

# Concession Agreement for the Operation of the Espanola Way Street Market

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**CONCESSION AGREEMENT  
BETWEEN THE CITY OF MIAMI BEACH, FLORIDA  
AND THE MARKET COMPANY, INC.  
FOR THE MANAGEMENT AND OPERATION OF THE  
ESPANOLA WAY STREET MARKET**

THIS CONCESSION AGREEMENT (the "Agreement") made the \_\_\_\_\_ day of \_\_\_\_\_, 2018 ("Effective Date"), between the **CITY OF MIAMI BEACH**, a municipal corporation of the State of Florida (hereinafter referred to as "City"), having its principal address at 1700 Convention Center Drive, Miami Beach, Florida, 33139, and **THE MARKET COMPANY, INC.**, a for-profit corporation established pursuant to the laws of the State of Florida, with offices at 238 East San Marino Drive, Miami Beach, Florida 33139 (hereinafter referred to as "Concessionaire").

**WITNESSETH**

**WHEREAS**, on April 23, 2014, the Mayor and City Commission adopted Resolution No. 2014-28573, accepting the recommendation of the City Manager pertaining to the ranking of proposals, pursuant to Request for Proposals No. 2013-317ME, for the management and operation of street markets, including green markets at Lincoln Road, Collins Park, Normandy Village Isle, and South of Fifth; and

**WHEREAS**, Concessionaire, although the sole proposer for the operation of a street market in Espanola Way, has been operating similar markets in Miami Beach and adjoining communities, and was recommended by the City Commission as the successful operator for the Espanola Way Street Market ("Market"); and

**WHEREAS**, the Espanola Way Association, Inc. (Association), the business association representing the interests of the Espanola Way neighborhood, has requested the City revive the street market on Espanola Way, situated on the public right-of-way between Washington Avenue and Drexel Avenue; and

**WHEREAS**, the Association endorsed Concessionaire as operator of the new market because Concessionaire presently operates the City's other green markets and previously operated the Espanola Way market from 2006 to 2009; and

**WHEREAS**, at the December 13, 2017, the Mayor and Commission authorized the City and Concessionaire to negotiate a concession agreement for operation of the Espanola Way Street Market on a month to month basis; and

**WHEREAS**, on \_\_\_\_\_, the Mayor and Commission accepted the written recommendation of the City Manager and waived, by 5/7<sup>th</sup> vote, the competitive bidding requirement, finding such waiver to be in the best interest of the City, and approved, in substantial form, this Agreement for the management and operation of the Espanola Way Street Market on a month-to-month basis, and further authorized the Mayor and City Clerk to execute the final negotiated Agreement.

**NOW THEREFORE**, in consideration of the premises and the mutual covenants and conditions herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby conclusively acknowledged, it is agreed by the parties hereto as follows:

The City hereby grants to the Concessionaire, and the Concessionaire hereby accepts from the City, the right to operate the following described concession within the Concession Area (as defined herein), in conformance with the purposes and for the period stated herein, and subject to all the terms and conditions herein contained and fairly implied by the terms hereinafter set forth.

## SECTION 1. TERM.

- 1.1 This Agreement shall operate on a month-to-month basis, commencing as of the aforementioned Effective Date ("Commencement Date"), expiring on September 30, 2019 or as such time as the City executes a new concession agreement for the Market ("Initial Term"), whichever occurs first.

## SECTION 2. CONCESSION AREA.

The City hereby grants to the Concessionaire the right to operate a concession for an open air street market, as further described herein, in the following areas (hereinafter referred to collectively as the "Concession Area" and as more specifically delineated in Exhibit A):

- 2.1 Area 1. Espanola Way.  
This Concession Area is limited to the public right-of-way bounded on the south by a line which lies no less than five (5'0") feet north of, and parallel to the south right-of-way line of Espanola Way (keeping, at minimum, a clear unobstructed five (5'0") foot clear path of travel for pedestrians between the private property and the Concession Area); bounded on the north by a line which lies no less than five (5'0") feet south of, and parallel to the north right-of-way line of Espanola Way (keeping, at minimum, a clear unobstructed five (5'0") foot clear path of travel for pedestrians between the private property and the Concession Area); bounded on the west by the east right-of-way line of Drexel Avenue; and bounded on the east by the west right-of-way line of Washington Avenue. The Concession Area does not include those portions of the public right-of-way where fountains, seating, or other public amenities or uses authorized, licensed, or permitted by the City are currently located or may be located in the future.
- 2.2 Area 2. Drexel Avenue.  
This Concession Area is limited to the public right-of-way bounded on the south by the south lot line of lot 1 block 4B of First Addition to Whitman's Subdivision of Espanola Villas according to the plat thereof as recorded in plat book 3 page 147 of the public records of Miami-Dade County, Florida; bounded on the north by the south Espanola Way right-of-way; bounded on the west by a line which lies no less than fourteen (14'0") feet east of, and parallel to the west right-of-way of Drexel Avenue; and bounded on the east by a line which lies no less than fourteen (14'0") feet west of, and parallel to the east right-of-way of Drexel Avenue. The Concession Area does not include those portions of the public right-of-way where fountains, seating, or other public amenities or uses authorized, licensed, or permitted by the City are located or may be located in the future.
- 2.3 Notwithstanding the use of the Concession Area granted to Concessionaire herein, Concessionaire herein understands, agrees, and acknowledges that the Concession Area, along with any and all other public right-of-way areas not specifically identified

herein, are public and, as such, must remain available for the use and enjoyment of the general public whether or not the public chooses to purchase any of Concessionaire's goods, or otherwise partake of any of the services it provides.

### SECTION 3. USE(S).

The Concessionaire is hereby authorized to conduct the following kind(s) of uses within the Concession Area, all at its sole cost and expense:

3.1 Concessionaire shall operate and manage an open air street market, commonly known and referred to herein as the Espanola Way Street Market ("Market"), which shall provide a venue for Concessionaire's vendors to sell and/or provide items such as: plants and cut flowers; fruits, vegetables, and other edible products and related food items; cooked and prepared food items; non-alcoholic beverages, coffee, and tea; and arts and craft items (as each is more specifically defined in Section 3.8 and more particularly delineated in the attached Exhibit E):

3.2 Facilities.

Operation of the Market shall generally include the rental of booths, tents, tables, signs, or space(s) (collectively, "Facilities"), in conformance with the site plan defined in Section 3.3 herein. The City herein approves the rental of the Facilities, and the prices for same, as set forth in Exhibit B, and as provided in Section 17. Any amendments to Exhibits A, B, or C must be approved in writing by the City Manager or his designee and, prior to implementation of same, an updated exhibit shall be incorporated herein. As referenced in this Agreement, the City Manager's designee shall be the Director of Tourism, Culture and Economic Development Department.

3.2.1 The design, type, material, and color of any and all Facilities shall be approved in writing by the City's Planning Department prior to the Commencement Date. A photo of City-approved Facilities is incorporated herein as Exhibit C. Thereafter, Concessionaire shall not change, alter, or modify the design, type, material, and color of any such City-approved Facilities without the prior written consent of the City Manager or his/her designee (and, if so approved, an updated Exhibit C will be made a part of and incorporated into this Agreement).

3.2.2 The condition and quality of Concessionaire's Facilities shall at all times be maintained in a manner that is consistent with the condition and quality of similar facilities in first-class open air markets. It is the City's intent, and Concessionaire hereby agrees and acknowledges, to develop and promote a world-class open air market similar to those found in other first-class resort and beach communities comparable to the City of Miami Beach. Accordingly, Concessionaire shall, at a minimum, ensure that all Facilities placed within the Concession Area are well-maintained and in usable condition, but shall also adhere to the high, ongoing maintenance standards for same, consistent with the aforementioned conditions and standards of quality.

3.3 Site Plan.

The set-up of Facilities to be placed within the Concession Area shall be substantially in accordance with the Site Plan approved in Exhibit A. The Facilities shall not

exceed a maximum number of 36 tent spaces or tables, as depicted in Exhibit A. Concessionaire further agrees that it will not alter or modify its Site Plan without the prior written consent of the City Manager or his/her designee.

All portions of the Concession Area shall at all times be maintained in a clean and sanitary manner.

3.4 Compliance with Americans with Disabilities Act (ADA).

Concessionaire agrees and acknowledges that during all periods when the Market operates, including set-up and break-down periods, it shall comply with ADA standards, Florida Accessibility Code standards, and any other applicable accessibility standards required by law, including the provisions of the City's "Special Events Disability Access Punch List," attached and incorporated as Exhibit D hereto. Concessionaire's compliance with the provisions set forth in the attached Exhibit D includes, but shall not be limited to, any and all responsibilities associated with "Event Producer," as described therein.

- 3.4.1 The Concessionaire's responsibility to comply with the aforementioned provisions in this section include, but are not limited to, ensuring that there is an accessible path of travel from the handicap-designated parking spaces and public transportation stops within the boundary of, areas associated with, and entrances to Espanola Way.

Concessionaire shall:

- a) maintain accessible path(s) of travel that permit unobstructed access to the entryways of all buildings, facilities, elements, and spaces within Espanola Way; and
- b) maintain an unobstructed accessible path of travel on all sidewalks of and along Espanola Way.

- 3.4.2 Concessionaire's responsibility to comply with the requirements of this section shall be limited to those areas within the Concession Area.

3.5 Public Right-of-Way.

The City and Concessionaire agree and acknowledge that the public's use of the public right-of-way is a prime consideration and must be balanced accordingly with Concessionaire's proposed operations. The right-of-way is for the use and enjoyment of the public and the public's right to such use shall not be infringed upon by any activity of the Concessionaire. Upon execution of this Agreement, Concessionaire acknowledges that all of the rights-of-way within the Concession Area are public, and as such, concession operations must not restrict, or appear to restrict, access to the general public, or in any way limit the public nature or ambiance of the adjacent area. The Concessionaire will conduct its operations so as to maintain a reasonably quiet and tranquil environment for the adjacent area, and make no public disturbances.

