approved by Licensor, if permitted by Licensee's insurance carrier), and hold harmless the Licensor and Claude Simon from and against any and all causes of action, damages, claims, counterclaims, demands, judgments, liens, litigation, liability, penalties, orders, loss of rents, other losses, costs, or expenses (including without limitation reasonable attorneys' fees, expenses and court costs and the costs of prosecuting the within indemnification) (collectively, "Liabilities") which may at any time be asserted against or incurred by the Licensor due to: (a) any acts or omissions of any Licensee Parties in the performance of the Protection Work; (b) any interference by the Licensee Parties with the use or enjoyment of the Licensor's property by the Licensor, its tenants or other occupants; (c) Licensee's breach of any of its obligations under this Agreement; (d) any damage to persons or property, in, on or adjacent to the Licensor's property or otherwise, arising from acts or omissions of the Licensee Parties in connection with the Protection Work, the License or the access granted herein; (e) the presence of or exposure of persons to any hazardous materials attributable to, arising out of or caused by the Licensee; (f) any liability associated with any offsite disposal of any hazardous materials relating to or generated by or during the any work; and (g) any liability associated with a violation by a Licensee Party of applicable law in connection with the Licensee Improvements. Licensor shall provide Licensee with prompt written notice of any claim and cooperate, without cost or expense to Licensor, in the defense or settlement of any such claim. Without limiting the generality of the foregoing, Licensee shall be liable to Licensor for all court costs and reasonable attorney's fees and expenses (at all levels of trial and appeal) which Licensor may incur in connection with the enforcement of this Agreement, except with regard to actions where a final un-appealable order of a court having jurisdiction finds Licensee not to be liable. In no event shall Licensee be liable for any Liabilities arising out of or due to the gross negligence or intentional misconduct of a Licensor Party. The indemnification provisions contained herein shall survive the expiration or termination of this Agreement and the License granted herein.

8. Licensee agrees to perform all work in a workmanlike manner by individuals and entities licensed as required and in compliance with any and all statutes, laws, rules and regulations of any governmental authority or agency having jurisdiction, and to avoid any disruption or interference with the occupancy of Licensor's building and the tenants thereof, including, without limitation, noise, vibration or other disturbances of the tenants or other occupants of Licensor's building. All work shall be performed between the hours of 7am and 6pm Mondays through Fridays, except that work may be performed at other times when necessary to correct any hazardous conditions, subject to compliance with law.

9. Any consent or approval of Licensor required under the terms of this Agreement must be in writing and will not be valid unless given by a Licensor or Licensor's attorney. Any consent or approval required of Licensor in any provision of this Agreement may not be withheld unreasonably.

10. This Agreement constitutes the entire understanding between the parties regarding the subject matter hereof and shall bind the parties hereto and their respective successors, assigns or other legal representatives. This Agreement supersedes any prior verbal

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understanding or written agreement between the parties relative to the subject matter hereof, and may not be amended, supplemented or discharged except by an instrument in writing signed by both parties.

11. Licensee shall not assign this Agreement without the express prior written consent of Licensors.
12. Nothing contained in this Agreement shall be construed to create an agency, partnership or joint venture arrangement between the parties. The parties' relationship shall at all times be and remain licensor-licensee.
13. This Agreement shall be governed by and construed under and in accordance with the laws of the State of New York, without regard to its conflicts of law provisions. LICENSOR AND LICENSEE HEREBY VOLUNTARILY, KNOWINGLY AND IRREVOCABLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION BROUGHT UNDER THIS AGREEMENT. In the event that either party shall commence an action to enforce its rights hereunder or to clarify said rights, the party substantially prevailing shall be entitled to recover the costs of such action from the other party, including, without limitation, reasonable legal fees.
14. Authorized Representative. Licensee hereby designates JENNIFER DOHERTY and NOEL PEARSON (Tel.: 212-752-8888, Cell: 516-644-8958), or such other representative(s) as Licensee may designate by written notice to Licensors (each a "Licensee Representative") who shall be available on a 24 hour basis, for emergencies or any other issues arising under this Agreement.
15. Notices. All notices of default, demands, requests for or grants of consents or approvals, which any of the parties to this Agreement may desire or be required to give hereunder shall be in writing and shall be given by (a) personal delivery, (b) a nationally recognized courier service, fees prepaid, or (c) electronic mail, provided one of the previously listed methods is also utilized, addressed as follows:

If to Licensors:

Charles Henry Properties, LLC  
c/o Vernon & Ginsburg, LLP  
261 Madison Avenue, 26<sup>th</sup> Floor  
New York, New York 10016  
Attention: Darryl M. Vernon  
Email: dvernon@vgllp.com

If to Licensee:

AKA Sutton Place  
Attn: Jennifer Doherty  
330 East 56<sup>th</sup> Street  
New York, New York 10022

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Email: [jdoherty@stayaka.com](mailto:jdoherty@stayaka.com)

With a copy to:

[Thomas P. Higgins, Esq.](#)

[Higgins & Trippett LLP](#)

[1120 Avenue of the Americas, 4<sup>th</sup> Floor](#)

[New York, New York 10036](#)

Email: [tpiggins@h-tlaw.com](mailto:tpiggins@h-tlaw.com)

16. This Agreement may be executed in two or more counterparts, each of which, when taken together, shall constitute one and the same instrument. Electronically transmitted signatures shall be deemed binding and effective.

17. Licensor's Professional Fees. Licensee shall pay Licensors \$~~1,000~~ for Licensors' legal fees incurred in the preparation of this Agreement, which shall be due simultaneously with the execution of this Agreement.

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18. Licensee shall cause to be installed a sign or signs on the parapet of the bridge located on the sidewalk fronting 336 East 56 Street, New York, NY to the reasonable satisfaction of Licensor. The sign shall identify the subject building "~~336 East 56 Street, New York, NY~~" as well as the business of the commercial tenant on the ground floor. Licensee shall also provide adequate lighting under the bridge that is part of the Front Protection in accordance with law, so as to make walking on the sidewalk and entering the building safe. If Licensee's Front Protection interferes in any manner with garbage removal at the Licensor's property, the Licensee will undertake to promptly remove such garbage and keep the area clean. Licensee represents that none of the Front Protection or Roof Protection will be attached in any manner to the Licensor's building.

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19. Licensee shall provide lien waivers in respect of the work performed at 330 East 56 Street, New York, NY.

20. Anything to the contrary notwithstanding, nothing in this Agreement will prohibit Licensor from selling or assigning the Licensor's Adjoining Property during the pendency of this Agreement, which Agreement shall then be binding upon any such successor or assign.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

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METROPOLITAN SUTTON ASSOCIATES, LLC

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By: Robert S. Grossman, Exec. Vice Pres.

CHARLES HENRY PROPERTIES LLC

By:

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