



COMMUNITY AND ECONOMIC  
DEVELOPMENT DEPARTMENT

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MEMORANDUM

Date: April 8, 2021  
To: Michael G. Bartholomew, MCP, LEED AP, City Manager  
From: Michael McMahon, Director of Community and Economic Development *mm*  
Subject: Downtown Metra Train Station - License Agreement For Concession

**Issue:** On February 23, 2021, John Reno, owner of *CRAFT Management, Inc. DBA CRAFT Donuts and Coffee* (CRAFT), informed the City that the CRAFT, located inside the Des Plaines Downtown Metra Train Station, had permanently closed.

**Analysis:** On May 6, 2019, the City Council approved a License Agreement for Concession (“Agreement”) with CRAFT to occupy and operate a food and beverage operation in the Downtown Metra Station. The term of the Agreement was for five years commencing on May 6, 2019 and terminating on May 5, 2024. One of the terms of the Agreement was a monthly fee, in the initial amount of \$700.00, per month, increasing over time.

Soon after Mr. Reno’s official notice of the closure of CRAFT, he informed the City that he had a potential operator that would like to assume the License Agreement and operate a food and beverage operation in the train station. The Agreement does have an Assignment clause that states the Licensee may not assign, in whole or in part, its rights, obligations, or interests in this Agreement, or grant any person or entity other than Licensee permission to occupy or use all or any part of the Licensed Premises or Subject Property, without the City’s prior written consent, which consent the City may grant in its sole and absolute discretion. Staff agreed to meet with this potential operator.

Alex Hilton and Paris Riley are the owners of Juice & Berry LLC (“Juice & Berry”). Juice & Berry has one other location on Main Street located in Roselle. This location opened in July 2019, and provides cold pressed juices, acai bowls, smoothies, protein shakes, salads, toasts and other items. Juice & Berry has 12 employees and is open Monday –Friday from 8:00 a.m. - 6:00 p.m., and Saturday and Sunday from 8:00 a.m. - 4:00 p.m. Juice & Berry has done well throughout the pandemic, retaining all their employees, and has not had to close for any period of time since originally opening. They offer a full menu in-house and are available on multiple delivery platforms such as GrubHub, DoorDash and Uber Eats.

City Staff is recommending the City Council approve a new exclusive License Agreement for Concession with Juice & Berry LLC to provide food and beverage for sale to the general public through a counter service

style café. Currently, Juice & Berry does offer a limited amount of coffee products at the Roselle location; however, they have agreed to purchase several of CRAFT's coffee making equipment and will continue provide a number of coffee products. At this time, they are undecided if they plan to utilized the espresso maker and provide specialty coffee products.

City Staff consulted with the City's General Council and developed a path to terminate the CRAFT License Agreement for Concession and enter into a new agreement with Juice & Berry. Key points of the agreement are as follows:

- The CRAFT License Agreement will terminate effective upon the approval of Resolution R-76-21.
- A new exclusive License Agreement for Concession will become effective upon approval of Resolution R-77-21.
- The new Juice & Berry License Agreement will be similar in terms as the original CRAFT License Agreement to include:
  - a. The agreement is for an exclusive license for concession within the subject property to provide food and beverage for sale to the general public through a counter service style café;
  - b. The initial term of the Agreement will be for five years commencing on May 1, 2021 and terminating on April 30, 2026;
  - c. The licensee will pay to the City a monthly fee in the initial amount of \$700.00. The license fee will increase on the anniversary of the commencement date by an amount equal to 3% of the previous year's license fee; and
  - d. The minimum concession hours is no later than 6:00 a.m. to 1:00 p.m. Monday through Friday. The licensee may be open outside of the minimum hours at their discretion.
- One additional provision in the Juice & Berry License Agreement is that they must provide at least three distinct coffee products or flavors.

**Recommendation:** I recommend the City Council approve Resolution R-76-21 terminating the CRAFT Management, Inc. License Agreement and approving Resolution R-77-21 approving a new License Agreement with Juice & Berry LLC for the operation of a concession in the Downtown Train Station.

Attachments:

Resolution R-76-21

Resolution R-77-21

**CITY OF DES PLAINES**

**RESOLUTION R - 76 - 21**

**A RESOLUTION AUTHORIZING THE TERMINATION OF A  
LICENSE AGREEMENT WITH CRAFT MANAGEMENT,  
INC., FOR THE OPERATION OF A CONCESSION IN THE  
DOWNTOWN TRAIN STATION.**

**WHEREAS**, Article VII, Section 10 of the 1970 Illinois Constitution authorizes the City to contract with individuals, associations, and corporations in any manner not prohibited by law or ordinance; and

**WHEREAS**, on May 6, 2019, pursuant to City of Des Plaines Resolution R-94-19, the City entered into a license agreement with CRAFT Management Inc., d/b/a CRAFT Donuts and Coffee for the operation of a concession in the downtown train station ("***License Agreement***"); and

**WHEREAS**, the license agreement had an initial term of five years commencing on May 6, 2019 and expiring on May 5, 2024 ("***Initial Term***"); and

**WHEREAS**, on February 23, 2021, John Reno, the owner of CRAFT Management Inc. d/b/a CRAFT Donuts and Coffee ("***CRAFT***") notified the City that CRAFT had officially ceased operations, vacating the space effective February 14, 2021; and

**WHEREAS**, shortly after CRAFT's official notice it had ceased operations, it informed the City it had a potential operator with an interest in operating a food and beverage concession in the downtown train station; and

**WHEREAS**, City staff recommends terminating the License Agreement, effective immediately, and entering into a new license agreement with a new licensee for the operation of a concession in the downtown train station; and

**WHEREAS**, the City Council has determined that it is in the best interest of the City to terminate the License Agreement with CRAFT;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Des Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows:

**SECTION 1: RECITALS.** The foregoing recitals are incorporated into, and made a part of, this Resolution as findings of the City Council.

**SECTION 2: AUTHORIZATION TO TERMINATE LICENSE AGREEMENT.**  
The City Council hereby authorizes and directs the City Manager to take all actions necessary to terminate the License Agreement, effective immediately.

**SECTION 3: EFFECTIVE DATE.** This Resolution shall be in full force and effect from and after its passage and approval according to law.