No vehicular traffic or parking will be permitted on the public right-of-way or the Concession Area unless specifically authorized. Vehicles and trailers belonging to Concessionaire, including its employees, contractors, agents, vendors, and/or other third parties, shall be permitted on the street adjacent to the Concession Area/public right-of-way on Espanola Way only for set up and removal of the concession

operations, and any and all such vehicles must be removed from the public right-of-way immediately thereafter. Anyone operating a vehicle for these purposes shall have a current and valid driver's license.

The bagging of parking meters for the Market is not permitted. If use of parking spaces within the Concession Area is needed in connection with the operation of the Market, and approved by prior written consent of the City Manager or his/her designee, Concessionaire will be required to pay for appropriate costs associated for the bagging of parking meters.

3.6 Removal of Concession Facilities.

Concessionaire agrees that any Facilities or other items used in Market operations shall be removed from the public right-of-way and Concession Area, in compliance with the time parameters set forth in section 9.2 herein.

3.7 Hurricane Evacuation Plan.

Concessionaire agrees that the Facilities and any other items used in concession operations will be immediately removed from the Concession Area upon the issuance of a hurricane warning by the Miami-Dade County Office of Emergency Management, and stored by Concessionaire at a private, off-site location.

Concessionaire agrees to adhere to the site plan which satisfies emergency ingress and egress requirements and has been approved by the Fire Department, attached hereto as Exhibit G ("Emergency Evacuation Plan").

3.8 Permitted Concession Items.

The quality of goods and services offered by Concessionaire will be first-rate and comparable to those available in open air markets in other first-class resort and beach communities similar to Miami Beach (or, at a minimum, to the quality and pricing of goods and services provided by privately-owned businesses selling like goods and services within the City).

3.8.1 Cut Flowers and Plants.

This shall generally include the sale of flowers, either individually or in bunches that have been cut from their base, and potted plants.

3.8.2 Fruits, Vegetables, Other Edible Products.

This shall generally include the sale of those edible items such as fresh or dried fruits, vegetables, nuts; preserves, jams, jellies, or pickled items; juices, smoothies, or other non-alcoholic, non-branded beverages (e.g. lemonade, ice tea, etc.), and Coca-Cola brand beverages and coffee products.

3.8.3 Cooked and Prepared Food Items.

This shall generally include the sale of prepared and cooked food items, including, but not limited to, ethnic cuisine, pastas, salads, cooking demonstrations, etc., and ready-to-eat foods items such as barbecue, hamburgers, and hotdogs. Any cooking and heating elements, especially those using open flames or combustible fuels, must be set up in accordance with any regulations of and/or recommendations by the City of Miami Beach Fire Department.



3.8.4 Arts and Crafts.

This shall generally include the sale of arts and crafts that are individually hand-crafted and not commercially mass-produced.

3.8.5 Live Entertainment/Amplified Sound.

Live entertainment or speakers are not permitted in the Concession Area.

3.8.6 Termination of Permitted Items by City.

In the event that the City determines, at its sole option and discretion, that any of the foregoing items for sale are no longer permitted, then the City may revoke Concessionaire's right to provide such item, upon thirty (30) days written notice to Concessionaire. Any percentage of gross receipts (PG), as defined herein, paid by Concessionaire with regard to a discontinued use/item shall be prorated and/or adjusted accordingly, as of the date of termination of said use/item.

3.9 Dangerous Materials.

Concessionaire agrees not to use or permit in the Concession Area and/or Facilities the storage and/or use of gasoline (except for combustible powered electricity producing generators, which shall be allowed subject to compliance with any applicable laws), fuel oils, diesel, illuminating oils, oil lamps, turpentine, benzene, naphtha, propane (except for the use of gas grills for cooking, subject to compliance with any applicable laws and approval from the City of Miami Beach Fire Department), natural gas, or other similar substances, combustible materials, or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida. Any such substances or materials found within the Concession Area and/or Facilities shall be immediately removed.

Concessionaire shall indemnify and hold City harmless from any loss, damage, cost, or expense of the City, including, without limitation, reasonable attorney's fees, incurred as a result of, arising from, or connected with the placement by Concessionaire, and/or its employees, vendors, agents and/or subcontractors of any hazardous substance or petroleum products on, under, in or upon the Concession Area, as those terms are defined by applicable Federal and State Statute, or any environmental rules and environmental regulations promulgated thereunder; provided, however, Concessionaire shall have no liability in the event of the willful misconduct or gross negligence of the City, its agents, servants or employees. The provisions of this Subsection 10.6 shall survive the termination or earlier expiration of this Agreement.

3.10 Intentionally Omitted.

3.11 Monitoring Fee

Concessionaire agrees to pay a monitoring fee in the amount of **\$40.00 per day** for costs related to monitoring the Concessionaire's operations at the Market. The monitoring fee shall be paid with the PG payment due pursuant to Subsection 4.2 herein. The City, through its designated staff, will monitor the Concession Area at a frequency deemed appropriate by the City in its sole discretion.

In the event that the City chooses to extend the term of this Agreement for the Renewal Term, the monitoring fee during the Renewal Term shall automatically increase by five (5%) percent.

3.12 Nonexclusive Use.

Concessionaire understands and agrees that there exist other businesses, establishments, operations, and events which are ongoing, or may occur from time to time, within or in close proximity to the Concession Area. As such, Concessionaire agrees that it will use its best efforts to cooperate and coordinate with said businesses, establishments, operations and events so as to minimize the impact to the respective parties.

3.13 Conflict Resolution.

Concessionaire recognizes and understands that conflicts with one or more of the following may arise during the Term of this Agreement, or any extensions thereof: conflicts between Espanola Way area merchants/businesses and Concessionaire, conflicts between vendors and Concessionaire, conflicts between vendors and the general public, and/or conflicts between the general public and Concessionaire.

In the event that the City receives notice of a conflict, whether verbally or in writing, the City will communicate said information to the Concessionaire as quickly as practicable.

In the event of a conflict between Concessionaire and any of the aforementioned entities regarding any of Concessionaire's operations, upon Concessionaire's receipt of notice of same, whether written or verbal, resolution of said conflict shall be addressed in the following manner:

1. Concessionaire shall meet with the conflicted party and, using its best good faith efforts, endeavor to resolve the conflict to the satisfaction of all parties concerned within fourteen (14) calendar days from receipt of notice.
2. In the event that the conflict is not thereby resolved, then the Concessionaire shall provide written notice of the conflict to the City Manager's designee, with copy to the conflicted party. Within fourteen (14) calendar days of receipt of the written notice, the City Manager's designee shall propose a resolution, which may include the conflicted parties meeting with the City Manager's designee.
3. In the event the resolution recommended by the City Manager's designee is not acceptable to the Concessionaire or the other conflicted party, the City Manager's designee shall inform the City Manager of the conflict. The City Manager may choose to meet with the conflicted parties prior to making a determination in concurrence with the designee's recommendation or offering an alternative resolution. The City Manager's determination will be final and binding upon all parties.

Concessionaire understands and agrees that the foregoing conflict resolution process is not applicable to any conflict that may arise between the City and the Concessionaire under this Agreement, or to conflicts outside of the City's purview,

control, or jurisdiction.

3.14 Management and Security.

Concessionaire shall provide an onsite supervisory manager in the Concession Area at all times during which the Market is operating. Concessionaire's supervisory manager must also be present during the Set-Up and Move-Out periods.

The Concessionaire shall be solely responsible providing any security, as it may deem required in its judgment and discretion, to protect the Concession Area and any of the Facilities and vendor goods, merchandise and/or other property. Under no circumstances shall the City be responsible for any stolen or damaged goods, merchandise, Facilities, and/or any other property, nor shall City be responsible for any stolen or damaged personal property of Concessionaire's employees, contractors, vendors, patrons, guests, and/or other third parties.

Concessionaire agrees to provide off-duty police services ("Policing Services"), as required pursuant to City policy or applicable law, at such time or as may be required in special circumstances as they may arise. Should the City, in its sole discretion, hereinafter deem that Policing Services become warranted, the City shall provide notice to Concessionaire, who shall immediately thereafter implement same.

3.15 Vendor Selection / Priority for Miami Beach Merchants.

Concessionaire shall be solely responsible for the selection, oversight, and supervision of any vendor operating within the Concession Area as part of the Market.

The Concessionaire shall offer City-licensed merchants the opportunity to participate as vendors with a booth space in the Market. Concessionaire will use best efforts to ensure that City-licensed merchants are contacted and that marketing of booth availability is disseminated throughout the City, including, but not limited to, advertising in print newspapers, journals, websites, etc.

Concessionaire will keep and make available to the City for inspection, upon notice by the City, detailed vendor records, including vendor name, address, telephone numbers, qualifications, experience, and the proposed goods and services to be offered for sale by its vendors. Concessionaire will endeavor to match vendors and booths with appropriate locations.

3.16 Business Tax Receipt

Concessionaire shall obtain, at its sole cost and expense, any business licensing required by the City for its proposed operations. For purposes of this Agreement, Concessionaire shall obtain the "Agents, Broker, Dealers..." category business tax receipt.

SECTION 4. CONCESSION FEES

4.1 Security Deposit

Upon execution of this Agreement, and in any event no later than the Commencement Date, Concessionaire shall furnish the City with a Security Deposit, in the amount of One Thousand (\$1,000) Dollars ("Security Deposit"). This fee shall

serve to secure Concessionaire's performance in accordance with the provisions of the Agreement. In the event the Concessionaire fails to perform in accordance with said provisions, the City may retain the Security Deposit, as well as pursue any and all other legal remedies provided herein, or as may be provided by applicable law.

In the event that Concessionaire does furnish the Security Deposit within the time period provided herein, then the City Manager or his/her designee may immediately, without further demand or notice, terminate this Agreement without liability and without being prejudiced as to any remedies which may be available to the City for breach of contract.

4.2 Percentage of Gross Receipts (PG).

During the Term, Concessionaire shall pay the City on a monthly basis, and within thirty (30) calendar days from the end of each month, an amount equal to fifteen (15%) percent of Concessionaire's gross receipts (referred to as "PG").

