File #: CB 119154, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE granting Pier 54, LLC permission to maintain and operate a pedestrian walkway and a covered patio, including benches, tables, food preparation and serving areas, outdoor lighting, pedestrian deck, pilings, and other related appurtenant structures in the public place on the north side of Madison Street, west of Alaskan Way, for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

WHEREAS, by Ordinance 112217, The City of Seattle granted Ivar's Inc. permission to construct and maintain a pedestrian walkway and a covered patio, including benches, tables, food preparation and serving areas, outdoor lighting, pedestrian deck, pilings, and other related appurtenant structures and other related appurtenant structures in the public place on the north side of Madison Street, west of Alaskan Way; and

WHEREAS, the permission authorized by Ordinance 112217 was amended by Resolution 28305, Resolution 29331, Resolution 30477, and Ordinance 121855, and the permission ended on May 3, 2015; and

WHEREAS, Ivar's Inc. applied to the Director of Transportation to continue maintaining and operating a pedestrian walkway and a covered patio and has satisfied all the terms of the original authorizing ordinance as amended;

WHEREAS, Pier 24, LLC purchased the property located at 1001 Alaskan Way, from Ivar’s Inc., on May 24, 2017, and Pier 54, LLC, has applied to transfer the application to renew the pedestrian walkway and covered patio from Ivar’s Inc., NOW, THEREFORE**,**

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. **Permission.** Subject to the terms and conditions of this ordinance, The City of Seattle ("City") grants permission (also referred to in this ordinance as a permit) to Pier 54 LLC., and its successors and assigns as approved by the Director of Transportation ("Director") according to Section 15 of this ordinance (the party named above and each such approved successor and assign is referred to as "Permittee"), to maintain and operate a pedestrian walkway and a covered patio, including benches, tables, food preparation and serving areas, outdoor lighting, pedestrian deck, pilings, and other related appurtenant structures ("pedestrian walkway and patio") in the public place on the north side of Madison Street, west of Alaskan Way, for a ten-year term, renewable for two successive ten-year terms, adjacent in whole or in part to the property legally described as:

PORTION OF LOT 8 AND ALL OF LOTS 9-12, BLOCK 181, SEATTLE TIDELANDS; TOGETHER WITH PORTIONS OF ADJOINGING LANDS IN THE SOUTHEAST QUARTER OF SECTION 31-25-4, KING COUNTY, WASHINGTON.

Section 2. **Term.** The permission granted to Permittee is for a term of ten years starting on May 4, 2015 and ending at 11:59 p.m. on May 3, 2025. Upon written application made by the Permittee at least 180 days before expiration of the term, the Director may renew the permit twice, each time for a successive ten-year term, subject to the considerations set forth in Section 3 of this ordinance and subject to the right of the City to require removal of the pedestrian walkway and covered patio or to revise this ordinance or any of the terms and conditions of the permission granted by this ordinance. The total term of the permission, including renewals, shall not exceed 30 years. The Permittee shall submit any application for a new permission no later than 180 days prior to the expiration of the then-existing term.

Section 3. **Basis for renewal.** Renewal of the permission may be granted, denied, or amended in accordance with Title 15 of the Seattle Municipal Code and is subject to the transportation needs of the area anticipated at the time of expiration of the initial term of the permission, including the status of the rebuilding of Alaskan Way/Elliot Way and other projects in the area. The Director shall make a determination and give written notice of that determination to the Permittee by the eighth year of the initial term of this permission,

whether the transportation needs require denial or amendment to the permission granted by the authorizing ordinance. Nothing in this section impairs the rights of the City Council and the Director under other sections of this ordinance, including to require the removal of the pedestrian walkway and covered patio pursuant to Section 5 of this ordinance.

Section 4. **Protection of utilities.** The permission granted is subject to the Permittee bearing the expense of any protection, support, or relocation of existing utilities deemed necessary by the owners of the utilities, and the Permittee being responsible for any damage to the utilities due to the construction, repair, reconstruction, maintenance, operation, or removal of the pedestrian walkway and covered patio and for any consequential damages that may result from any damage to utilities or interruption in service caused by any of the foregoing.