**PASSED** this \_\_\_\_ day of \_\_\_\_\_, 2021.

**APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2021.

**VOTE:** AYES \_\_\_\_ NAYS \_\_\_\_ ABSENT \_\_\_\_

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**MAYOR**

ATTEST:

Approved as to form:

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**CITY CLERK**

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**Peter M. Friedman, General Counsel**

**CITY OF DES PLAINES**

**RESOLUTION R - 77 - 21**

**A RESOLUTION APPROVING A LICENSE AGREEMENT  
WITH JUICE AND BERRY, LLC, FOR THE OPERATION OF  
A CONCESSION IN THE DOWNTOWN TRAIN STATION.**

**WHEREAS**, Article VII, Section 10 of the 1970 Illinois Constitution authorizes the City to contract with individuals, associations, and corporations in any manner not prohibited by law or ordinance; and

**WHEREAS**, the City owns the train station located in downtown Des Plaines, Illinois ("***Train Station***"), which is on land owned by the Commuter Rail Division of the Regional Transportation Authority; and

**WHEREAS**, the City desires to retain Juice and Berry, LLC ("***Licensee***"), to operate a café and concession establishment ("***Café***") within the Train Station; and

**WHEREAS**, the City and Licensee desire to enter into a five year license agreement to permit Licensee to operate the Café within the Train Station ("***License Agreement***"); and

**WHEREAS**, the City Council has determined that is in the best interest of the City to enter into the License Agreement with Licensee;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Des Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows:

**SECTION 1: RECITALS.** The foregoing recitals are incorporated into, and made a part of, this Resolution as findings of the City Council.

**SECTION 2: APPROVAL OF LICENSE AGREEMENT.** The City Council hereby approves the License Agreement in substantially the form attached to this Resolution as **Exhibit A**, and in a final form to be approved by the General Counsel.

**SECTION 3: AUTHORIZATION TO EXECUTE LICENSE AGREEMENT.** The City Council hereby authorizes and directs the City Manager and the City Clerk to execute and seal, on behalf of the City, the final License Agreement only after receipt by the City Clerk of at least two executed copies of the License Agreement from Licensee; provided, however, that if the City Clerk does not receive such executed copies of the License Agreement from Licensee within 60 days after the date of adoption of this Resolution, then this authority to execute and seal the License Agreement shall, at the option of the City Council, be null and void.

**SECTION 4: EFFECTIVE DATE.** This Resolution shall be in full force and effect from and after its passage and approval according to law.

**PASSED** this \_\_\_\_ day of \_\_\_\_\_, 2021.

**APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2021.

**VOTE:** AYES \_\_\_\_ NAYS \_\_\_\_ ABSENT \_\_\_\_

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**MAYOR**

ATTEST:

Approved as to form:

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**CITY CLERK**

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**Peter M. Friedman, General Counsel**

## EXHIBIT A

### **LICENSE AGREEMENT FOR CONCESSION** **(1501 Miner Street, Des Plaines, Illinois 60016)**

**THIS AGREEMENT** is made of this **1st day of May, 2021**, by and between the **CITY OF DES PLAINES**, an Illinois home rule municipality (the "**City**"), and **JUICE AND BERRY, LLC.** an Illinois Corporation (the "**Licensee**").

**NOW, THEREFORE**, in consideration of the recitals set forth above and the mutual covenants and agreements set forth below, the parties hereto agree as follows:

#### **Section 1. Recitals.**

A. The City is the ground lessee of that certain parcel of property located at 1501 Miner Street, Des Plaines, Illinois, which is operated as a commuter rail station ("**Station**") and is depicted in ***Exhibit 1*** attached to this Agreement ("**Subject Property**").

B. Subject to the terms and conditions of this Agreement, the Licensee wishes to operate a food and beverage concession on portions of the Subject Property described in Section 2 below ("**Licensed Premises**").

C. Subject to the terms and conditions of this Agreement, the City desires to grant the Licensee a license to operate a food and beverage concession on the Licensed Premises.

#### **Section 2. Licensed Premises.**

The Licensed Premises collectively consists of the following portions of the Subject Property all of which are depicted on the Station Floor Plan attached as ***Exhibit 2*** to this Agreement:

A. Café Area: Approximately 360 square foot area located to the east of the commuter seating area of the Station to be used for counter service of food and beverages to customers.

B. Storage Area: Approximately 295 square foot area located at east end of Station to be used for storage of equipment, supplies, and materials necessary to operate the Concession.

#### **Section 3. Grant and Nature of License.**

A. Exclusive License for Concession. The City hereby grants to the Licensee an exclusive license and concession within the Subject Property pursuant to which the Licensee may provide food and beverage for sale to the general public through a counter service style café in accordance with the terms and obligations of this Agreement (the "**Concession**"). The Licensee may operate the Concession and use the Licensed Premises and the Subject Property according to the terms of this Agreement and for no other purpose.

B. Parking. The City will provide and reserve ten (10) off-street parking spaces on the Subject Property, including one (1) accessible parking space, for the use by the Licensee, its employees, agents, and customers during the Licensee's Hours of Operation. The City reserves

the right to redefine any and all parking configurations, including but not limited to size, shape and location during the term of this Agreement. The City agrees to impose parking time restrictions on these dedicated spaces to reasonably ensure turnover of spaces during the Licensee's Hours of Operation as hereinafter defined.

C. Signage. The Licensee will be required to submit signage plans and necessary permit applications to the City prior to fabrication and installation of interior and exterior signage. Installation of signage must be completed according to City's ordinances and regulations and/ or guidelines by the Occupancy Date (as hereafter defined), unless otherwise negotiated. Re-facing of existing signage requires obtaining prior written consent of the City's Director of Community and Economic Development and will not require a sign permit.

D. Nature of License. The parties acknowledge that: (i) this Agreement grants a license to use a portion of the Subject Property, solely as set forth in this Agreement; (ii) this Agreement grants only contractual rights and does not grant to the Licensee a leasehold or any real property interest in the Licensed Premises or the Subject Property; (iii) the City will retain legal possession and control over the Licensed Premises and the Subject Property at all times during the term of this Agreement; and (iv) the Concession is intended to be incidental to, and promote, the City's operation of the Licensed Premises and the Subject Property for public mass transportation purposes. The license granted by this Agreement is expressly subject to all applicable laws, ordinances, regulations, covenants, restrictions, any existing easements, permits or licenses affecting, applying to, or encumbering the Subject Property, including, without limitation, the lease agreement between the City and the Commuter Rail Division dated March 18, 1985.