The term "gross receipts" is understood to mean all income, whether collected or accrued, derived by the Concessionaire under the privileges granted by this Agreement, excluding amounts of any Federal, State, or City sales tax, or other tax, governmental imposition, assessment, charge or expense of any kind, collected by the Concessionaire from customers and required by law to be remitted to the taxing or other governmental authority. Except as otherwise provided, with regard to a special event under Subsection 15.1 hereof in which Concessionaire is not permitted to continue operating, the pro-rata share due to the City for the event days will be abated.

4.3 Intentionally Omitted

4.4 Interest for Late Payment.

Any payment which Concessionaire is required to make to City which is not paid on or before the respective date provided for in this Agreement shall be subject to interest at the rate of eighteen percent (18%) or the highest rate allowable under Florida Law, whichever is less, from the due date of payment until such time as payment is actually received by the City.

4.5 Sales and Use Tax.

Any required Florida sales and use tax shall be added to Concessionaire's payments and forwarded to the City as part of said payments, unless Concessionaire has secured a resale certificate, in which case the sales tax shall be remitted by Concessionaire to the Florida Department of Revenue. It is the City's intent that all payments due from Concessionaire (including MG and PG) shall be submitted to the City as net of such taxes.

SECTION 5. MAINTENANCE AND EXAMINATION OF RECORDS.

Concessionaire shall maintain current, accurate, and complete financial records, on an accrual basis, of accounting related to its operations pursuant to this Agreement. Systems and procedures used to maintain these records shall include a system of internal controls and all accounting records shall be maintained in accordance with generally accepted accounting principles, and shall be open to inspection and audit by the City Manager or

his/her designee upon reasonable prior notice and during normal business hours.

Such records and accounts shall include a breakdown of gross receipts, expenses, and profit and loss statements, and shall be maintained as would be required by an independent CPA in order to audit a statement of annual gross receipts and profit and loss statement pursuant to generally accepted accounting principles.

A monthly report of gross receipts must be submitted to the City, through the Finance Department's Revenue Manager, no later than thirty (30) days after the close of each month during the Term.

## SECTION 6. INSPECTION AND AUDIT.

- 6.1 Concessionaire shall maintain its financial records pertaining to operations for a period of three (3) years following conclusion of the Term, and such records shall be open and available to the City as deemed necessary. Concessionaire shall maintain all such records at its principal office, currently located at 238 E. San Marino Drive, Miami Beach, Florida, 33139 or, if moved to another location, all such records shall be relocated, at Concessionaire's expense, to a location within the City of Miami Beach, within ten (10) days' written notice from the City that it desires to review said records.

The City Manager or his/her designee shall be entitled to audit Concessionaire's records pertaining to its operation as often as deemed reasonably necessary throughout the Term, and three (3) times within the three (3) year period following termination of the Agreement, regardless of whether such termination results from the natural expiration of the term or for any other reason. The City shall be responsible for paying all costs associated with such audits, unless the audit(s) reveals a deficiency of five percent (5%) or more in Concessionaire's statement of gross receipts for any year or years audited; in which case the Concessionaire shall pay to the City, within thirty (30) days of the audit being deemed final by the City, the cost of the audit and a sum equal to the amount of the deficiency revealed by the audit, plus interest.

- 6.2 Concessionaire shall submit, within ninety (90) days following the end of each calendar year during the Initial Term, and any Renewal Term, an audited annual statement of gross receipts for the Market, in a form consistent with generally accepted accounting principles.

Nothing contained within this section shall preclude the City's audit rights for resort tax collection purposes.

## SECTION 7. TAXES, ASSESSMENTS, AND UTILITIES.

- 7.1 Concessionaire agrees to pay, before delinquency, all taxes including, but not limited to, resort taxes, and assessments of any kind assessed or levied upon Concessionaire by reason of this Agreement or by reason of the business or other activities and operations of Concessionaire upon or in connection with the Concession Area. Concessionaire will have the right, at its own expense, to contest the amount or validity, in whole or in part, of any tax and/or assessment by

appropriate proceedings diligently conducted in good faith. Concessionaire may refrain from paying a tax or assessment to the extent it is contesting the assessment or imposition of same in a manner that is in accordance with law; provided, however, if, as a result of such contest, additional delinquency charges become due, Concessionaire shall be responsible for such delinquency charges, in addition to payment of the contested tax and/or assessment if so ordered.

Concessionaire shall also pay for any fees imposed by law for licenses or permits for any business, activities, or operations of Concessionaire upon the Concession Area.

Concessionaire shall pay before delinquency any and all charges for utilities used by, for, or on behalf of the operations contemplated herein, including, but not limited to, water, electricity, gas, heating, cooling, sewer, telephone, trash collection, etc.

7.2 Ad Valorem Taxes.

Notwithstanding Subsection 7.1, the parties agree that the concession operations contemplated herein are for public purposes and, therefore, no ad valorem taxes should be assessed by the Miami-Dade County Tax Appraiser. If, however, said taxes are assessed, City and Concessionaire shall use reasonable efforts to address payment of same.

7.3 Generator Usage.

Concessionaire, at its sole cost and expense, shall provide quiet (whisper) generators for use by vendors requiring electricity. Concessionaire shall not create a fire hazard or connect to any electric outlets or power sources. Concessionaire must provide its own power sources, if any is required.

SECTION 8. EMPLOYEES AND INDEPENDENT CONTRACTORS.

8.1 In connection with the performance of its responsibilities hereunder, Concessionaire may hire its own employees and/or independent contractors, who will be employees and/or independent contractors of Concessionaire and not employees or agents of the City. Additionally, Concessionaire's vendors and/or sub-concessionaires shall not be considered agents or employees of the City. Concessionaire shall select the number, function, qualifications, compensation, including benefits (if any), and may, at its discretion and at any time, adjust or revise the terms and conditions relating to its employees and/or independent contractors.

8.2 Concessionaire shall ensure that its employees, agents and contractors, including any vendors selected by Concessionaire for the Market, observe all the graces of personal grooming and shall comport themselves in a professional and courteous manner. Neither Concessionaire nor any of its employees, agents or anyone selected by Concessionaire as a vendor for the Market shall have been convicted of a felony. If Concessionaire materially fails to comply with this provision, the City may default Concessionaire pursuant to Section 13 herein.

8.3 The Concessionaire shall have an experienced manager or managers overseeing the concession operations at all times.

SECTION 9. SCHEDULE OF OPERATION.

Concessionaire shall operate the Market in accordance with the schedule outlined below, weather or events of force majeure permitting.

9.1 Days of Operation: Sunday and Tuesday

9.2 Hours of Operation:

Set-Up: Sunday  
No earlier than 8 AM and finish by 10 AM

Tuesday  
No earlier than 2 PM and finish by 4 PM

Market operating hours: Sunday  
Daylight Savings Time: 10 AM to 1 PM  
Eastern Standard Time: 10 AM to 2 PM

Market operating hours: Tuesday  
Daylight Savings Time: 4 PM to 9 PM  
Eastern Standard Time: 4 PM to 10 PM

Move-Out: Sunday  
Daylight Savings Time: 1 PM to 4 PM  
Eastern Standard Time: 2 PM to 5 PM

Move-Out: Tuesday  
Daylight Savings Time: 9 PM to 10 PM  
Eastern Standard Time: 10 PM to 11 PM

9.3 Changes to Operational Hours.

If the City Manager or his designee deems that there is a decrease in demand for the concession operations, the City shall provide Concessionaire with a minimum of two (2) weeks prior written notice before implementing a specified reduction in Concessionaire's operation. In the event the City reduces the Concessionaire's operations pursuant to this subsection, then the partial termination provisions of Subsection 13.6.3 shall apply.

If the Concessionaire desires an increase or decrease in the Market's hours of operation, Concessionaire shall provide the City with a minimum of two (2) weeks prior written notice requesting said modification of operational hours. Such request by the Concessionaire shall be subject to the City Manager's written approval, which shall not be unreasonably withheld.

Concessionaire acknowledges and agrees that any reduction in operational hours at Concessionaire's request and in accordance with this subsection shall in no way reduce Concessionaire's financial responsibility to the City, as defined in Section 4 herein.

## SECTION 10. MAINTENANCE.

- 10.1 The Concessionaire accepts the use of the Concession Area and any and all other public property and/or rights-of-way provided or used by Concessionaire in conjunction with this Agreement, in their "AS IS" condition. Concessionaire assumes sole responsibility and expense for maintenance of the Concession Area. This shall include, at a minimum, daily removal of litter, garbage, and debris.
- 10.2 Orderly Operation.  
The Concessionaire shall have a neat and orderly operation at all times and shall be solely responsible for the necessary housekeeping services to properly maintain the Concession Area and all Facilities incident thereto.
- 10.3 Garbage Receptacles.  
With respect to litter, garbage, and debris removal, the Concessionaire shall also provide, at its sole cost and expense, receptacles within the confines of the Concession Area, and shall provide a sufficient number of these receptacles for use by the Concessionaire, its vendors, and the public that patronizes the Market. Determination of the number of receptacles shall be within the City Manager's sole discretion and Concessionaire agrees to be bound by same.
- Disposal of the contents of said receptacles and removal of litter, garbage, and debris within the Concession Area shall be accomplished by the end of the day on all days of Market operation. Any costs for removal of the contents of said trash receptacles by the City, as a result of the Concessionaire's failure to do so, shall be passed onto Concessionaire. The dumping or disposal of any refuse, trash, or garbage, generated by or as a result of the concession operations, into any City trash receptacle by the Concessionaire, including its employees, contractors, or vendors, is strictly prohibited.
- 10.4 Pressure Cleaning.  
Concessionaire shall also be responsible for reimbursing the City for the cost and expense of pressure cleaning the Concession Area, including all abutting sidewalks and public rights-of-way adjacent thereto, in the total amount of **\$100.00 per quarter**.
- 10.5 Inspection.  
The Concession Area and all Facilities and operations thereon, including but not limited to vendor booths, may be inspected at any time during days and hours of operation by the City Manager or any authorized City representative, or by any other State or County officer or agency having responsibilities for inspections of such operations. Concessionaire hereby waives any and all claims against the City for compensation for loss or damage sustained by reason of any interference with the concession operation by any public agency or official in enforcing their duties or any laws or ordinances. Any such interference shall not relieve the Concessionaire from any obligation hereunder.