Section 5. **Removal for public use or for cause.** The permission granted is subject to use of the public place by the City and the public for travel, utility purposes, and other public uses or benefits. The City expressly reserves the right to deny renewal, or terminate the permission at any time prior to expiration of the initial term or any renewal term, and require the Permittee to remove the pedestrian walkway and covered patio, or any part thereof or installation on the public place, at the Permittee's sole cost and expense in the event that:

(a) the City Council determines by ordinance that the space occupied by the pedestrian walkway and covered patio is necessary for any public use or benefit or that the pedestrian walkway and covered patio interferes with any public use or benefit; or

(b) the Director determines that use of the pedestrian walkway and covered patio has been abandoned; or

(c) the Director determines that any term or condition of this ordinance has been violated, and the violation has not been corrected by the Permittee by the compliance date after a written request by the City to correct the violation (unless a notice to correct is not required due to an immediate threat to the

health or safety of the public).

A City Council determination that the space is needed for, or the pedestrian walkway and covered patio interferes with, a public use or benefit is conclusive and final without any right of the Permittee to resort to the courts to adjudicate the matter.

Section 6. **Permittee's obligation to remove and restore.** If the permission granted is not renewed at the expiration of a term, or if the permission expires without an application for a new permission being granted, or if the City terminates the permission, then within 90 days after the expiration or termination of the permission, or prior to any earlier date stated in an ordinance or order requiring removal of the pedestrian walkway and covered patio, the Permittee shall, at its own expense, remove the pedestrian walkway and covered patio and all of the Permittee's equipment and property from the public place and replace and restore all portions of the public place that may have been disturbed for any part of the pedestrian walkway and covered patio in as good condition for public use as existed prior to construction of the pedestrian walkway and covered patio and in at least as good condition in all respects as the abutting portions of the public place as required by Seattle Department of Transportation (SDOT) right-of-way restoration standards.

Failure to remove the pedestrian walkway and covered patio as required by this section is a violation of Chapter 15.90 of the Seattle Municipal Code (SMC) or successor provision; however, applicability of Chapter 15.90 does not eliminate any remedies available to the City under this ordinance or any other authority. If the Permittee does not timely fulfill its obligations under this section, the City may in its sole discretion remove the pedestrian walkway and covered patio and restore the public place at the Permittee's expense, and collect such expense in any manner provided by law.

Upon the Permittee's completion of removal and restoration in accordance with this section, or upon the City's completion of the removal and restoration and the Permittee's payment to the City for the City's removal and restoration costs, the Director shall then issue a certification that the Permittee has fulfilled its removal and restoration obligations under this ordinance. Upon prior notice to the Permittee and entry of written findings

that it is in the public interest, the Director may, in the Director's sole discretion, conditionally or absolutely excuse the Permittee from compliance with all or any of the Permittee's obligations under this section.

Section 7. **Repair or reconstruction.** The pedestrian walkway and covered patio shall remain the exclusive responsibility of the Permittee and the Permittee shall maintain the pedestrian walkway and covered patio in good and safe condition for the protection of the public. The Permittee shall not reconstruct or repair the pedestrian walkway and covered patio except in strict accordance with plans and specifications approved by the Director. The Director may, in the Director's judgment, order the pedestrian walkway and covered patio reconstructed or repaired at the Permittee's cost and expense because of: the deterioration or unsafe condition of the pedestrian walkway and covered patio; the installation, construction, reconstruction, maintenance, operation, or repair of any municipally-owned public utilities; or for any other cause.

Section 8. **Failure to correct unsafe condition.** After written notice to the Permittee and failure of the Permittee to correct an unsafe condition within the time stated in the notice, the Director may order the pedestrian walkway and covered patio be closed or removed at the Permittee's expense if the Director deems that the pedestrian walkway and covered patio has become unsafe or creates a risk of injury to the public. If there is an immediate threat to the health or safety of the public, a notice to correct is not required.

Section 9. **Continuing obligations.** Notwithstanding termination or expiration of the permission granted, or closure or removal of the pedestrian walkway and covered patio, the Permittee shall remain bound by all of its obligations under this ordinance until the Director has issued a certification that the Permittee has fulfilled its removal and restoration obligations under Section 6 of this ordinance. Notwithstanding the issuance of that certification, the Permittee shall continue to be bound by the obligations in Section 10 of this ordinance and shall remain liable for any unpaid fees assessed under Section 16 and Section 18 of this ordinance.

Section 10. **Release, hold harmless, indemnification, and duty to defend.** The Permittee, by accepting the terms of this ordinance, releases the City, its officials, officers, employees, and agents from any and all claims, actions, suits, liability, loss, costs, expense, attorneys' fees, or damages of every kind and

description arising out of or by reason of the pedestrian walkway and covered patio or this ordinance, including but not limited to claims resulting from injury, damage, or loss to the Permittee or the Permittee's property.