#### **Section 4. License Term.**

A. Term. The initial term of this Agreement will be for five years commencing on **May 1, 2021** ("**Commencement Date**") and terminating on **April 30, 2026** ("**Initial Term**") unless terminated earlier pursuant to Section 13 of this Agreement.

B. Renewal. In the event that the City has not previously terminated this Agreement pursuant to Section 13, this Agreement will automatically renew for two additional five year terms (each, a "**Renewal Term**"), provided that no later than 60 days before the conclusion of the Initial Term or a Renewal Term, as the case may be, the Licensee shall provide the City a written notice of renewal, unless the City Council denies the request for renewal by resolution duly adopted.

#### **Section 5. License Fee and Other Charges.**

A. License Fee. The Licensee will pay to the City a monthly fee in the initial amount of \$700.00 commencing on the first day of the month no later than ninety (90) days immediately following the **Commencement Date**, as hereinafter defined ("**License Fee**"). The License Fee will increase on the anniversary of the Commencement Date by an amount equal to 3% of the previous year's License Fee during the Initial Term and all subsequent Renewal Terms. Payment of the License Fee and all other amounts that are or become due from Licensee to the City under this Agreement will be paid by Licensee to City on or before the first day of each month to the City's Director of Finance or at another place designated from time to time by written notice from the City to Licensee. The payment of License Fee hereunder is independent of each and every other covenant and agreement contained in this Agreement, and License Fee will be paid without any setoff, abatement, counterclaim or deduction whatsoever.



B. Utilities. The cost of providing heating, air conditioning, water, and public Wi-Fi to the Licensed Premises will be included in the License Fee and not charged separately to the Licensee. To the extent that other utilities serving the Licensed Premises are separately metered and used solely by the Licensee, the Licensee will pay for all such gas, electricity, light, power, telecommunications, sewer, sprinkler services, janitorial services, refuse and trash collection, and other utilities and services used on the Licensed Premises by the Licensee. In the event Licensee fails to pay for any utilities or services as required under this paragraph, the City will have the right, but not the obligation, upon ten (10) days prior written notice to the Licensee, to pay such utility or service bills on the Licensee's behalf and charge the Licensee for same as an additional charge under this Agreement due and payable upon City's written demand therefor. No interruption or failure of utilities or services shall result in the termination of this Agreement by the Licensee or the abatement of the License Fee.

C. Interest. All amounts owed by the Licensee to the City pursuant to any provision of this Agreement will bear interest from the due date until paid at the rate of one and one-half percent per month, unless a lesser rate will then be the maximum rate permissible by law with respect thereto, in which case said lesser rate will be charged.

D. Taxes. The City's leasehold interest in the Subject Property is exempt from payment of real estate taxes. If at any time in the future the Licensed Premises are assessed and real estate taxes are due, Licensee shall pay all real estate taxes or other charges applicable to or assessed against that portion of the Subject Property which is the subject of this Agreement, even though such taxes may not become due and payable until after the expiration or termination of this Agreement. If any such taxes or charges shall have been paid by the City, the Licensee agrees to reimburse the City within 30 days after presentation of a bill therefor. In default of such reimbursements, all sums so paid by the City shall be deemed an additional charge and recoverable as a debt due and payable to the City. The Licensee will be liable for all taxes levied or assessed against any personal property or fixtures placed in the Licensed Premises, whether levied or assessed against the City or the Licensee.

## **Section 6. Operational Requirements.**

The Licensee's operation of the Concession will strictly conform to the following operational requirements:

A. Minimum Hours of Operation. The Licensee will open the Concession to the public no later than 6 a.m. and close no earlier than 1 p.m. Monday through Friday ("**Hours of Operation**"). The Licensee may extend the Hours of Operation, but will not be required to open the Concession to the public on Saturday or Sunday, or public holidays recognized by the federal government of the United States. The City Manager, upon request of the Licensee, may review and change the Hours of Operations to better serve the public interest.

B. Food and Beverage Selection. The Licensee will offer for sale to the public, through a counter service style café, a selection of fresh pastries, breakfast foods, coffee, tea and bottled beverages (juice, water, etc.) continuously throughout the Hours of Operation. The Licensee must provide at least three distinct coffee products or flavors. The City will have the opportunity to review the Licensee's food and beverage offerings and prices on an annual basis to ensure that a consistent level of quality and value continues to be provided.

C. Prohibited Sales. The Licensee may not offer tobacco products for sale to the public as part of the Concession.

E. Cleaning of Licensed Premises and Surrounding Areas. Licensee will maintain the Licensed Premises in a clean and sanitary condition at all times during the Hours of Operation. The Licensee will remove any trash or debris left by customers of the Concession (1) prior to opening the Concession, (2) no less than three times during the Hours of Operation, and (3) at closing of the Concession each day.

F. Key Management Personnel. The operation of the Concession will, throughout the term of this Agreement, be managed by those persons identified in **Exhibit 3**, attached hereto ("**Key Management Personnel**"). In the event that any of the Key Management Personnel are no longer associated with or employed by the Licensee, the Licensee will provide prompt written notice to the City of (1) the change in Key Management Personnel, (2) an explanation for the change, and (3) a description of the qualifications of any person who will be replacing or taking on the responsibilities of the Key Management Personnel.

G. Employee Uniforms and Conduct. All employees of Licensee performing tasks on the Licensed Premises must wear clean attire that identifies them as employees of the Licensee and shall conduct themselves in a courteous manner at all times when on the Licensed Premises. All personnel employed by Licensee will at all times and for all purposes be solely in the employment of Licensee and Licensee shall be responsible for directing such personnel and will control the operative details of their work.

H. Licensee Furniture. Any furniture provided by Licensee for use by customers (tables and chairs) in the Licensed Premises will be returned to and secured in the Café or Storage Areas outside of the Hours of Operation. The City will have no responsibility for storing or securing such furniture.

## **Section 7. City Access, Use, and Inspection of Licensed Premises.**

A. Right of Entry. The Licensee agrees and acknowledges that the City, its employees, agents, or representatives may enter into and upon any part of the Licensed Premises at any time with 24 hours prior, reasonable notice to the Licensee to determine Licensee's compliance with this Agreement, to inspect the Licensed Premises, or to clean or make repairs, alterations or additions to the Licensed Premises or the Subject Property, or for any other purpose.