## SECTION 11. INSURANCE.

- 11.1 Concessionaire shall maintain throughout the Term, at its sole cost and expense, the



following types of insurance coverage:

- a. Comprehensive General Liability in the minimum amount of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. This policy must also contain coverage for premises operations, products, and contractual liability.
- b. Workers Compensation Insurance shall be provided as required under the Laws of the State of Florida.
- c. Automobile Insurance for any vehicles used for, or associated with concessionaire's operations shall be provided covering all owned, leased, and hired vehicles and non-ownership liability for not less than the following limits:

Bodily Injury	\$1,000,000 per person
Bodily Injury	\$1,000,000 per accident
Property Damage	\$1,000,000 per accident

- 11.2 The policies of insurance referred to above shall not be subject to cancellation or changing coverage except upon at least thirty (30) days prior written notice to the City, and then only subject to the prior written approval of the City Manager or his designee. Prior to the Commencement Date of this Agreement, Concessionaire shall provide City with a Certificate of Insurance for each such policy. ALL POLICIES SHALL NAME THE CITY OF MIAMI BEACH FLORIDA AS AN ADDITIONAL NAMED INSURED. All such policies shall be obtained from companies authorized to do business in the State of Florida with an A.M. Best's Insurance Guide (latest edition) rating acceptable to the City's Risk Manager, and any replacement or substitute company shall also be subject to the approval of the City's Risk Manager.

CERTIFICATE HOLDER MUST READ:

CITY OF MIAMI BEACH  
1700 CONVENTION CENTER DRIVE  
MIAMI BEACH, FL 33139

**Failure to procure or maintain the required insurance shall constitute an immediate default of the Agreement, and the City may, at its sole discretion, provide notice to Concessionaire of termination of the Agreement without liability to the City hereunder.**

The City may also elect to obtain the insurance itself, in which case the cost of said insurance shall be passed through to the Concessionaire. Any sums expended by City in obtaining said insurance shall be repaid by Concessionaire to City, plus ten percent (10%) of the amount of premiums paid, to compensate City for administrative costs. If Concessionaire fails to repay City's expenditures within fifteen (15) days of demand, the total sum owed shall accrue interest at the highest rate allowable under Florida Law, until paid, or, at its option, the City may declare the Agreement in default pursuant to Section 13 herein.

## SECTION 12. INDEMNITY.

- 12.1 In consideration of a separate and specific consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify, hold harmless, and defend the City, its agents, servants, and employees from and against any claim, demand, or cause of action of whatsoever kind or nature arising out of error, omission, or negligent act of Concessionaire, and/or its vendors, agents, servants, employees, and/or subcontractors and/or sub-concessionaires pursuant to, as a result of, or in connection with the operations contemplated under this Agreement.
- 12.2 In addition, in consideration of a separate and specific consideration of \$10.00 and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify, hold harmless and defend the City, its agents, servants or employees, from and against any claim, demand or cause of action of whatever kind or nature arising out of any misconduct of Concessionaire, and/or its vendors, agents, servants, employees and/or subcontractors and/or sub-concessionaires, not included in the paragraph in the subsection above and for which the City, its agents, servants or employees are alleged to be liable.
- 12.3 Subsections 12.1 and 12.2 shall survive the termination or expiration of this Agreement. Subsections 12.1 and 12.2 shall not apply, however, to any such liability that arises as a result of the willful misconduct or gross negligence of the City, its agents, servants or employees.
- 12.4 Subrogation.  
The terms of insurance policies referred to in Section 11 shall preclude subrogation claims against Concessionaire, the City and its respective officers, employees, and agents.
- 12.5 Force Majeure.  
Neither party shall be obligated to perform hereunder and neither party shall be deemed to be in default if performance is prevented by:
- a. fire which renders at least thirty percent (30%) of the Concessionaire's cumulative Facilities and operations unusable and which is not caused by negligence of Concessionaire;
  - b. earthquake, hurricane, flood, act of God, civil commotion occurring in the Concession Area during or in connection with any event or other matter or condition of like nature; or
  - c. any law, ordinance, rule, regulation, or order of any public or military authority stemming from the existence of economic or energy controls, hostilities, or war.
- 12.6 Labor Dispute.  
In the event of a labor dispute which results in a strike, picket, or boycott affecting the Concession Area or operation described in this Agreement, Concessionaire shall not thereby be deemed in default or breach of any part of this Agreement, unless such dispute shall have been caused by illegal labor practices or violations by Concessionaire of applicable collective bargaining agreements, and there has been a

final determination of such fact which is not cured by Concessionaire within thirty (30) days.

12.7 Waiver of Loss from Hazards.

The Concessionaire hereby expressly waives all claims against the City for loss or damage sustained by the Concessionaire resulting from fire, water, natural disasters/acts of God (e.g. hurricane, tornado, etc.), civil commotion, riot, or any other Force Majeure contemplated in Subsection 12.5 and Labor Dispute in Subsection 12.6 above, and the Concessionaire hereby expressly waives all rights, claims, and demands against the City and forever releases and discharges the City of Miami Beach, Florida, from all demands, claims, actions and causes of action arising from any of the aforesaid causes.

SECTION 13. DEFAULT AND TERMINATION.

Subsections 13.1 through 13.3 shall constitute events of default under this Agreement. An event of default by Concessionaire shall entitle City to exercise any and all remedies described as City's remedies under this Agreement, including but not limited to those set forth in Subsection 13.4. An event of default by City shall entitle Concessionaire to exercise any and all remedies described as Concessionaire's remedies under this Agreement, including but not limited to those set forth in Subsection 13.5.

13.1 Bankruptcy.

If either the City or Concessionaire shall be adjudged bankrupt or insolvent, or if any receiver or trustee of all or any part of the business property of either party shall be appointed, or if any receiver of all or any part of the business property shall be appointed and shall not be discharged within sixty (60) days after appointment, or if either party shall make an assignment of its property for the benefit of creditors, or shall file a voluntary petition in bankruptcy, or insolvency, or shall apply for reorganization or arrangement with its creditors under the bankruptcy or insolvency laws now in force or hereinafter enacted, Federal, State, or otherwise, or if such petitions shall be filed against either party and shall not be dismissed within sixty (60) days after such filing, then the other party may immediately, or at any time thereafter, and without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract.

13.2 Default in Payment.

In the event Concessionaire fails to submit any payment within five (5) days of its due date, Concessionaire shall be assessed a late charge of \$50.00, in addition to interest at the rate of eighteen percent (18%) per annum or the highest rate allowable by Florida law, whichever is less. If any payment and accumulated penalties are not received within fifteen (15) days after the payment due date, and such failure continues three (3) days after written notice thereof, then the City may, without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract.

13.3 Non-Monetary Default.

In the event that Concessionaire or the City fails to perform or observe any of the covenants, terms, or provisions under this Agreement, and such failure continues thirty (30) days after written notice thereof from the other party hereto, such non-

defaulting party may immediately or at any time thereafter, and without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract. In the event that a default is not reasonably susceptible to being cured within such period, the defaulting party shall not be considered in default if it shall, within such period, commence with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default, but in no event shall such extended cure period exceed ninety (90) days from the date of written notice thereof. In the event Concessionaire cures any default pursuant to this Subsection, it shall promptly provide City with written notice of same.

#### 13.4 City's Remedies for Concessionaire's Default.

On the occurrence of any event of default set forth in this Section 13, the City may, following notice (if required) and the expiration of cure periods (as provided above), at its sole option and discretion, institute such proceedings it deems necessary to cure such defaults and to compensate City for damages resulting from such defaults, including but not limited to the right to terminate this Agreement. If notice of termination is given, the term of this Agreement shall terminate upon the date specified in such notice from City to Concessionaire.

On the date so specified, Concessionaire shall then quit and surrender the Concession Area to City pursuant to the provisions of Subsection 13.7. Upon the termination of this Agreement, all rights and interests of Concessionaire in and to the Concession Area and to this Agreement, and every part thereof, shall cease and terminate and City may, in addition to any other rights and remedies it may have, retain all sums paid to it by Concessionaire under this Agreement. In addition to the rights set forth above, City shall have the rights to pursue any and all of the following:

- a. the right to injunction or other similar relief available to it under Florida law against Concessionaire; and or
- b. the right to maintain any and all actions at law or suits in equity or other proper proceedings to obtain damages resulting from Concessionaire's default.

13.5 On the occurrence of any event of default set forth in this Section 13, the Concessionaire may, after notice (if required) and the expiration of the cure periods (as provided above), at its sole option and discretion, terminate this Agreement upon written notice to the City and/or seek damages. Said termination shall become effective upon receipt of a written notice of termination by the City, but in no event shall Concessionaire specify a termination date that is less than sixty (60) days from the date of the written termination notice. On the date specified in the notice, Concessionaire shall quit and surrender the Concession Area to City pursuant to the provisions of Subsection 13.7.

#### 13.6 Termination for Convenience / Partial Termination.

13.6.1 Notwithstanding the provisions of this Section 13, this Agreement may be terminated by the City Manager or his designee, for convenience and without cause, upon the furnishing of thirty (30) days prior written notice to Concessionaire.

Conversely, this Agreement may be terminated by the Concessionaire, for convenience and without cause, upon the furnishing of thirty (30) days prior written notice to City.

13.6.2 Concessionaire acknowledges that the City may develop a schedule of capital improvements for the right-of-way, including all or a portion of the Concession Area, which may entail a closure of all or a portion of the right-of-way and Concession Area, at the City Manager's sole discretion. In the event that the City closes down the right-of-way, or any other portion of the Concession Area, for the purpose of undertaking a capital improvement plan thereon, then the parties agree that that portion of the Agreement referencing said individual Concession Area shall be partially terminated for convenience, without cause and without penalty to either party, and only as to that portion of the Concession Area which has been closed. Such a termination shall become effective upon thirty (30) days prior written notice to Concessionaire.

