

SUBLICENSE AGREEMENT

SUBLICENSE AGREEMENT (“**Agreement**” or “**License**”) made as of the ____ day of _____, 2025, by and between **BRYANT PARK CORPORATION**, a New York not-for-profit corporation maintaining an address at 1065 Avenue of the Americas, Suite 2400, New York, New York 10018 (hereinafter referred to as the “**Licensor**” or “**BPC**”) and _____ a New York [corporation or LLC, etc.], maintaining an address at _____, hereinafter referred to as the “**Licensee**”:

WHEREAS, under a License Agreement (the “**City-BPC License Agreement**”) dated June 8, 2018, between The City of New York (the “**City**”), acting by and through the Department of Parks and Recreation (“**Parks**”), Licensor is the manager and licensee of the property commonly known as Bryant Park, New York, New York, between 40th Street, Avenue of the Americas and 42nd Street, west of the New York Public Library main building (the “**Park**”), as shown in **Exhibit A** annexed hereto, and manages the Park on behalf of the City for the benefit of the public;

WHEREAS, the City-BPC License Agreement allows Licensor to enter into sublicense agreements for various concessions, including the Kiosks along West 42nd Street heretofore used as newsstands, with the approval of Parks;

WHEREAS, Licensee desires to license from Licensor the facility located on the 42nd Street sidewalk, which is shown in **Exhibit A** annexed hereto as Kiosk No. ____ (the “**Kiosk**”), **[Note: if the sublicense is for both kiosks, so indicate here]** for the sale of food and beverages to the public;

WHEREAS, Licensor is willing to enter into such a license on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of ten dollars (\$10.00) and other good and valuable consideration and the mutual covenants herein contained, the receipt and sufficiency of which are hereby mutually acknowledged, Licensor and Licensee hereby agree as follows:

1. **SUBLICENSE.** (a) **License Granted.** Licensor hereby grants Licensee an exclusive sublicense to use the Kiosk during the Term (as hereinafter defined), for the purpose of serving food and beverages to the public, and for no other purpose, on the terms and conditions contained in this Agreement. This Agreement shall constitute a license and not a lease. Licensee hereby acknowledges that it does not, and shall not during the Term, possess any rights as a tenant of the Kiosk or any portion of the Park. This Agreement and the rights of Licensee shall not be deemed to be or construed as a month-to-month tenancy or any other type of tenancy, and Licensee hereby waives any and all notices which would otherwise be required to be given by a landlord to a tenant to terminate a tenancy.

This agreement is subordinate to the City-BPC License Agreement and in the event of any conflict between the terms of this Agreement and the City-BPC License Agreement, the terms of the City-BPC License Agreement shall govern. In the event of a termination of the City-BPC License Agreement prior to the expiration of this Agreement, this Agreement shall automatically terminate and be of no further force and effect, with no further action required on the part of the City or Parks, except as provided in Section 2(c) below.

(b) **Sublicense Limited to Kiosk.** No areas outside the walls of the Kiosk are licensed to Licensee hereunder. No carts, equipment or trash may be placed or left outside the footprint of

the Kiosk by Licensee except as expressly permitted by Licensor in advance, at Licensor's discretion.

(c) Other Vendors. Licensee acknowledges that other vendors, both permanent and temporary, are authorized to serve and sell food and beverage products at various locations in and around the Park and along the sidewalk on West 42nd Street, and no such activities shall be deemed a violation of the rights of Licensee, whose only exclusivity is within the Kiosk except as may be otherwise stated in this Agreement.

2. **TERM.** (a) Term. Provided that this Agreement has received the approval of the Commissioner of Parks (the "Commissioner"), as provided in Section 21 below, the term of this Agreement (the "**Term**") shall commence on _____ or such earlier or later date as the parties may agree to in writing (the "**Commencement Date**"), and shall expire on, December 31, 2032, or such earlier date on which the Term is terminated in accordance with this Agreement (the "Expiration Date") .

(b) Limitation. Licensee acknowledges that the term of the City-BPC License Agreement is currently scheduled to expire on July 18, 2028. By mutual agreement, Licensor and DPR shall have the option to renew the City-BPC License Agreement with DPR for up to two (2) additional five-year periods. If such term is not extended (in addition to other events which could lead to early termination of this License Agreement for the Kiosk, as set forth in this Agreement) Licensee may not be able to enjoy the full Term contemplated hereunder. Neither Licensor nor the City shall have any liability or obligation to Licensee following the expiration or term of the City-BPC License Agreement, or early termination of this Agreement in accordance with the terms hereof. However, if upon expiration or termination of the City-BPC License Agreement a replacement agreement takes effect, and such replacement agreement grants BPC the right to continue the license granted by this Agreement, then such replacement agreement shall be deemed to be an extension of the City-BPC License Agreement for purposes of this Agreement.

3. **LICENSE FEE.**

(a) Definitions: As used in this Agreement:

(i) "**Kiosk Revenues**" shall mean the aggregate sum of all of Licensee's revenues from the following sources: (A) sales from the Kiosk made directly to Licensee's patrons, regardless of whether the sales were made in the form of payment by cash, credit or any other means, (B) sales from the Kiosk for functions which do not take place at the Kiosk, including, without limitation, catering services, office or home delivery services, internet sales or any other similar services, whether or not taking place in the Park, and (C) sales made by reason of Licensee's location in the Kiosk, including, without limitation, for functions or events which take place in the Park. There shall be excluded from Kiosk Revenues, or deducted therefrom, as applicable, (1) sums

collected for any sales, use, luxury or excise tax, or any other tax, collected separately from customers by Licensee; (2) returns to shippers or suppliers, wholesalers or distributors, for credit; or (3) cash or credit refunds, but only to the extent that the amounts refunded or credited were originally included in gross sales.

(ii) “**License Year**” shall mean any twelve (12) calendar month period ending on November 30 during the Term: provided that the first License Year shall be the period beginning on the first day of the Term and ending November 30, 2026, and provided further that if the Term is terminated before November 30th of any License Year, such License Year shall be the shorter period ending on the last day of the Term.

(b) License Fee Payable. Licensee shall pay to Licensor a license fee equal to the Base License Fee plus the additional Percentage License Fee, each set forth below.

(c) Base License Fee. During the Term, Licensee shall pay to Licensor for the period commencing on the Commencement Date and ending on the Expiration Date, as the base license fee, the following sums (the “Base License Fee”), payable in advance, on the first (1st) day of each calendar month during the Term, without any setoff or deduction whatsoever:

License Year	Annual Base License Fee	Monthly Installment
Year 1		
Year 2		
Year 3		
Year 4		
Year 5		
Year 6		
Year 7		

In addition to payment to BPC of the monthly License Fee, the following amounts will be paid per month to BPC for electrical charges (which shall be adjusted each year effective November 1 starting in 2026, based on increases in BPC’s costs):

- a) Kiosk #2 (Fifth Ave): \$275 / month
- b) Kiosk #1 (Sixth Ave): \$175 / month

Notwithstanding the foregoing, together with the execution of this License Agreement, Licensee shall pay to Licensor the sum of *[two months' base license fee]* which shall be applied toward payment of the Base License Fee for the first and second month of the Term. In the event that the Commencement Date shall for any reason occur on a date other than the first day of a calendar month, then the Base License Fee for the first month shall be prorated and Licensee shall receive a credit against the Base License Fee next becoming due.

(d) Percentage License Fee. Licensee shall pay to Licensor a percentage license fee in an amount equal to _____ percent (___%) of Licensee's Kiosk Revenues for each License Year (as hereinafter defined) during the Term (the "Percentage License Fee"), provided that the Base License Fee paid theretofore in respect of such License Year shall be applied as a credit against percentage license fee due.

(e) Internal Control System Licensee agrees to use a POS system, will provide monthly sales statements and shall inform Licensor with notice if it changes such system.

(f) Statements. On or before January 10, 2026 and the tenth (10th) day of each subsequent calendar month during the Term, and the month following the Term, Licensee shall deliver a written statement of Kiosk Revenues for the immediately preceding calendar month, which statement shall be certified to be true and correct by an officer or principal of Licensee or, in lieu of such statement, will provide POS reports reflecting Kiosk Revenues for the immediately preceding calendar month (each such statement or report, a "**Sales Statement**"). If the Term commences prior to December 1, 2025, the first monthly statement shall include all sales from the beginning of the Term through December 31, 2025. Each Sales Statement shall set forth (i) all Kiosk Revenues for the month in question, (ii) the cumulative sum of Kiosk Revenues for the License Year in question, and (iii) a breakdown of all Kiosk Revenues received from the sources set forth in subsection 3(a)(i)(A), (B), (C) and (D) above, and any permitted exclusions and deductions, in a form reasonably acceptable to Licensor, and shall be accompanied by payment of the Percentage License Fee due for such month.

(g) Payment of Percentage License Fee. During each License Year, Licensee shall pay the Percentage License Fee to Licensor with respect to Kiosk Revenues on a monthly basis, on or before the tenth day of the calendar month. Each monthly statement shall be accompanied by any payment due at such time.

Any overpayment may be taken as a credit against the payments next coming due. In the event that at the end of the Term Licensee has overpaid or underpaid, Licensee shall pay the amount of any underpayment, or Licensor shall refund the amount of any overpayment, within thirty (30) days following the earlier to occur of (i) the Expiration Date or (ii) the sooner termination of this Agreement, which obligations shall survive the expiration or sooner termination of this Agreement. The Percentage License Fee shall be paid to Licensor as and when the same is due hereunder notwithstanding the expiration of the Term or earlier termination of this Agreement.

