

LICENSE AGREEMENT

Parking at the Coliseum

THIS LICENSE AGREEMENT (“Agreement”) is entered into by the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “**City**”) and **BOTTLING GROUP LLC**, a Delaware limited liability company with its principal place of business at 1111 Westchester Avenue, White Plains, New York 10604 (the “**Licensee**”), collectively, “the Parties.”

1. **Agreement.** Upon execution of this Agreement, the City grants a revocable and non-exclusive license (the “**License**”) to the Licensee and Licensee’s employees, subcontractors, and agents for the purpose of entering that portion of the property known as the Coliseum Parking lot described in **Exhibit A** attached hereto (the “**Parking Lot**”) and utilizing the Parking Lot for trailer parking (the “**Authorized Use**”).
2. **Retained Rights of City.** The City retains the right of use, occupancy, and control of the Parking Lot, but such use, occupancy and control shall not unreasonably interfere with the exercise of the License as granted and conditioned in this Agreement.
3. **Use of Premises.** As a condition of the Agreement, Licensee shall be responsible for all damage to the Parking Lot caused by the negligence of Licensee or its employees, subcontractors and agents. Licensee shall not be responsible for normal wear and tear of the Parking Lot related to commercially acceptable parking, driving and/or staging use of the Parking Lot.
4. **Term.** This Agreement shall commence fifteen (15) days after the City gives Licensee notice that the City will begin construction (the “**Work**”), pursuant to the Globeville Landing Outfall Project No. 20100346 and shall be in effect until revoked or terminated as provided herein.
5. **Revocation & Termination.** The City has the right to revoke the License, and terminate this Agreement, for violation of the terms, conditions, warranties and covenants of the Temporary Easement between the Parties and CVJ Axles, Inc., dated June 7, 2013 and filed with the Clerk and Recorder’s Office in the City and County of Denver, with a clerk and recorder number of 2013082163, as amended from time to time. The License shall terminate automatically and be of no further force or effect without further action be either party upon the City’s completion of the Work.
6. **Costs & Charges.** The exercise of the License herein granted and other rights and obligations under this Agreement shall be without cost or expense to the City. There shall be no monetary charge to the Licensee for the License granted under this Agreement.
7. **Permits & Compliance.** The Licensee shall comply with all applicable laws, rules, regulations, and requirements relating to the Authorized Use. The Licensee shall provide copies of any permits upon the request of the Executive Director of Public Works (the “**Director**”). Nothing in this Agreement shall relieve Licensee from complying with other regulatory requirements applicable to the Authorized Use.

8. Damage to City Property/City to Provide Temporary Fencing and Landing Pads. Any real or personal property of the City damaged or destroyed by the Licensee that is not a result of normal wear shall be promptly repaired or replaced by Licensee to the satisfaction of the Director. For failure or refusal by the Licensee to comply with this paragraph, the City shall have the right to seek recovery of damages, costs, expenses, and attorney's fees from the Licensee by any means available under the law. The City shall furnish and install landing pads on the Parking Lot. The City shall install temporary fencing around the Parking Lot during the term of this License.

9. Third Party Contracts. The Licensee has no authority to bind the City on any contractual matters. The City shall have no liability or financial obligation to or for any contractor, subcontractor, supplier, or other person or entity with which the Licensee contracts or has a contractual arrangement with respect to the Authorized Use or other aspects of this Agreement.

10. Insurance.

(a) General Conditions. The Licensee shall secure, at or before the time of execution of this Agreement, the following insurance covering the Authorized Use. The Licensee shall keep the required insurance coverage in force at all times during the Term of this Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-" VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the above-described policies are canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement and shall reference the City contract number listed on the signature page of this Agreement. Such written notice shall be sent thirty (30) days prior to such cancellation or reduction unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Licensee shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Licensee. Licensee shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Licensee. The Licensee shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

(b) Proof of Insurance. Licensee shall provide a copy of this Agreement to its insurance agent or broker. Licensee may not commence the Authorized Use relating to the Agreement prior to placement of coverages required under this Agreement. Licensee certifies that the certificate of insurance attached as **Exhibit B**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Licensee's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office

may require additional proof of insurance, including but not limited to policies and endorsements.

(c) Additional Insureds. For general liability, the Licensee's insurer shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

(d) Waiver of Subrogation. For all coverages, the Licensee's insurer shall waive subrogation rights against the City.

