

FARMERS MARKET
BOOTH CONCESSION RENTAL AGREEMENT

This Booth Concession Rental Agreement (this “**Agreement**”) is made effective as of _____, 200__, between Jennifer McColm, LLC., (referred to as “**Landlord**”), and _____ (referred to as “**Tenant**”).

1. Rental of Booth Space

Tenant hereby agrees to rent from Landlord a booth space (the “**Booth**”) at the _____ Farmers Market (the “**Farmers Market**”), with such location of the Booth to be designated by Landlord.

2. Purpose and Use

a. Tenant shall use the Booth for the sole purpose of selling its produce, products, merchandise or other goods (the “**Goods**”) as may be pre-approved by Landlord for sale at the weekly Farmers Market. Tenant shall not use or permit the use of the Booth for any other purpose.

b. Landlord has the right to restrict or limit Tenant’s sale of Goods at the Booth which Landlord may, in its sole judgment, deem to be competitive with other Goods sold by Landlord or other vendors at the Farmers Market.

c. Trash or other materials shall not be allowed to accumulate in or near the Booth area. The storage or use of welding, flammable, explosive or other inherently dangerous material is prohibited. Tenant shall not store or use in the Booth any items which shall be in violation of any law or regulation, or do any act or cause to be done any act which creates or may create a nuisance in or upon or connected with the Booth area.

d. No tobacco products shall be sold or distributed by Tenant.

e. For all days of the Farmers Market that Tenant is scheduled to attend, Tenant agrees to operate Tenant’s concession business and be open for business for the entire duration that the Farmers Market is open to the public.

3. Term of Rental

The term of this Agreement shall be for a period of months specified on the application for the Farmers Market attached hereto and approved by Landlord. If

no number of months is specified, this term of this Agreement shall be effective on a week to week basis.

4. Access to Booth

Tenant agrees Landlord shall have the right of free access to the Booth at all times.

5. Rental Rate

Tenant shall pay a rental rate per week or month, as applicable, as shown on the Farmers Market application attached hereto as Exhibit A (the “**Application**”). The rent is due and payable as shown on the Application. The rent for the first week or month, as applicable, shall be paid to Landlord upon execution of this Agreement.

6. Non-Payment of Rent

If any payment of rent is not received by Landlord when due as shown on the Application, Landlord shall assume Tenant is not returning and Landlord shall have the right to rent Tenant’s reserved space to another vendor.

7. Tenant’s Insurance

a. Tenant shall, at its sole expense, procure and maintain at all times during the term of this Agreement the following liability and property damage insurance with the specified minimum limits of coverage:

i. Comprehensive Bodily Injury, Property Damage, and Liability Insurance covering losses caused by the operation of the Booth, automobiles, trucks, or other vehicles with limits of \$500,000 for injury or death of one (1) person and \$1,000,000 for injury or death of two (2) or more persons in any one (1) accident, and \$100,000 for property damage in any one (1) accident, and also including bodily injury and property damage or loss caused by independent contractors or by agents of Tenant.

ii. Fire and extended coverage insurance with fire, vandalism and mischief endorsements for the full cash value of the Booth and its contents.

iii. Product Liability Insurance with minimum limits of \$500,000 for injury or death of one (1) person and \$1,000,000 for each accident or occurrence to cover the liability of both Tenant and Landlord and the agents and employees of each.

iv. Worker's Compensation Insurance as required by the laws of the State of California.

v. Automobile Liability Insurance covering all vehicles owned, non-owned, hired and leased with minimum limits of \$100,000 for property damage and \$1,000,000 for bodily injury or death.

b. Tenant shall cause the foregoing insurance policies to name as additional insureds each of the following: (i) Jennifer McColm, LLC., Jennifer McColm, Raw Inspiration, Inc., California Certified Farmers Markets, Inc., Farm Fresh To You, a California nonprofit corporation, and any and all of their respective subsidiaries, directors, officers and employees; (ii) each specific Farmers Market location, as listed on the INSURANCE REQUIRED FOR ALL FARMERS/VENDORS attached hereto as Exhibit B, in which Tenant is participating; and (iii) the specific City where each Farmers Market takes place. All such insurance shall be primary insurance and shall provide that any right of subrogation against any party named as additional insured and its successors and assigns are waived.

8. Indemnification

Tenant agrees to defend, indemnify, and hold harmless the Landlord, Jennifer McColm, LLC., Jennifer McColm, Raw Inspiration, Inc., California Certified Farmers Markets, Inc., Farm Fresh To You, a California nonprofit corporation, and each of their respective officers, directors, partners, members, shareholders, employees, agents, representatives, subsidiaries, affiliates, contractors, lenders, successors and assigns (collectively referred to as the "**Indemnitees**"), from and against, and reimburse the Indemnitees for, any and all claims, damages, losses, demands, liabilities, obligations, judgments, settlements, penalties, fines, costs and expenses (including attorneys' fees and costs) and other amounts (collectively, "**Losses**") which may be paid, incurred or sustained or asserted against the Indemnitees based upon, arising from or relating to, directly or indirectly, (i) any breach or noncompliance by Tenant of any representation, warranty, covenant or agreement contained in this Agreement, including all exhibits hereto; (ii) the use, occupancy or operation of the Booth, including all common areas and other areas appurtenant to the Booth, by Tenant and its employees, agents, representatives, affiliates, contractors, licensees, customers and invitees (collectively, the

"**Users**"); and (iii) any acts or omissions of the Users in carrying on any activity on or around the premises of Landlord or in connection with the Farmers Market, including, without limitation, any Losses for injury to persons or property of Landlord, any Indemnatee, any User or any third party. The indemnification provided under this Section 8 shall survive the expiration or earlier termination of this Agreement.