(h) Books and Records. In furtherance of the foregoing, Licensee covenants, represents and warrants to Licensors that all sales generated in connection with the operation of Licensee's business at the Kiosk shall be recorded on cash registers with tapes or another equally acceptable POS system and that Licensee shall preserve and maintain such tapes and all of its receipts (whether the same were generated in connection with cash, credit or other forms of transactions) for a period of one hundred eighty (180) days following the expiration or sooner termination of the Term.

(i) Audit Rights. Licensors and Parks shall have the right to inspect and copy Licensee's books and records (including, without limitation, all cash register receipts, all sales receipts, ledgers, bank statements and sales tax returns) during regular business hours upon reasonable prior notice to Licensee. If any such inspection discloses an underpayment of any installment(s) of the Percentage License Fee, the amount underpaid shall be immediately due and payable. In addition to the foregoing, if the amount underpaid shall be greater than 3% of the reported Kiosk Revenues, then Licensee shall (i) pay to Licensors interest on the amount underpaid at the Prime Rate (as hereinafter defined) plus two percent (2%) from the date such payment should have been made to Licensors until the date the underpayment is actually received by Licensors and (ii) reimburse Licensors for the reasonable cost of its inspection. If the first or last month during the Term shall be a partial calendar month or if the Kiosk shall not be open for business for a portion of any calendar month, the corresponding Sales Statement(s) and Percentage License Fee(s) shall be based upon the gross sales for the days during the months in question in which the Kiosk (or portions thereof, as the case may be) were open for business. "**Prime Rate**" means the prime commercial lending rate from time to time announced by JPMorgan Chase Bank to be in effect at its principal office in New York, New York, or, in the event such rate is no longer published, a similar rate published by such bank or another "money center" bank to be designated by Licensors.

(j) Payment in General. All sums to be paid to Licensors by Licensee hereunder shall be paid to Licensors at its above address or at such other place(s) as Licensors may designate, from time to time, without notice, set-off or deduction whatsoever, and without regard to whether Licensors has submitted a demand or invoice therefor. All amounts payable by Licensee under this Agreement shall be paid to Licensors as and when the same are due notwithstanding the expiration of the Term or earlier termination of this Agreement. At Licensors's option payment shall be made by wire transfer or ACH payment directly to such account as Licensors may specify from time to time.

(k) Late Charges. In the event that Licensee fails to pay any installment of the Base License Fee, the Percentage License Fee, or any other sum due hereunder within ten (10) days after the same shall be due and payable, then, in addition to, and without waiving, any rights or remedies Licensors may have, Licensee shall pay a late charge of ten percent (10%) of any overdue payment, which shall be due and payable on demand. In addition to the foregoing, Licensee shall pay a monthly interest charge of two percent (2%) per month (or the highest rate allowed by applicable law, whichever is less) with respect to any overdue payments which shall be delinquent for a period of thirty (30) or more days, which shall be due and payable on demand; provided that such 30-day grace period shall not apply, and such interest shall be

calculated from the day the payment is due, if Licensee has made late payments twice previously in the then-current License Year.

4. **DATES AND HOURS OF OPERATION.** (a) Minimum hours for the Kiosk. Licensee shall keep the Kiosk open for business to its customers seven (7) days per week throughout the year during the hours as follows:

[*Bidder to propose hours*]_____

No closure of the Kiosk to the public for a private event by Licensee shall be permitted except with the advance written approval of Licensor in each instance. Such approval may be granted or withheld at Licensor's and Parks' discretion.

(b) Changes in Operating Hours. Notwithstanding anything to the contrary contained in this Section 4, Licensee may, to the extent permitted by applicable law, codes, rules and regulations and Parks, open the Kiosk for business to its customers earlier than the minimum opening hours set forth herein and may keep the Kiosk open for business to its customers later than the closing hours set forth herein. Subject to the prior written consent of Licensor and Parks, Licensee shall have the right to alter its hours of operations at the Kiosk, but Licensee acknowledges that the continuous and regular operation of the Kiosk is of utmost importance to Licensor.

(c) Commissioner's Discretion. Licensee acknowledges and agrees that its dates and hours of operation may be increased or decreased from time to time by the Commissioner.

(d) Closure by Governmental Authority. Licensee acknowledges and agrees that Parks, and other governmental agencies, and utility companies, have the right to temporarily close, or require Licensor to temporarily close, the sidewalk or any portion thereof (including the Kiosk) from time to time for the maintenance, repair, construction or landscaping, or in order to comply with applicable law, or for any other reason. In such event, the Base License Fee for any such month during each calendar year during the Term in which any governmental agency has closed the Kiosk shall be reduced pro rata based on the number of days the Kiosk is open.

(e) Force majeure. In the event of severe weather or public emergency, repairs, alterations, fire, flood or other casualty, or any other reason or cause beyond the reasonable control of Licensee which renders Licensee's operation of the Kiosk in the ordinary fashion during the required hours impossible or impracticable, Licensee shall be excused from the obligations set forth in subsections (a) and (b) above to the extent required by such exigencies. In such event Licensee shall give Licensor such notice as is practicable under the circumstances, and resume operation as soon as reasonably practical to do so.

5. **USE.** (a) In General. Licensee shall use the Kiosk only for the retail sale of the food and beverages which are expressly set forth on **Exhibit D** annexed hereto, as the same may be amended from time to time with Licensor's and Parks' prior approval, and for no other purpose. Licensee shall not sell any products other than food and beverages, nor any items not

expressly set forth in **Exhibit D**, as the same may be amended from time-to-time except with Licensor's prior written consent in each case. At no time shall the Kiosk be used as a storage area and Licensee shall not cause, allow or suffer the Kiosk to be used as a storage area other than with respect to customary quantities of Licensee's goods, supplies and stock which are incidental to the operation of its business at the Kiosk, all of which shall be kept inside the Kiosk at all times. If Licensee desires to modify or alter the uses of the Kiosk, Licensee shall provide Licensor with reasonable advance written notice of the intended change in the manner in which it is operating the Kiosk. Any such change shall require the advance approval of Licensor. At no time shall any portion of the Park outside the Kiosk be used for storage by Licensee, except as expressly permitted herein for trash storage.

(b) Licensee shall not access or store materials in the roof and/or drop ceiling areas of the Kiosk. In addition, the Licensee shall not store materials inside the Kiosk that will interfere with the distribution of the advertising licensee's electrical, mechanical services, or mounting and/or access of the illuminated ad panels on the exterior of the Kiosk

(c) No coolers or tubs of any kind or size are allowed outside the Kiosk for the sale or distribution of bottled water, beverages, etc. All beverages are to be maintained within refrigerators or other containers furnished, installed, and operated by Licensee.

6. **SECURITY DEPOSIT.** (a) Deposit. Simultaneously with the execution of this Agreement, Licensee shall deposit with Licensor the sum of \$ *[two months' base license fee]* (the "**Security Deposit**") as security for the full, faithful and punctual performance by Licensee of all of the terms of this License Agreement. In the event Licensee defaults in the performance of any of the terms of this License Agreement, including the payment of the Base License Fee or Additional License Fee, Licensor may use, apply or retain the whole or any part of the Security Deposit to the extent required for the payment of any fees due hereunder or for any sum which Licensor may expend or may be required to expend by reason of Licensee's default in respect of any of the terms of this License Agreement, including any damages or deficiency in the re-licensing of the Kiosk, whether accruing before or after summary proceedings or other re-entry by Licensor. In the case of every such use, application or retention, Licensee shall, on demand, pay to Licensor the sum so used, applied or retained which shall be added to the Security Deposit so that the same shall be replenished to its former amount. If Licensee shall fully and punctually comply with all of the terms of this License Agreement, the Security Deposit, without interest, shall be returned to Licensee within sixty (60) days after the expiration or termination of this License Agreement and delivery of exclusive possession of the Kiosk to Licensor.

(b) Assignment by Licensor. In the event of an assignment of Licensor's interest in this License Agreement, Licensor shall have the right to transfer (at no expense to Licensor) the cash security deposited hereunder to the assignee, and Licensor shall, after notice to Licensee of such transfer, sent by certified mail, return receipt requested, including the name and address of the assignee, be released by Licensee from all liability for the return of such cash security. In such event, Licensee agrees to look solely to the new licensor for the return of said cash security. It is agreed that the provisions hereof shall apply to every assignment made of

said cash security to a new licensor. In all other cases, Licensee will not assign or encumber, or attempt to assign or encumber, the monies deposited hereunder as security, and neither Licensor nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment, or attempted encumbrance.

7. **CONDITION OF THE KIOSK.** The Kiosk shall be delivered to Licensee on the Commencement Date and Licensee shall accept the Kiosk in its then “as is” condition, but broom-clean and free of all refuse and free and clear of any and all occupants, tenants or licensees. Licensor represents to Licensee, that, to the best of the knowledge of Licensor’s personnel, the Kiosk is, and on the Commencement Date will be, structurally sound. Except as expressly set forth in this Agreement, Licensor shall not be required to perform any work or alterations to prepare the Kiosk for Licensee’s occupancy. Licensor has not made nor does Licensor make any other representations or promises with respect to the Park or the Kiosk.

(b) End of Term. Upon the expiration or termination of the Term, Licensee shall leave the Kiosk vacant, in good condition and broom clean.