13.6.3 In the event of termination or partial termination by City of the Agreement pursuant to this Subsection, Concessionaire herein acknowledges and agrees that it shall not have any claim, demand, or cause of action of whatsoever kind or nature, against the City, its agents, servants and employees (including, but not limited to, claims for interference in business or damages for interruption of services or interference in its concession operations by Concessionaire or its vendors). However, if it is determined, via a contract year end-review, that a termination or partial termination results in a decrease to the gross revenues derived by the Concessionaire, then Concessionaire's MG amount due to the City, pursuant to Section 4.3, shall be reduced proportionately equal to the percentage of Concession Area that was terminated or partially terminated and for the period of time of said partial termination.

13.6.4 In the event of termination for convenience by Concessionaire pursuant to Subsection 13.6.1, Concessionaire herein acknowledges and agrees that it shall not have any claim, demand, or cause of action of whatsoever kind or nature, against the City, its agents, servants, and employees. Moreover, Concessionaire's MG amount due to the City, pursuant to Section 4.3, shall be reduced proportionately equal to the period of time remaining on the current Term of this Agreement.

### 13.7 Surrender of Concession Area.

At the expiration of this Agreement, or in the event of a partial termination or termination of the entire Agreement, Concessionaire shall surrender the Concession Area (or portion thereof in the event of a partial termination) in the same condition as the Concession Area was prior to the commencement of this Agreement, reasonable wear and tear expected. Concessionaire shall remove all its Facilities, equipment, fixtures, personal property, etc. upon two (2) hours written notice from the City Manager or his/her designee unless a longer time period is agreed to by the City. Concessionaire's obligation to observe or perform this covenant shall survive the expiration or other termination of this Agreement. Continued occupancy of the Concession Area (or portion thereof) after termination (or partial termination) of the Agreement shall constitute trespass by the Concessionaire, and may be prosecuted

as such. In addition, the Concessionaire shall pay to the City one thousand dollars (\$1,000) per day as liquidated damages for such trespass and holding over.

#### SECTION 14. ASSIGNMENT.

Except as otherwise provided in this section, or in the Agreement, Concessionaire shall not assign, sublease, grant any concession or license, permit the use of by any other person other than Concessionaire, or otherwise transfer all or any portion of this Agreement and/or of the Concession Area without the prior written consent of the City Manager, which consent, if given at all, shall be at his/her sole discretion.

Concessionaire shall notify the City Manager or his designee of any proposed transfer, prior to consummation of same and the City or the City Manager or his designee, as applicable, shall respond within thirty (30) days. In the event that any such transfer is approved, the transferee shall agree to be bound by all the covenants of this Agreement required of the transferor hereunder. Any transfer made without complying with this section shall be null, void, and of no effect and shall constitute an act of default under this Agreement. Notwithstanding any such consent, or any permitted transfer under any provision of this section, unless expressly released by the City, Concessionaire shall remain jointly and severally liable (along with each approved transferee, who shall automatically become liable for all obligations of the transferor hereunder with respect to that portion of the Agreement so transferred), and the City shall be permitted to enforce the provisions of this Agreement directly against Concessionaire or any transferee of the Concessionaire without proceeding in any way against any other person.

For purposes of this Section 14, Concessionaire's selection of vendors for the Market shall not be deemed a transfer.

#### SECTION 15. SPECIAL EVENTS.

Concessionaire's proposed uses, as set forth in Section 3 herein, do not contemplate the production, promotion, or sponsorship by the Concessionaire of special events in any portion of the Concession Area. In the event Concessionaire does produce, promote, or sponsor a special event in the Concession Area, it shall abide by the City's Special Events Permit Requirements and Guidelines, as same may be amended from time to time. For any use, other than those permitted for in this Agreement, a Special Events Permit may be required and shall be obtained through the City's Department of Tourism, Culture and Economic Development Department. The City Manager's prior written authorization must be obtained for any such special event.

In the event that a special event and/or film permit is requested by an entity, other than the Concessionaire, and the proposed special event and/or film production is scheduled to occur within all or a portion of the Concession Area during Concessionaire's hours of operation, the Concessionaire agrees to cooperate with the City and the special event permit applicant to allow use of the Concession Area during the period of the special event, including set-up and break-down time.

##### 15.1 City Special Events.

Notwithstanding Section 15 hereof, and in the event that the City Manager, in his/her sole discretion, deems that it would be in the best interest of the City, the City

reserves the right to displace the Concessionaire for City produced special events and/or other City produced productions. In such cases, the City may request that the Concessionaire cease and desist operations during the time of, and in the area of, the special event and/or production, and the Concessionaire shall not operate during said time. If the Concessionaire is not required to close, Concessionaire shall only be allowed to have in operation its normal daily complement of Facilities and vendors. "Normal" shall be defined as Facilities and vendors that the Concessionaire has available for the public on a normal Market day. Such Facilities and vendors shall not be increased during special events and/or productions without the prior written permission of the City Manager or his/her designee.

Notwithstanding anything to the contrary, if a special event occurs in all or any portion of any Concession Area, Concessionaire shall not be liable for any charge, fee or other expense, governmental or otherwise, in connection with such special event.

## 15.2

### Street Vendors / Street Performers.

Any locations within the Concession Area identified by the City for non-Concessionaire sponsored street vendors and/or street performers, in accordance with City Ordinance No. 2002-3366, as may be amended from time to time, or otherwise in accordance with the City's respective rules, regulations, and guidelines associated therewith, as same may also be amended from time to time, are excluded from this Agreement, and Concessionaire shall not interfere or otherwise prohibit said street vendors and/or street performers' activities upon such designated portions of the public right-of-way. Similarly, Concessionaire shall not prohibit or otherwise interfere with the activities of any street vendors and/or street performers who may not be part of a City of Miami Beach permitted process, but who may have certain constitutionally protected rights to perform and/or offer for sale their wares on public rights-of-way.

## SECTION 16. NO IMPROPER USE.

The Concessionaire will not use, nor suffer or permit any person to use in any manner whatsoever, the Concession Area, operations, or facilities for any improper, immoral or offensive purpose, or for any purpose in violation of any Federal, State, County, or Municipal ordinance, rule, order or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted. The Concessionaire will protect, indemnify, and forever save and keep harmless the City, its agents, employees and contractors from and against damage, penalty, fine, judgment, expense or charge suffered, imposed, assessed or incurred for any violation, or breach of any law, ordinance, rule, order or regulation occasioned by any act, neglect or omission of the Concessionaire, its vendors, employees, agents, and/or subcontractors regarding the Concession.

In the event of any violation by the Concessionaire, or if the City or its authorized representative shall deem any conduct on the part of the Concessionaire, its vendors, agents, employees and/or subcontractors, to be objectionable or improper, the City shall have the option, at its sole discretion, to either (i) automatically terminate the Agreement, upon prior written notice to Concessionaire, or to (ii) suspend the concession operations should the Concessionaire fail to correct any such violation, conduct, or practice to the satisfaction of the City within twenty-four (24) hours after receiving written notice of the nature and extent of such violation, conduct, or practice, and such suspension shall continue

until the violation is cured. The Concessionaire further agrees not to commence operations during the suspension until the violation has been corrected to the satisfaction of the City.

#### SECTION 17. PRICE SCHEDULES.

Concessionaire agrees that prices charged for facilities and or space (booth) rental, be consistent with the price schedule(s) herein submitted by the Concessionaire and approved by the City and incorporated herein as Exhibit B to this Agreement. All subsequent price increases and amendments to Exhibit B must be approved in writing by the City Manager, or his designee, and prior to such changes being implemented within the Concession Area a new updated Exhibit B will be incorporated into this Agreement. Notwithstanding the foregoing, Concessionaire agrees and acknowledges that any discounted prices it may offer for the rental of Facilities shall not in any way reduce the amount of remuneration due to the City, including but not limited to the Percentage of Gross (Section 4.2), which shall be based and calculated on the prices set forth in said Exhibit B. Rain Discounts up to 50% of fees are approved by the City.

The Concessionaire agrees to refrain from the sale or rental of any item identified as prohibited by City law and/or other applicable law and to sell only those items approved by the City.

#### SECTION 18. NOTICES.

All notices from the City to the Concessionaire shall be deemed duly served upon receipt, if mailed by registered or certified mail with a return receipt to the Concessionaire at the following address:

Ms. Claire Tomlin, President  
The Market Company, Inc.  
238 East San Marino Dr  
Miami Beach, Florida 33139

All notices from the Concessionaire to the City shall be deemed duly served upon receipt, if mailed by registered or certified mail, return receipt requested, to the City of Miami Beach at the following addresses:

City Manager  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, FL 33139

With copies to:

Tourism, Culture and Economic Development Department  
City of Miami Beach  
1755 Meridian Avenue, Suite 500  
Miami Beach, FL 33139

The Concessionaire and the City may change the above mailing address at any time upon giving the other party written notification. All notices under this Concession Agreement must be in writing.



## SECTION 19. LAWS.

### 19.1 Compliance.

Concessionaire shall comply with all applicable City, Miami-Dade County, State, and Federal ordinances, statutes, rules, and regulations, including but not limited to all applicable environmental City, County, State, and Federal ordinances, statutes, rules and regulations.

### 19.2 Governing Law.

This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Florida. In case of any inconsistency between the terms of this Agreement, and any applicable general or special law, said general or special law shall govern, unless otherwise provided herein.

### 19.3 Equal Employment Opportunity.

Neither Concessionaire nor any affiliate of Concessionaire performing services hereunder, or pursuant hereto, will discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, sexual orientation, and disability, as defined in Title I of ADA. Concessionaire will take affirmative steps to utilize minorities and females in the work force and in correlative business enterprises.

### 19.4 No Discrimination.

The Concessionaire agrees that there shall be no discrimination as to race, sex, age, sexual orientation, color, creed, national origin, income, familial status, religion or handicap, in its employment practice or in the operations referred to by this Concession Agreement; and further, there shall be no discrimination regarding any use, service, maintenance, or operation within the Concession Area. All concession operations and services offered shall be made available to the public, subject to the right of the Concessionaire and the City to establish and enforce rules and regulations to provide for the safety, orderly operation and security of the operations and the facilities.

Additionally, Concessionaire shall comply fully with the City of Miami Beach Human Rights Ordinance, codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment, housing, public accommodations, and public services on account of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation.