B. Security of Licensed Premises. The Licensee acknowledges and agrees that the City will not provide any security services to the Licensed Premises and that the City will not be liable to the Licensee for, and the Licensee hereby waives any claim against the City with respect to, any loss by theft or any other damage suffered or incurred by the Licensee in connection with any unauthorized entry into the Licensed Premises or any other breach of security with respect to the Licensed Premises.

## **Section 8. Condition, Improvements, Alterations, Repairs, Maintenance, and Occupancy of Licensed Premises.**

A. No warranty. The City will provide the Licensed Premises to the Licensee in an "as is" condition. The Licensee acknowledges and agrees that the City has made no representations or warranties relating to the condition of the Licensed Premises or the suitability of the Licensed Premises for the Concession. The Licensee waives any implied warranty that the Licensed Premises are suitable for the Licensee's intended purposes. In addition, the City makes no warranty or representation that rail service will continue to serve the Subject Property.

B. No Waste or Nuisance. The Licensee will use the Licensed Premises in a careful, safe, and proper manner and will not commit waste on or create a nuisance, whether defined under the City's ordinances or regulations or common law, upon the Licensed Premises or the Subject Property.

C. Improvements. The Licensee may make no structural improvements, alterations, additions, or repairs to the Licensed Premises ("**Licensee Improvements**") including, but not limited to, structural carpentry, electrical, or masonry work without, in each case, without first (1) obtaining the prior written consent of the Director of Community and Economic Development of the City, except in the case of emergency alterations or repairs, and (2) obtaining all required building permits for such work. In the event any such structural work in or to said Licensed Premises are deemed necessary or desirable by Licensee, Licensee will submit plans and specifications to the City for its review. Licensee shall be responsible for the cost of any such Licensee Improvements, which shall become the property of the City.

All Licensee Improvements must be constructed in a good and workmanlike manner by contractors reasonably acceptable to the City and only good grades of materials may be used. The City may monitor construction of the Licensee Improvements. The Licensee will provide the City with the identities and mailing addresses of all persons performing work or supplying materials, prior to beginning such construction, and the City may post on and about the Licensed Premises notices of non-responsibility pursuant to applicable law. The Licensee will furnish security or make other arrangements satisfactory to the City to assure payment for the completion of all work free and clear of liens and shall provide certificates of insurance for worker's compensation and other coverage in amounts and from an insurance company satisfactory to the City protecting the City against liability for personal injury or property damage during construction. Upon completion of any Licensee Improvements, the Licensee must deliver to the City sworn statements setting forth the names of all contractors and subcontractors who did work on the Licensee Improvements and final lien waivers from all such contractors and subcontractors. Upon surrender of the Licensed Premises, all Licensee Improvements will remain on the Licensed Premises as the City's property, except to the extent (1) the City requires removal of any such Licensee Improvements at Licensee's expense prior to the expiration of the term of this Agreement, or (2) the City and the Licensee have otherwise agreed in writing in connection with the City's consent to any Licensee Improvements. The Licensee will repair any damage to the Licensed Premises caused by such removal, unless the City elects to complete such repairs itself, in which case the Licensee will reimburse the City for the costs of such repairs within ten (10) days after the City's written demand therefor. If the Licensee fails to remove any Licensee Improvements per the requirements of this Section 8.C, or fails to repair any damage caused thereby, the City will have the right, but not the obligation, to complete such removal and/or repairs at Licensee's expense, and the Licensee will reimburse the City for same, within ten (10) days after the City's written demand therefor. The Licensee's obligations under this Section 8.C will survive the expiration of the term of this Agreement.

D. Trade Fixtures. The Licensee, at its own cost and expense and without the City's prior approval, may erect such shelves, bins, and trade fixtures (collectively "**Trade Fixtures**") in the ordinary course of its business provided that such Trade Fixtures do not alter the basic character of the Licensed Premises, do not overload or damage the Licensed Premises, and may be removed without injury to the Licensed Premises, and the construction, erection, and installation thereof complies with all of the City's ordinances and regulations. Prior to the expiration of the term of this Agreement, the Licensee will remove its Trade Fixtures and will repair any damage caused by such removal, unless the City elects to complete such repairs itself, in which

case the Licensee will reimburse the City for the costs of such repairs within ten (10) days after the City's written demand therefor. If the Licensee fails to remove any Trade Fixtures per the requirements of this Section 8.D, or fails to repair any damage caused thereby, the City will have the right, but not the obligation, to complete such removal and/or repairs at the Licensee's expense, and the Licensee will reimburse the City for same, within ten (10) days after the City's written demand therefor. The Licensee's obligations under this Section 8.D will survive the expiration of the Term of this Agreement.

E. Occupancy Date. The Licensee must obtain a City Business Registration Certificate and complete all work necessary to obtain a Certificate of Occupancy for the Licensed Premises, including the installation of all Licensee Improvements and Trade Fixtures, no later than ninety (90) days after all necessary permits have been issued by the City and other governmental entities. Licensee must occupy the Licensed Premises and commence operation of the Concession no later than seven (7) days after the date a Certificate of Occupancy is issued for the Licensed Premises ("**Occupancy Date**"). Failure to complete the work necessary to obtain a certificate of occupancy or to commence operation of the Concession in accordance with this Section 8.E will constitute an Event of Default under this agreement.

## **Section 9. Compliance with Laws.**

A. General Obligation; Building and Health Laws. The Licensee will conform to and abide by all applicable laws, statutes, ordinances, requirements, resolutions, rules, and regulations of the City, County of Cook, including the Cook County Health Department, State of Illinois, the United States of America, and all other governmental agencies with jurisdiction ("**Requirements of Law**"). If a permit is required for any operation, it must be obtained from the regulating body having jurisdiction thereof before such operation is undertaken. Without limiting the foregoing, (i) any and all repairs and improvements on the Licensed Premises must comply with all applicable laws, codes, rules, and regulations, including all building code requirements of the City and (ii) the Licensee shall obtain and maintain any and all necessary permits or certificates from the Cook County Health Department for food preparation on the Licensed Premises.

