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***CONFIDENTIAL ATTORNEY-CLIENT
PRIVILEGED MEMORANDUM***

DATE: September 12, 2013

TO: Hotel Association of New York City, Inc.
Labor Relations Members
General Managers, Human Resource Directors and Controllers

FROM: Kane Kessler, P.C.
Labor and Employment Law Department

RE: Concessionaires

Concessionaires are defined under IWA Article 1(A)(2) as “all restaurants, lessees and contractors operating within Hotels that employ employees in job classifications covered by this Agreement”. IWA Article 45(A) (Area Standards and Work Preservation), inter alia, requires that Hotels make certain that any “contract, lease or agreement” with a concessionaire provide that the concessionaire agrees to pay its employees who work in IWA classifications wages and benefits which are equivalent to the wages and benefits received by Hotel employees employed in the same classification(s). Article 45(C) imposes liability on Hotels for failure to make concessionaires adhere to Article 45(A) and states that the Hotel and concessionaire are “joint employers for the purposes of the IWA.”

Too often it seems that Hotels fail to protect themselves by contractually binding their concessionaires to Article 45 with the outcome being that the Hotel is left to pay the wages, benefits and Fund contributions owed by the concessionaire without any viable recourse against the concessionaire.

Periodically, we have distributed recommended language for leases or agreements with concessionaires to codify Hotels’ compliance with the IWA and to protect Hotels in the event of a default by their concessionaire. Another copy of our recommended lease or agreement language, updated for the current IWA, is enclosed.

If you have any questions, do not hesitate to contact David R. Rothfeld, Judith A. Stoll, Niki J. Franzitta, Lois M. Traub, Alexander Soric or Robert L. Sacks. If you need assistance with your lease, do not hesitate to contact Gary Ostroff, (212) 519-5112, or Darren Berger, (212) 519-5196, of our Real Estate Department.

cc: Joseph E. Spinnato, Esq.
Geoffrey A. Mills, Chairman

Collective Bargaining Agreement:

(a) Vendor acknowledges receipt of a copy of the Industry-Wide Collective Bargaining Agreement (the "Collective Bargaining Agreement" between the Hotel Association of New York City, Inc. and the New York Hotel Trades Council, AFL-CIO ("Union") effective from July 1, 2012 to midnight June 30, 2019 ("the Collective Bargaining Agreement"), and Vendor represents that it is fully familiar with all of the terms and conditions contained therein. Vendor covenants and agrees that it will, at all times, comply with, and not violate, the provisions of the Collective Bargaining Agreement, as the same may, from time to time, be renewed, modified, amended or extended, and that Vendor will commit no act or omission that would constitute a violation of the Collective Bargaining Agreement. Vendor will take whatever steps necessary to achieve compliance with such Collective Bargaining Agreement to insure that Hotel operations are not adversely impaired, either by work stoppage, picketing or otherwise, and Vendor will take such further necessary action, including payment of monies to insure that Hotel is not liable to the Union or to others for any area standards (as hereinafter defined) obligations by reason of Vendor's operations at the demised premises at any time. Without limiting the foregoing, Vendor agrees as follows:

(i) Vendor will comply with the provisions of Paragraph 45 of the Collective Bargaining Agreement, as amended, which provides that employees employed in job classifications covered by the Collective Bargaining Agreement must work in accordance with the schedule of hours and will receive not less than the wages and economic benefits required by the Collective Bargaining Agreement, including holidays, vacation, premiums, overtime, health and welfare, dental, pension, legal aid training and/or any other economic benefits required by the Collective Bargaining Agreement (such benefits sometimes referred to as the "Area Standards");

(ii) Vendor agrees to submit any questions or disputes concerning compliance with respect to the provisions of Paragraph 45 to the Impartial Chairpersons designated under Paragraph 26 of the Collective Bargaining Agreement for final and binding determination. Vendor acknowledges that any affected party may institute a request for such arbitration. If Vendor is not party to a collective bargaining agreement with Union, simultaneously with Vendor's execution of the Agreement, Vendor shall execute the letter attached hereto as Ex. 1.

(iii) Vendor will furnish security in the form of cash or bond in the amount of three (3) months' wages for all employees in order to secure performance of the obligations contained in the Collective Bargaining Agreement. In the event that Vendor's payroll shall increase, either due to increased wages or increased number of employees, then from time to time but no more frequently than once a quarter, Vendor shall supplement the deposited security to reflect the increased payroll. As provided in Paragraph 46 of the Collective Bargaining Agreement, the security shall be deposited with the Impartial Chairperson, and in the event of a default by Vendor in performance of its obligations with respect to payment of wages or other benefits, the Impartial Chairperson may order such payment to be made from the security deposited by Vendor and, in such event, Vendor shall be required to restore the amount of the cash or bond to

its full amount. Simultaneously with Vendor's execution of this Agreement, Vendor shall deliver the cash or bond to the Impartial Chairperson.

(b) Vendor further represents that it is fully familiar with Paragraph 45(C) to the Collective Bargaining Agreement which mandates that the Vendor and Hotel are deemed joint employers for labor relations purposes with regard to the schedule of hours, wages and economic benefits, including holidays, vacation, premiums, overtime, health and welfare, dental, pension, legal and training. Vendor agrees to submit to such control by Hotel as is necessary for Hotel, in Hotel's sole judgment, to be in compliance with the Area Standards requirements of Paragraph 45 and Paragraph 45(C).

