

LICENSE AGREEMENT

This License Agreement (“Agreement”) is entered into between the **The Corporation for Findlay Market of Cincinnati**, an Ohio not-for-profit corporation, as “Licensor” and _____ as “Licensee” and pertains to the following described space located at Findlay Market (“Market”): _____, as more specifically described in the drawing attached hereto as **Exhibit A** (“Premises”).

WHEREAS, Licensee is interested in procuring one or more spaces within Findlay Market as a place from which to operate a retail food-related business.

IN CONSIDERATION of the mutual promises and obligations contained in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, Licensor hereby grants to Licensee the revocable right to temporarily occupy and use the Premises, and Licensee accepts the same, on the following terms and conditions:

1. **Term**: The term of this Agreement shall be for a period of ___ year(s) commencing _____, 2009 and ending _____, 20__ (“Term”). The Term of this Agreement may be terminated by Licensor, prior to the expiration of such Term, in accordance with the provisions set forth in paragraph 15 of this Agreement.

2. **Security Deposit**: Upon execution of this Agreement, Licensee will be required to pay a security deposit to Licensor in the amount of one month’s base license fee (“Security Deposit”). The purpose of the Security Deposit is to secure Licensee’s performance under this Agreement. The Security Deposit shall not bear interest, and may not be applied against the last month’s licensee fees. In the event that Licensor uses the Security Deposit to pay any of Licensee’s obligations under this Agreement, Licensee agrees to immediately replenish the amount spent so as to return the Security Deposit to its original amount. Upon expiration of the Term of this Agreement, and only in the event

Licensee _____

Licensor _____

Licensee has fulfilled its obligations hereunder and vacated the Premises as prescribed in Section 15 of this Agreement, Licensor agrees to return to Licensee its Security Deposit.

3. **License Fees:** Licensee agrees to pay to Licensor monthly fees and common area maintenance charges during the Term of this Agreement in accordance with the License Fee Schedule set forth and attached hereto as **Exhibit B** (“Licensee Fee Schedule”). All fees and charges shall be due and payable on the first day of each month. A 5% late fee shall be charged on any late payments received after the fifth day of the month.

4. **Renewal:** Any renewal of the Term of this Agreement, or entering into a new license agreement, will be at the discretion of CFFM. Therefore, there is no expectation of or obligation to renew the Term of this Agreement. In the event of renewal, Licensor shall submit a new License Fee Schedule for the renewal term.

5. **Use of Premises:** Licensee’s use of the Premises shall be limited to the retail sale of food and food products described in **Exhibit C** to this Agreement (“Permitted Uses”). Other than the products listed in **Exhibit C**, Licensee agrees to carry no other products without the advance written consent of Licensor. All products offered for sale by Licensee shall be of high quality, within sell-by date, labeled and weighed honestly and accurately, and with prices to be clearly visible to the public. All prepared foods must be properly labeled in accordance with government regulations. Sales receipts will be made available to customers who request them. Licensee agrees not to sell any products that Licensor believes are non-conforming. Licensee recognizes that Licensor has a legitimate business purpose in regulating the use of the Premises for the Permitted Uses only, so as to maintain the viability of the Market for other vendors within the Market, and to promote a wider variety of food products being offered for sale at the Market.

6. **Transferability of Interest by Licensee:** Licensee shall not be permitted to sublet, assign or transfer its rights or interests under this Agreement without the prior written consent of Licensor (if Licensee is a corporation, partnership, limited liability company or other entity, then any sale, conveyance or other transfer of the controlling interest in Licensee shall be deemed to be a “transfer” for purposes of this Agreement); provided, however, this Agreement is assignable or transferable as follows:

(a) If Licensee is a sole proprietor, he or she may assign this Agreement to his or her spouse or direct lineal descendants, provided that the new Licensee fully assumes, for the benefit of Licensor, all the terms and conditions of this Agreement as then in effect. Said right of transfer may be exercised by giving written notice thereof to Licensor and the new Licensee signing an assumption agreement satisfactory to Licensor. The same right of transfer shall apply if Licensee is a partnership, limited liability company or corporation, and the person owning the majority of the beneficial interest wishes to assign his or her interest to his or her spouse or direct lineal descendants.