B. Discrimination Laws. The Licensee may not discriminate in its recruiting, hiring, promotion, demotion, or termination practices or in the use, operation, management or occupancy of the Licensed Premises on the basis of race, religious creed, color, national origin, ancestry, sex, age, physical handicap, disability, medical condition, or marital status with respect to the Concession granted herein or the occupancy, use, or enjoyment of the Licensed Premises. The Licensee will also comply with the applicable provisions of the Illinois Human Rights Act, Titles I and III of the Americans with Disabilities Act of 1990 ("**ADA**") and all other acts and laws of whatever kind and all administrative rules and regulations issued pursuant to said Acts.

C. Hazardous Materials. The Licensee will not use, generate, manufacture, store, or dispose of, in, under, or about the Licensed Premises or the Subject Property, or transport to or from the Licensed Premises or the Subject Property, any Hazardous Materials. For purposes of this Agreement, "**Hazardous Materials**" includes, but is not limited to: (1) flammable, explosive, or radioactive materials, hazardous wastes, toxic substances, or related materials; (2) all substances defined as "hazardous substances," "hazardous materials," "toxic substances," or "hazardous chemical substances or mixtures" in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*, as amended by Superfund Amendments and Reauthorization Act of 1986, the Hazardous Materials Transportation Act, 49 U.S.C. § 1901, *et seq.*; the Resource Conservation and Recovery Act, 42

U.S.C. § 6901, *et seq.*; the Toxic Substances Control Act, at U.S.C. §2601, *et seq.*; (3) those substances listed in the United States Department of Transportation Table (49 CFR 172.10 and amendments thereto) or by the Environmental Protection Agency (or any successor agent) as hazardous substances (40 CFR Part 302 and amendments thereto); (4) any material, waste, or substance which is (a) petroleum, (b) asbestos, (c) polychlorinated biphenyls, (d) designated as a “hazardous substance” pursuant to § 311 of the Clean Water Act, 33 U.S.C. S 1251 *et seq.* (33 U.S.C. § 1321) or listed pursuant to the Clean Water Act (33 U.S.C. § 1317); (5) flammable explosives; or (6) radioactive materials; and (7) all substances defined as “hazardous wastes” in any applicable state or local laws.

For the purposes of this Agreement, “**Environmental Requirements**” means and includes all present and future laws (whether common law, statute, rule, order, guidance, regulation or otherwise), regulations, permits, and other guidelines or requirements of governmental authorities applicable to the Licensed Premises and relating to the environment and environmental conditions or to any Hazardous Materials (including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, the Federal Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*, the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.*, the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.*, the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§ 11011 *et seq.*, any so-called “Super Lien” law, liens under the Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118 (2002), institutional or engineering controls, environmental laws administered by the Environmental Protection Agency, any similar state and local laws and regulations, all as amended from time to time, and all regulations, guidance, orders, decisions, and decrees now or hereafter promulgated thereunder.

During the Initial Term or any Renewal Term of this Agreement, the Licensee will: (1) timely comply with all Environmental Requirements to the extent applicable to the Licensee's particular and unique use of the Licensed Premises; provided, however, the Licensee will have no liability, obligation or responsibility for any Hazardous Materials on the Licensed Premises or the Subject Property, except to the extent caused by or resulting from the actions of the Licensee, its employees or invitees; and (2) provide the City, immediately upon receipt thereof, with copies of any correspondence, notice, pleading, citation, notice of noncompliance, notice of violation, indictment, complaint, order, decree or other document from any source asserting or alleging that the Licensee has violated any Environmental Requirements in connection with the Licensee's use of or presence at the Licensed Premises, or asserting or alleging a circumstance or condition upon the Subject Property that may require the Licensee to undertake a cleanup, remedial action, other response activities (including, without limitation, investigation), or due care activities, or that imposes an obligation upon the Licensee to pay any amount required under any of the Environmental Requirements, by or on the part of the Licensee under any of the Environmental Requirements.

If authorized by the City, the Licensee will: (1) investigate and remediate in accordance with all Environmental Requirements any releases or threatened releases of Hazardous Materials which, as a result of the Licensee's use or occupancy of the Licensed Premises, are present in any portion of the Licensed Premises, the Subject Property, or the soils, ground water, or aquifer under the Subject Property in quantities or concentrations that exceed applicable standards for contaminated property under the Environmental Requirements (including, if applicable, Risk Based Corrective Action standards); and (2) will comply with, and not impede, the integrity and effectiveness of any institutional or engineering controls placed on the Licensed Premises or the

Subject Property, and will take reasonable steps to prevent releases or threatened releases on the Licensed Premises and the Subject Property.

## **Section 10. Indemnity and Insurance.**

A. Waiver of Claims and Indemnity. The Licensee hereby releases the City and its elected officials, officers, employees, attorneys, agents, and representatives from all claims, and waives all claims, for injury or damage to person, property or business sustained in or about the Licensed Premises or the Subject Property by the Licensee, its agents, employees or servants. The Licensee will indemnify, defend, and hold harmless the City and its elected officials, officers, employees, attorneys, agents, and representatives from and against any and all claims, actions, obligations, judgments, damages, liability, cost and expense, including reasonable attorneys' fees arising from or related to: (1) any loss of life, personal injury and/or damage to property occurring in, upon or at the Licensed Premises or the Subject Property resulting from the acts or omissions of the Licensee, except to the extent arising out of the negligence or intentional misconduct of the City and/or the City's agents or employees; (2) the particular or unique use of the Licensed Premises or the Subject Property or any part thereof by the Licensee; (3) the Licensee's failure to comply with any provision of this Agreement; and/or (4) any negligent act or omission or intentional misconduct of the Licensee and its agents, contractors, and employees. The Licensee's obligation under this Section 10.A shall survive the expiration of the term of this Agreement.

### **B. Insurance.**

1. Coverages and Limits. The Licensee shall provide certificates and keep in force policies of insurance evidencing the minimum insurance coverages and limits set forth below. Such policies shall be in a form, and from companies, acceptable to the City. Such insurance shall provide that no change, modification in, or cancellation of any insurance shall become effective until the expiration of thirty (30) days after written notice thereof shall have been given by the insurance company to the City.

a. Worker's Compensation and Employer's Liability. This insurance shall be kept in force during any time that Licensee has any employees and shall have limits not less than:

- i. Worker's Compensation: Statutory
- ii. Employer's Liability: \$1,000,000 injury - per occurrence  
\$1,000,000 disease - per employee  
\$1,000,000 disease - policy limit

Such insurance shall evidence that coverage applies in the State of Illinois.

b. Comprehensive Motor Vehicle Liability. This insurance shall be kept in force at any time that Licensee enters or occupies the Licensed Premises, shall cover vehicles owned, non-owned, or rented, and shall have limits not less than:

- i. Bodily Injury: \$1,000,000 per person;  
\$1,000,000 per occurrence
- ii. Property Damage: \$1,000,000 per occurrence;  
\$1,000,000 aggregate

All employees shall be included as insured.