8. **REPAIRS AND MAINTENANCE**

(a) **Licensee’s Obligations.** Licensee shall maintain the Kiosk in good repair and condition during the term hereof, and make all necessary repairs thereto, except as otherwise provided herein. Such maintenance shall include, without being limited to, routine work to keep the appearance of the Kiosk at the highest professional level. BPC shall reasonably decide whether the Kiosk requires such repair or replacement, and upon written notice by BPC to Licensee to repair or replace the same, Licensee agrees to make such replacement or repair within ten (10) days after such notice, at Licensee’s expense. In the event Licensee fails to make such repairs when called upon to do so, within such ten (10) day period, or if the repairs are of such a nature as cannot be completed within such period and Licensee has not commenced to perform such work, BPC may at its sole discretion (i) elect to repair the Kiosk, and charge Licensee with the cost thereof to be deemed additional License Fees due and payable hereunder, or (ii) consider the failure to do so a default for which BPC will have the same remedies as in the case of any other default under the terms of this Agreement. Notwithstanding the foregoing provisions, BPC reserves the right to order or make immediate repairs in the event that there is a safety issue that endangers persons or the structural integrity of the Kiosk.

(b) **Exterior Painting.** From time to time the exterior of the Kiosk shall require painting to maintain its appearance. If BPC determines that such painting is advisable, BPC shall direct the work, which shall be conducted by BPC. Licensee shall allow full access to BPC for any painting which BPC deems necessary or advisable including vacating the Kiosk.

(c) **Structural and Extraordinary Repairs.** Subject to the provisions of Section 29 below, structural repairs shall be the responsibility of BPC, unless they are necessitated by the fault or negligence of Licensee, its agents, employees, contractors or invitees. In the event that the Kiosk [one of the Kiosks] is destroyed or damaged in substantial portion, so that in the opinion of BPC the affected Kiosk must be closed for repairs or replacement,

and such damage or destruction is not attributable to the fault or negligence of Licensee, its agents, employees, contractors or invitees, then BPC shall be responsible for effecting such repair or replacement at its option. In such event (i) during the period the affected Kiosk is closed on account of such damage or destruction, or the necessary repair or replacement, all of the License Fee hereunder attributable to such Kiosk shall be equitably abated until such Kiosk is again available for use by Licensee; and (ii) Licensee shall fully cooperate with BPC in promptly notifying BPC of such damage or destruction, and in removing its property from the affected Kiosk and granting access thereto. Any abatement shall be calculated based on the number of days the Kiosk is not usable, and shall extend until BPC shall give notice to Licensee that the Kiosk in question has been restored to usable condition. Notwithstanding the foregoing, BPC may in its sole discretion elect not to repair or replace a damaged or destroyed Kiosk, in which case this License shall thereupon terminate as to such Kiosk, and BPC shall refund Licensee's security deposit after deducting amounts to which BPC is entitled. If this License covers both Kiosks, the security deposit and base license fee shall be equitably allocated between the two Kiosks based on sales history to the date of the damage or destruction. The abatement provided under this Section shall be Licensee's sole remedy in the event of damage or partial or total destruction of a Kiosk hereunder, and BPC shall have no additional or further liability to Licensee on account thereof.

(d) Electrical System. If the electrical system, including but not limited to panels, distribution, lighting, and exterior signage systems and controls, is damaged, other than by reason of the fault or negligence of BPC, its agents or contractors, then BPC may, after notice to Licensee, cause the necessary repairs to be made, and Licensee shall reimburse BPC for such costs, on invoice therefore. In all other cases, Licensee shall allow full access to BPC for any repairs and maintenance to the electrical system which BPC deems necessary or advisable.

(e) Image and Appearance. Licensee acknowledges that the condition of the Kiosk is of utmost importance to BPC in preserving the image of Bryant Park as a world-class public space. Licensee therefore agrees that BPC shall have the right to require Licensee to make such changes in the condition and appearance of the Kiosk as are necessary, in BPC's reasonable judgment, to preserve such image.

(f) Quarterly Maintenance and Repair Schedule. On or prior to the first day of each calendar quarter Licensee shall submit to BPC for its review a schedule of routine and other maintenance and repair tasks which are needed or contemplated during such quarter. Licensee shall adhere to such schedule. Nothing in this paragraph shall relieve Licensee from the obligation to undertake any other maintenance or repairs which may be required hereunder during such period, however.

(g) BPC Repairs. BPC reserves the right to make repair or alterations in the area of the Kiosk when necessary by reason of accident, or repairs, alterations or improvements until such condition shall have been cured, and this Agreement and the obligations of Licensee hereunder shall in no way be affected, nor shall BPC be liable to Licensee, its agents,

employees, servants, contractors or invitees for any loss, damage, stoppage or shutdown of service due to any such repairs or alterations.

9. **ALTERATIONS.**

(a) Approval Required. Licensee shall not install or permit any party to install anything in or on the Kiosk or perform any alterations, additions or improvements on or to the Kiosk, whether structural or non-structural or whether to the interior or exterior of the Kiosk, or perform any painting therein or thereupon (each of the foregoing being “**Licensee Work**”), without first obtaining the prior written consent of Licensor in each instance, which consent Licensor may grant or withhold in Licensor’s discretion.

(b) Submittal of Plans, etc. If Licensee shall desire to perform Licensee Work, Licensee shall first submit in writing to Licensor, detailed plans and specifications thereof (“**Plans**”), and if approved by Licensor, Licensee may only perform Licensee Work in strict accordance with such Plans and only after Licensee shall have first obtained and provided copies to Licensor of (i) all necessary permits and/or approvals to perform such work, including, without limitation, the approval of Parks, (ii) worker’s compensation insurance in statutory limits, (iii) general liability insurance in coverage and amounts reasonably determined by Licensor and (iv) such other requirements upon which Licensor may have conditioned its consent or Parks may require.

(c) Inspection. Licensor and Parks shall have the right to inspect the Kiosk at all reasonable times during the progress of Licensee Work.

(d) Report on Completion of Work. Upon completion of Licensee Work (other than Licensee’s trade fixtures) which involves structural work, exterior work or utility systems, Licensee shall promptly furnish Licensor with a detailed, itemized statement of costs actually incurred for such work, together with copies of all lien waivers from contractors and materialmen.

(e) Title. Title to all alterations, fixtures and other improvements made, installed, attached, or affixed to the Kiosk shall pass to the City immediately upon construction or installation, attachment or affixation thereto. Without limiting the generality of the foregoing, unless otherwise agreed to by Licensor in writing in advance, Licensee shall not be entitled to any payment, credit or reimbursement for any expenditure for any trade, display or other fixtures, or any alterations or improvements.

10. **COMPLIANCE WITH LAWS.** Licensee, at its sole cost and expense, shall comply with all present and future applicable governmental laws, rules, orders, ordinances, regulations, statutes, requirements, codes, and executive orders, extraordinary as well as ordinary, of any and all of governmental and quasi-governmental departments and bureaus, and of any applicable fire rating bureau, or other body exercising similar functions, in connection with the granting of this License and Licensee’s use of the Kiosk, including, but not limited to, obtaining and at all times maintaining any requisite permits from the

Department of Health and Mental Hygiene (“NYC DOHMH”) or the New York State Department of Agriculture and Markets (“NYS DOAM”) and all other permits, approvals and requirements necessary for the operation of Licensee’s business at the Kiosk for the use permitted hereunder. Licensee shall obtain all such required permits and approvals prior to the Commencement Date and shall maintain the same in full force and effect throughout the Term.

11. **BUSINESS CONDUCT.** (a) General. Licensee, recognizing that Bryant Park is a well-known New York City park, and a Scenic Landmark designated by the New York City Landmarks Preservation Commission, and is being operated and maintained as a world class public space, and as a special inducement to Licensor to enter into this Agreement, covenants and agrees that at all times:

(i) Licensee’s activities at the Kiosk throughout the Term will be consistent with the character and dignity of the Park;

(ii) the sales methods in said business, as well as all other elements of presentation, merchandising, display and promotion, will be dignified and in conformity with the highest standards of practice;

(iii) Licensee’s employees shall maintain a neat and clean appearance and shall conduct themselves in a polite, courteous and professional manner;

(iv) the appearance of the Kiosk, including the interior of the Kiosk to the extent visible by the public from outside, and any external installations of Licensee (including signs, displays, etc.) shall be subject to Licensor’s approval and Licensee shall promptly comply with any instructions from Licensor to change such appearance if it is found unacceptable in Licensor’s discretion and;

(v) the appearance, number, location, nature and subject matter of all displays and exhibits placed or installed on or about the Kiosk, and of any signs, lettering, announcements, or any other kinds or forms of inscription displayed in or about the Kiosk, shall be subject to Licensor’s prior written approval, and shall not be displayed until Licensee shall have obtained such approval and all necessary permits therefor. Licensee shall not affix or allow to be affixed to the Kiosk or any appurtenance thereto any advertising of any kind whatsoever, including (without being limited to) promotional displays and point-of-purchase displays.

(vi) Licensee shall not grant any other person access or rights to use any part of the Kiosk, or the adjacent areas, or any other area of Bryant Park, for any event or other activity, regardless of whether or not of a commercial nature, and regardless of whether any payment is made by the persons conducting such activity, without obtaining the advance approval of BPC in each case, which approval may be granted, conditioned or withheld by BPC at its sole discretion.