9. Security for Booth

Landlord is not responsible for any loss or damage to the Booth or the property of Tenant caused by the removal of the Booth or any property therein by any authorized or unauthorized persons, or any act of repossession, resale or other removal of the Booth or any property therein by other persons.

10. Limitation of Liability

Notwithstanding Landlord's negligence or breach of this Agreement, the Indemnitees shall under no circumstances be liable for injury to Tenant's business or for any loss of income or profit therefrom, or for any consequential, incidental or special damages of any kind, nor shall the Indemnitees be liable for any damages to the property of Tenant, its employees, invitees, customers or other Users, or for injury to the person of Tenant or any other Users, all of which loss, damage or injury shall be at the sole risk of Tenant, except to the extent that such injury, loss or damage is caused by the gross negligence or willful misconduct of an Indemnatee. The obligations of Landlord under this Agreement shall not constitute personal obligations of the Landlord or any other Indemnatee, and Tenant shall look to the Booth, and to no other assets of the Indemnitees, for the satisfaction of any liability of Landlord with respect to this Agreement, and shall not seek recourse against the Indemnitees, or any of their personal assets, for such satisfaction. Further, Landlord shall not be liable for any damages arising from any act or neglect of any other tenant of Landlord. The limitation of liability provided under this Section 10 shall survive the expiration or earlier termination of this Agreement.

11. Rules

Tenant shall, and shall cause its employees, agents, representatives, affiliates, contractors, licensees, customers and invitees to, abide by all rules and policies that may be adopted from time to time by

Landlord for the use, occupancy and operation of the Booth and the Farmers Market, including, without limitation, the MARKET RULES AND POLICIES attached hereto as Exhibit C.

12. Surrender of Booth

After the closing of the Farmers Market, Tenant shall as soon as possible quit and surrender the Booth to Landlord. Upon such quitting and surrender, the Booth shall be in the same condition as at the opening of the Farmers Market. Tenant shall remove all of its property from the Booth and the Farmers Market. It shall be a breach of security of the premises and a material breach of this Agreement if Tenant remains on the Farmers Market premises or fails to remove all of its property after closing time. Tenant shall pay Landlord for any expenses incurred by Landlord in removing and/or storing any property of Tenant that it fails to remove after the closing of the Farmers Market.

13. Abandonment

If Tenant fails to pay rent when due and remains unpaid for a period of one (1) day after the due date, and Tenant fails to give Landlord written notice of Tenant's intention not to abandon the Booth and personal property located therein within one (1) day thereafter, Tenant shall be deemed to have abandoned the Booth and personal property located therein and, at Landlord's option, the Booth shall be deemed abandoned. In the event of Tenant's abandonment, any expenses and costs incurred by Landlord in connection with Tenant's abandonment shall be paid by Tenant upon demand by Landlord.

14. No Refund

If Tenant fails for any reason to occupy or use the Booth as provided herein (other than as a result of a breach by Landlord of its obligations hereunder), no refund shall be made of any amounts paid by Tenant to Landlord hereunder.

15. Maintenance and Service

a. Tenant shall regularly inspect and service the Booth and shall keep it in clean and sanitary condition in accordance with all applicable federal, state and local laws.

b. Tenant shall furnish and bear the expense of regular janitorial service for the area in which the Booth is located and shall at all times keep the tables, chairs, and floor and wall areas around, behind, and under the Booth clean and free from rodents, insects, or other pests.

c. Tenant shall supply suitable waste disposal containers for the convenience of users of the Booth and of the adjacent eating areas and shall provide and bear the expense of garbage removal and disposal services. All trash containers shall be emptied at least once daily.

16. Utilities (*For evening markets only)

Tenant shall pay a fee of \$50 per month or \$15 per week, as applicable, for electrical power.

17. Electrically Operated Machines

All electrically operated equipment utilized by Tenant shall be equipped so as to provide thermal overload protection, and shall comply with applicable ordinances and regulations.

18. Compliance With Laws

a. Tenant shall comply with all applicable federal, state or local laws with respect to the Farmers Market, the use, occupancy and operation of the Booth, and the sale of Goods at the Farmers Market.

b. Tenant shall comply with all applicable rules, orders, regulations or requirements of the Los Angeles Fire Department (the "**Fire Department**") or any other similar body and shall not do or permit to be done in or about the Booth or bring or keep anything therein except as permitted by the Fire Department or any other authority having jurisdiction over the Farmers Market, Landlord or Tenant. Any decorations provided by Tenant shall be subject to the reasonable approval of Landlord and, if necessary in Landlord's sole judgment, the approval of the Fire Department. Any item not so approved shall not be permitted in the Booth and if it is already in the Booth, it shall immediately be removed by Tenant at its expense.