- c. Comprehensive General Liability. This insurance shall be kept in force at any time that Licensee enters or occupies the Licensed Premises, shall have coverage written on an "occurrence" basis and shall have limits not less than:

- i. General Aggregate: \$2,000,000
- ii. Bodily Injury: \$1,000,000 per person;  
\$1,000,000 per occurrence
- iii. Property Damage: \$1,000,000 per occurrence;  
\$2,000,000 per aggregate

Coverages must include:

- Premises/Operations
- Products/Completed Operations
- Independent Contractors
- Personal Injury (with Employment Exclusion deleted)
- Broad Form Property Damage Endorsement
- Blanket Contractual Liability (must expressly cover the indemnity provisions of this Contract)
- Bodily Injury and Property Damage

"X", "C", and "U" exclusions must be deleted.

- d. Dram Shop Insurance. This insurance shall be kept in force at any time that Licensee serves liquor or allows liquor to be served or consumed on the Licensed Premises and shall have the limits required by statute.

2. Umbrella Policy. The required coverages may be in any combination of primary, excess, and umbrella policies. Any excess or umbrella policy must provide excess coverage over underlying insurance on a following-form basis such that when any loss covered by the primary policy exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover such loss. The limit of any umbrella policy shall be an additional \$1,000,000.

3. City as Additional Insured. The City must be named as an additional insured and a cancellation notice recipient on all policies with the exception of Worker's Compensation and Employer's Liability. The City shall be identified as an additional insured in the following manner "The City of Des Plaines, its elected officials, officers, employees, and agents."

4. Evidence of Insurance: The Licensee will furnish City with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. Failure of the City to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the City to identify a deficiency from evidence that is provided will not be construed as a waiver of Licensees' obligation to maintain such insurance. The City will have the right, but not the obligation, of prohibiting the Licensee from entering the Licensed Premises until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by City. Failure to maintain the required insurance will constitute an Event of Default under Section 13 of this Agreement. The Licensee will provide certified copies of all insurance policies required above within 10 days of City's written request for said copies.

#### **Section 11. Eminent Domain.**

If all or any part of the Licensed Premises is taken by or conveyed to any public authority under the power or threat of eminent domain, then the term of this Agreement shall cease to the extent that it relates to the part so taken from the day possession of that part shall be taken by such public authority. Any fees or other amounts payable to the City under this Agreement will be paid up to the date of such possession. If all or a substantial part of the Subject Property is taken or sold, such that Licensee, in its reasonable discretion, determines that operation of the Concession in accordance with this Agreement is impractical, then upon such taking or sale, Licensee will have the right to terminate this Agreement upon thirty (30) days written notice to the City. The Licensee will not be entitled to any portion of any amount paid to the City for any such taking or conveyance.

#### **Section 12. Assignments and Encumbrances.**

A. Assignments. The Licensee may not assign, in whole or in part, its rights, obligations, or interests in this Agreement, or grant any person or entity other than Licensee permission to occupy or use all or any part of the Licensed Premises or Subject Property, without the City's prior written consent, which consent the City may grant in its sole and absolute discretion. No assignment by Licensee will be effective prior to the execution by any assignee of a transferee and assumption agreement in a form acceptable to the City, under which transferee and assumption agreement the assignee will assume all of Licensee's obligations under this Agreement.

B. Encumbrances; Mechanics Liens. Licensee may pledge security interests in its equipment and in any other assets of Licensee's business, but Licensee may not otherwise encumber, in whole or in part, (1) its rights, obligations, or interests, in this Agreement; (2) the Licensed Premises; or (3) the Subject Property.

The Licensee has no express or implied authority to create or place any lien or encumbrance of any kind upon, or in any manner to bind the interest of the City or the Licensee in, the Licensed Premises or the Subject Property or to charge the amounts payable hereunder for any claim in favor of any person dealing with the Licensee, including those who may furnish materials or perform labor for any construction or repairs. The Licensee covenants and agrees that it will pay or cause to be paid all sums legally due and payable by it on account of any labor performed or materials furnished in connection with any work performed on the Licensed Premises and that it will save and hold the City harmless from all loss, cost or expense based on



or arising out of asserted claims or liens against the interest of the Licensee in the Licensed Premises under this Agreement. The Licensee will provide the City immediate written notice of the placing of any lien or encumbrance against the Licensed Premises or the Subject Property and cause such lien or encumbrance to be discharged within thirty (30) days of the filing or recording thereof; provided, however, the Licensee may contest such liens or encumbrances as long as such contest prevents foreclosure of the lien or encumbrance and the Licensee causes such lien or encumbrance to be bonded or insured over in a manner satisfactory to the City within such thirty (30) day period.

C. Unauthorized Assignments, or Encumbrances. Any assignment or encumbrance in violation of this Section 12 shall be void and, at the City's election, will constitute an Event of Default under Section 13 of this Agreement. No consent by the City to any assignment or encumbrance will constitute a waiver of any provision of this Agreement.

### **Section 13. Events of Default; Remedies.**

A. Events of Default. Any of the following will constitute a default by the Licensee (collectively, "**Events of Default**"):

1. If the Licensee fails either (i) to pay any License Fee or other charge due hereunder by the Licensee within ten (10) days after the applicable due date, or (ii) to perform any other obligation or covenant of this Agreement within fifteen (15) days after written notice; provided, however, that if such failure cannot reasonably be cured within such fifteen (15) day period, then Licensee will not be in default if the Licensee commences correction within such fifteen (15) day period and thereafter diligently prosecutes such cure in good faith to completion in no more than thirty (30) days; or

2. If any voluntary petition or similar pleading under any bankruptcy act or under any federal or state law seeking reorganization or arrangement with creditors or adjustment of debts, is filed by or against the Licensee, or if any such petition or pleading is involuntary, and it is not adjudicated favorably to the Licensee within thirty (30) days after its filing; or

3. If the Licensee admits its inability to pay its debts, or a receiver, trustee or other court appointee is appointed for all or a substantial part of the Licensee's property; or

4. If the interest of the Licensee in the Licensed Premises is levied upon or attached by process of law; or

5. If the Licensee makes an assignment for the benefit of creditors, or if any proceedings are filed by or against Licensee to declare the Licensee insolvent or unable to meet its debts.

