

**REVOCABLE LICENSE AGREEMENT**  
Sioux Empire Farmer's Market

This Revocable License Agreement (the "Agreement") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between Macerich Management Company ("Licensor"), on the one hand and \_\_\_\_\_ ("Licensee"), on the other, based upon the following facts and circumstances:

**A.** Licensor is the managing agent on behalf of the owner(s) of the shopping center commonly known as Empire East and located at Louise Avenue, Sioux Falls, SD 57106 (the "Center"); and,

**B.** Licensee desires to be an Exhibitor at the Center.

NOW THEREFORE, in consideration of the mutual covenants herein contained and the terms and conditions hereinafter set forth:

**1. Term.** The "Term" of this Agreement shall commence on May 10, 2011, and shall terminate on October 25, 2011, unless sooner terminated as provided for herein.

**2. License Fee.** Licensee shall pay to Licensor as a License Fee, the sum of Zero Dollars (\$0), payable in full prior to Licensee being provided access to the Exhibitor Premises. In addition thereto, Licensee shall be responsible for any excise, transaction, sales or privilege tax (except net income tax) now or hereafter levied or imposed upon Licensor or the owner(s) of the Center by any governmental agency on account of, attributed to or measured by this Agreement, which additional sum shall be paid by Licensee to Licensor along with the License Fee.

**3. Event.** Licensee will host an event at the Center known as "Sioux Empire Farmers Market" (the "Event"), as further described on **Exhibit A** attached hereto and incorporated herein by this reference. The Event will take place on the following date(s): May 10, May 17, May 24, May 31, June 7 June 14, June 21, June 28, July 5, July 12, July 19, July 26, August 2, August 9, August 16, August 23, August 30, September 6, September 13, September 20, September 27, October 4, October 11, October 18, and October 25 of 2011.

**4. Exhibitor Premises.** The "Exhibitor Premises" wherein Licensee may operate during the Event is located within the portion(s) of the Center cross-hatched on **Exhibit B** attached hereto, which specific location shall be mutually agreed upon by the parties. No other portion of the Center may be used by Licensee, except for the Common Area in common with other persons and except as otherwise provided for herein. As used herein, the term "Common Area" shall mean all realty and improvements in or at the Center now or hereafter

made available by Licensor for the general use, convenience and benefit of Licensee and tenants of the Center. Licensee agrees that the Exhibitor Premises may be relocated at any time at the discretion of, and without liability to, Licensor, to a mutually agreed upon location within the Center.

**5. Marketing and Sponsorship Components.** In connection with this Agreement, Licensee shall be granted such marketing and sponsorship components as set forth on **Exhibit C**, attached hereto and incorporated herein by this reference.

**6. Non-Exclusivity.** The parties hereto acknowledge and agree that any and all sponsorship rights granted under this Agreement shall be non-exclusive.

**7. Insurance.** Licensee, at its sole cost and expense, shall obtain and keep in full force and effect while conducting any activities at the Center, a policy of comprehensive general liability and special form (all-risk) insurance, including without limitation broad form property damage liability and personal injury liability coverage, insuring Licensor and Licensee against any liability arising out of Licensee's negligence or willful misconduct, naming Licensor, the owner(s) of the Center and its management company, and The Macerich Company, and such other entities as Licensor shall reasonably request, as additional insureds. Said insurance shall at all times be in an amount of not less than One Million Dollars (\$1,000,000.00) combined each occurrence in the aggregate for personal and bodily injury and property damage. Licensee, at its sole cost and expense, shall also obtain and keep in full force and effect while conducting any activities at the Center, Commercial automobile liability insurance having a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence and \$1,000,000 in the aggregate, and insuring Licensee against Liability for claims arising out of ownership, maintenance, or use of any owned, hired, borrowed or non-owned vehicle. All such insurance shall specifically insure the performance by Licensee of the indemnity agreement as to liability for injury to or death of persons and injury or damage to property contained in Paragraph 8 of this Agreement. Licensee shall also obtain and keep in full force and effect during the term of this Agreement, Workers' Compensation Insurance having limits not less than those required by applicable state statute and federal statute where the Center is located, and covering all persons employed by Licensee in the conduct of its operations (including all states endorsement and, if applicable, the volunteers endorsement). Certificates evidencing the coverages required under this Paragraph 7 shall be delivered to Licensor not less than fifteen (15) days prior to Licensee entering upon the Center. Such certificates shall contain a provision that Licensor and Licensee shall be given a minimum of fifteen (15) days written notice by the insurer prior to cancellation, termination or material change in such insurance. Licensee waives any rights to recover against Licensor for claims for damages to Licensee's property whether or not covered by insurance. This provision is intended to waive fully, and for the benefit of Licensor, any rights

and/or claims which might give rise to a right of subrogation in favor of any insurance carrier. The coverage obtained by Licensee pursuant to this Agreement shall include, without limitation, a waiver of subrogation endorsement attached to the certificate of insurance.

