

LICENSE AGREEMENT BY AND BETWEEN

CITY OF PORTLAND

AND

MARKET VENDORS, LLC

28 Monument Sq.

027-F-002

5/7/14

THIS LICENSE made this _____ day of June, 2013, by and between the **CITY OF PORTLAND**, a municipal corporation located in Cumberland County, State of Maine (hereinafter the "**CITY**") and **MARKET VENDORS LLC**, a Maine limited liability company located at 27/28 Monument Square, Portland, ME 04101 (hereinafter "**LICENSEE**").

W I T N E S S E T H:

WHEREAS, LICENSEE has been conducting a public market at the former Army-Navy Surplus store located at 27/28 Monument Square, with a fully licensed kitchen for **LICENSEE**'s use and the use of other licensed users; and

WHEREAS, in conjunction with its public market, LICENSEE wishes to be able to provide day tables for use outside their location at Monument Square, to be used for small local producers of Maine foods and crafts (hereinafter the "Vendors"); and

WHEREAS, the CITY is willing to permit such use in conjunction with their public market so long as adequate protections are maintained for the **CITY** and its citizens;

NOW THEREFORE, the parties do hereby agree as follows:

1. Permit for Tables.

CITY agrees to permit **LICENSEE** to put up a maximum of twelve (12) tables on a daily basis in the areas described on Exhibit A, attached hereto and incorporated herein by reference (hereinafter the **PREMISES**). The location of such tables within the defined areas shall be subject to the **CITY**'s approval. Such use for tables shall be exclusive to **LICENSEE** and its authorized Vendors, but **LICENSEE** shall maintain adequate passage for the public in and around said tables. The tables hereunder shall not exceed the following dimensions: 2.5 feet by

6 feet. All tables shall be sturdy and shall not pose a danger of falling over or collapsing. All tables to be used shall be subject to the prior approval of the City's Director of Planning and Urban Development or his/her designee or the Director of Public Services or his/her designee, which approval shall not be unreasonably withheld. Tables shall not be permanently attached to the Square in any manner and shall be removed and stored inside at the conclusion of each business day. **LICENSEE** is permitted to use umbrellas and/or tents to cover the tables when it is raining. Said umbrellas or tents shall be no greater than eight (8) feet in height and no greater than ten (10) feet in diameter or length and shall be limited to the configuration as shown on Exhibit A. If at any time the **CITY** determines that any or all of the umbrellas or tents are unsafe or interfere with pedestrian traffic through Monument Square, the **CITY** may order removal and **LICENSEE** shall remove said umbrellas or tents.

2. Permit for Planters.

In addition to the foregoing, **LICENSEE** may place up to nine (8) planters, of which two (2) are round planters and six (6) are planters that each measure 2'9" long by 2'9" tall by 10" wide, in the locations on Monument Square indicated on Exhibit A. Planters shall contain flowers and shall not be permanently attached to the Square in any manner. During times when it is not open, **LICENSEE** shall place the planters either inside the Market House or along the storefront windows, flat against the building. **LICENSEE** shall be solely responsible for securing and maintaining the planters in good condition and **CITY** shall have no responsibility therefor. **CITY** reserves the right, in its discretion, to require the planters to be placed in the Market House when **LICENSEE** is not open and **CITY** further reserves the right, in its discretion, to revoke this permit for the planters effective immediately upon receipt of notice to **LICENSEE** without revoking any other portion of this License.

3. Term

This Agreement shall be effective as of the date of execution until May 31, 2013, unless this License is sooner terminated by either **LICENSEE** or **CITY**, as provided herein.

4. Permitted Uses.

LICENSEE shall use the **PREMISES** for the following purposes, and no other, unless otherwise agreed in writing by **CITY**:

-Installation of day tables as provided in Exhibit A to be used for the sale by small Maine producers of their own locally produced seasonal, farm produced products, hand made crafts, including jewelry and clothes, and foods such as jams, jellies, syrup and other prepared foods of a similar type for consumption at home. All farm produced products or food must be produced, processed or manufactured in an establishment licensed by the Maine Department of Agriculture (or other applicable state agency) to produce the item.

- Installation of day tables as provided in Exhibit A to be used by non-profit organizations not engaged in the sale of any product.

-Installation and maintenance of planters as provided in Exhibit A.