## SECTION 20. MISCELLANEOUS.

### 20.1 No Partnership.

Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between the City and Concessionaire.

### 20.2 Modifications.

This Agreement cannot be changed or modified except by agreement in writing executed by all parties hereto. Concessionaire acknowledges that no modification to this Agreement may be agreed to by the City unless approved by the Mayor and City Commission except where such authority has been expressly provided herein to the City Manager or his designee.

20.3 Complete Agreement.

This Agreement, together with all exhibits incorporated hereto, constitutes all the understandings and agreements of whatsoever nature or kind existing between the parties with respect to Concessionaire's operations, as contemplated herein.

20.4 Headings.

The section, subsection, and paragraph headings contained herein are for convenience of reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement.

20.5 Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

20.6 Clauses.

The illegality or invalidity of any term or any clause of this Agreement shall not affect the validity of the remainder of the Agreement, and the Agreement shall remain in full force and effect as if such illegal or invalid term or clause were not contained herein unless the elimination of such provision detrimentally reduces the consideration that either party is to receive under this Agreement or materially affects the continuing operation of this Agreement.

20.7 Severability.

If any provision of this Agreement or any portion of such provision or the application thereof to any person or circumstance shall be held to be invalid or unenforceable, or shall become a violation of any local, State, or Federal laws, then the same as so applied shall no longer be a part of this Agreement but the remainder of the Agreement, such provisions and the application thereof to other persons or circumstances, shall not be affected thereby and this Agreement as so modified remains in full force and effect.

20.8 Right of Entry.

The City, at the direction of the City Manager, shall at all times during days and hours of operation, have the right to enter into and upon any and all parts of the Concession Area for the purposes of examining the same for any reason relating to the obligations of parties to this Agreement.

20.9 Not a Lease.

It is expressly understood and agreed that no part, parcel, building, facility, equipment or space is leased to the Concessionaire, that it is a concessionaire and not a lessee; that the Concessionaire's right to operate the concession shall continue only so long as this Agreement remains in effect.

20.10 Signage.

Concessionaire shall provide, at its sole cost and expense, any required signs at its concessions. All advertising, signage and postings shall be approved, in writing, by the City in its proprietary capacity, and shall be in accordance with all applicable Municipal, County, State and Federal laws and regulations. Any signage posted by Concessionaire on its facilities and equipment shall be subject to the prior approval of the City as to size, shape and placement of same.

20.11 Conflict of Interest.

Concessionaire shall perform its services under this Agreement and conduct the concession operations contemplated herein, in a manner so as to show no preference for other concession operations/facilities owned, operated, managed, or otherwise controlled by Concessionaire with regard to its responsibilities pursuant to this Agreement.

20.12 Reasonableness.

Notwithstanding anything to the contrary in this Agreement, including but not limited to references to "sole option" or "sole discretion" or words of similar meaning, in each instance in which the approval or consent or other action of the City Commission or the City Manager or his designee is allowed or required in this Agreement, such approval, consent or other action shall not be unreasonably withheld, conditioned or delayed.

20.13 Waiver.

No waiver of any covenant or condition of this Agreement by either party shall be deemed to imply or constitute a waiver in the future of the same covenant or condition or of any other covenant or condition of this Agreement.

20.14 No Third Party Beneficiary.

Nothing in this Agreement shall confer upon any person or entity, including, but not limited to sub concessionaires, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies by reason of this Agreement.

20.15 Attorneys' Fees.

If it becomes necessary for City or Concessionaire to enforce their respective rights under this Agreement or any part hereof through litigation, Concessionaire and City agree that the prevailing party shall be entitled to recover from the other party all costs and expenses of such litigation, including reasonable attorney's fees and costs, for all trial and appellate proceedings.

SECTION 21. LIMITATION OF LIABILITY.

The City desires to enter into this Agreement only if in so doing the City can place a limit on its liability for any cause of action for breach of this Agreement, so that its liability for any such breach never exceeds the sum of \$10,000.00. Concessionaire hereby expresses its willingness to enter into this Agreement with a \$10,000.00 limitation on recovery for any action for breach of contract. Accordingly, and in consideration of the separate consideration of \$10.00, the receipt of which is hereby acknowledged, the City shall not be liable to Concessionaire for damages to Concessionaire in an amount in excess of \$10,000.00, for any action for breach of contract arising out of the performance or non-performance of any

obligations imposed upon the City by this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of limitation placed upon the City's liability as set forth in Florida Statutes Section 768.28.

## SECTION 22. VENUE.

This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any and all the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.

**CITY AND CONCESSIONAIRE KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT CITY AND CONCESSIONAIRE MAY HERINAFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE CONCESSION AREA.**

## SECTION 23. CONCESSIONAIRE'S COMPLIANCE WITH FLORIDA PUBLIC RECORDS LAW.

- 23.1 Concessionaire shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.
- 23.2 The term "public records" shall have the meaning set forth in Section 119.011(12), which means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.
- 23.3 Pursuant to Section 119.0701 of the Florida Statutes, if the Concessionaire meets the definition of "Contractor" as defined in Section 119.0701(1)(a), the Concessionaire shall:
  - 23.3.1 Keep and maintain public records required by the City to perform the service;
  - 23.3.2 Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;
  - 23.3.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract term and following completion of the Agreement if the Concessionaire does not transfer the records to the City;
  - 23.3.4 Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of the Concessionaire or keep and maintain public records required by the City to perform the service. If the Concessionaire transfers all public records to the City upon completion of the Agreement, the Concessionaire shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Concessionaire keeps and maintains public records upon completion of the Agreement, the Concessionaire shall meet all applicable requirements for retaining public records.

All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

23.4 Request for Records; Noncompliance.

- 23.4.1 A request to inspect or copy public records relating to the City's contract for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Concessionaire of the request, and the Concessionaire must provide the records to the City or allow the records to be inspected or copied within a reasonable time.
- 23.4.2 Concessionaire's failure to comply with the City's request for records shall constitute a breach of this Agreement, and the City, at its sole discretion, may: (1) unilaterally terminate the Agreement; (2) avail itself of the remedies set forth under the Agreement; and/or (3) avail itself of any available remedies at law or in equity.
- 23.4.3 A Concessionaire who fails to provide the public records to the City within a reasonable time may be subject to penalties under s. 119.10.

23.5 Civil Action.

- 23.5.1 If a civil action is filed against a Concessionaire to compel production of public records relating to the City's contract for services, the court shall assess and award against the Concessionaire the reasonable costs of enforcement, including reasonable attorney fees, if:
  - i. The court determines that the Concessionaire unlawfully refused to comply with the public records request within a reasonable time; and
  - ii. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Concessionaire has not complied with the request, to the City and to the Concessionaire.
- 23.5.2 A notice complies with subparagraph (1)(b) if it is sent to the City's custodian of public records and to the Concessionaire at the Concessionaire's address listed on its contract with the City or to the Concessionaire's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.
- 23.5.3 A Concessionaire who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

23.6 IF THE CONCESSIONAIRE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONCESSIONAIRE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

CITY OF MIAMI BEACH  
ATTENTION: RAFAEL E. GRANADO, CITY CLERK  
1700 CONVENTION CENTER DRIVE

**SECTION 24. PROHIBITIONS REGARDING SALE OR USE OF EXPANDED POLYSTYRENE  
FOOD SERVICE ARTICLES.**

Pursuant to Section 82-7 of the City Code, as may be amended from time to time, effective August 2, 2014, the City has prohibited the use of expanded polystyrene food service articles by City Contractors, in connection with any City contract, lease, concession agreement, or special event permit. Additionally, pursuant to Section 82-385 of the City Code, as may be amended from time to time, no polystyrene food service articles will be allowed in the right-of-way, and no polystyrene food service articles can be provided to sidewalk café patrons.

*Expanded polystyrene* is a petroleum byproduct commonly known as Styrofoam. Expanded polystyrene is more particularly defined as blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead foam), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene).

*Expanded polystyrene food service articles* means plates, bowls, cups, containers, lids, trays, coolers, ice chests, and all similar articles that consist of expanded polystyrene.

Concessionaire agrees not to sell, use, provide food in, or offer the use of expanded polystyrene food service articles at the Concession Area or in connection with this Agreement. Concessionaire shall ensure that all vendors operating in the Concession Area abide by the restrictions contained in this Section 24. A violation of this section shall be deemed a default under the terms of this Agreement. This subsection shall not apply to expanded polystyrene food service articles used for prepackaged food that have been filled and sealed prior to receipt by the Concessionaire or its vendors.

Additionally, Concessionaire agrees to comply (and ensure compliance by its vendors) with Section 46-92 (c) of the City Code, which states that it is unlawful for any person to carry any expanded polystyrene product onto any beach or into any park within the City or for any business to provide plastic straws with the service or delivery of any beverage to patrons on the beach.

**IN WITNESS WHEREOF**, the parties hereto have caused their names to be signed and their seals to be affixed, all as of the day and year first above written, indicating their agreement.

