

**ENCROACHMENT AGREEMENT
(Kiosks)**

THIS ENCROACHMENT AGREEMENT (this "Agreement") is hereby entered into by and between the **CITY OF LANCASTER**, a California municipal corporation and charter city (the "City"), and **LANCASTER PROMENADE III, LLC**, a California limited liability company (the "Kiosk Operator").

R E C I T A L S

A. Kiosk Operator desires to operate retail kiosks within the public right-of-way along a certain portion of Lancaster Boulevard.

B. City has the authority to regulate the terms and conditions for the use of public rights-of-way.

C. Pursuant to the terms and conditions of this Agreement, City desires to authorize Kiosk Operator to utilize a portion of the public right-of-way along Lancaster Boulevard in order to operate retail kiosks.

NOW THEREFORE, in consideration of the recitals set forth above, the covenants and agreements set forth herein below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Kiosk Operator agree as follows:

1. Non-Exclusive License to Use Public Right-of-Way.

1.1 Grant of Non-Exclusive License. Subject to the provisions of this Agreement, all applicable laws and all City ordinances, City hereby grants to Kiosk Operator a non-exclusive license ("License") to operate up to thirty-four (34) retail kiosks (each, a "Kiosk") upon each of the locations identified as a "Kiosk Location" (all Kiosk Locations are referred to collectively as the "License Area") on the Site Map that is attached hereto as Exhibit "A" and incorporated herein. Each Kiosk Location shall be generally located within the area commonly referred to as "The Boulevard," which consists of that portion of Lancaster Boulevard that is bounded to the west by 10th Street West and to the east by Sierra Highway. City reserves the right to and may, from time to time, change any particular Kiosk Location or the entire License Area (such change may be in the form of the addition, deletion and/or relocation of one or more Kiosk Location or the entire License Area). The term of the License shall commence upon the date of this Agreement and, subject to earlier termination pursuant to Section 6, shall expire and be of no further force on its tenth (10th) anniversary (the "Term"); provided, however, that the Term may be extended for up to two (2) additional five (5) year periods if and to the extent the parties mutually agree in writing.

1.2 City's Use of Public Right-of-Way and License Area. Except as and to the extent specifically authorized and permitted herein, Kiosk Operator shall not interfere in any manner with the existence and operation of any and all public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, overhead and underground electric and telephone wires, electroliers, cable television, and other telecommunications, utility and municipal property without the approval of the owner(s) of the effected property or properties. Additionally, City shall have exclusive use of the License Area during any special event that is sponsored and/or hosted by City.

1.3 No Grant of Property Interest. This Agreement, including the License granted herein, is not a grant by City of any property interest and is expressly made subordinate to the prior and continuing right of City and its assigns to use all of the License Area in the performance of its duty, including, but not limited to, public use as a street and for the purpose of laying, installing, maintaining, repairing, protecting, replacing and removing sanitary sewers, water mains, storm drains, gas mains, poles, overhead and underground electric and telephone wires, electroliers, cable television, and other telecommunications, utility and municipal uses, together with appurtenances thereof and with right of ingress and egress, along, over, across and in the License Area.

1.4 Existing Rights and Interests. This Agreement, including the License granted herein, is expressly made subject to all easements, restrictions, conditions, covenants, encumbrances and claims of title which may affect the License Area, and it is understood that Kiosk Operator, at its sole cost and expense, shall obtain such permission as may be necessary and consistent with any other existing rights. Kiosk Operator shall obtain a separate City-issued business license for each Kiosk.

2. Kiosk Operating Requirements.

2.1 Operation and Maintenance; Cost. Kiosk Operator shall operate and maintain each Kiosk in a clean and safe manner. No Kiosk may impede vehicular or pedestrian traffic or interfere in any manner with the existence or operation of any public or private rights-of-way, use of any legally marked parking space, sanitary sewers, water mains, storm drains, gas mains, poles, overhead and underground electric and telephone wires, electroliers, cable television, or other telecommunications, utility or municipal use. The cost of constructing, installing, operating and maintaining each Kiosk shall be solely the responsibility of the Kiosk Operator; under no circumstance shall City incur any obligation or liability for any cost associated with or related to the construction, installation, operation and/or maintenance of a Kiosk.