(vii) Licensee shall observe all restrictions required of “sublicensees” under the City-BPC License Agreement, including, without being limited to, restrictions on categories of

products offered or advertised, limitations as to use of City-owned intellectual property, and Parks rights of approval.

(b) Objectionable Products. Licensee will, promptly after demand by Licensor, and as often as each such demand shall be made, forthwith discontinue selling or offering for sale, or permitting to be sold, or otherwise dealing in, or exhibiting, or advertising in or upon the Kiosk, or any portion thereof, any product to which Licensor may reasonably object. Licensee shall, promptly after demand by Licensor, and as often as each such demand shall be made, forthwith discontinue any advertisement, sign, notice, object, poster, exhibit and/or display at the Kiosk, or any portion thereof, to which Licensor may reasonably object.

(c) Appearance of the Kiosk. Licensee acknowledges that the appearance of the Kiosk is of the utmost importance to Licensor in preserving the image of the Park as a world class public space. Therefore, in the event Licensee fails to remedy the condition or cleanliness of the Kiosk, or of any installations of Licensee (including signs, displays, etc.) within twenty-four (24) hours after notice from Licensor, Licensor shall have the right to remedy the deficient condition, the cost of which shall be due and payable by Licensee upon demand.

(d) NYC DOHMH Rating. If applicable: Licensee shall at all times maintain the highest grade given by the NYC DOHMH (currently an "A" rating) at the Kiosk. In the event that such rating is not maintained, Licensee shall correct the situation as quickly as possible. In the event that the highest rating is not achieved after re-inspection by the NYC DOHMH, then Licensor may order the Kiosk closed to the public, and may thereupon terminate this License Agreement, and the Term, on seven days' notice to Licensee; in such event, if the appropriate rating has not been achieved within such time, the Term shall end at the expiration of such seven days; provided that such period shall be extended for the period of any delay which is beyond the control of Licensee, such as delays in re-inspection caused by the NYC DOHMH. Licensee shall promptly report any rating received to Licensor. In addition, at all times that the Kiosk is operating, a staff person with a valid DOHMH food handler's license must be present.

(e) Sponsorships. Negotiations with any potential sponsor, or public or private event, for any product or service that may be promoted, featured or identified by brand name in any way at the Kiosk are the exclusive right of Licensor and Licensee shall have no authority to represent Licensor in any sponsorship or promotional transaction. Licensee shall promptly notify Licensor and Licensor shall lead any discussions regarding this type of activity. All revenues deriving from sponsorship, product endorsement and promotion at the Kiosk shall remain the property of Licensor.

Licensor may require Licensee to offer for sale the products of one or more sponsors, for example beverages such as sodas and energy drinks, and may require exclusive pouring rights. Other than the revenue derived from the sales of these products there will be no additional compensation or reward offered or paid to Licensee by Licensor or the sponsor.

During any sponsored promotion Licensee shall cooperate with Licensor and any such sponsor to coordinate matters of presentation, displays, service and supply of products, provided that such sponsor makes such products available to Licensee on a commercially reasonable basis.

(f) Events conducted by Licensor. In the event that Licensor requests services by Licensee in connection with any events conducted or authorized by Licensor, the parties hereto will cooperate fully in providing and coordinating such services, with such compensation to Licensee as may be negotiated.

(g) Events conducted by Licensee. Any inquiries, discussions or negotiations regarding “pop-up” brand activations, or any presence at the Kiosk by corporate brands who wish to temporarily display their products or outward facing signage with their logo, must be referred promptly to Licensor and Licensor shall lead any discussions regarding this type of activity. Any inquiries, discussions or negotiations regarding external film or photo shoots must also be referred promptly to Licensor and Licensor shall lead any discussions regarding this type of activity. It is the understanding of the parties that approval will normally not be given for such events.

(h) Sound Restrictions. Unless specifically approved by Licensor, no music or other noise generated by Licensee or its employees shall be audible outside the Kiosk. In the event that music is permitted by Licensor which is audible outside the Kiosk, Licensor shall maintain complete control over the type of music, volume, apparatus used, and all other aesthetic matters, and Licensor’s determination with regard to such matters shall be binding on Licensee, but Licensee shall be solely liable for all costs thereof.

The violation by Licensee of any of the covenants, agreements, terms, provisions and conditions contained in this Section 11 shall be deemed a material and substantial default by Licensee under the terms of this Agreement. Any demand or demands by BPC pursuant to the provisions of this Section and compliance therewith by Licensee shall not impair this Agreement or affect Licensee’s ability hereunder, nor shall Licensee be entitled to any compensation or diminution or abatement of license fees by reason thereof.

12. **SIGNS.** (a) All signs (including, without being limited to, all permanent or temporary signs, lettering, commercial inscriptions, menu boards, banners or streamers of any kind whatsoever) which are visible from outside the Kiosk shall be subject to Licensee’s obligation to consult with BPC beginning at the planning and development stage. Licensee shall have no right to place any signs on the exterior of the Kiosk, including on or in any refrigerators or other display equipment used by Licensee, provided that at BPC’s discretion Licensee may erect and maintain suitable signs within the Kiosk, subject to the prior written approval of BPC with respect to number, type, size, shape and design, and subject also to compliance with all applicable legal requirements or regulations. In the event that any signs as described in this section are installed or placed without BPC’s approval, such signs shall be removed promptly by Licensee upon BPC’s request. Upon the expiration or sooner termination of this Agreement, if BPC shall so elect, Licensee at its own expense shall remove such sign or signs and restore the Kiosk to its original condition. Such obligation of Licensee shall survive the expiration or termination of this Agreement.

(b) In no event shall Licensee use or permit to be used the space adjacent to or any other space outside of the Kiosk, for display, sale or any other similar undertaking. In no event shall Licensee use, or permit to be used, any advertising medium or loud speaker, sound amplifier, radio, or television broadcast which may be heard outside of the Kiosk or which does not comply with the reasonable rules and regulations of BPC then in effect.

(c) BPC shall have the right to prohibit any advertising or display by Licensee mentioning Bryant Park which in BPC's opinion tends to impair the reputation of the Park. In addition, Licensee shall display such banners and other signs (such as signs on refrigerators containing cold drinks accessible by the public) as BPC may furnish for such purpose.

(d) Licensee hereby acknowledges that BPC has entered into an agreement with a separate advertising licensee for the sale of LED advertising panels on the exterior of the Kiosk. Licensee shall not interfere with, obstruct, or damage such panels, or take any action which would compromise such advertising licensee's exclusivity. Licensee shall not obstruct, or interfere with, mechanical, electrical, or other systems that serve such advertising panels, including but not limited to equipment and distribution located inside the Kiosk. The Licensee shall allow full access on a regular basis to the advertising licensee for any repairs and maintenance to the advertising panels which the advertising licensee and/or the BPC deems necessary or advisable. Such access may require the Licensee to remove and/or relocate its property to allow for monthly service of the advertising panels or the equipment and systems which serve them. Without limiting the generality of the foregoing, Licensee and its personnel shall take care that the consistent 24/7 operation of the advertising panels are not disrupted, as further dealt with in Section 15 below.

Any violation by Licensee of any of the obligations or restrictions contained in this Section 12 shall be deemed a material and substantial default by Licensee under the terms of this License.

13. **SERVICES.** (a) Refuse. Licensee shall place all of its refuse in secure vermin-proof bins, to be supplied by Licensee, to be kept at a place designated by BPC either adjacent to the Kiosk or within the Park for use by Licensee, and Licensee shall be responsible for using such space for storage and pickup of its refuse. BPC may change such location from time to time at its discretion. Licensee shall independently contract with a private carting firm for the removal of its refuse, and removal of refuse shall be subject to such rules and regulations as, in the judgment of BPC, are necessary for the proper operation of Bryant Park. In no event will Licensee allow its refuse to be placed in park receptacles either within Bryant Park or along the abutting sidewalks, except as expressly permitted by BPC. Licensee may not leave any of its trash, waste or rubbish by the curbs or streets adjacent to the Kiosk for a period in excess of one-half (½) hour (or such shorter period as may be required under the New York City Department of Sanitation Regulations), except between the hours of 10 p.m. and 6 a.m., and then, only for the purpose of placing the same for pick-up by Licensee's refuse removal private carting firm.

(b) **Pest Control.** Licensee shall pay to BPC, as upon invoice therefor, the cost of employing an exterminator, on a regular basis, to keep the Kiosk free from vermin. The Kiosk shall be subject to inspection by representatives of BPC who shall be permitted access and opportunity to inspect the Kiosk at all reasonable times.

(c) **Security.** BPC shall have no responsibility with respect to security of the Kiosk, or Licensee's property, employees, agents or invitees, and Licensee shall look solely to public authorities and its own contractors for the provision of services related to security. BPC will provide keys to Licensee for the existing locks, and BPC shall retain master keys which can be used to open the Kiosk in case of emergency or other uses permitted hereunder. Licensee shall be responsible for assuring that BPC has a key to the Kiosk at all times for use in the event entry becomes necessary when the Kiosk is closed.

14. **DELIVERIES.** All deliveries to Licensee at the Kiosk shall be made between the hours of 6:00 a.m. and 8:00 a.m. or between the hours of 8:00 p.m. and 10:00 p.m. daily. Licensee shall not permit delivered merchandise to be left outside the Kiosk during or following deliveries at any time.