The Permittee agrees to at all times defend, indemnify, and hold harmless the City, its officials, officers, employees, and agents from and against all claims, actions, suits, liability, loss, costs, expense, attorneys' fees, or damages of every kind and description, excepting only damages that may result from the sole negligence of the City, that may accrue to, be asserted by, or be suffered by any person or property including, without limitation, damage, death, or injury to members of the public or to the Permittee's officers, agents, employees, contractors, invitees, tenants, tenants' invitees, licensees, or successors and assigns, arising out of or by reason of:

(a) the existence, condition, construction, reconstruction, modification, maintenance, operation, use, or removal of the pedestrian walkway and covered patio or any portion thereof, or the use, occupation, or restoration of the public place or any portion thereof by the Permittee or any other person or entity;

(b) anything that has been done or may at any time be done by the Permittee by reason of this ordinance; or

(c) the Permittee failing or refusing to strictly comply with every provision of this ordinance; or arising out of or by reason of the pedestrian walkway and covered patio or this ordinance in any other way.

If any suit, action, or claim of the nature described above is filed, instituted, or begun against the City, the Permittee shall upon notice from the City defend the City, with counsel acceptable to the City, at the sole cost and expense of the Permittee, and if a judgment is rendered against the City in any suit or action, the Permittee shall fully satisfy the judgment within 90 days after the action or suit has been finally determined, if determined adversely to the City. If it is determined by a court of competent jurisdiction that Revised Code of Washington (RCW) 4.24.115 applies to this ordinance, then in the event claims or damages are caused by or result from the concurrent negligence of the City, its agents, contractors, or employees, and the Permittee, its agents, contractors, or employees, this indemnity provision shall be valid and enforceable only to the extent of

the negligence of the Permittee or the Permittee's agents, contractors, or employees.

Section 11. **Insurance.** For as long as the Permittee exercises any permission granted by this ordinance and until the Director has issued a certification that the Permittee has fulfilled its removal and restoration obligations under Section 6 of this ordinance, the Permittee shall obtain and maintain in full force and effect, at its own expense, insurance and/or self-insurance that protects the Permittee and the City from claims and risks of loss from perils that can be insured against under commercial general liability (CGL) insurance policies in conjunction with:

(a) construction, reconstruction, modification, operation, maintenance, use, existence, or removal of the pedestrian walkway and covered patio or any portion thereof, as well as restoration of any disturbed areas of the public place in connection with removal of the pedestrian walkway and covered patio;

(b) the Permittee's activity upon or the use or occupation of the public place described in Section 1 of this ordinance; and

(c) claims and risks in connection with activities performed by the Permittee by virtue of the permission granted by this ordinance.

Minimum insurance requirements are CGL insurance written on an occurrence form at least as broad as the Insurance Services Office (ISO) CG 00 01. The City requires insurance coverage to be placed with an insurer admitted and licensed to conduct business in Washington State or with a surplus lines carrier pursuant to chapter 48.15 RCW. If coverage is placed with any other insurer or is partially or wholly self-insured, such insurer(s) or self-insurance is subject to approval by the City's Risk Manager.

Minimum limits of liability shall be $2,000,000 per Occurrence; $4,000,000 General Aggregate; $2,000,000Products/Completed Operations Aggregate, including Premises Operation; Personal/Advertising Injury; Contractual Liability. Coverage shall include the "City of Seattle, its officers, officials, employees and agents" as additional insureds for primary and non-contributory limits of liability subject to a Separation of Insureds clause.

Within 60 days after the effective date of this ordinance, the Permittee shall provide to the City, or cause to be provided, certification of insurance coverage including an actual copy of the blanket or designated additional insured policy provision per the ISO CG 20 12 endorsement or equivalent. The insurance coverage certification shall be delivered or sent to the Director or to SDOT at an address as the Director may specify in writing from time to time. The Permittee shall provide a certified complete copy of the insurance policy to the City promptly upon request.