2.2 Location and Hours of Operation. Kiosk Operator shall operate a Kiosk only at, within and upon the License Area and an area that has been designated as a Kiosk Location pursuant to this Agreement. Kiosk Operator may operate a Kiosk only during the following "Kiosk Operating Hours": (i) between 11:00 a.m. and 9:00 p.m. on Mondays through Thursdays; (ii) between 11:00 a.m. and 11:00 p.m. on Fridays and Saturdays; and (iii) between 11:00 a.m. and 9:00 p.m. on Sundays.

2.3 Removal of Vacant Kiosks. No Kiosk shall remain vacant in place for more than seven (7) consecutive days. Any Kiosk that remains vacant for seven (7) consecutive days shall immediately be removed by Kiosk Operator from the public right-of-way. When not actually being operated, and at all times other than the Kiosk Operating Hours, each Kiosk shall be safely and securely stored by Kiosk Operator

3. Entitlements and Land Use Approval; Planning Director's Review. In addition to any other land use approval and/or entitlement required in order for Kiosk Operator to operate Kiosks as contemplated in this Agreement, prior to putting into service each and every Kiosk the Kiosk Operator shall submit to City's Planning Director for review and approval the design plans, specifications and proposed operating location (which shall be within the License Area) of such proposed Kiosk. City's Planning Director shall approve, conditionally approve or deny Kiosk Operator's submission and request to put into service a particular Kiosk within fifteen (15) days of

receipt thereof. The current License Area (which consist of all of the Kiosk Locations) is visually depicted on the Site Map that is attached hereto as Exhibit "A."

4. Insurance. Kiosk Operator shall secure a comprehensive general liability insurance policy with limits of \$1,000,000 per occurrence (\$2,000,000 aggregate) from a company licensed to operate in the State of California with an A.M. Best rating of A-VII or better. Kiosk Operator shall maintain the policy in full force and effect for the duration of this Agreement. The policy shall name the City and its entities as additional insureds and be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice (ten (10) days written notice for non-payment) by Certified Mail, return receipt requested to the City. Kiosk Operator shall furnish a certificate of liability insurance to City.

Kiosk Operator shall secure, pay for and maintain in full force and effect for the duration of this Agreement, Workers' Compensation Insurance for Kiosk Operator's workers at the License Area to the extent required by law, and shall furnish a Certificate of Insurance to City before commencement of the Term. City, its officers, employees, agents, representatives and attorneys shall not be responsible for any claims in law or equity occasioned by the failure of Kiosk Operator to comply with this section.

5. Release and Indemnification. Kiosk Operator hereby fully and irrevocably releases City, including its elected officials, employees, agents and representatives, from any and all claims that the Kiosk Operator may now have or hereafter acquire against City, including its elected officials, employees, agents and representatives, for any action, cause of action, claim, cost, damage, demand, expense (including, without limitation, attorneys' fees and expenses), fine, judgment, liability, lien, loss, or penalty, whether foreseen or unforeseen, direct or indirect, arising from or related to Kiosk Operator's entry upon or use of the License Area, except to the extent caused by the willful misconduct of City. Kiosk Operator further acknowledges and agrees that this release shall be given full force and effect according to each of its expressed terms and provisions, including, but not limited to, those relating to unknown and suspected claims, damages and causes of action. Kiosk Operator agrees to indemnify, defend and hold City, including its elected officials, employees, agents and representatives, harmless from and against any and all claims, actions, losses, liabilities, damages, costs and expenses (including, but not limited to, attorneys' fees and costs) of any kind or nature which arise or in any way relate to Kiosk Operator's entry upon or use of the License Area, except to the extent caused by the negligence or willful misconduct of City. The provisions of this Section 5 shall survive the expiration or termination of this Agreement.