15. **UTILITIES.** (a) Generally. The existing utilities at the Kiosk are described on **Exhibit B.** Electric utility hook-ups are provided with the Kiosk. Licensee will pay BPC a monthly fee for electric service as provided in Section 3 (c) above. **LICENSEE ACKNOWLEDGES THAT THE KIOSK DOES NOT HAVE ANY WATER SUPPLY, WASTEWATER CONNECTIONS, HEAT OR AIR CONDITIONING.**

(b) **"As Is" Condition.** Licensee acknowledges that, except as otherwise expressly provided in this Agreement, it is accepting the Kiosk and the utility services "as-is." Licensor makes no warranty or representation that the utility service and capabilities of the Kiosk are suitable for Licensee's needs.

(c) **BPC's Advertising Panels on the Exterior of the Kiosk.** The Kiosk features (a) BPC's exterior advertising panels and (b) decorative lighting mounted inside the crown of the Kiosk. Licensee shall be responsible for assuring that electric service to the lights for the advertising panels and the crown is continuous and uninterrupted at all times. BPC and/or the advertising licensee shall be responsible for maintaining LED lights in such advertising panels and crown lights, and otherwise assuring that such lights are in working order, and Licensee shall provide unlimited access to BPC, its licensees and its agents for such purpose. Licensee shall assure that the system(s) controlling illumination of the advertising panels and crown lighting are not tampered with or turned off by Licensee's personnel at any time.

16. **SIGNS.** (a) **In general.** Licensee shall not install or maintain any signs at the Kiosk, or on the exterior of the Kiosk, without Licensor's prior written consent. If Licensee proposes to install any signage, Licensee shall first submit full color drawings to Licensor which set forth the proposed design of the signage, the number, type, size, shape, color and method of installation, and subject, also, to compliance with all applicable legal requirements

and regulations. Initial outside signage and interior “Menu Boards” shall be those depicted on **Exhibit C**, subject to final refinements and approval. Upon the expiration or sooner termination of this Agreement, if Licensors shall so elect, Licensee at its own expense, shall remove such signs and restore the affected places at the Kiosk to their original condition. In no event shall Licensee place signs on the inside or the outside of or displays of any kind on the exterior of the Kiosk or visible from outside the Kiosk without the prior written approval of Licensors in each instance, and then, only upon obtaining all necessary permits therefor. Upon the expiration or sooner termination of this Agreement, if Licensors shall so elect, Licensee, at its own expense, shall remove such signs and restore any affected places on the Kiosk to their original condition. Licensee shall be responsible for obtaining all necessary permits for signage. Free-standing signs and handwritten signs shall not be used at any time.

(b) **Areas Outside the Kiosk**. In no event shall Licensee use or permit to be used the space adjacent to or any other space outside of the Kiosk, for display, sale, solicitation, the distribution of signs, flyers or promotional material or any other similar undertaking. In no event shall Licensee use, or permit to be used, any advertising medium and/or loudspeaker and/or sound amplifier and/or radio or television broadcast which may be heard outside of the Kiosk or which does not comply with the reasonable rules and regulations of Licensors which are then in effect.

17. **BPC’s LICENSE AGREEMENT WITH THE CITY**. (a) **In General**. This Agreement and every right of Licensee hereunder is and shall be subject and subordinate in all respects to each and every term, covenant, condition and provision of the City-BPC License Agreement, a copy of which is attached hereto as **Exhibit D**.

(b) **Licensee Bound**. Licensee hereby covenants, represents and warrants to Licensors that Licensee has received a copy of the City-BPC License Agreement and is bound by it, and shall comply with, each and every term, covenant, condition and provision of the City-BPC License Agreement to be performed by Licensors thereunder to the extent applicable to Licensee. Without limiting the foregoing in any manner whatsoever, Licensee hereby covenants, represents and warrants to Licensors, the Commissioner and Parks that (i) Licensee shall not violate any terms or conditions of the City-BPC License Agreement and (ii) nothing contained in this Agreement shall create or be deemed to create any relationship of contract or agency between Licensee and the Commissioner, Parks or the City. Further, Licensee shall not take any action, or neglect to take any action, which action or failure would result in an Event of Default by Licensors under the City-BPC License Agreement. Without limiting the generality of the foregoing, Licensee shall abide by the provisions of Section 1.2 and Section 10 thereof setting forth requirements for Licensee’s operations as a “Sublicensee” pursuant to the City-BPC License Agreement. In addition, in the event Licensors is assessed any penalties under Section 10.18 of the City-BPC License Agreement as a result of conduct or omission of Licensee, Licensee shall promptly reimburse Licensors for all costs thereof, including the costs of any appeals, upon submission by Licensors of an invoice therefor. In the event either party wishes to contest such assessment, the parties shall cooperate in conducting such appeal.

(c) **City-BPC License Agreement Terminable by Commissioner**. Licensee acknowledges that the license granted by the City to Licensors pursuant to the City-BPC License Agreement may

be terminable by the Commissioner, upon written notice to Licensors. Notwithstanding anything to the contrary contained in Section 2 hereof or elsewhere in this Agreement, in the event that the Commissioner terminates the City-BPC License Agreement, this Agreement and the license granted hereunder shall automatically terminate, expire and come to an end. Licensors agree to promptly notify Licensee of Licensors' receipt of any notice of termination of the City-BPC License Agreement, and neither the City nor Licensors shall have any liability to Licensee arising from such termination.

(d) Parks and other Governmental Approvals. Whenever Licensee is required to obtain the approval of Parks or another City or State agency or authority under this Agreement, or under the City-BPC License Agreement, Licensee shall first confer with Licensors, and Licensors shall determine which party shall submit the application for approval. If the application covers a matter that is also subject to Licensors' approval under this Agreement, such application shall not be submitted to Parks or such other agency or authority unless Licensors shall consent. Once the parties have agreed on the application, the parties shall cooperate in any application for approval. Nothing in this Agreement shall grant to Licensee the right to object or intervene in any matter for which Licensee is not obligated to obtain Parks (or other agency or authority) approval pursuant to this Agreement, the City-BPC License Agreement, or applicable laws, rules, regulations or orders.

(e) Parks' Inspections: Inspectors from Parks will visit the site unannounced to inspect operations and ensure proper maintenance of the Kiosk. Based on their inspections, Parks may issue directives to Licensors regarding deficiencies that Licensors will be obligated to rectify in a timely fashion. To the extent that any such identified deficiency and its associated corrective actions fall within the scope and responsibility of Licensee, Licensee will correct the deficiency in a timely fashion at the direction of Licensors. The time required to correct the deficiency will be outlined in the written directive from Parks.

18. **REMOVAL UPON EXPIRATION OR TERMINATION OF AGREEMENT.** Any and all alterations, additions and improvements to or placed at or on the Kiosk, as well as all fixtures existing or installed upon the Kiosk at any time (whether or not prior to the date of this Agreement), either by Licensee or by Licensors on Licensee's behalf, shall, upon installation, become the property of Licensors and shall remain upon and be surrendered with the Kiosk unless Licensors, by notice to Licensee not less than twenty (20) days prior to the date fixed as the termination of this Agreement, elects to relinquish Licensors' right thereto and to have them removed by Licensee, in which event the same shall be removed from the Kiosk by Licensee prior to the expiration of this Agreement, at Licensee's sole cost and expense. Notwithstanding the foregoing, movable furniture, movable personal property and movable trade fixtures located at the Kiosk shall remain the property of Licensee and shall be removed by Licensee at or before the expiration or sooner termination of this Agreement. In connection with the removal of any property from the Kiosk by Licensee, Licensee shall, at Licensee's sole cost and expense, promptly repair any and all damage to the Kiosk to restore the Kiosk to the condition existing prior to installation, including, without limitation, repairs occasioned by the removal of any property. Any of Licensee's property or other items remaining at the Kiosk after the expiration or sooner termination of this Agreement shall be deemed abandoned and may be disposed of by Licensors as it sees fit in its sole discretion, at

Licensee's expense. Licensee further agrees that Licensor shall have no liability for any disposal of property which is deemed abandoned. The foregoing provisions shall be effective regardless of whether the termination is the result of termination of the City-BPC License Agreement by Parks.

19. **ASSIGNMENT AND SUBLICENSING.** (a) Licensee, or its legal representatives, will not by operation of law or otherwise, assign (in whole or in part), mortgage or encumber this License Agreement, or sublet or permit any or all of the Kiosk to be used or occupied by others, without Licensor's prior written consent in each instance. The consent by Licensor to any assignment or sublicensing by Licensee shall not be a waiver of or constitute a diminution of Licensor's right to withhold its consent to any other assignment or sublicensing and shall not be construed to relieve Licensee from obtaining Licensor's express written consent to any other or further assignment or sublicensing. Such reasonable attorneys' fees as may be incurred by Licensor in connection with Licensee's request for consent to an assignment or sublicensing shall be paid by Licensee. Licensee hereby acknowledges that any proposed assignment of this License Agreement or sublicensing of the Kiosk shall be subject to the Commissioner's approval.

(b) If Licensee (or its legal representatives) desires to assign this License Agreement or sublicense the Kiosk, Licensee shall promptly notify Licensor in writing. Upon obtaining a proposed assignee or sublicensee upon acceptable terms, Licensee shall submit to Licensor in writing: (1) the name of the proposed assignee or sublicensee and if the proposed assignee or sublicensee is not a person, the names and addresses of all principals having a ten percent (10%) or greater ownership interest in such proposed sublicensee or assignee; (2) a true and complete copy of the fully executed proposed assignment or sublicense and all side agreements relating thereto; (3) the nature and character of the business which the proposed assignee or sublicensee will conduct at the Kiosk and (4) banking, financial and other credit information relating to the proposed sublicensee or assignee as requested by Licensor to determine the financial responsibility of said proposed sublicensee or assignee; and thereafter Licensee shall promptly submit to Licensor any other information concerning the proposed assignment or proposed sublicense which Licensor may request.