B. Notice of Default. In the event that the Licensee violates any of the terms or conditions of this Agreement, including specifically, the Operational Requirements set forth in Section 6 of this Agreement, the City shall give the Licensee a written notice of such violation and demand correction or abatement thereof (a "**Notice of Default**"), provided however, that the City may cure any such violation without providing Notice of Default but may not terminate this Agreement except as provided in Subsection 13.C.

C. Termination for Default. The parties acknowledge and agree that (1) the Concession and the terms of this Agreement are intended to be incidental to, and promote, the City's operation of the Licensed Premises and the Subject Property for first class public mass transportation purposes; and (2) that if the Licensee fails to comply with the terms of this Agreement, including specifically, the Operational Requirements set forth in Section 6 of this Agreement, the Concession shall not adequately promote such public mass transportation purposes and, therefore, in the event of such a failure, the City shall be permitted to terminate this Agreement or cure such failure itself, in accordance with the terms of this Section 13. If, within thirty (30) days after a Notice of Default is served, Licensee has not (1) corrected or abated such violation; (2) demonstrated, to the City's reasonable satisfaction, that such violation cannot reasonably be cured during such 30-day period and commenced and diligently pursued a cure of such violation; or (3) demonstrated, to the City's reasonable satisfaction, that no violation exists, the City has the right to immediately declare a Default (a "**Default**") of this Agreement and (1) terminate this Agreement; (2) cure such Default itself and receive reimbursement from Licensee for any costs incurred thereby; and (3) pursue any and all remedies provided by law. Notwithstanding the foregoing, the 30-day period provided for in this Section 13.C. shall be reduced to a 15-day period for any failure by Licensee to pay money owed to the City as provided in this Agreement. In the event of termination for Default, the City has the right to take immediate possession of the Licensed Premises and the provisions of Section 14 shall be observed by the parties with regard to the surrender of the Licensed Premises.

D. Liability for Breach. Termination for Default or any other reason shall not excuse either party from any liability for any breach of this Agreement.

#### **Section 14. Conditions for Surrender of Licensed Premises and Termination of Agreement.**

A. City Property. Upon termination of this Agreement for any reason, the Licensee will surrender the Licensed Premises in the same condition received, broom clean, subject to ordinary wear and tear.

B. Licensee Equipment, Supplies, and Trade Fixtures. The Licensee further agrees that upon termination of this Agreement it will remove all equipment, supplies, and Trade Fixtures, ("**Licensee Equipment**") belonging to Licensee from the Licensed Premises. Following the removal of such Licensee Equipment shall repair any damage or injury to the Licensed Premises occasioned by installation or removal thereof. In the event that the Licensee Equipment is not removed within thirty (30) days after the termination of this Agreement, the Licensee shall be deemed to have abandoned to the City the Licensee Equipment, and waives any and all claim for possession of or damages to such. The City may remove the Licensee Equipment and dispose of it and Licensee shall pay to the City the cost of such removal and disposal.

#### **Section 15. General Provisions.**

A. Notice. Notices required or permitted to be given by either party to the other under this Agreement will be in writing and will not be effective unless personally delivered or mailed by certified or registered mail, return receipt requested, postage prepaid, to the following addresses:

To Licensee:

Alexandra Hilton, TITLE  
Juice and Berry, LLC

With a Copy To:

Paris Riley

310 S. Roselle Rd.  
Roselle, IL 60172

To City:

City of Des Plaines  
1420 Miner Street  
Des Plaines, IL 60016  
Attention: Finance Director

With a Copy To:

Elrod Friedman, LLP  
325 N. LaSalle St., Suite 450  
Chicago, IL 60654  
Attention: Peter M. Friedman

Notices will be deemed to have been given three (3) days after mailing or upon personal delivery. Either party may change its address for receipt of notices by written notice to the other party given in accordance with the terms hereof.

B. Time of the Essence. Time is of the essence in the performance of all terms and provisions of this Agreement.

C. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements and negotiations between the parties, whether written or oral, relating to the subject matter of this Agreement.

D. Exhibits. Exhibits 1 through 3 attached to this Agreement are, by this reference, incorporated in and made a part of this Agreement. In the event of a conflict between an exhibit and the text of this Agreement, the more specific term shall control.

E. Amendments and Modifications. No amendment or modification to this Agreement shall be effective unless and until it is reduced to writing and approved and executed by all parties to this Agreement in accordance with all applicable statutory procedures.

F. Governing Law. This Agreement shall be governed by, and enforced in accordance with, the internal laws, but not the conflicts of laws rules, of the State of Illinois.

G. Changes in Laws. Unless otherwise explicitly provided in this Agreement, any reference to any Requirements of Law shall be deemed to include any modifications of, or amendments to such Requirements of Law as may, from time to time, hereinafter occur.

H. Non-Waiver. The City shall be under no obligation to exercise any of the rights granted to it in this Agreement. The failure of the City to exercise at any time any right granted to the City shall not be deemed or construed to be a waiver of that right, nor shall the failure void or affect the City's right to enforce that right or any other right.

I. Severability. It is hereby expressed to be the intent of the parties hereto that should any provision, covenant, agreement, or portion of this Agreement or its application to any person, entity, or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application to any person, entity, or property shall not be impaired thereby, but the remaining provisions shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

J. No Third Party Beneficiaries. No claim as a third party beneficiary under this Agreement by any person, firm, or corporation shall be made, or be valid, against the City, or the Licensee.

K. Attorneys' Fees. In any litigation arising out of this Agreement, or any other litigation which one party causes the other party to become involved without said other party's fault, the prevailing party in said litigation, or the party involved without fault, as the case may be, will be entitled to recover from the other party all attorneys' fees incurred in connection therewith.

**[END OF TEXT - SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, the parties hereto have affixed their signatures the date and year first above written.