**PASSED AND ADOPTED THIS \_\_\_\_\_ of \_\_\_\_\_, 2018.**

**Attest:**

**CITY OF MIAMI BEACH**

\_\_\_\_\_  
**RAFAEL E. GRANADO,  
CITY CLERK**

\_\_\_\_\_  
**JIMMY L. MORALES,  
CITY MANAGER**

\_\_\_\_\_  
Date

**Attest:**

**THE MARKET COMPANY, INC.**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**CLAIRE TOMLIN, PRESIDENT**

\_\_\_\_\_  
**Print Name**

\_\_\_\_\_  
Date

# EXHIBIT A

## Site Plan



7580 NE 4th Court  
Jacksonville, FL 32218  
Miami, FL 33138

1733  
PROJECT NUMBER

PROJECT:  
ESPAÑOLA  
WAY  
FARMER'S  
MARKET

ESPAÑOLA WAY  
MIAMI BEACH,  
FLORIDA

DRAWING:

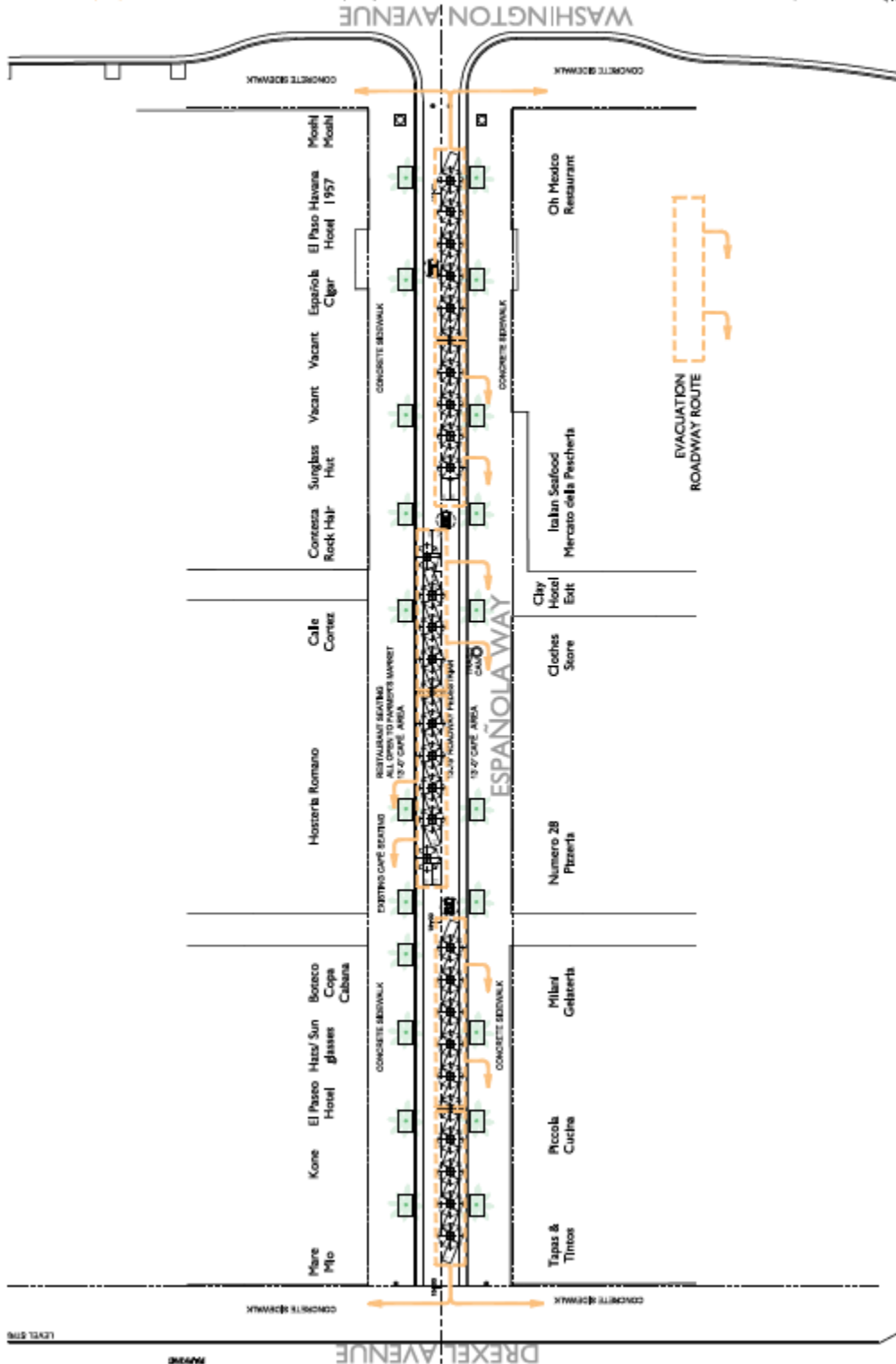
SITE  
DIAGRAM



SCALE: NOT TO SCALE  
DATE: 1/11/17  
BY: [Signature]

A | 00  
SHEET NUMBER

SITE DIAGRAM (NOT TO SCALE)





# EXHIBIT B

## ESPANOLA WAY STREET MARKET FEE SCHEDULE

(Rental Fee Schedule)

### Espanola Way Street Market- Fee Schedule

Type Vendor	Fee	Tax	Total
Excellent Potential	\$ 70.09	\$ 4.91	\$ 75.00
Good Potential	\$ 50.47	\$ 3.53	\$ 54.00
Medium Potential	\$ 40.19	\$ 2.81	\$ 43.00
Questionable Potential	\$ 29.91	\$ A9	\$ 3A0
New fruit & vegetable vendor may be charged minimal fee up to 6 months. Market Manager may also charge this minimal fee up to 6 months for other specialty products.	\$ 23.36	\$ 1.64	\$ 25.00
Winter fees are to be determined but are likely higher			
The fee is for a 10 X 10 canopy. Additional canopies are a total of \$20 including tax.			

Rain Discounts up to 50% of the fee are approved by the City of Miami Beach

# EXHIBIT C

## Espanola Way Street Market FACILITIES DESIGN/LAYOUT

FACILITIES PICTURES FORTHCOMING

DRAFT

# EXHIBIT D

(Page 1 of 2)

(Special Events Disability Access Punch List)

## Special Events Disability Access Punch List

1. Ensure curb cuts and cross walks are kept free and clear for usage, with a continuous accessible route of 44 inches in width.
2. The Event Producer must ensure that any nearby accessible on- or off-street parking ("handicapped parking") is not obstructed by vehicles loading/unloading equipment, etc. If such obstructions occur, the Event Producer must see that such obstructions are removed immediately. Accessible parking spaces shall be connected to the site's continuous accessible route, with no obstructions between the accessible parking spaces and the curb ramps that serve those spaces.
3. Any and all accessible routes created and/or installed by the Event Producer, or under the Event Producer's supervision, must have no abrupt change in level in excess of  $\frac{1}{4}$  inch. Where such changes in level are present, properly bevel the change in level at a 1:2 ratio or provide a ramp with a slope not to exceed a 1:12 ratio. This is necessary to allow passage of wheelchairs or strollers and prevent tripping or the catching of walkers and canes. Any ramps provided must be in compliance with all Florida Accessibility Code requirements, including, but not limited to, requirements regarding edge protection, handrails, and surface.
4. Provide a smooth transition between temporary pathways and any ramps, sidewalks, streets, or parking lots. This means no change in level exceeding  $\frac{1}{4}$  inch. Any change exceeding  $\frac{1}{4}$  inch requires beveling at a 1:2 ratio or the installation of a ramp with a slope not to exceed a 1:12 ratio. Any ramps provided must be in compliance with all Florida Accessibility Code requirements, including, but not limited to, requirements regarding edge protection, handrails, and surface.
5. All cashier counters (counters where money transactions occur) must be no higher than 36 inches maximum above finish floor, for a minimum length of 36 inches.
6. Maintain an accessible route for access to merchandise that is both within a vendor space, as well as merchandise not contained within a vendor space. If the overflow of merchandise for patron viewing is placed behind a booth, then provide adjacent access to the merchandise via a curb ramp, as well as the placement of a pathway with a stable and firm surface necessary for the use of wheelchairs and mobility aids.
7. Merchandise for display should be within a line of sight no higher than 48 inches for persons of short stature or wheelchair users. If merchandise is

displayed higher than 48 inches, merchant must provide assistance to disabled customers in order to reach items.

8. All vendor spaces shall be located on an accessible route that is a minimum of 44 inches wide.
9. If tables and seating are provided for the consumption of food, all aisles adjacent to accessible fixed seating shall provide 30 inch by 48 inch clear floor space for wheelchairs. Where there are open positions along both sides of such aisles, the aisles shall be not less than 52 inches wide.
10. For wheelchair seating spaces provided at tables or counters, knee spaces at least 27 inches high, 30 inches wide, and 19 inches deep shall be provided. The tops of accessible tables and counters shall be from 28 inches to 34 inches above the finish floor or ground.
11. Where food or drink is served at counters exceeding 34 inches in height for consumption by customers seated on stools or standing at the counter, a portion of the main counter which is 60 inches in length minimum shall be provided in compliance with the requirements of Items #9 and #10 above, or service shall be available at accessible tables within the same area.
12. Where portable toilets are provided, an accessible route shall be provided to the toilets. Five percent of the total number of toilets must be accessible. If clusters of portable toilets are distributed throughout the site, then each cluster must have accessible units.
13. If general assembly seating or standing space is provided for audience members attending a public performance at a special event, reserved wheelchair seating must be provided. Such seating must be provided in a location that allows wheelchair users an unobstructed line of sight to the stage. If seating capacity accommodates greater than 300 persons, then accessible seating shall be dispersed throughout the venue.

# EXHIBIT E

(Product List)

## Espanola Way Street Market Product List

All products represented for sale in the Market must comply with Section 3.8 (Permitted Concession Items). Products listed as part of this Exhibit are not intended to be outside of the definitions stated in Section 3.8.

Baked Goods  
Bonsai  
Candles  
Cheese  
Christmas Trees  
Cut Flowers  
Ethnic Products (i.e. clothing – not commercially mass produced)  
Fish & Shellfish as produce and cooked food  
Fruits & Vegetables  
Guacamole  
Candies (handmade)  
Herbs & Spices  
Honey  
Food Products (imported, handmade, cooked)  
Jams & Jellies  
Jewelry  
Kettle Corn  
Nuts  
Oils & Marinades  
Orchids  
Organic Food Products  
Original Artwork  
Plants & Trees  
Popcorn  
Potpourri (handmade)  
Smoothies, Fruit Juice, Teas & Lemonade  
Soaps (natural, handmade)  
Topiaries  
Vegan Products  
Vegetarian Soy Meat  
Water Gardens  
Water and other bottles or cans of non-alcohol drinks

# EXHIBIT F

(Page 1 of 5)  
(Vendor Guidelines)

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## The Market Company, Inc.

238 E. San Marino Drive/Miami Beach, FL 33139 (mailing address)  
(O) 305/531-0038 (F) 305/576-9792

### APPLICATION & AGREEMENT

Applicant: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Business Name: \_\_\_\_\_

State of Florida Sales Tax#: \_\_\_\_\_ (Copy Must Accompany Application)

Mobile Vending Permit \_\_\_\_\_ (for all edible products)

Phone: \_\_\_\_\_ E-Mail: \_\_\_\_\_

Fax: \_\_\_\_\_ Cell: \_\_\_\_\_

Market(s) of Interest: \_\_\_\_\_

Merchandise to be sold: \_\_\_\_\_

\_\_\_\_\_  
(Please continue on back of this page if necessary and initial your work).