19. Permits

Prior to Tenant's use of the Booth, Tenant agrees, at Tenant's expense, to obtain from the City of Los

Angeles or any other applicable governmental body or agency, such governmental permits as Landlord determines to be necessary for Tenant's use of the Booth for the Farmers Market, including, but not limited to, business licenses and seller's permits.

20. Fees and Taxes

Tenant shall be responsible for and shall pay all federal, state, county, and city license fees and all sales or other taxes that may be imposed on the sales of Goods at the Booth.

21. Independent Contractor Status

It is the intention and understanding of the parties that the parties are acting as independent contractors hereunder and that this Agreement shall not be deemed to create a partnership, joint venture, agency or employment relationship between the parties.

22. Alterations

Tenant shall not make any alterations or improvements in or to the Booth or the Farmers Market premises without the prior written consent of Landlord, which consent may be withheld in Landlord's absolute discretion.

23. Non-Exclusive Use

Tenant acknowledges that, besides the use of the Booth as contemplated by this Agreement, the Farmers Market and various parts thereof and areas therein may or will be used by other vendors and that in order for the Farmers Market to operate as efficiently as practicable it may or will be necessary for the use or availability of services and facilities of the Farmers Market, including without limitation, entrances, exits, parking lots, truck ramps, storages areas and receiving areas, to be scheduled or shared. Tenant agrees that Landlord shall have the full, complete and absolute authority to establish the schedules for the use and availability of such services and facilities and to determine when and to what extent any sharing of any such services and facilities is necessary or desirable provided such schedules do not unreasonably interfere with Tenant's use of the Booth, and Tenant agrees to comply with any schedules so established and to cooperate in any sharing arrangements so determined. In no event shall Tenant enter or use any areas, service space or facility of the Farmers Market other than the

Booth without first obtaining Landlord's consent and approval, which may be given or withheld in its sole discretion.

24. Termination

Either party may terminate this Agreement for any or no reason by giving thirty (30) days' prior written notice to the other party of its intention to terminate.

25. Entire Agreement

This Agreement, together with all exhibits referred and attached hereto, constitutes the entire and only understanding and agreement among the parties, and supersedes all proposals, oral or written, all negotiations, conversations or discussions among the parties, with respect to the subject matter in this Agreement. This Agreement shall not be deemed to provide any third parties with any claim, right of action, remedy or right.

26. Governing Law and Venue

a. This Agreement shall be governed by and construed in accordance with the laws of the State of California without reference to its conflicts of laws principles.

b. For any actions or proceedings relating to the judicial enforcement or interpretation of this Agreement, Landlord and Tenant each irrevocably submits to the exclusive jurisdiction of the courts of competent jurisdiction located in the County of Los Angeles, State of California, and of all courts therein competent to hear appeals therefrom. Landlord and Tenant each further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to the other party. Nothing herein shall affect the right to serve process in any other manner permitted by law.

27. Severability

If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

28. Notices

Except as otherwise expressly provided in this Agreement, all notices or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed effectively given (i) upon receipt if delivered in personal or by facsimile or other electronic means, (ii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepared, or (iii) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the address as set forth on the signature page hereof or at such other address as such party may designate by ten (10) days' advance written notice to the other party.

29. Waiver

Any waiver of any term, covenant or condition of this Agreement by any party hereto shall not be effective unless set forth in writing signed by the party granting such waiver, and in no event shall any such waiver be deemed to be a waiver of any other term, covenant or condition of this Agreement or any subsequent waiver of the same term, covenant or condition.

30. Attorneys' Fees

If any action or other proceeding is brought for the enforcement of this Agreement or because of any alleged or actual dispute in connection with any of the provisions of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

31. Assignment

This Agreement shall not be assignable or delegable in whole or part, whether by operation of law or otherwise, by Tenant, without the prior written consent of Landlord, which may be given or withheld in its sole discretion. Any assignment or delegation or attempted assignment or delegation without such consent shall, at the election of Landlord, be void and of no force and effect.

The parties have caused this Agreement to be executed as of the date first written above.

TENANT (Owner / Authorized Person):

Print Name (Owner / Authorized Person)

Signature (Owner / Authorized Person)

Address for Notices:

Attention:
Tel:
Fax:
E-mail:

LANDLORD:

Jennifer McColm, LLC

By: _____
Name:
Title:

Address for Notices:

Jennifer McColm, LLC.
23501 Park Sorrento Drive, Suite 105
Calabasas, CA 91302
Tel: (818) 591-8286
Fax: (818) 591-8216
E-mail:
info@jennifermccolm.com

EXHIBIT A

FARMERS MARKET APPLICATION

(attached)

EXHIBIT B

INSURANCE REQUIRED FOR ALL FARMERS/VENDORS

(attached)

EXHIBIT C

MARKET RULES AND POLICIES

(attached)