If Licensee contracts with or hires independent contractors or vendors to participate in the Event at the Center, Licensee shall require such independent contractors and/or vendors to obtain, maintain and furnish to Licensee and Macerich satisfactory evidence of insurance with coverages, limits, and additional insureds endorsement outlined above. Licensee shall not allow any independent contractor or vendor to enter the Center until each has obtained and submitted the insurance evidence required herein.

**8. Indemnification.** Licensee hereby agrees to indemnify, defend and hold Licensor harmless from and against any and all suits, actions, claims, demands, losses, costs, damages, liabilities, fines, expenses and penalties (including reasonable attorney's fees) arising out of (i) Licensee's actions or non-actions, and (ii) Licensee's breach of any representation, warranty, term, condition or performance of or under this Agreement. Licensor shall not be liable to Licensee for any injury, damage or loss arising out of or in any way related to any act, omission or negligence of tenants or other occupants of the Center or patrons, customers or invitees of the Center, all such claims against Licensor for any such injury, damage or loss being hereby expressly waived by Licensee. Licensee's obligation to indemnify Licensor as herein provided shall survive the expiration or earlier termination of this Agreement for acts or omissions occurring prior to such expiration or termination. For purposes of this section only, the term "Licensor" shall be deemed to include the owner(s) of the Center and its management company, The Macerich Company and the partners, shareholders and/or members of each of these entities.

**9. Default.** The occurrence of any of the following shall constitute an event of default:

- i). Any failure by Licensee to pay any sums due hereunder if such failure continues for a period of time in excess of three (3) days after notice from Licensor to Licensee;
- ii). Any failure by Licensee to perform any other of the terms, conditions, or covenants of this Agreement to be observed or performed by it if such failure continues for a period of time in excess of three (3) days after written notice; or,
- iii). Licensee's attempt to "assign" this Agreement or any of Licensee's rights hereunder contrary to Paragraph 10 of this Agreement.

If a default occurs, Licensor, in addition to any other rights or remedies it may have at law or in equity or under this Agreement, shall have the immediate right to unilaterally terminate this Agreement and to remove all persons or property from the Exhibitor Premises (such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Licensee), all without service of notice or resort to legal process and without being deemed guilty of trespass, or becoming liable for loss or damage which may be occasioned thereby.

**10. Assignment.** This Agreement, and the rights granted hereunder, are personal to Licensee and are non-assignable and non-transferable by Licensee. Any attempted assignment or other transfer of this Agreement or any rights hereunder by Licensee shall be null and void, have no effect and confer no rights upon any third party.

**11. Manner of Operation.** Licensee and its employees shall wear appropriate attire at all times while in the Center pursuant to this Agreement. Licensee agrees to comply with (and cause its officers, employees, contractors, invitees and all others doing business with Licensee, to comply with) all rules and regulations of general applicability regarding the Center as may be established by Licensor at any time and from time to time during the Term, including without limitation the Event Operating Rules attached hereto marked as **Exhibit D** and the rules and regulations pertaining to signs.

**12. Suitability of Exhibitor Premises.** Licensee hereby accepts the Exhibitor Premises in an "AS IS" condition and Licensor expressly disclaims any warranty or representation with regard to the condition, safety, security or suitability of the Exhibitor Premises. It is understood by Licensee that Licensor does not provide security protection for the Exhibitor Premises and/or Licensee's property.

**13. Waiver of Jury Trial, Venue and Governing Law.** Licensor and Licensee hereby waive trial by jury in any action or proceeding brought by either to enforce or defend the provisions of this Agreement. The parties further agree that any legal action or proceeding related to this Agreement shall be instituted in a court of competent jurisdiction in the state where the Center is located. This Agreement shall be construed and enforced in accordance with the laws of the state where the Center is located, including the construction, performance and enforcement of the Agreement.

