

## **WAIVER AND HOLD HARMLESS AGREEMENT:**

PLEASE READ THE FOLLOWING AGREEMENT AND WAIVER CAREFULLY, AS IT AFFECTS YOUR FUTURE LEGAL RIGHTS. BY PROCEEDING WITH YOUR APPLICATION AND APPROVAL AS A VENDOR FOR CITY OF GAINESVILLE MARKET SQUARE, YOU ACKNOWLEDGE AND AGREE THAT YOU HAVE CAREFULLY READ THE AGREEMENT AND WAIVER AND AGREE TO THE TERMS SET FORTH BELOW.

In consideration of being permitted to participate as a Vendor in City of Gainesville Market Square (hereafter known as "Market") on behalf of yourself and any personal representatives, assigns, heirs, executors, successors, next of kin, and persons supported by you, you understand that: You represent and warrant to Market that you have full legal authority and capacity to complete the application, including this Agreement and Waiver, on behalf of yourself and/or, where applicable, any party for whom you are applying, (the "Vendor Parties"), including authority to make use of the credit or debit card to which fees will be charged. As used in this Agreement and Waiver, (a) Market means and includes the City of Gainesville, CITY OF GAINESVILLE MARKET SQUARE, its directors and members; and (b) "you" or "your" means and includes you (as an individual) and your employees and agents, suppliers, volunteers, and family members and by virtue of agreeing to this Agreement and Waiver, for whom you are waiving certain rights. To the extent permitted by law, each person agreeing to this Agreement and Waiver for him/herself and/or on behalf of another employee or volunteers of Vendor agrees to indemnify, defend, and hold Market harmless from any liability, claim, demand, cause of action, damage, loss, or expense (including court costs and reasonable attorneys' fees and associated expenses) of any kind or nature (each, a "Liability" and collectively "Liabilities") in the event the Liability arises because a Vendor is found by a court of competent jurisdiction to not be bound by the terms and conditions of this Agreement and Waiver. In addition, if despite this Agreement and

Waiver, any of the Vendor Parties makes a claim against Market, you agree, immediately upon request or demand by Market, to defend, indemnify, and hold Market harmless from all Liabilities which may be incurred as the result of such claim.

IN CONSIDERATION OF THE ACCEPTANCE OF YOUR APPLICATION, YOU ASSUME FULL AND COMPLETE RISK AND RESPONSIBILITY FOR ANY ILLNESS, INJURY, OR ACCIDENT WHICH MAY OCCUR WHILE YOU ARE PREPARING FOR SALES AT THE MARKET, OPERATING AT THE MARKET, AND WHILE YOU ARE ON THE MARKET SITE. YOU ARE AWARE OF AND ASSUME ALL RISKS ASSOCIATED WITH PARTICIPATING IN THE MARKET, INCLUDING WITHOUT LIMITATION RISKS OF PERMANENT INJURY OR DEATH DUE TO FALLS, CONTACT WITH OTHERS, ACTS OR OMISSIONS OF OTHER VENDORS OR SHOPPERS, OR EFFECT OF WEATHER.

You agree to observe and obey all posted rules and warning, to follow any instructions or directions provided to you by Market and to abide by any decision of any Market official relative to your ability to safely participate in or attend the Market. You understand and agree that you are expected to exhibit appropriate behavior at all times while at the Market and to obey all applicable laws while participating in or attending the Market. This includes, generally, respect for other people, equipment, facilities or property. You agree that Market officials may dismiss you, without refund, should your behavior, in the opinion of Market endanger the safety of or negatively affect the Market. You understand and agree that Market is not responsible for any personal item or property that is lost, damaged, or stolen at the Market. You understand and agree that Market reserves the right to cancel the Market in the event of weather (including, but not limited to, heat, tornadoes, earthquakes, fires, storms, lightning and floods), accidents, acts of war or terrorism, military conflicts or riots, or for any reason that would affect the safety and security of participants and/or visitors. In the event of such cancellation or any other cancellation for any reason, there will be no refund of your payment. You agree to hold Market harmless from any liability, claim, demand, and cause of action, damage, loss, or expense (including court costs and reasonable attorneys' fees) of any kind or nature, related to any cancellation or disruption of the Market.