At no time shall **LICENSEE** permit sandwich or other pre-packaged food sales, except as permitted above, or the sale of alcoholic beverages from the **PREMISES**. In no event shall any user of a day table sell any potentially hazardous, illegal or obscene products of any kind.

Any Vendor selling food will provide evidence to **LICENSEE** that it has all necessary state and local licenses, including any required by the State of Maine, licensing the kitchen in which the food is prepared. **CITY's** Building Inspection Division shall consult with **LICENSEE** upon request to help determine what licenses are required for its Vendors. **LICENSEE** shall maintain a copy of all such Vendor licenses.

All products for sale must be presented and maintained on the day tables, and at no time is clothing or any other product permitted to be hung or otherwise displayed for sale except on a day table. Sale of second-hand or used goods is not permitted. **CITY** reserves the right to approve the sale of certain items or goods by Vendors, such approval not to be unreasonably withheld. **CITY'S** approval of the sale of food by a Vendor may be conditioned on the Vendor's compliance with the Maine Food Code. All Vendors are allowed to sell only those items that they have personally produced or made. Re-sale of new items is not permitted.

5. Hours of Operation.

LICENSEE can use the **PREMISES** during all hours that its Monument Square business is open, with the following exceptions:

- a. Each Wednesday during the hours of the Farmers Market, unless given prior approval to do so by the Farmers market Coordinator.
- b. During special events scheduled for Monument Square, unless given prior approval to do so by the event coordinator.

Notwithstanding the foregoing, **LICENSEE** may use the three tables immediately adjacent to their front door as shown on Exhibit A during the Farmers Market and special events, unless the **CITY** determines there is a safety or other issue in regard to pedestrian access. In such case, the **LICENSEE** shall remove the tables immediately upon direction of the **CITY**.

6. Fees

LICENSEE agrees to pay to **CITY** a fee in the amount of Sixty Five Dollars (\$65.00) per area or Two Hundred Dollars (\$200.00) per year for the right to use the areas in Exhibit A for the installation of tables and planters for the uses permitted hereunder. In addition there shall be an initial \$30.00 application fee for this License, with \$20.00 per annual renewal. Payment of the fees shall be due with execution of this License. No refunds shall be granted in the event of early termination of this License.

7. Repairs and Maintenance

LICENSEE represents that it has inspected and examined the **PREMISES** and accepts them in their present condition, and agrees that **CITY** shall not be required to make any improvements or repairs whatsoever in or upon the **PREMISES** or any part thereof; **LICENSEE** agrees to keep said **PREMISES** safe and in good order and condition at all times during the term hereof, and upon expiration of this License or any sooner termination thereof, **LICENSEE** will quit and surrender the possession of the **PREMISES** quietly and peaceably and in as good order and condition as they were at the commencement hereof, reasonable wear, tear, and damage by the elements excepted; **LICENSEE** further agrees to leave the **PREMISES** free from all nuisance and dangerous or defective conditions not in existence at the commencement of this License.

8. Assignment

This License may not be assigned except as provided herein to duly authorized Vendors using the day tables with authority of **LICENSEE**.

9. Management of Vendors

LICENSEE shall require each Vendor to apply for a license to use the day tables, said application form to be mutually agreed upon by the parties. **LICENSEE** shall obtain and maintain a copy of any required state licenses from its Vendors and shall keep them with the Vendor's application. **CITY** shall have the right to inspect **LICENSEE**'s Vendor files in regard to applications and licensing, and **LICENSEE** shall notify the **CITY** upon approval of any new Vendor. **LICENSEE** shall provide a report to **CITY** identifying its Vendors and the general nature of their goods on a monthly basis, or such other schedule as may be mutually agreed upon with the **CITY**. **CITY** shall designate the representative to whom such notices shall be sent.

10. Insurance

LICENSEE shall obtain comprehensive general liability insurance in the minimum amount of One Million Dollars (\$1,000,000) combined single limit covering bodily injury, death or property damage and shall name the **CITY** as additional insured thereon. Said insurance shall cover the indemnification provision herein and the operations of its Vendors and shall include products liability insurance covering the sale of food. A certificate evidencing such coverage shall be provided to **CITY** at commencement of the License term. Such insurance shall be on an occurrence basis and in the event of termination of this License. **LICENSEE** shall purchase a tail for such insurance for a minimum of three (3) years from the date of termination.