**14. Compliance with Laws.** Licensee shall, at its sole cost and expense, comply with all laws, ordinances, orders, rules and regulations (state, federal, municipal or any other agency having or claiming jurisdiction) related to its activities at the Center as provided for under this Agreement. All business licenses and other applicable permits and licenses shall be secured and paid for by Licensee, as appropriate.

**15. Confidentiality.** Licensee may not disclose to any third party the terms and conditions of this Agreement except as may be necessary to establish or assert rights hereunder or required by law; provided, however, it may on a confidential basis, disclose this Agreement to its accountants, attorneys and financing organizations and other individuals within each other's organizations on a "need to know" basis. This obligation shall survive the expiration of the Term of this Agreement.

**16. Notices.** All notices required hereunder shall be in writing and may be delivered by personal service to the other party (in which case such notice shall be deemed delivered as of the day of such delivery), or sent postage prepaid by certified mail, return receipt requested (in which case such notice shall be deemed delivered as of the third day after the date of such mailing), to the following addresses, and for notices to be delivered to Licensor, a copy shall also be sent to the Property Manager at the Center:

To Licensee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

To Licensor: The Empire Mall  
5000 W. Empire Mall  
Sioux Falls, SD 57106  
Attn: Chrissy Spoo

**17. Representations and Warranties Regarding Trademarks.** Licensee represents and warrants to Licensor that it has all of the rights required under state and federal law for the use of trademarks and service marks of Licensee and its affiliates, including their names and logos during the Term of this Agreement. Licensee hereby grants to Licensor (at no cost to Licensor) the right and license to use, exploit, print, publish, reproduce, display, distribute and broadcast and to grant others the right to use, exploit, print, publish, reproduce, display, distribute and broadcast all such trademarks and service marks, including Licensee's and its affiliates' names and logos, during the Term of this Agreement in connection with the Event.

**18. Entire Agreement.** This Agreement is an integrated agreement, containing the entire agreement between the parties as to the matters addressed herein. There are no agreements between the parties which are not contained herein, and Licensee has not received or relied on any representations from Licensor or Licensor's agents other than as provided herein. No subsequent change, modification, or addition to this Agreement shall be binding unless in writing and signed by the parties.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first above written.

**Licensor:** The Empire Mall

**Licensee:** \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Dennis Gilliam

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

Title: Property Manager

Title: \_\_\_\_\_

## EXHIBIT A

EVENT DESCRIPTION: Sioux Empire Farmers Market

EVENT LOCATION: Empire East Parking Lot

EVENT DATE: Tuesday Evenings from May 10 through October 25, 2011

LICENSEE EMERGENCY CONTACT INFORMATION/E-MAIL ADDRESS: \_\_\_\_\_

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A. Possession and Load In:

1. Event Hours are 3:00 p.m. until 6:00 p.m.
2. No vendor shall begin setup prior to 2:00 p.m. on event days.

B. Set-up: NA

C. Technical Requirements: NA

D. Advertising & Signage: See Exhibit C.

E. On-Site Activity: Sales of Produce and other Homegrown Products

F. Footprint: See Exhibit B Attached

G. Partners: NA

H. Equipment Requested: NA

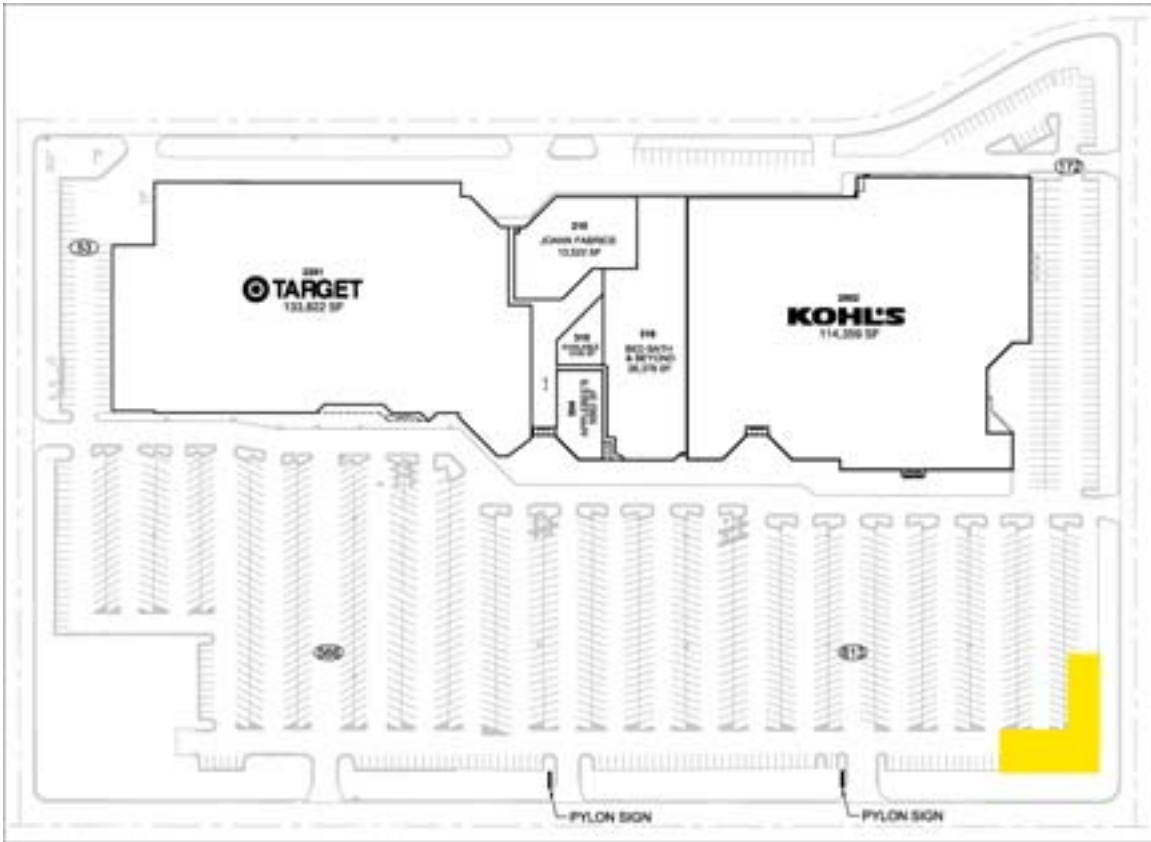
- |   |  |
|---|--|
| <input type="checkbox"/> Tables             | <input type="checkbox"/> Sound System (microphone) |
| <input type="checkbox"/> Table Skirts       | <input type="checkbox"/> Pipe and Drape Sections   |
| <input type="checkbox"/> Staging            | <input type="checkbox"/> Podium                    |
| <input type="checkbox"/> Skirting for Stage | <input type="checkbox"/> Caution Tape              |
| <input type="checkbox"/> Chairs             | <input type="checkbox"/> Phone Jack                |
| <input type="checkbox"/> Stanchions         | <input type="checkbox"/> Electrical Outlet         |
| <input type="checkbox"/> Trash Can          |  |

I. Closing and Tear Down:

1. Event Ends at 6:00 p.m.
2. Vendors are required to leave their areas clean and free from trash and debris.
3. No vendor shall remain at the event site after 8:00 p.m. on event days.

**EXHIBIT B**

**EXHIBITOR PREMISES**



## EXHIBIT C

### **MARKETING AND SPONSORSHIP COMPONENTS**

The Empire Mall will provide the following Marketing and Sponsorship Components:

- “Sandwich Board” signage to be placed in three locations along Louise Avenue on Tuesdays to promote the event each week. The Empire Mall will work with members of the association to develop artwork.
- Empire Mall to store market signage and other materials each week. Items to be packed into a storage container at the conclusion of the event. Mall to deliver stored materials prior to the event each week.
- Empire Mall to provide barricades for traffic control. Barricades to be delivered to the southwest corner of the Kohl’s parking lot each Tuesday prior to event for setup.
- Signage to be placed inside The Empire Mall to promote the event throughout the summer. Signage may include 22 x 28 posters, table tents, etc.
- Web site promotions and content at [www.TheEmpireMall.com](http://www.TheEmpireMall.com)
- Facebook and Twitter Promotions throughout the Summer.
- Email blast to Empire Mall database each month as part of regularly scheduled monthly emails.