(c) Licensor may grant or withhold its consent to any request for assignment or sublicensing in its sole discretion and may require further information and submissions prior to making its decision.

(d) If this License Agreement shall be assigned, or if the Kiosk shall be sublicensed or occupied by any person or persons other than Licensee, Licensor may, after default by Licensee, collect all monies owed to Licensor under this Agreement from the assignee, sublicensee or occupant and apply the net amount collected to the fees herein reserved, but no such assignment, sublicensing, occupancy or collection of monies shall be deemed a waiver of the covenants in this Section, nor shall it be deemed acceptance of the assignee, sublicensee or occupant.

(e) Each permitted assignee or sublicensee shall assume all of Licensee's obligations and covenants under this License Agreement and shall be and remain liable jointly and severally

with Licensee for the payment of all sums owed to Licensors under this Agreement and for the due performance of all the terms, covenants, conditions and agreement herein contained on Licensee's part to be performed for the term of this License Agreement. No assignment shall be effective unless Licensee shall promptly deliver to Licensors a duplicate original of the instrument of assignment, in form reasonably satisfactory to Licensors, containing a covenant of assumption by the assignee of all of the obligations aforesaid and Licensee shall have obtained from Licensors the aforesaid written consent, prior thereto.

(f) Notwithstanding any provision of this License Agreement to the contrary, one hundred percent (100%) of any fees and/or consideration paid or payable by the sublicensee or assignee in excess of the fees reserved or payable under this License Agreement shall be paid by Licensee to Licensors as and when received by Licensee, less expenses proven to have been incurred by Licensee in assigning this License Agreement or sublicensing the Kiosk. Such expenses shall include, but not be limited to, brokerage fees, attorneys' fees and disbursements, advertising costs, reasonable concessions, and the costs incurred in connection with alterations, decorations and installations made by Licensee in preparing such space for occupancy by the assignee or sublicensee.

(g) In the event of an approved sublicensing or assignment, Licensors may require such approved sublicensee or assignee to deposit such moneys as Licensors may require to be held by Licensors in accordance with the terms of Section 6 of this License Agreement. If such sublicensee or assignee shall fail to pay such funds to Licensors as herein required no later than the third business day after Licensors shall have given its consent to such proposed sublicense or assignment, then Licensors shall have the right to revoke its consent to such sublicense or assignment on three (3) days' prior written notice.

(h) No assignment of this License Agreement or sublicensing of the Kiosk shall release or discharge Licensee hereunder from any of its obligations under this License Agreement nor relieve Licensee of the obligation to comply with the provisions of this Section in the event of a desire to further or additionally sublicense or assign.

(i) An "assignment" within the meaning of this Section 19 shall be deemed to include one or more sales, assignments, or transfers, by merger, consolidation, operation of law or otherwise, or creation of new stock, or any event by which an aggregate of fifty (50%) percent or more of Licensee's voting stock or ownership interest shall be vested directly or indirectly in a party or parties who are non-stockholders, or not holders of beneficial ownership interests, as the case may be, as of the date hereof.

(j) Notwithstanding anything to the contrary contained in this Section, Licensee may, without the consent of Licensors and without any right of termination in favor of Licensors or right on Licensors' part to require that Licensee sublicense or assign to Licensors, but subject to Commissioner's approval, sublicense all, but not less than all, of the Kiosk (together with Licensee's rights with respect to the Kiosk) or assign this License Agreement to any Subsidiary, Parent Company, Affiliate or successor by merger, consolidation or by operation of law or to an entity or person to whom all or substantially all of Licensee's assets or stock or ownership interests (directly or indirectly) are sold or transferred (such a successor or person

being herein called “**Successor**”), but only if prior to the effective date of any such transaction, Licensee demonstrates to Licensor’s satisfaction that (i) the Successor has a net worth equal to or greater than Licensee’s average net worth (as determined in accordance with generally accepted accounting principles) during the twelve (12) month period immediately prior to such merger, consolidation, sale or transfer and (ii) such merger, consolidation or transfer of assets is not effected for the primary purpose of transferring this License Agreement or sublicensing the Kiosk. In the event of an assignment or sublicense to a Successor, Licensor shall not be entitled to any portion of any profits received by Licensee in connection therewith. For the purpose of this Section, a “Subsidiary,” “Parent Company” and “Affiliate” of Licensee shall mean the following: (a) “Subsidiary” shall mean any corporation not less than 51% of whose outstanding capital and voting stock shall, at the time, be owned directly or indirectly, by Licensee; (b) “Parent Company” shall mean any corporation which shall own, directly or indirectly, at least 51% of the outstanding capital and voting stock of Licensee at the time; and (c) “Affiliate” shall mean any corporation or other entity which, directly or indirectly, controls or is controlled by or is under common control with Licensee. For this purpose, “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise. No assignment or sublicense under this Section shall be valid unless Licensee shall give notice of the assignment or sublicense to Licensor at least twenty (20) days prior to the effective date thereof and a true and complete copy of the instrument of assignment or sublicense shall be received by Licensor within ten (10) days following the effective date thereof. Furthermore, no such assignment or sublicense shall be permitted or effective, and shall be deemed to be null and void, if Licensee is then in default under this License Agreement beyond any applicable notice and grace period.

20. **ACCESS.** Other than in cases of emergency where no prior notice is required, Licensor and its agents and representatives shall have access to the Kiosk at all reasonable times upon twenty-four (24) hours prior notice to Licensee to perform necessary or required repairs and to inspect the same and/or in connection with the performance of repairs, alterations or improvements to the Kiosk. Licensee shall provide Licensor with a complete set of all keys for the Kiosk and shall furnish new keys as needed to assure that Licensor always has access. In the event that a keyless device or combination is required for entry, Licensee shall furnish any such needed device or combination as well. Licensee shall allow any government employees to inspect the Kiosk at any time, including, without limitation, any employees of Parks or the City. In addition, during the last six months of the Term, or during the pendency of an RFP issued by Licensor for a succeeding license for the Kiosk, Licensee shall grant Licensor access to the Kiosk from time to time during or outside business hours, upon reasonable notice, to enable inspections by subsequent licensees or prospective occupants of the Kiosk.

21. **AGREEMENT SUBJECT TO APPROVAL.** Licensee acknowledges and agrees that this Agreement is subject to the Commissioner’s approval. In the event such approval has not been granted within thirty (30) days following the execution and delivery hereof, either party may thereafter terminate this Agreement at any time before such approval has been granted.

22. **NO LIABILITY.** Neither Licensor nor the City shall be liable to Licensee for any injury or damage to Licensee or any other person or for any damages to or loss (by theft or otherwise) of any property of Licensee or of any other person, irrespective of the cause of such injury or damage, nor shall the City, Licensor or their affiliates have any liability or obligation to Licensee of any nature whatsoever, except as required by law or expressly provided in this Agreement. In no event shall Licensor's liability hereunder exceed amounts actually paid by Licensee to Licensor hereunder.

23. **INDEMNITY.** To the fullest extent permitted by law, Licensee shall indemnify and save harmless Licensor, The City and their officers, agents and employees (collectively, the "**Indemnified Parties**") from and against (a) any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without being limited to, attorneys' fees and disbursements) (i) arising from or related to (x) the use and occupancy of or conduct within the Kiosk and the Park by Licensee, or (y) any work or thing done, or any condition created in or about the Kiosk during the term of this Agreement by Licensee, (ii) arising from any act or omission by Licensee or its agents, invitees, or contractors, (iii) arising from Licensee's failure to comply with any of the terms, covenants or conditions of this Agreement or any requirement of law, or (iv) arising out of any delay by Licensee in surrendering vacant possession of the Kiosk upon the expiration or sooner termination of this Agreement, and (b) all losses, costs, expenses, claims; and liabilities incurred in connection with each such claim or action or proceeding brought thereon. In case any action or proceeding is brought against one or more of the Indemnified Parties by reason of any such claim, Licensee shall pay all costs of the Indemnified Parties (including, without limitation reasonable attorneys' fees and disbursements and amounts paid in settlement with Licensee's approval, which shall not be unreasonably withheld or denied) incurred in connection therewith. The foregoing indemnity shall include all losses suffered by Licensor as a result of its inability (or delay) in licensing the premises licensed herein after the expiration or termination of this Agreement due to damage to the Kiosk or any other part of the Park caused by Licensee. Licensee's obligations hereunder shall not be limited in any way by the provisions of any insurance policy required under this Agreement, nor by the failure of any of the Indemnified Parties to pursue any rights or claims thereunder. Without limiting the generality of the foregoing, Licensee shall be responsible for any claims made by an employee of Licensee or member of the public against Licensee, Licensor or the City arising from Licensee's operations under this Agreement.

24. **ESTOPPEL CERTIFICATES.** Licensee, at any time, and from time to time, upon at least ten (10) days' prior notice by Licensor, shall execute, acknowledge and deliver to and for the benefit of Licensor an original certificate in recordable form, certifying that (if such be the case) Licensee has accepted the Kiosk, that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), that there are no defenses or offsets to Licensee's obligations hereunder (or stating those offsets and defenses claimed by Licensee), that no notice of assignment of Licensor's interest has been given to Licensee, the dates to which the Base License Fee and the Percentage License Fee, if any, has been paid hereunder and such other information as Licensor may reasonably request.