(b) In the event Licensee has occupied space within the Market for more than five (5) years on a continuous basis, including any occupancy prior to execution of this Agreement, Licensee shall be permitted to assign its rights and interests under this Agreement to a third party purchaser of Licensee’s business, provided the following occur prior to or at the time of assignment: (i) the proposed transferee agrees for the benefit of Licensor to be bound by the terms of this Agreement as then in effect, and executes an assumption agreement satisfactory to Licensor; (ii) the proposed transferee submits its financial statements and history of prior retail experience to Licensor to allow Licensor to determine whether the proposed transferee is suitable for running business operations comparable to Licensee’s; and (iii) Licensor determines that the proposed transferee is suitable.

7. **Relocation**: Notwithstanding anything contained in this Agreement to the contrary, Licensor reserves the right, at any time during the term of this Agreement, to relocate Licensee to another space within the Market of larger, smaller or comparable size. Licensee may be relocated at Licensor's sole discretion, except that no Licensee who paid rent (exclusive of Common Area Costs) during the previous annual period equal to twelve thousand dollars or more shall be relocated without Licensee's agreement. In the event Licensor requests that Licensee relocate to other space within the Market, Licensor agrees to pay the reasonable cost of moving Licensee's inventory and equipment to the relocated space, and the base license fee payable hereunder will be adjusted to a fair license fee for the space to which Licensee is relocated, commensurate with the base license fee charged for other space within the Market of comparable size and location.

8. **Additional Obligations of Licensee**: In addition to the obligations set forth elsewhere in this Agreement, Licensee further agrees to do the following:

(a) Licensee agrees to keep accurate records of its sales, accounting separately for on-premise and off-premise sales, and to retain these records for at least two years. Licensee shall, on a weekly basis, report sales to Licensor on a form provided to Licensee by Licensor, which report shall include the dollar amount of sales and the number of transactions for each business day during the prior week. These reports will be delivered to Licensor by Tuesday of each following week and will be signed by Licensee. Licensee further agrees to deliver to Licensor copies of Licensee's sales tax returns at such time(s) as they are required to be filed with the State. Licensee further agrees to allow Licensor the opportunity to audit or examine Licensee's sales, not more often than twice a year. Such audit shall be at Licensor's expense, unless the audit shows that Licensee has been substantially misreporting its sales information to Licensor, in which case the audit will be at the expense of Licensee.

(b) All products shall be handled and the Premises used in accordance with Cincinnati Health Department rules and regulations. All waste material shall be removed from the Premises at least once a day and placed in the proper trash receptacles. Stalls, counters, coolers and fixtures must be maintained in a clean and sanitary condition at all times, and floors swept and washed daily after the Market closes. Cooking is permitted only with the prior written consent of Licensor.

(c) All signage installed by Licensee shall comply with the guidelines set forth in **Exhibit D**. All signage must be approved by Licensor prior to installation, including but not limited to its size, shape, material, weight, color, location and lighting.

(d) Licensee agrees to participate in reasonable marketing efforts and special events initiated by Licensor, including but not limited to the payment of regular marketing fees as provided in the License Fee Schedule then in effect. Licensee understands and agrees that marketing directed at promoting the Market as a whole has the incidental benefit of promoting the businesses operated by each merchant and vendor within the Market.

(e) Licensee (or in the event Licensee is a corporation, limited liability company or partnership, then its principal owner) shall be present at the Premises during most normal hours of operation. No other person or entity, other than Licensee and Licensee's employees, shall be permitted to operate out of the Premises.

(f) Licensee agrees not to make any alterations or additions to the Premises without Licensor's advance written consent.

(g) Licensee agrees that Licensor shall control, and shall own the proceeds from, all vending machines, coin operated games, automatic teller machines, and all other vending machinery within the market facilities.

9. **Hours of Operation:** Licensor reserves the right to impose mandatory hours of operation for the Premises during which Licensee shall be fully staffed and fully merchandised with full product selection and open for business. Licensor may change the mandatory hours of operation, from time to time, upon reasonable advance notice to Licensee.