If the Permittee is self-insured, a letter of certification from the Corporate Risk Manager may be submitted in lieu of the insurance coverage certification required by this ordinance, if approved in writing by the City's Risk Manager. The letter of certification must provide all information required by the City's Risk Manager and document, to the satisfaction of the City's Risk Manager, that self-insurance equivalent to the insurance requirements of this ordinance is in force. After a self-insurance certification is approved, the City may from time to time subsequently require updated or additional information. The approved self-insured Permittee must provide 30 days' prior notice of any cancellation or material adverse financial condition of its self-insurance program. The City may at any time revoke approval of self-insurance and require the Permittee to obtain and maintain insurance as specified in this ordinance.

In the event that the Permittee assigns or transfers the permission granted by this ordinance, the Permittee shall maintain in effect the insurance required under this section until the Director has approved the assignment or transfer pursuant to Section 15 of this ordinance.

Section 12. **Contractor insurance.** The Permittee shall contractually require that any and all of its contractors performing work on any premises contemplated by this permit name the "City of Seattle, its officers, officials, employees and agents" as additional insureds for primary and non-contributory limits of liability on all CGL, Automobile and Pollution liability insurance and/or self-insurance. The Permittee shall also include in all contract documents with its contractors a third-party beneficiary provision extending to the City construction indemnities and warranties granted to the Permittee.

Section 13. **Performance bond.** Within 60 days after the effective date of this ordinance, the Permittee shall deliver to the Director for filing with the City Clerk a sufficient bond executed by a surety company authorized and qualified to do business in the State of Washington that is: in the amount of $130,000, and conditioned with a requirement that the Permittee shall comply with every provision of this ordinance and with every order the Director issues under this ordinance. The Permittee shall ensure that the bond remains in effect until the Director has issued a certification that the Permittee has fulfilled its removal and restoration obligations under Section 6 of this ordinance. An irrevocable letter of credit approved by the Director in consultation with the City Attorney's Office may be substituted for the bond. In the event that the Permittee assigns or transfers the permission granted by this ordinance, the Permittee shall maintain in effect the bond or letter of credit required under this section until the Director has approved the assignment or transfer pursuant to Section 15 of this ordinance.

Section 14. **Adjustment of insurance and bond requirements.** The Director may adjust minimum liability insurance levels and surety bond requirements during the term of this permission. If the Director determines that an adjustment is necessary to fully protect the interests of the City, the Director shall notify the Permittee of the new requirements in writing. The Permittee shall, within 60 days of the date of the notice, provide proof of the adjusted insurance and surety bond levels to the Director.

Section 15. **Consent for and conditions of assignment or transfer.** The permission granted by this ordinance shall not be assignable or transferable by operation of law; nor shall the Permittee transfer, assign, mortgage, pledge or encumber the same without the Director's consent, which the Director shall not unreasonably refuse. The Director may approve assignment or transfer of the permission granted by this ordinance to a successor entity only if the successor or assignee has accepted in writing all of the terms and conditions of the permission granted by this ordinance; has provided, at the time of the acceptance, the bond and certification of insurance coverage required under this ordinance; and has paid any fees due under Section 18 of this ordinance. Upon the Director's approval of an assignment or transfer, the rights and obligations

conferred on the Permittee by this ordinance shall be conferred on the successors and assigns. Any person or entity seeking approval for an assignment or transfer of the permission granted by this ordinance shall provide the Director with a description of the current and anticipated use of the pedestrian walkway and covered patio.

Section 16. **Inspection fees.** The Permittee shall, as provided by SMC Chapter 15.76 or successor provision, pay the City the amounts charged by the City to inspect pedestrian walkway and a covered patio, including benches, tables, food preparation and serving areas, outdoor lighting, pedestrian deck, pilings, and other related appurtenant structures of the permitted use during construction, reconstruction, repair, annual safety inspections, and at other times deemed necessary by the City. An inspection or approval of the pedestrian walkway and covered patio by the City shall not be construed as a representation, warranty, or assurance to the Permittee or any other person as to the safety, soundness, or condition of the pedestrian walkway and covered patio. Any failure by the City to require correction of any defect or condition shall not in any way limit the responsibility or liability of the Permittee.

Section 17. **Inspection reports.** The Permittee shall submit to the Director, or to SDOT at an address specified by the Director, an inspection report that:

(a) describes the physical dimensions and condition of all load-bearing elements of pedestrian deck, piling, and other supporting structures of the permitted use;

(b) describes any damages or possible repairs to any element of the pedestrian deck, piling, and other supporting structures of the permitted use;

(c) prioritizes all repairs and establishes a timeframe for making repairs; and

(d) is stamped by a professional structural engineer licensed in the State of Washington.