(c) In order to assist Hotel as joint employer, in its determination of Area Standards compliance, Vendor shall deliver, or make available to, Hotel, or its agents, on an interval not longer than monthly, the following:

(i) A fully signed copy of any collective bargaining agreement with an Union representing Vendor's employees at the premises;

(ii) The number of employees covered by Vendor's obligations under Article 45(C);

(iii) Weekly work schedules of Vendor's employees and copies of time cards, sign in sheets or other records of attendance;

(iv) Weekly or other periodic record of wages, benefits, fund contributions, dues, fees, assessments, and taxes paid to or on behalf of Vendor's employees, including but not limited to ADP or other similar automated payroll reports, payroll registers, etc.; and

(v) Copies of forms WT4 and 914 and reconciliations (if applicable) to the payroll registers.

(d) Notwithstanding the foregoing, Hotel and Vendor are not joint employers for any purpose except those required by Paragraph 45(C) of the Collective Bargaining Agreement. Vendor acknowledges that it is solely responsible for payment of wages, benefits, taxes, compliance with any and all federal, state and local law or regulation relating to employment or its operations and shall not seek recovery from Hotel in connection with any claim, proceeding or demands raised in connection with its operation of the premises or employment of employees.

(e) (i) Vendor, its agents, employees and affiliates, shall not engage in, directly or indirectly, any labor dispute, including, by way of example and not by way of limitation, walk-outs, sit-downs, sit-ins, boycotts, picketing, strikes, or other interference with Hotel's business, guests, or property (herein "labor dispute"). Vendor, its agents, employees and affiliates, shall not honor, or refuse to cross any picket line established at Hotel whether directed at Hotel or Third Parties.

(ii) Vendor shall take all steps necessary to prevent its employees, agents or affiliates from engaging in any of the conduct or activity prohibited by subparagraph (f)(i) hereof.

(iii) In the event that as a result of any labor dispute, any union establishes a picket line at the site by reason of the operations of Vendor and such picketing continues for a period of two (2) days and in Hotel's reasonable opinion such picketing creates an adverse effect on Hotel's operations, then (except in the case of a strike caused by Hotel or another Vendor of Hotel) Vendor shall cease doing business or engaging in the activities which are the subject of the picketing until the dispute causing such picket line is resolved or the picket line is removed or until Hotel, in its sole discretion, considers it advisable for Vendor to reopen the demised premises for business even though the labor dispute is continuing. In the event Vendor is required by Hotel to cease doing business at the demised premises as aforesaid, and as a result therefore, Vendor's does not conduct business for two (2) days, or in the event such picket line or sit-down strike continues for a successive period of two (2) days, then, in either of such events, Hotel shall have the right to terminate this Agreement upon one (1) days' written notice to Vendor and upon the expiration of said one (1) - day period, this Agreement shall terminate and any and all rights of Vendor under this Agreement, or any one claiming by, through or under Vendor, shall terminate and come to an end with the same force and effect as if the date of such termination was the date fixed for the expiration of the Agreement.

(iv) In the event that either the operations of Vendor or any labor dispute of Vendor shall directly result in a labor dispute by any employees of the Hotel, Hotel shall have the right to terminate this Agreement upon one (1) days' written notice to Vendor and upon the expiration of said one (1) - day period, this Agreement shall terminate and any and all rights of Vendor under this Agreement, or any one claiming by, through or under Vendor, shall terminate and come to an end with the same force and effect as if the date of such termination was the date fixed for the expiration of the demised term, unless, within said one (1) - day period, such labor dispute is resolved and the employees of the Hotel return to work.

(f) Hotel shall have the right to terminate this Agreement upon ten (10) days prior written notice to Vendor for Vendor's breach, or failure or refusal to adhere to, in whole or in part, any of its obligations set forth herein, including, by way of example and not by way of limitation, failure to comply with the Area Standards requirements of Paragraph 45, failure or refusal to appear for an arbitration hearing at the Office of the Impartial Chairperson, failure to abide by a decision of the Impartial Chairperson, failure or refusal to furnish or restore the security required hereunder, failure to remove an objectionable employee.

(g) Hotel shall also have the right to withhold monies due to Vendor under this Agreement, in the event that Hotel has reason to believe that Vendor has failed to meet the foregoing obligations under the Collective Bargaining Agreement. The amount of such monies that Hotel withholds shall be equal to an amount which Hotel, in good faith, approximates as Vendor's outstanding obligations under the Collective Bargaining Agreement. The Hotel's exercise of this right is in addition to and not exclusive of its right to terminate the Agreement.

(h) Vendor shall indemnify and hold harmless Hotel from and against any liabilities, obligations, damages, penalties, claims, costs and expenses, including reasonable attorneys fees, caused or incurred as a result, directly or indirectly, of Vendors' breach or claims of any of its obligations hereunder. Upon written notice from Hotel, Vendor shall, at Vendor's expense, resist or defend any action or proceeding of any kind or nature by retention of counsel, which counsel shall be approved by landlord prior to retention.