I hereby agree to sell only such items that are approved with my application. I swear that all information is correct and complete. I hereby affirm that I have read the regulations and policies as outlined and agree to abide by all rules established for the operation of the markets. I further acknowledge that I am an independent contractor and take full responsibility for all activities conducted and agree to hold harmless and indemnify The Market Company, its owners, agents and employees, and any municipality or property owner from all liability arising from participation and sales in the market.

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

**Note:** Violation or falsification of any of the conditions set forth in this legal agreement will result in the immediate and permanent loss of permission to sell any product at markets sponsored by The Market Company, Inc.



**The Market Company, Inc.**  
238 E. San Marino Drive/Miami Beach, FL 33139 (mailing address)  
(O) 305/531-0038 (F) 305/576-9792

### **Vendor Requirements**

**Definition of Vendor:** Vendors are all persons selling in a market area managed by The Market Company including merchants who own stores and/or businesses. All vendors must meet these requirements.

**Market Location & Times:** **Determined by each individual market**

The Market Company has permits with several municipalities and property owners that designate set-up and break down times that also means "no more selling". Vendors that do not follow these times may be fined or terminated from the market(s).

**Market Fee Payment:** Market fees paid in advance will reserve a space in the markets. Fees can be paid in cash, check or credit card (automatic credit card deductions can be arranged). If a vendor cannot attend a market for which payment has been made, cancellation made 48 hours in advance of the official start of the set up time will transfer the paid funds to the next market date. Funds will be forfeited if cancellation is not made on time. Vendors who have reserved a space in a market owe for their space unless cancelled 48 hours in advance of the start of the official market set up time. Vendors who do not pay in advance but choose to come and obtain an unreserved space will pay at a time designated by the Market Manager and will be assigned a space if available.

**Markets Operate Rain or Shine.** If a vendor elects to set up for product sales, even if rain reduces sales, a minimum fee of 50% will be charged. In the case of advanced payment, if a vendor questions whether a market will be set up due to rain, he should call the market coordinator to protect his funds.

**Vendor Spaces:** The Market Company assigns vendor spaces not the vendor. A vendor may be moved at any time the business requires it. If a vendor misses two market days with his previously assigned space, if not being used, will be forfeited and the vendor must re-apply for a market space.

**Additional Markets:** Vendors are welcomed to participate in multiple markets. For a vendor to be eligible to be in additional markets he must be prepared to stay in his original market and apply to the additional markets.

**Vendor Display Area:** Vendors furnish their own tents, umbrellas, tables, cloths, carts, chairs, displays, trash cans, brooms and trash bags. Market standards are white 10x10 tents (Insta-shade, EZUp), green market umbrellas with stands and green table skirts (Dade Towel 305/751-1284). Market aesthetics are very important. White tablecloths can be purchased from The Market Company.

Vendor initials \_\_\_\_\_

(Page 3 of 5)  
(Vendor Guidelines)

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**Tents and Umbrellas:** Vendor's tents and umbrellas must be weighed down immediately after set-up to maintain public safety. Any vendor who delays weighing down their tent or umbrella may be fined \$50 for the first occurrence and \$100 for each subsequent occurrence. In addition, a vendor who does not comply with this requirement may be reported to the police for endangering the public and/or terminated from any or all of our markets.

**Vendor Electricity:** Vendors who need electricity may make a request to The Market Company representative for access to an approved electrical outlet. Vendors must provide heavy-duty grounded cords and a heavy-duty grounded connector. Cords exposed on the sidewalk or street must be covered to protect the public. Vendors who provide light can use up to 300 watts per 10'x10' booth. There is a \$5.00/day fee for electricity for some markets.

**Vendors Space:** A single space is 10' x 10' and all tables and merchandise must fit within the space to be considered one space. Under rare circumstances, a vendor may be allowed to shade their product or provide an area for the public to sit but these will be approved on an individual basis.

**Vendor Behavior:** Vendors must dress appropriately with shirts on at all times. Alcoholic beverage consumption by vendors is not allowed.

**Vendor Clean-up:** Vendors are responsible for removal of all trash related to their stand. They are not to use public trash cans. They are to leave their immediate area clean at all times. Vendors are advised to bring their own trash receptacle and broom.

**Vendor Approval:** An appointment must be made with The Market Company to review the requirements and vendor products. The Market Company application and agreement must be completed and signed. Upon acceptance vendor will be allowed to participate in the market.

**Signs/Pricing:** Products must be priced either individually, by basket/crate or on a posted sign. Signs will be on white background only.

**State Sales Tax and Food Handling Permits:** Vendors must provide The Market Company with a copy of all such licenses when filing their application and must provide copies of the annual renewals. If a vendor does not follow the state guidelines for food handling, they must leave the market.

**Parking:** Following loading/unloading, vendor's vehicles must be removed from loading/unloading areas.

**Agreement with Relevant Contractors/Associations:** The markets are designed as economic development for the area in which they are located. If there is a complaint from merchants about a particular vendor selling products that interfere with their business, The Market Company may ask a vendor to no longer participate in the market.

**Insurance:** The Market Company has general liability insurance in the amount of \$1,000,000 pursuant to permit requirements of each location. This insurance protects The Market Company and the specific municipality or corporation.

Vendors should carry their own general liability insurance which covers property damage, personal injury and product liability. Most farm/business policies cover activities at the market. Check with your insurance carrier.

Vendor initials \_\_\_\_\_





**Addendum to the Market Company Vendor Regulations**  
**Vendor Rules**  
**Last Chance Agreement**

In order to provide a safe, secure and pleasant environment, The Market Company requests your cooperation in complying with the following vendor rules and regulations:

1. Vendor tents and umbrellas must be weighed down immediately after set up to protect the public and other vendors.
2. The use of profanity, loud, rude, disruptive or threatening behavior by any vendor or participant in the market is prohibited.
3. Appropriate dress, including shirts and shoes or sandals, must be worn at all times.
4. Smoking while staffing a booth is prohibited.
5. The playing of loud radios that disturb the pleasant shopping experience is prohibited.
6. Taking unauthorized photographs or videos of vendors or their property is prohibited.
7. The display, selling or soliciting of anything pornographic in nature is prohibited.
8. Possession/consumption of alcoholic beverages and/or illegal substances is prohibited.
9. The carrying of weapon(s) of any kind, possession of any item defined as a weapon, whether illegal or not is prohibited.

I understand and accept the conditions set forth in the Market Company Vendor Requirements and Rules and this Last Chance Agreement.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

The Market Company or its designee, reserves the right to request that those who refuse to comply with the above conditions leave the market immediately.

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(Vendor Guidelines)

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## IMPORTANT CONTACTS

### SALES TAX NUMBER

Miami Service Center  
(305) 470-5001  
8175 NW 12<sup>th</sup> Street, Suite 119 – Miami, FL 33126  
[www.myflorida.com/dor](http://www.myflorida.com/dor)

### PREPARED FOODS AND DRINKS LICENSE/ MOBILE VENDING PERMIT Form DACS-14223

[www.doacs.state.fl.us](http://www.doacs.state.fl.us)

### SEAFOOD RETAIL LICENSE

FL Fish and Wildlife Conservation  
(850) 487-3122  
[www.myfwc.com](http://www.myfwc.com)

### MARKET ONSITE COOKING LICENSE STATE FLA DIV OF HOTELS AND RESTAURANTS (850) 487-1395 [www.myfloridalicense.com/dbpr](http://www.myfloridalicense.com/dbpr)

### TABLE SKIRTING

Dade Towel Company  
(305) 751-1284 – contact Karen  
7000 NE 4<sup>th</sup> Ct. (at the West end of NE 70<sup>th</sup> St. off Biscayne Blvd.)

### DARK GREEN TABLE SKIRTS

WHITE TABLE CLOTHS (Can be purchased from The Market Company for \$15 each)

### TENTS 10' x 10' + 4 heavy weights

[www.academy.com](http://www.academy.com)

WHITE TENTS and 4 weights

### MARKET UMBRELLAS AND BASES

Home Depot or The Market Company  
[www.lovemypatio.com](http://www.lovemypatio.com)

DARK GREEN

### 6FT FOLDING TABLES

Home Depot

### BANNER SIGNS

Bing Banner  
<http://www.bingbanners.com/>  
We have had GREAT results from this inexpensive maker

Approximate size 10' x 1'

## REMINDERS

Bring ample change to the market  
Bring drop cloths in case of rain  
Bring a broom & dustpan  
Vendors remove all of their trash,  
Public facilities are not used

Stand-up and interact with clientele  
All products must be first quality  
Stands must be clean/orderly  
All food handling employees must  
be licensed  
Tents/umbrellas must be weighted  
Get to know your neighboring  
vendor trade off when bathroom  
breaks are needed

# EXHIBIT G

## Emergency Evacuation Plan Espanola Way Street Market

- The Espanola Neighborhood Association (Association) will meet before every market day and discuss the schedule and emergency plan.
- Upon sounding of a fire alarm or occurrence of any emergency, the Emergency Evacuation Plan will be put into effect.
  - o Concessionaire shall meet with every merchant before they are accepted as a vendor for the street market as well as conduct a group meeting before the market to review the plan.
  - o Each vendor's table(s) will contain wheels which will allow for mobility onto the curb, not only on Espanola Way but over to the curb on Washington and Drexel (based on relative location on the street).
    - Each retailer as well as the 30+ hotel employees will become available to assist the street vendors roll the tables, even though the vendors can handle the table themselves.
  - o The umbrellas shall be turned 180 degrees and slid into the seating and off the public ROW.
- The Association serves as the street's formal business association and the street vendors will also serve together to unify the block. There is sufficient manpower and space on the curbs of the ROW to easily move less than 40 tables out of the ROW, in the least amount of time possible, to ensure immediate access to Emergency Services.

Note: There will be no cooking, generators, or any extension cords used.