(e) Contractors. All independent contractors or sub-contractors, suppliers or other entities utilizing the Parking Lot for its Authorized Use shall be subject to all of the requirements in this Agreement and shall procure and maintain the same coverages required of the Licensee. The Licensee shall include all independent contractors and subcontractors, suppliers or other entities as insureds under its policies or shall ensure that the same maintain the required coverages. The Licensee agrees to provide proof of insurance for the same upon request by the City.

(f) Workers' Compensation/Employer's Liability Insurance. The Licensee shall maintain the coverage as required by statute and shall maintain Employer's Liability insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Licensee expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Licensee's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date the Licensee executes this Agreement.

(g) General Liability. The Licensee shall maintain limits of \$1,000,000 for each occurrence claim, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations for each occurrence, and \$2,000,000 policy aggregate.

(h) Automobile Liability. Contractor shall maintain Business Automobile Liability, or its equivalent, with minimum limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement. If transporting wastes, hazardous material, or regulated substances, Contractor shall carry a pollution coverage endorsement and an MCS 90 endorsement on their policy. Transportation coverage under the Contractors Pollution Liability policy shall be an acceptable replacement for a pollution endorsement to the Business Automobile Liability policy.

(i) Additional Provisions.

(i) For general liability, the policy must provide the following:

(a) That this Agreement is an Insured Contract under the policy;

(b) Defense costs are outside the limits of liability;

(c) A severability of interests, separation of insureds provision (no insured vs. insured exclusion); and

(d) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(ii) For claims-made coverage:

(a) The retroactive date must be on or before the commencement date of this Agreement.

(b) Licensee shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Licensee will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

11. Indemnification. The Licensee releases and indemnifies and saves harmless the City, its officers, agents, and employees from and against any and all loss of or damage to property, or injuries to or death of any person or persons, including property and employees or agents of the City, and shall defend, indemnify, and save harmless the City, its officers, agents, and employees from any and all claims, damages, suits, costs, expenses, liability, actions, penalties, or proceedings of any kind or nature, including without limitations worker's compensation claims, of or by anyone, which with respect to any of the foregoing in any way results, from, or arises out of, directly or indirectly, its use or occupancy of any portion of the Parking Lot or any Authorized Use, and including acts and omissions of officers, employees, representatives, suppliers, invitees, contractors and agents of the Licensee; provided, that the Licensee need not release, indemnify or save harmless the City, its officers, agents, and employees from damages resulting from the actions or omissions of the City's officers, agents, and employees. The minimum insurance requirements prescribed in this Agreement shall not be deemed to limit or define the obligations of the Licensee.

12. Damage or Injury. The City shall not be responsible or liable for injuries to persons or damage to property when such injuries or damage are caused by or result from the Licensee's use of the Parking Lot under this Agreement and are not due to the actions or omissions of the City's officers, agents or employees. It is expressly understood and agreed that the City is relying upon, and has not waived, the monetary limitations (presently \$350,000 per person, \$990,000 per occurrence) and all other rights, immunities and protection provided by the Colorado Governmental Act, C.R.S. § 24-10-101, *et seq.*

13. Notices. All notices required to be given to the City or Licensee shall be in writing and sent by certified mail, return receipt requested, to:

Licensee: Bottling Group, LLC
111 Westchester Avenue
White Plains, New York 10604
ATTN: Cynthia Poggiogalle, Director of Real Estate

Matt LcLaughlin
3801 Brighton Boulevard
Denver, Colorado 80216

City: Executive Director
Department of Public Works
201 West Colfax Avenue, Department 611
Denver, CO 80202

City Attorney's Office
201 West Colfax Avenue, Department 1207
Denver, Colorado 80202

Any party may designate in writing from time to time the address of substitute or additional persons to receive such notices. The effective date of service of any such notice is the date it is actually received.

14. Compliance with Laws. All persons or entities utilizing the Parking Lot pursuant to this Agreement shall observe and comply with the applicable provisions of the Charter, ordinances, and rules and regulations of the City and with all applicable Colorado and federal laws.

15. Applicable Law; Venue. The Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of the State of Colorado and the United States of America. Venue for any legal action relating to this Agreement shall lie solely in the District Court in and for the City and County of Denver

16. Amendment. This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion or other amendment shall have any force or effect whatsoever, unless embodied in writing in the same formality as this Agreement. Any representations made by any officer, agent or employee of the respective parties unless included in this Agreement are null and void and of no effect. No subsequent notation, renewal, addition, deletion, or other amendment shall have any force or effect unless embodied in a written amendatory or other agreement executed by the parties in the same formality as this Agreement.