RELEASE AND WAIVER OF LIABILITY. YOU HEREBY WAIVE, RELEASE, COVENANT NOT TO SUE AND FOREVER DISCHARGE MARKET AND ALL OTHER PERSONS ASSOCIATED WITH THE MARKET, FOR ALL LIABILITIES, CLAIMS, ACTIONS, OR DAMAGES THAT YOU MAY HAVE AGAINST THEM ARISING OUT OF OR IN ANY WAY CONNECTED WITH YOUR APPLICATION AND/OR PARTICIPATION IN THE MARKET, INCLUDING WITHOUT LIMITATION ANY LIABILITIES, CLAIMS ACTIONS, OR

DAMAGES CAUSED BY NEGLIGENCE OF THE ABOVE PARTIES OR THE ACTION OR INACTION OF ANY OF THE ABOVE PARTIES. MARKET SHALL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF MARKET HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). WITHOUT LIMITING THE FOREGOING, MARKET WILL NOT BE RESPONSIBLE FOR (A) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED THROUGH OR FROM THE MARKET; (B) YOUR PARTICIPATION IN ANY PROMOTION OR PROGRAM COORDINATED BY MARKET; (C) PERSONAL INJURY; (D) STATEMENTS OR CONDUCT OF ANY THIRD PARTY AT THE MARKET SITE; (E) ANY OTHER MATTER RELATING TO THE MARKET SITE OR SERVICES; OR (F) YOUR PARTICIPATION IN THE MARKET. YOU AGREE THAT MARKET'S MAXIMUM LIABILITY TO YOU, FOR ANY REASON OR CAUSE WHATSOEVER, SHALL NOT EXCEED THE TOTAL AMOUNT OF MONIES RECEIVED BY MARKET FROM YOU. NOTHING IN THIS AGREEMENT AND WAIVER SHALL BE CONSTRUED AS LIMITING OR EXCLUDING MARKET'S LIABILITY FOR: (A) DEATH OR PERSONAL INJURY CAUSED BY GROSS NEGLIGENCE; (B) FRAUD OR FRAUDULENT MISREPRESENTATION; OR (C) ANY OTHER MATTER FOR WHICH IT WOULD BE ILLEGAL OR UNLAWFUL TO EXCLUDE OR ATTEMPT TO EXCLUDE LIABILITY. YOUR STATUTORY RIGHTS AS A CONSUMER ARE NOT AFFECTED BY THIS AGREEMENT AND WAIVER.

INDEMNITY. YOU AGREE TO INDEMNIFY, DEFEND, AND HOLD HARMLESS MARKET AND ALL OTHER PERSONS ASSOCIATED WITH THE MARKET, FROM ALL LIABILITIES ARISING OUT OF OR IN ANY WAY CONNECTED WITH (A) YOUR PARTICIPATION IN THE MARKET, INCLUDING WITHOUT LIMITATION ANY LIABILITY CAUSED BY NEGLIGENCE, THE ACTION OR INACTION OF WAIVER AND/OR THE TERMS OF USE INCLUDED IN THE VENDOR HANDBOOK.

You agree that this Agreement and Waiver is intended to be as broad and inclusive as is permitted by applicable law, and if any provision of this Agreement and Waiver is held to be unenforceable by a court of competent jurisdiction for any reason whatsoever, (a) the validity, legality, and enforceability of the remaining provisions of this Agreement and Waiver (including without limitation, all portions of any provisions containing any such unenforceable provision that are not themselves

unenforceable) shall not in any way be affected or impaired thereby, and (b) to the fullest intent and economic effect of the unenforceable provision and the Agreement and Waiver shall be deemed amended accordingly.

ACCEPTANCE. BY INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT AND WAIVER, YOU ARE AFFIRMING THAT YOU HAVE READ THIS AGREEMENT AND WAIVER AND FULLY UNDERSTAND ITS TERMS. YOU UNDERSTAND THAT YOU AND ALL RELATED PARTIES ARE GIVING UP SUBSTANTIAL RIGHTS, INCLUDING THE RIGHT TO SUE. YOU ACKNOWLEDGE THAT YOU ARE AGREEING TO THIS AGREEMENT AND WAIVER FREELY AND VOLUNTARILY, AND INTEND BY YOUR ACCEPTANCE TO BE A COMPLETE AND UNCONDITIONAL RELEASE OF ALL LIABILITY TO THE GREATEST EXTENT ALLOWED BY LAW.

POSSIBLE INCLUSIONS:

I consent to emergency medical care and transportation in order to obtain treatment in the event of injury to me as medical professionals may deem appropriate. This release extends to any liability arising out of or in any way connected with the medical treatment and transportation provided in the event of an emergency.

I grant permission to the MARKET, its affiliates, sponsors, and assigns to use any photographs, motion pictures, recordings or any other record of the Gainesville Market Square for any purpose including but not limited to promoting, advertising and marketing purposes. Any and all photographs, motion pictures, recordings or other records of the event are the sole property of the City of Gainesville Market Square.