25. **DEFAULT.**

(a) Non-monetary default. In the event of any non-monetary default by Licensee, Licenser may terminate this Agreement by delivering notice thereof to Licensee advising of the default and if said default is not cured within thirty (30) days thereafter, or, in the event the default involves the safety of persons, such shorter period as is stated in the notice, this Agreement shall, at the option of Licenser, terminate.

(b) Failure to make payments. In the event that Licensee does not make timely payment of any installment of the Base License Fee or the Percentage License Fee, or any other sums due under this Agreement, within ten (10) days after the due date thereof, Licenser shall have the right to terminate this Agreement upon not less than ten days' notice to Licensee; Licensee shall have the right to cure such default at any time up to the termination date set forth in such notice.

(c) Licensee's insolvency. If Licensee makes an assignment for the benefit of its creditors, or if a trustee, receiver, or similar officer of any court is appointed for Licensee or for a substantial part of its property or assets, whether with or without its consent, or if an action for bankruptcy, composition, reorganization, insolvency, or liquidation proceedings is or are instituted by or against Licensee and such action or proceedings are not dismissed within sixty (60) days from the date of the institution thereof, then such event shall constitute a default hereunder and Licenser may terminate this Agreement.

(d) Licenser's Rights. No termination hereunder shall be deemed to truncate or diminish Licensee's remaining obligations or Licenser's rights hereunder, and Licenser shall retain its rights and remedies in accordance with Section 37(e) below.

26. **WAIVERS.** Both parties hereto hereby waive trial by jury in any action or proceeding brought against the other relating to this Agreement. Licensee agrees not to claim any set-off or offset or interpose any counterclaim of whatever nature or description, except compulsory counterclaims, in a proceeding or action commenced by Licenser.

27. **BROKER.** Licensee represents to Licenser that Licensee has had no conversations or negotiations with any broker or finder with respect to this Agreement, other than those who may be acting as Licenser's consultants. Licensee agrees to indemnify, defend, and hold Licenser harmless from and against any and all claims for fees and commissions and against any liability (including reasonable attorneys' fees and disbursements) arising out of any conversations or negotiations had by Licensee with any broker or finder with respect to this Agreement.

28. **INSURANCE.** (a) Licensee shall maintain Commercial General Liability insurance in the amount of at least Three Million Dollars (\$3,000,000) per occurrence for bodily injury (including death) and property damage and Two Million Dollars (\$2,000,000) for personal and advertising injury. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Premises and such per-location aggregate shall be at least Three Million Dollars (\$3,000,000). This insurance shall protect

the insureds from claims that may arise from any of the operations under this Agreement. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be "occurrence" based rather than "claims-made."

(b) Such Commercial General Liability insurance shall name Licensor and the City, together with their officials and employees, as an Additional Insured for claims that may arise from any of the operations under this Agreement. Coverage shall be at least as broad as the most recent edition of ISO Form CG 2026. "Blanket" or other forms are also acceptable if they provide the City, together with its officials and employees, with coverage at least as broad as ISO Form CG 2026.

(c) Licensee shall maintain Workers' Compensation insurance, Employers Liability insurance, and Disability Benefits insurance on behalf of, or with regard to, all employees involved in Licensee's operations under this Agreement, and such insurance shall comply with the laws of the State of New York.

(d) With regard to all operations under this Agreement, Licensee shall maintain or cause to be maintained Commercial Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA0001. If vehicles are used for transporting hazardous materials, such Business Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

(e) Policies of insurance required under this Section shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from Licensor and the Commissioner.

(f) Policies of insurance required under this Section shall be primary and non-contributing to any insurance or self-insurance maintained by Licensor or the City.

(g) Wherever this Section requires that insurance coverage be "at least as broad" as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that Licensee can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

(h) There shall be no self-insurance program or self-insured retention with regard to any insurance required under this Section unless approved in writing by Licensor and the Commissioner. Under no circumstances shall Licensor or the City be responsible for the payment of any self-insured retention (or any other aspect of a self-insurance program). Further, Licensee shall ensure that any such self-insurance program provides Licensor and the City with all rights that would be provided by traditional insurance under this Section,

including but not limited the defense and indemnification obligations that insurers are required to undertake in liability policies.

(i) Licensors and the City's limits of coverage for all types of insurance required under this Section shall be the greater of (i) the minimum limits set forth in this Section or (ii) the limits provided to Licensee under all primary, excess and umbrella policies covering operations under this Agreement.

(j) All required policies, except for Workers' Compensation insurance, Employers Liability insurance, and Disability Benefits insurance, shall contain an endorsement requiring that the issuing insurance company endeavor to provide Licensors and the City with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both the Commissioner of the Department of Parks and Recreation, 830 Fifth Avenue, New York, New York, 10065 and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Such notice is to be sent at least (30) days before the expiration, cancellation or termination date, except in cases of non-payment, where at least ten (10) days written notice would be provided.

(k) All required policies, except Workers' Compensation, Employers Liability, and Disability Benefits, shall include a waiver of the right of subrogation with respect to all insureds and loss payees named therein.

(l) Certificates of Insurance for all insurance required in this Section must be submitted to and accepted by Licensors and the Commissioner prior to or upon execution of this Agreement.

(m) For Workers' Compensation, Employers Liability Insurance, and Disability Benefits, Licensee shall submit one of the following: C-105.2 Certificate of Workers' Compensation Insurance; U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance; Request for WC/DB Exemption (Form CE-200); equivalent or successor forms used by the New York State Workers' Compensation Board; or other proof of insurance in a form acceptable to Licensors and the City. ACORD forms are not acceptable proof of workers' compensation coverage.

(n) For all insurance required under this Section other than Workers' Compensation, Employers Liability, and Disability, Licensee shall submit one or more Certificates of Insurance in a form acceptable to Licensors and Commissioner. All such Certificates of Insurance shall (a) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) be accompanied by the provision(s) or endorsement(s) in Licensee's policy/ies (including its general liability policy) by which Licensors and the City have been made additional insureds or loss payees, as required herein. All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form required by Licensors and the Commissioner or certified copies of all policies referenced in such Certificate of Insurance.

(o) Certificates of Insurance confirming renewals of insurance shall be submitted to Licensor and the Commissioner prior to the expiration date of coverage of all policies required under this License. Certificates of Insurance shall comply with subsections (n) and (o) directly above.

(p) Acceptance or approval by Licensor and the Commissioner of a Certificate of Insurance or any other matter does not waive Licensee's obligation to ensure that insurance is fully consistent with the requirements of this Section is secured and maintained, nor does it waive Licensee's liability for its failure to do so.

(q) Licensee shall be obligated to provide Licensor and the City with a copy of any policy of insurance required under this Section upon request by Licensor, the Commissioner or the New York City Law Department.

(r) Licensee may satisfy its insurance obligations under this Section through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

(s) In the event Licensee requires any contractor to procure insurance with regard to any operations under this Agreement and to name Licensee as an Additional Insured thereunder, Licensee shall ensure that such contractor also name Licensor and the City, including their officials and employees, as an Additional Insured with coverage at least as broad as the most recent edition of ISO Form CG 20 26.

(t) Licensee shall be solely responsible for the payment of all premiums for all policies and all deductibles to which they are subject, whether or not Licensor or the City is an insured under the policy.

(u) Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Section, Licensee shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this Agreement (including notice to Commercial General Liability insurance carriers for events relating to the Licensor's own employees) no later than twenty (20) days after such event. For any policy where Licensor or the City is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of Licensor and the City of New York as Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. Licensee shall simultaneously send a copy of such notice to Licensor at its address set forth in this Agreement and the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

(v) Licensee's failure to secure and maintain insurance in complete conformity with this Section, or to give the insurance carrier timely notice on behalf of Licensor or the City, or to do anything else required by this Section shall constitute a material breach of this Agreement.

Such breach shall not be waived or otherwise excused by any action or inaction by Licensor or the City at any time.

(w) Insurance coverage in the minimum amounts provided for in this Section shall not relieve Licensee of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or the law.

(x) In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Section, Licensee shall at all times fully cooperate with Licensor and the City with regard to such potential or actual claim.

(y) Apart from damages or losses covered by Workers' Compensation Insurance, Employers Liability Insurance, and Disability Benefits Insurance, or Commercial Automobile Insurance, Licensee waives all rights against Licensor and the City, including their officials and employees, for any damages or losses that are covered under any insurance required under this Section (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of Licensee and/or its employees, agents, or servants of its contractors or subcontractors.

(z) In the event Licensee receives notice, from an insurance company or other person, that any insurance policy required under this Section shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, Licensee shall immediately forward a copy of such notice to Licensor at its address set forth in this Agreement and both the Commissioner of the Department of Parks and Recreation, 830 Fifth Avenue, New York, New York, 10065 and the New York City Comptroller, att'n: Office of Contract Administration, Municipal Building, One Centre Street, room 1005, New York, New York 10007. Notwithstanding the foregoing, Licensee shall ensure that there is no interruption in any of the insurance coverage required under this Section.

(aa) Licensee shall be responsible for obtaining and maintaining insurance covering Licensee's property, equipment and inventory at the Kiosk.