17. Severability. The promises and covenants contained in this Agreement are several in nature. Should any provision of this Agreement be judicially adjudged invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provisions of this Agreement. However, if the license is deemed invalid or unenforceable, the Agreement shall terminate.

18. Exhibits. All exhibits attached to this Agreement are incorporated in this Agreement by reference. To the extent there is a conflict or inconsistency between the language of this Agreement and any exhibit, the language of this Agreement shall control.

19. Third Party Beneficiaries. It is expressly understood and agreed upon that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Licensee, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement, including but not limited to subcontractors, sub-consultants, and suppliers. It is the express intention of the City and Licensee that any person other than the City or the Licensee

receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

20. Appropriation. All obligations of the City under and pursuant to this Agreement are subject to prior appropriations of monies expressly made by the City Council for the purposes of this Agreement and paid into the Treasury of the City.

21. Recordation. This Agreement may be recorded by either party at the Office of the Clerk and Recorder for the City and County of Denver.

22. Conflict of Interest by City Officers. The Licensee represents that to the best of its information and belief no officer or employee of the City is either directly or indirectly a party to or in any manner interested in this Agreement except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

23. No Construction against the Drafting Party: The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

24. Electronic Signatures and Electronic Records: Licensee consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature under the Agreement, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

25. Authority. The persons who affixed the signatures hereto on behalf of the Licensee attest and affirm they have authority to execute this Agreement on behalf of Licensee.

26. Execution. This Agreement shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver.

Contract Control Number: _____

Contract Name: BOTTLING GROUP, LLC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____
MAYOR

Clerk and Recorder, Ex-Officio Clerk of
the City and County of Denver

APPROVED AS TO FORM:
Attorney for the City and
County of Denver

REGISTERED AND COUNTERSIGNED:

By _____
Manager of Finance

By _____
Assistant City Attorney

By _____
Auditor

Contract Control Number: _____

Contractor Name: BOTTLING GROUP, LLC

By: _____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: (if required)

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT A

SECTION 23, TOWNSHIP 3 SOUTH, RANGE 68 WEST 6th P.M.
----CITY AND COUNTY OF DENVER----

PROPERTY DESCRIPTION

A PARCEL OF LAND BEING LOCATED IN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 23, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEARINGS ARE ASSUMED AND ARE BASED UPON THE 20.00' FOOT RANGE LINE LOCATED AT THE INTERSECTION OF BRIGHTON BOULEVARD AND 40TH STREET AND THE NORTHEASTERLY PROLONGATION THEREOF, SAID RANGE LINE BEARS N44°54'46"E A DISTANCE OF 574.20' BETWEEN THE RANGE POINT MONUMENTS SHOWN HEREON.

COMMENCING AT THE MOST NORTHEASTERLY RANGE POINT;
THENCE N47°30'34"W A DISTANCE OF 710.51 FEET TO THE **POINT OF BEGINNING**;
THENCE S44°55'45"W TANGENT WITH THE FOLLOWING DESCRIBED CURVE A DISTANCE OF 260.00 FEET;
THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 90°00'00", A RADIUS OF 100.00 FEET, A CHORD BEARING S89°55'45"W A DISTANCE OF 141.42 FEET, AND AN ARC DISTANCE OF 157.08 FEET;
THENCE N45°04'15"W TANGENT WITH THE LAST DESCRIBED CURVE A DISTANCE OF 182.00 FEET;
THENCE N44°55'45"E A DISTANCE OF 360.00 FEET;
THENCE S45°04'15"E A DISTANCE OF 282.00 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 99,374 SQUARE FEET (2.281 ACRES), MORE OR LESS.


KENNETH G. QUELLETTE, P.L.S. 24673
DATE: MAY 25, 2016
JOB NO. 65418594
FOR AND ON BEHALF OF MERRICK & COMPANY

| REVISION DESCRIPTION | |
|---|----------|
| MERRICK PROJECT NO. | 65418594 |
| DRAWN | KGO |
|  MERRICK® & COMPANY | |
| 5970 Greenwood Plaza Blvd., Greenwood Village, CO 80111 Telephone: 303-751-0741 | |

CITY AND COUNTY OF DENVER

LICENSE AGREEMENT

DATE: MAY 25, 2016

SCALE: N/A

SHEET 1 OF 2

ILLUSTRATION FOR EXHIBIT A

2015-PRJMSTR-0000637-01-LA