10. **Maintenance:** Licensor shall be responsible for maintenance of the Market building including the roof, major systems and structure. Licensee shall, at its expense, be responsible for maintaining its Premises including all fixtures and equipment, including refrigerated display equipment, owned by the City of Cincinnati (“City”). Licensee’s obligation to maintain the refrigeration and display equipment owned by the City shall include a regular preventive maintenance program, together with routine repairs caused by normal wear and tear, to be provided by a licensed service company acceptable to Licensor. Licensee shall obtain Licensor’s prior written approval designating what licensed service company will service and maintain the equipment. If Licensee fails to have Licensor’s equipment properly serviced and maintained, Licensor has the right to contract directly for such services and recoup the cost from Licensee. During the warranty period on any such equipment, Licensee shall do nothing to void such warranty, and will permit service personnel assigned by Licensor to enter the Premises and perform service on such equipment. Licensee shall keep records of all service and repair performed, and make these records available to Licensor at least quarterly. Licensee shall not be responsible for replacement or major overhaul of such equipment unless caused by Licensee’s failure to adequately maintain and repair such equipment, or acts of negligence, gross negligence, or willful destruction by Licensee or its employees or agents.

11. **Rules and Regulations of Operation:** Licensor reserves the right to establish rules and regulations of operation (“Operating Rules”), and to modify them from time to time in Licensor’s sole discretion. Licensor will provide 30 days advance written notice to Licensee of any modifications to the

Operating Rules. Licensee agrees to abide by such Operating Rules. The current Operating Rules are set forth in **Exhibit D** attached to this Agreement.

12. **Insurance**: Licensee agrees to provide personal liability and property/casualty insurance coverage concerning the Premises and Licensee's operations at the Premises in an amount not less than \$1,000,000.00 per person, per incident and \$1,000,000.00 in the aggregate, together with property/casualty coverage equal to the replacement value of the refrigeration and display equipment owned by the City and Licensee's own equipment and inventory used in or located on the Premises. Licensee shall also carry product liability insurance with coverage limits of not less than \$1,000,000.00. Licensee shall cause Licensor to be named as an additional insured on all its insurance coverage, and Licensee shall require the insurer to provide a ten day notice of cancellation to Licensor prior to cancellation or termination of such insurance coverage. Licensee shall provide a certificate of such insurance to Licensor to evidence this coverage.

13. **Indemnification**: Licensee agrees to save, hold harmless and indemnify Licensor, its agents and employees, from and against any and all liabilities, claims, demands, expenses, fines, penalties, suits, proceedings, actions and causes of action of any and every kind and nature arising out of or in any way connected with Licensee's use or occupancy of the Premises, or any of Licensee's activities in the Market, or those of Licensee's agents, contractors, employees, customers and invitees while in or on the Premises and/or the Market.

Notwithstanding anything contained in this Agreement to the contrary, Licensee agrees that no individual director, officer, employee or agent of CFFM shall have any personal liability with respect to any of the provisions of this Agreement. Under no circumstance shall Licensee have a claim or cause of action against any individual Director, officer, employee or agent of CFFM with respect to any breach of this Agreement by CFFM as Licensor, or for any injury or damage sustained by Licensee, its employees,

contractors, agents, customers or invitees arising out of or in connection with Licensee occupying and/or operating a retail business at the Premises or in the Market. This provision shall inure to the benefit of Licensor, its successors and assigns and their respective principals.

14. **Enforcement of Provisions:** In addition to Licensor's right to terminate this Agreement pursuant to paragraph 15 of this Agreement, Licensor may, at Licensor's sole discretion, impose other sanctions short of termination upon Licensee for violating the Operating Rules or provisions of paragraphs 5, 8, 9, 10 and 11 of this Agreement including but not limited to the right to temporarily suspend Licensee's business operations at the Premises and to impose additional rent.

15. **Termination:** **Licensor shall be entitled to terminate this Agreement, whereupon Licensee agrees to immediately vacate the Premises, in the event Licensor provides notice of termination as set forth below, without the need for any formal eviction procedures.**

The grounds for termination are as follows:

- (a) Failure to pay rent or common areas maintenance charges on a timely basis;
- (b) Failure to abide by the other obligations contained in this Agreement, after written notice from Licensor and a 7-day opportunity to cure any such non-compliance, except in the event of Licensee's default under paragraph 5 by selling products that are not part of the Permitted Uses, or under paragraphs 8(a)(b) or (e), in which case such defaults must be cured within 24 hours after notice;
- (c) Failure to be open for business during the mandatory hours of operation, and open on a continuous basis for 52 weeks per year, unless Licensee has the advance written consent of Licensor to the contrary. Licensor shall permit Licensee to close for vacation during one week of each year, provided that Licensee schedules the closing in advance and provided that no other tenant has previously scheduled to close the same week.