29. **DAMAGE OR DESTRUCTION—INSURANCE PROVISIONS, ETC.**

Each party hereby releases the other from any liability which it might otherwise have to the other party for any damage to the Kiosk by fire or other casualty to the extent that such damage shall be insured under a policy or policies of insurance permitting such release by a party. Each party shall cause each policy for property damage insurance to include a provision permitting such a release of liability, provided that if an insurer will not include such a provision in such policy or if the inclusion of such provision would involve an additional premium the party carrying the policy shall so advise the other party within a reasonable time. If the other party notifies the party carrying the policy that it desires such a provision to be included in the policy, the party carrying the policy shall use its best efforts to cause such a provision to be so included provided the other party shall promptly pay any additional premium therefor.

30. **MARKETING.** Licensee shall use commercially reasonable efforts to advertise, market and promote the Kiosk in form and manner consistent with the character and dignity of the Park. Licensee agrees to keep Licensor informed of the marketing and promotional activities which Licensee is intending to engage in. The use of Licensor's name and logos, and references to the Kiosk and Bryant Park, shall be subject to Licensor's and the City's approval. All uses of any sponsor's name, logo and other intellectual property shall be subject to the control of such sponsor.

31. **EARLY TERMINATION OF CITY-BPC LICENSE AGREEMENT.**

Notwithstanding any other provision of this Agreement, the initial term of the City-BPC License Agreement expires on July 18, 2028. Licensor currently intends to exercise its options to renew such agreement for two further terms of five years, expiring in 2038, and to extend such agreement beyond such date, but the renewal of such agreement will depend on the assent of the City, which cannot be guaranteed. In the event the City-BPC License Agreement is not extended, then upon the expiration or termination of the City-BPC License Agreement all of Licensee's rights granted under this Agreement shall terminate as well. However, if upon expiration or termination of the City-BPC License Agreement a replacement agreement takes effect, and such replacement agreement grants BPC the right to continue the license granted by this Agreement, then such replacement agreement shall be deemed to be an extension of the City-BPC License Agreement for purposes of this Agreement.

32. **LICENSOR'S OPTION TO TERMINATE.** (a) Licensor, its successors and assigns, shall have the absolute right, option and privilege to terminate this Agreement, the Term and Licensee's rights hereunder by giving written notice to Licensee by personal delivery, certified mail or nationally recognized overnight delivery service (the "**Termination Notice**"). The Termination Notice shall specify the date upon which the Term shall expire pursuant to this Section 32 (the "**Termination Date**"); provided, however, that Licensor may not terminate this Agreement on a date which is less than twenty-five (25) days from the date the Termination Notice is given, which shall be deemed to be have been given upon the date of mailing, delivery or refusal to accept delivery, as the case may be.

(b) Upon the Termination Date, this License and the Term shall cease, come to an end and expire as fully and as completely as if the Termination Date were the date originally fixed herein as the end and expiration of Term and the license granted hereunder. On or before the Termination Date, Licensee shall (i) vacate the Kiosk in accordance with all of its obligations pursuant to Section 18 of this Agreement and (ii) deliver to Licensor, an original acknowledgment letter executed by Licensee in the form acceptable to Licensor acknowledging that the Term has been terminated in accordance with this Section.

33. **MECHANICS' LIENS.** Licensee shall not suffer or permit any mechanics' liens to be filed against the Kiosk, or part thereof, by reason of work, labor, services or materials supplied or claimed to have been supplied to or anyone holding any interest in the Kiosk, or any part thereof through or under Licensee. If any such mechanics' lien shall at any time be filed, Licensee shall, within 30 days after notice of the filing thereof, cause the same to

be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Licensee shall fail to cause such lien to be discharged within the period aforesaid, then Licensor may discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding, and in any such event Licensee shall be required, if Licensor so elects, to take any and all steps necessary to prevent the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowance. Nothing in this License contained shall be deemed or construed in any way as constituting the consent or request of Licensor, express or implied by inference or otherwise, to any contractor, subcontractor, laborer, or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of the Kiosk, or any part thereof nor as giving Licensee a right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanics' lien against Licensor's or the City's interest in the Kiosk or any appurtenant structures or areas.

34. **NO DISCRIMINATION.** Licensee shall not unlawfully discriminate against any employee or applicant for employment or patron because of race, creed, sex, color, age, handicap, marital status, sexual preference or orientation, or national origin, or any other group with respect to whom such discrimination is now or hereafter prohibited under federal, state or local law. Licensee will take affirmative action to ensure that employees and applicants for employment are treated without regard to their race, creed, sex, color, sexual preference, or orientation, national origin, age, handicap or marital status, or any other group with respect to whom such discrimination is now or hereafter prohibited to contractors for the City under federal, state or local law. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited whether by advertising or other means, compensation, selected for training, including apprenticeship, promoted, upgraded, demoted, downgraded, transferred, laid-off and terminated. Any violation of this Section shall be deemed a material breach of this Agreement, as a result of which Licensor may terminate or suspend same without incurring any penalty or damage on account of such termination or suspension.

35. **NOTICES.** Except as otherwise expressly set forth herein, all notices, demands, consents, deliveries and requests (each, a "Notice"), which either party may desire or be required to give to the other party, shall be deemed to be sufficiently given or rendered if in writing, and delivered by certified mail, return receipt requested, by a nationally recognized overnight courier service or by personal delivery, addressed to Licensor or Licensee, as the case may be, at their respective address set forth above, and the time of giving of any such Notice shall be deemed to be the date upon which the same is delivered or the date of mailing, as the case may be. Either party may change the address to which Notices are to be sent by designating the new address in a Notice to the other party. In addition, Licensee shall furnish Licensor with a 24-hour emergency contact, and shall keep such emergency contact information updated so as to be current at all times throughout the Term.

36. **GOVERNING LAW; JURISDICTION AND VENUE.** (a) This Agreement shall be governed and construed in all respects by the laws of the State of New York.

(b) This License shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of Licensee, and shall be governed by and construed in accordance with the laws of the State of New York.

(c) Any and all claims asserted by or against the City arising under this License or related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Courts") or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this License Agreement and intent, Licensee agrees:

(i) If the City initiates any action against Licensee in Federal Court or in New York State Court, service of process may be made on Licensee either in person, wherever such Licensee may be found, or by registered mail addressed to Licensee at its address set forth in this License, or to such other address as Licensee may provide to the City in writing; and

(ii) With respect to any action between the City and Licensee in New York State Court, Licensee hereby expressly waives and relinquishes any rights it might otherwise have (x) to move to dismiss on grounds of forum non conveniens, (y) to remove to Federal Court; and (iii) to move for a change of venue to a New York State Court outside New York County.

(d) With respect to any action between the City and Licensee in Federal Court located in New York City, Licensee expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.

(e) If Licensee commences any action against the City in a court located other than in the City and State of New York, upon request of the City, Licensee shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, Licensee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

37. MISCELLANEOUS.

(a) "Park." As used in this Agreement the term "Park" shall include the entirety of Bryant Park, together with abutting sidewalks.

(b) Approvals and Consents. Unless otherwise specifically stated in this Agreement, or otherwise required by law, whenever the approval or consent of Licensor is required hereunder, Licensee shall request such approval or consent in writing, and such approval or consent may be granted or withheld at the discretion of Licensor, with no further liability or obligation to Licensee with respect to such decision, but subject to the limitations set forth in this section. In all matters of design, appearance, style and color, Licensor will have full, unconditional right of approval.

(c) Employee Discount. All employees of Licensor, and Licensor for its internal catering needs, shall receive a discount from Licensee equal to 20 percent of the costs of the items offered for sale on Licensee's price lists upon presentation of proper employee ID.

(d) Validity. A determination that any provision of this Agreement is void, unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Agreement to any person or under particular circumstances is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

(e) Remedies. The parties hereby expressly acknowledge and agree that their remedies are cumulative, and that mention of a particular remedy in this Agreement does not preclude either from exercising any and all other rights and remedies available to it, whether at law or in equity. No provision of this Agreement shall be deemed to be waived by Licensor unless such waiver is clearly set forth in a writing signed by an officer of Licensor.

(f) Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and no earlier statement or prior written agreement between the parties with respect to the subject matter of this Agreement shall have any force or effect. Licensee agrees that it is not relying on any representations, warranties or agreements other than those expressly contained in this Agreement. This Agreement shall not be modified or cancelled except in a writing subscribed by all parties hereto. This Agreement shall bind the parties hereto and their successors and permitted assigns.

(g) Survival. Each and every obligation and liability of Licensee under this Agreement shall survive the expiration or sooner termination of this Agreement.

(h) Headings. The headings contained in this Agreement are inserted solely for reference and shall not constitute a part of this Agreement nor affect its meaning, construction or effect.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

LICENSOR:

BRYANT PARK CORPORATION

By: _____
Name: _____
Title: _____

LICENSEE:

By: _____
Name: _____
Title: _____

STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

On _____, 2025 before me, the undersigned, a Notary Public in and for said State, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature(s) on the instrument, the entity upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

On _____, 2025 before me, the undersigned, a Notary Public in and for said State, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature(s) on the instrument, the entity upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

EXHIBITS:

Exhibit A—Site Plan for the Kiosk(s)

Exhibit B—Specifications and Utilities

**Exhibit C— Final Design Renderings and Drawings, Menu Boards, and Other Signage;
Initial Menu Items and Price List**

Exhibit D—The City-BPC License Agreement