**CITY OF DES PLAINES**, an Illinois home rule municipality

By: \_\_\_\_\_  
Its: Mayor

ATTEST:

By: \_\_\_\_\_  
Its: City Clerk

**JUICE AND BERRY, LLC.** an Illinois Corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

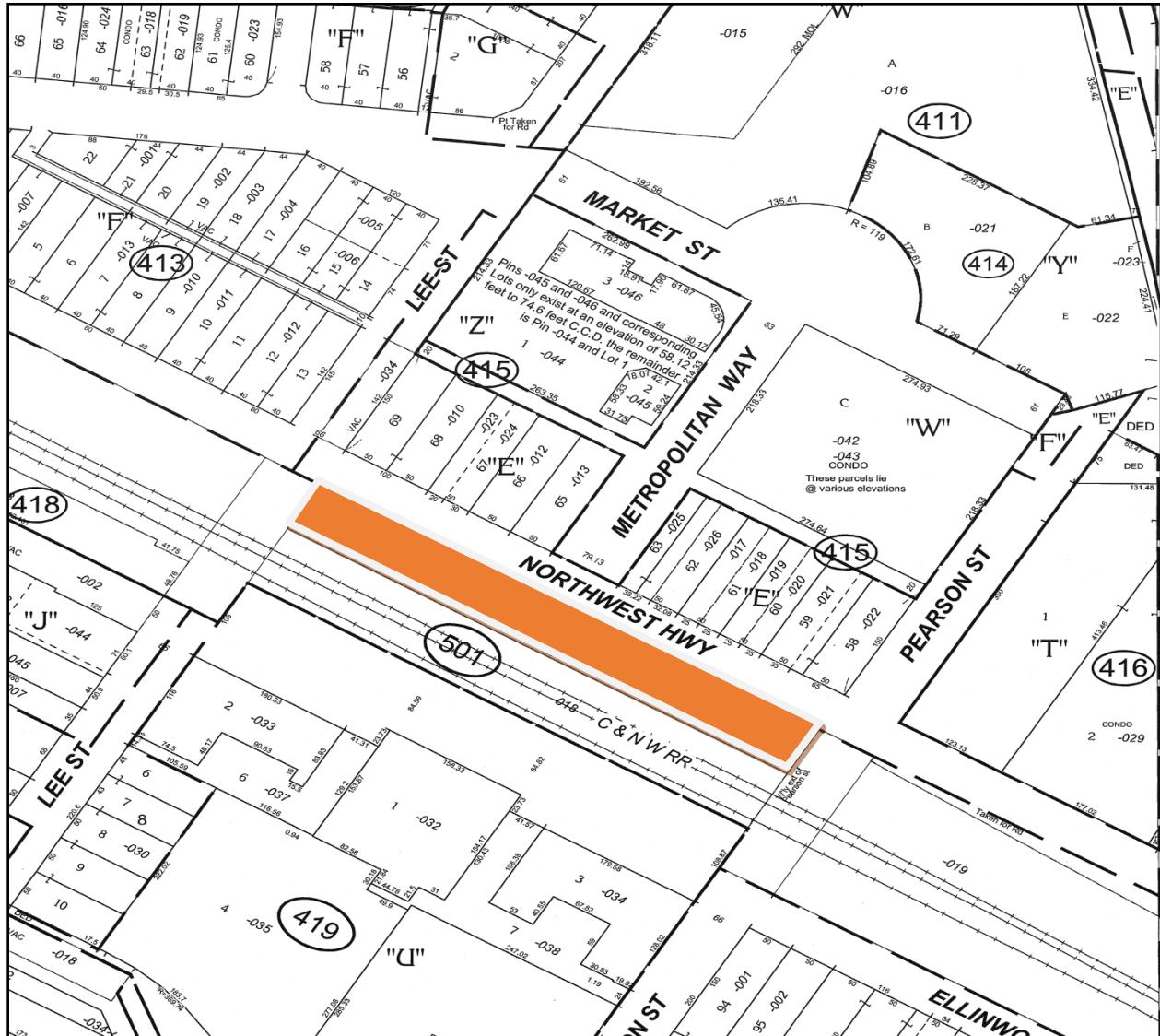
WITNESS

By: \_\_\_\_\_

**EXHIBITS**

<b>Exhibit 1</b>	Depiction of Subject Property
<b>Exhibit 2</b>	Station Floor Plan
<b>Exhibit 3</b>	Key Management Personnel

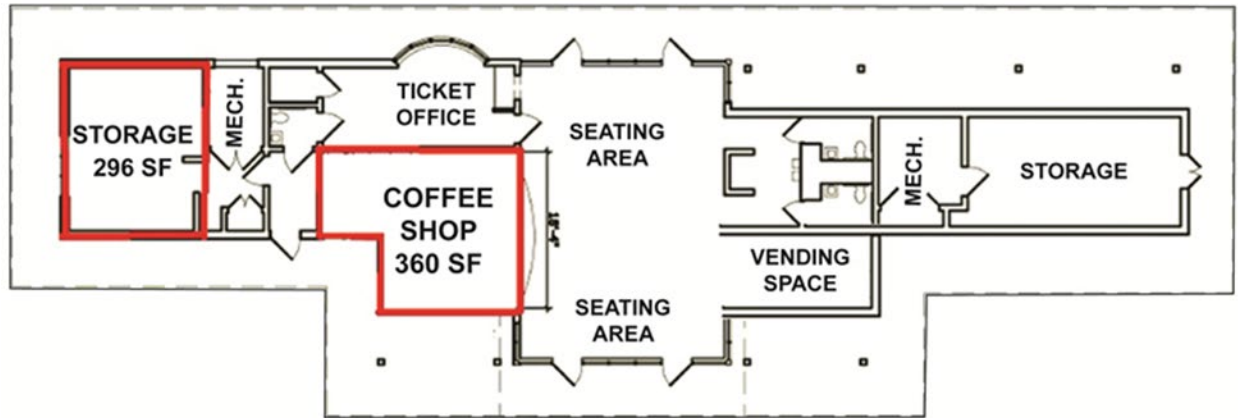
**EXHIBIT 1**  
**DEPICTION OF SUBJECT PROPERTY**



Commonly known as 1501 Miner Street, Des Plaines, Illinois 60016

PIN: 09-17-415-039-0000

**EXHIBIT 2**  
**STATION FLOOR PLAN**





### EXHIBIT 3

#### KEY MANAGEMENT PERSONNEL

Alexandra Hilton  
Paris Riley