6. Revocability and Termination. City shall have the right to revoke the License, and all other rights granted to Kiosk Operator herein, in the event of Kiosk Operator's material breach of this Agreement, immediately upon written notice to Kiosk Operator. In any event, this License, and all other rights granted to Kiosk Operator herein, shall terminate, without notice and without any further action by the Kiosk Operator, at the end of the Term. In the event of either a revocation or termination of the License, the indemnities, rights, obligations and releases contained in this Agreement shall remain in full force and effect in perpetuity.

7. Attorneys' Fees. In the event any declaratory or other legal or equitable action is instituted between City and Kiosk Operator in connection with this Agreement, the prevailing party shall be entitled to recover from the losing party all of its costs and expenses, including court costs and reasonable attorneys' fees, and all fees, costs and expenses incurred on any appeal or in collection of any judgment.

8. Notices. Any notice, request, demand, consent, approval or other communication required or permitted hereunder or by law shall be validly given or made only if in writing and delivered in person to an officer or duly authorized representative of the other party, or deposited in the United States mail, duly certified or registered (return receipt requested), postage prepaid, or delivered through another commercially reasonable method, including facsimile transmission and addressed to the party for whom intended, as follows:

If to City: City of Lancaster
 44933 Fern Avenue
 Lancaster, California 93534
 Attention: City Manager
 Facsimile: (661) 723-6141

If to Kiosk Operator : Lancaster Promenade III, LLC
 6265 Variel Avenue
 Woodland Hills, California 91367
 Attention: Steve Egash
 Facsimile: (818) 827-7179

Any party may from time to time, by written notice to the other, designate a different address which shall be substituted for that specified above. If any notice or other document is sent by mail as aforesaid, the same shall be deemed fully delivered and received forty-eight (48) hours after mailing as provided above. If any notice or document is sent by facsimile transmission, the same shall be deemed fully delivered and received upon the transmission to the sender of a facsimile confirmation sheet.

9. Mechanic's Liens. Kiosk Operator shall keep the License Area free from any and all liens arising out of any work performed, material furnished, or obligations incurred by Kiosk Operator.

10. Gender and Number. In this Agreement (unless the context requires otherwise), the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate.

11. Entire Agreement. This Agreement and its exhibits, each of which is incorporated herein by reference as though set forth in full, constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. All prior agreements, representations, negotiations and understanding of the parties hereto, oral or written, express or implied, are hereby superseded and merged herein.

12. Captions. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

13. Governing Law. This Agreement and the attachments hereto have been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California.

14. Invalidity of Provision. If any provision of this Agreement as applied to any party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or

unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.

15. Amendments. No addition to or modification of any provision contained in this Agreement shall be effective unless fully set forth in writing by Kiosk Operator and City.

16. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

17. Binding Upon Successors. The terms and conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns and successors of the parties hereof.

18. Assignment. Kiosk Operator shall not sell, assign, sublease, or otherwise transfer this Agreement or any right herein, either in whole or in part (each of which events is referred to in this Agreement as an "Assignment"), without prior written approval of City; any such approval shall be at the sole and absolute discretion of City. City shall condition any partial or complete Assignment of this Agreement upon, at a minimum, the following: (i) the proposed assignee's express assumption of this Agreement; and (ii) Kiosk Operator's agreement to pay and actual payment to the City of an amount equal to at least thirty percent (30%) of any amount paid by the proposed assignee to the Kiosk Operator in consideration of the Assignment (net of any costs and expenses actually incurred, including for construction and maintenance, and paid by Kiosk Operator relative to such Assignment). Any purported assignment without the prior written consent of City shall be null and void and shall confer no rights whatsoever upon any purported assignee or transferee.

[Signatures begin on next page]

IN WITNESS WHEREOF, the Kiosk Operator and City have caused this Agreement to be executed the _____ day of _____, 2011.

CITY OF LANCASTER, a California municipal corporation and charter city

By: _____
Its: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

LANCASTER PROMENADE III, LLC, a
California limited liability company

By: _____
Steve Egash
Its: Managing Member

EXHIBIT "A"

SITE MAP

[INSERT]