11. Indemnification

LICENSEE shall defend, indemnify and hold harmless the **CITY** and **CITY**'s officers, agents, elected officials, employees, inhabitants and assigns, from and against any and all claims, demands, suits, expenses (including reasonable attorney's fees) and judgments by or on behalf of any person or entity, arising out of **LICENSEE**'S use or occupancy of the **PREMISES** under

this License, including but not limited to the operations of its Vendors at or from the **PREMISES**. Without limiting the generality of this Article, **LICENSEE** expressly agrees to defend, indemnify and hold harmless the **CITY** from and against the following:

A. Employee Claims. Claims of **LICENSEE'S** officers or employees or their estates for workplace-related injuries or death sustained on the premises during the course of such employees' employment, including subrogated claims of such employees' workers' compensation insurance carriers pursuant to 39-A M.R.S.A. §107, as amended. For purposes of its indemnification obligations under this article only, **LICENSEE** hereby expressly waives its immunity from suit and judgment under 39-A M.R.S.A. § 104, as amended.

B. Other Claims. Claims of any person, entity or estate for personal injury, property damage, or death occurring on or from the **PREMISES** or arising out of **LICENSEE'S** business operations on or off the **PREMISES**.

C. **LICENSEE** as used herein, shall include **LICENSEE**, its officers and employees, and its contractors, subcontractors, invitees or Vendors.

This Section and Section 9 shall survive termination of this License and all insurance hereunder shall be primary to any insurance of self-insurance of **CITY**.

12. Termination

Either party may terminate this License for its convenience at any time upon thirty (30) days' prior written notice to the other party, and thereafter **LICENSEE** shall have no further right to the use or occupancy of the **PREMISES**. All personal property shall be removed therefrom by **LICENSEE**.

13. Default

In the event that **LICENSEE** shall be in default of any payment of any fees, or fails to obtain and/or maintain all required licenses, or is in default in the performance of any of the terms or conditions herein agreed to be kept and performed by **LICENSEE**, then in that event, **CITY** may terminate and end this License upon a fifteen (15) day prior written notice, and thereafter **CITY** may enter upon said **PREMISES** and remove all persons and property therefrom if **LICENSEE** has failed to cure said default within said notice period. **LICENSEE** shall be liable to **CITY** for all costs incurred by it as a result of the **LICENSEE'S** default and **LICENSEE** shall pay all costs of collection and cure incurred by **CITY**, including reasonable attorney's fees.

14. Hold Over

In the event that **LICENSEE** shall hold over and remain in possession of the **PREMISES** with the consent of the **CITY**, such holding over shall be deemed to be from month to month only, and upon all the same terms and conditions as contained herein.

15. Notices

Any notices which are required hereunder, or which either **LICENSEE** or **CITY** may desire to serve upon the other shall be in writing and shall be deemed served when delivered personally, or when deposited in the United States mail, postage pre-paid, return receipt requested, addressed to Market Vendors, LLC, 27/28 Monument Square, Portland, ME 04101 or addressed to City of Portland, City Manager, 389 Congress Street, Portland, ME 04101.

16. Waiver

Waiver by either party of any default in performance by the other of any of the terms, covenants, or conditions contained herein, shall not be deemed a continuing waiver of the same or any subsequent default herein.

17. Compliance with Laws

Each party agrees to comply with all laws, ordinances, rules and regulations which may pertain or apply to the **PREMISES** and the use thereof, including without limitation all laws regarding non-discrimination and equal employment opportunity.

18. Successors and Interest

All of the terms, covenants and conditions contained herein shall continue, and bind all successors in interest of **LICENSEE** and **CITY** respectively, herein.

IN WITNESS WHEREOF, the said **CITY OF PORTLAND** has caused this License Agreement to be signed in its corporate name and sealed with its corporate seal by Mark Rees, its City Manager, thereunto duly authorized, and **MARKET VENDORS LLC** has caused this License to be signed by _____, its _____ as of the day and date first set forth above.

WITNESS:

CITY OF PORTLAND

By: _____

Mark Rees
Its City Manager

MARKET VENDORS, LLC

Print Name: _____

Its: _____