## EXHIBIT D

### EVENT OPERATING RULES

1. Licensee shall keep the Exhibitor Premises open for business at all times during the Event and/or during the regular hours for the Center.
2. Licensee shall display no merchandise outside the Exhibitor Premises, as set forth on **Exhibit B** and shall keep the Exhibitor Premises and any displays in a safe, clean and proper manner. All boxes and other paraphernalia are to be stored under covered tables.
3. Licensee shall make arrangements with the Center management for trash removal and ensure that all trash is promptly removed from the Exhibitor Premises.
4. Licensee shall provide all necessary tables, chairs, identical table skirting (unless provided by Center management), signs, etc. All tables must be covered to the floor on all four sides. The tops of tables must also be covered.
5. Any signs used at the Exhibitor Premises shall be professionally prepared, stating the name of the business and reason for display. All signs are subject to Licensor's prior approval. Any Event signage must be approved by the Center's Marketing Manager a minimum of seven (7) days prior to the Event.
6. Licensee shall, upon execution of this Agreement, adhere to all plans provided to the Center's Marketing Manager related to the Exhibitor Premises layout, location of equipment, set-up and take-down, and times and dates of display.
7. Licensee shall not permit food or beverages to be consumed at the Exhibitor Premises. Licensee shall not permit food or beverages to be distributed or sold to customers at the Exhibitor Premises without Licensor's prior approval.
8. Licensee shall display customer sales return policies.
9. Licensee shall not permit loitering nor solicitation at the Exhibitor Premises. At no time may any person call out, directly solicit or physically detain customers nor may they enter any store at the Center or any other Exhibitor premises for the purpose of solicitation. Licensee may not distribute fliers at the Center outside of the Exhibitor Premises.
10. Licensee shall not permit the playing of any musical instrument or radio or television (including radio remote) or the use of a microphone or loudspeaker in the Exhibitor Premises without Licensor's prior written approval.

Licensor reserves the right to terminate this Agreement and/or the Event if the volumes exceed those deemed appropriate by Licensor in its sole discretion.

11. Licensee shall furnish Licensor with emergency contact telephone numbers, e-mail address and a forwarding mailing address.

12. Licensee shall secure and be responsible for the Exhibitor Premises at the close of business each day. Licensor assumes no responsibility for the merchandise or display.

13. Licensee shall deliver and surrender to Licensor immediate possession of the Exhibitor Premises upon the expiration of the Agreement or its earlier termination as provided for in the Agreement, in the same condition as delivered, normal wear and tear excluded, in broom clean condition.

14. Licensee shall comply with all rule and regulations established by Licensor from time to time with respect to the common areas, facilities and sidewalks.

15. All items to be sold at the Exhibitor Premises are subject to Licensor's prior approval.

16. All merchandise must be hand-carried to the Exhibitor Premises or, if dollied, the dolly must have wide rubber wheels only.

17. No equipment (hand trucks, ladders, tools, etc.) will be available or supplied by the Center or its management.

18. All forms of equipment (i.e., stanchions, fencing, staging, etc.) brought to the Center by Licensee must have approval by Licensor prior to set up.

19. All materials and equipment shall be brought to the Exhibitor Premises at the times specified by Center management or the Marketing Manager for the Center.

20. Nothing may be taped or otherwise affixed to fixtures in the Center. Nothing may be attached, secured to or hung from any architectural fixture in the Center. This includes by way of example, but is not limited to, walls, ceiling, sculptures, seating areas, plants or planters.

21. Electrical cords may not be run along the Center's floor and customer traffic walkways, except in areas approved by Licensor in advance and such areas must be covered with an approved electrical cover.

22. A Center representative will be opening floor electrical sockets and plates at entry time for the Event. Licensee is prohibited from moving these items. Only 110-volt household current is available. All electrical cords must be UL-approved. All power requirements must be discussed and approved by Licensor. Center management must supervise all approved electrical installations and set up.

23. Wax floor finishes in the Center are delicate and easily scratched. Licensee is responsible for any and all damage to the floor in the Center caused by it due to the set-up, tear-down and operation of the Exhibitor Premises.

24. No credit card signs may be displayed.

25. The maximum height allowed for the top of the Exhibitor Premises is six (6) feet.

26. Licensee and each of its employees shall park their vehicles only in areas designated by the Center's management.

27. Licensee shall furnish and pay for all labor needed to set up and take down the Exhibitor Premises. Licensee Event set-up may not commence earlier than one (1) day prior to the Event and the complete take down must be finished the day after the Event. All Licensee equipment, including, but not limited to, portable restrooms, bottled water, dumpsters, etc. must be removed from the Center by that date.

28. Failure by Licensee, its agents, employees and contractors to abide by any of these Event Operating Rules shall entitle Licensor to immediately terminate this Agreement and/or cancel the Event.