A report meeting the foregoing requirements shall be submitted within 60 days after the effective date of this ordinance; subsequent reports shall be submitted every two years, within 30 days prior to the anniversary date of the last inspection report; provided that, in the event of a natural disaster or other event that may have damaged the pedestrian deck, piling, and other supporting structures of the permitted use, the Director may

require that additional reports be submitted by a date established by the Director. In addition to the routine inspection every two years, an underwater inspection shall be performed once every 24 months. The underwater inspection shall meet the requirements found in the Federal Highway Administration Report No. FHWA-NHI-10-027. The Permittee has the duty of inspecting and maintaining the pedestrian walkway and covered patio. The responsibility to submit structural inspection reports periodically or as required by the Director does not waive or alter any of the Permittee's other obligations under this ordinance. The receipt of any reports by the Director shall not create any duties on the part of the Director. Any failure by the Director to require a report, or to require action after receipt of any report, shall not waive or limit the obligations of the Permittee.

Section 18. **Annual fee.** Beginning on May 4, 2015, and annually thereafter, the Permittee shall promptly pay to the City, upon statements or invoices issued by the Director, an annual fee of $11,882.62, or as adjusted annually thereafter, for the privileges granted by this ordinance.

Adjustments to the annual fee shall be made in accordance with a term permit fee schedule adopted by the City Council and may be made every year. In the absence of a schedule, the Director may only increase or decrease the previous year's fee to reflect any inflationary changes so as to charge the fee in constant dollar terms. This adjustment will be calculated by adjusting the previous year's fee by the percentage change between the two most recent year-end values available for the Consumer Price Index for the Seattle-Tacoma-Bremerton Area, All Urban Consumers, All Products, Not Seasonally Adjusted. All payments shall be made to the City Director of Finance for credit to the Transportation Fund.

Section 19. **Compliance with other laws.** Permittee shall construct, maintain and operate the pedestrian walkway and covered patio in compliance with all applicable federal, state, County and City laws and regulations. Without limitation, in all matters pertaining to the pedestrian walkway and covered patio, the Permittee shall comply with the City's laws prohibiting discrimination in employment and contracting including Seattle's Fair Employment Practices Ordinance, Chapter 14.04, and Fair Contracting Practices code, Chapter 14.10 (or successor provisions).

Section 20. **Acceptance of terms and conditions.** The Permittee shall deliver to the Director its written signed acceptance of the terms of this ordinance within 60 days after the effective date of this ordinance. The Director shall file the written acceptance with the City Clerk. If no such acceptance is received within that 60-day period, the privileges conferred by this ordinance shall be deemed declined or abandoned and the permission granted deemed lapsed and forfeited and the Permittee shall, at its own expense, remove the pedestrian walkway and covered patio and all of the Permittee's equipment and property and replace and restore all portions of the public place as provided in Section 6 of this ordinance.

Section 21. **Obligations run with the Property.** The obligations and conditions imposed on the Permittee by and through this ordinance are covenants that run with the land and bind subsequent owners of the property adjacent to the pedestrian walkway and covered patio and legally described in Section 1 of this ordinance (the "Property"), regardless of whether the Director has approved assignment or transfer of the permission granted herein to such subsequent owner(s). At the request of the Director, Permittee shall provide to the Director a current title report showing the identity of all owner(s) of the Property and all encumbrances on the Property. The Permittee shall, within 60 days of the effective date of this ordinance, and prior to conveying any interest in the Property, deliver to the Director upon a form to be supplied by the Director, a covenant agreement imposing the obligations and conditions set forth in this ordinance, signed and acknowledged by the Permittee and any other owner(s) of the Property and recorded with the King County Recorder's Office. The Director shall file the recorded covenant agreement with the City Clerk. The covenant agreement shall reference this ordinance by its ordinance number. At the request of the Director, Permittee shall cause encumbrances on the Property to be subordinated to the covenant agreement.

Section 22. **Section titles.** Section titles are for convenient reference only and do not modify or limit the text of a section.

Section 23. **Ratify and confirm.** Any act consistent with the authority of this ordinance taken after its passage and prior to its effective date is ratified and confirmed.

Section 24. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2018, and signed by me in open session in authentication of its passage this _____ day of _____, 2018.

_____

President _____ of the City Council

Approved by me this _____ day of _____, 2018.

_____

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2018.

_____

Monica Martinez Simmons, City Clerk

(Seal)