At the expiration of the Term of this Agreement, or in the event of termination by Licensor, where Licensee has not cured the default within the applicable cure period, or such other longer period as may be reasonably required and agreed to by Licensor under the circumstances, Licensee shall vacate the Premises in broom-clean condition and deliver them to Licensor in their original condition, normal wear and tear excepted. In addition, in the event of termination, Licensee shall promptly remove all of Licensee's personal property, equipment and inventory from the Premises. Upon Licensee's failure to do so, Licensor may remove Licensee's personal property, equipment and inventory from the Premises and have them delivered to Licensee, placed in storage at Licensee's expense or discarded, at Licensor's sole discretion. All perishable items will be disposed of as Licensor deems appropriate, without compensation to Licensee.

Licensee acknowledges and agrees that Licensor shall have no liability to Licensee, for incidental or consequential damages, loss of business, or otherwise, for terminating this Agreement in accordance with the terms set forth above.

16. **Assignment by Licensor:** The parties agree that Licensor may assign all of its right, title and interest under this Agreement at any time without any express consent being required by Licensee. In the event of assignment, Licensor will provide notice to Licensee that the Agreement has been assigned.

17. **Notices:** All notices required to be delivered by Licensor to Licensee shall be effectively made when either hand-delivered to Licensee, or when delivered by electronic mail, fax or certified mail, return receipt requested to Licensee at the following address:

or at such other address as Licensee may from time-to-time describe in writing to Licensor. All notices required to be sent to Licensor shall be sent by certified mail, return receipt requested to:

The Corporation for Findlay Market
P.O. Box 14727
Cincinnati, OH 45250-0727
Fax: (513) 721-3480
E-Mail: info@findlaymarket.org

or at such other address as such parties may prescribe from time-to-time.

18. **Miscellaneous:**

(a) This Agreement constitutes the entire understanding between the parties as to the subject matter hereof. This Agreement supercedes all prior understandings and written contractual agreements between the parties hereto, if any. Licensee acknowledges that any and all prior rights of tenancy, which Licensee may have had under prior arrangements, are hereby waived and terminated.

(b) In the event any dispute arises as to the meaning or enforcement of this Agreement, or otherwise arising out of Licensee's occupancy and/or business operations pursuant to or during the term of this Agreement, the parties agree that the courts located in Hamilton County, Ohio shall have exclusive jurisdiction and venue over any such proceeding.

(c) This Agreement may not be modified except in writing signed by both parties, except to the extent that Licensee agrees to further comply with and be bound by such Operating Rules as may be established from time-to-time by Licensor, all of which, whether now existing or promulgated in the future, shall become part of and be enforceable in accordance with the terms of this Agreement as if incorporated herein by reference.

(d) The parties agree that neither party shall be construed as the drafter of this Agreement. If it is determined that any provision of this Agreement is ambiguous, it shall be construed as if it was drafted equally by both parties and without regard to the actual author.

(e) To the extent that any provision of this Agreement shall be considered unenforceable, the remaining provisions of the Agreement shall remain intact and fully enforceable, with such offending provision to be deemed stricken, to the extent reasonable under the circumstances.

(f) The parties understand that their performance under this Agreement may be interrupted or delayed by occurrences beyond their control, including but not limited to acts of God, war, riot, terrorism or civil unrest. If that should occur, performance hereunder may be temporarily excused for a reasonable period of time commensurate with the occurrence, but no such interruption or delay shall operate to extend the Term of this Agreement.

(g) The captions set forth at the beginning of each numbered paragraph of this Agreement are for informational purposes only and have no meaning separately and apart from the actual provisions of this Agreement.

(h) Any failure by Licensor to enforce the provisions of this Agreement in any specific instance shall not be deemed a waiver of Licensor's right to enforce them at any later time or with regard to any subsequent instances.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below.

WITNESSES:

LICENSOR:

Date

LICENSEE:

Date