



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of November 17, 2012

DATE: October 29, 2012

SUBJECT: Approval by the County Board of the Joinder and Consent to an Open-Air Market License Agreement between Arlington Public Schools, as Licensor, and Field to Table, Inc., as Licensee, on property known as the Westover Library/Reed School, in which the County has a Leasehold Interest in a Portion of the Property (RPC No. 10-022-030), 1644 N. McKinley Road, Arlington County, Virginia.

C. M. RECOMMENDATIONS:

1. Approve the Joinder and Consent of the County Board to the attached Open-Air Market License Agreement between Arlington Public Schools (“APS”), as Licensor, and Field to Table, Inc. (“FTT”) as Licensee, on property known as the Westover Library/Reed School, in which the County has a leasehold interest in apportion of the property (RPC No. 10-022-030), 1644 N. McKinley Road, Arlington County, Virginia.
2. Authorize the Real Estate Bureau Chief, or his designee, to execute on behalf of the County Board, the Joinder and Consent to the attached Open-Air Market License Agreement between APS and FTT, subject to approval of such Agreement as to form by the County Attorney.

ISSUES: The County Board is being requested to join in and consent to the attached License Agreement between APS, as Licensor, and FTT, as Licensee, for use of a portion of the Property for the Westover Farmers Market. The County has a leasehold interest in a portion of the Property under a Lease between the County and APS. There are no outstanding issues related to this Board item.

SUMMARY: FTT, the market organizer, has proposed to use a portion of the Westover Library/Reed School property owned by Arlington Public Schools in order to expand the farmers market that is currently operating within the right-of-way of N. McKinley Road. The County leases a portion of the property from APS for the Westover Library, which includes joint use by the County and APS of the plaza and parking areas. The County Board is being asked to join in and consent to the License Agreement between APS and FTT.

County Manager:

County Attorney:

BRC

9. B.

Staff: Betsy Herbst – DES, Real Estate Bureau

BACKGROUND: For the last several years, open-air markets, operated by various organizations within the County, have been approved through the County's Special Events permitting process. On June 11, 2011, the County Board adopted a text amendment to the Zoning Ordinance that defined "open-air markets" and required a special exception use permit in certain zoning districts. It was recommended, at that time, to bring all the existing open-air markets into conformance under the special exception use permit process on the County Board's motion.

In April 2012, the County Board approved a special exception use permit allowing FTT to operate a farmers market on Sunday mornings within the right-of-way of North McKinley Road adjacent to the Westover Library/Reed School. The use permit allowed FTT to operate the market during the months of April 2012 through November 2012. Since that time, the market has been successfully operating and has obtained the support of the surrounding neighborhood.

Under a Lease between the County and APS dated May 22, 2008, commencing October 23, 2009, the County leases a portion of the property from APS, including use of the plaza and parking areas, for operation of the Westover Library. Westover Library is currently open every day of the week except Sundays.

FTT and APS have entered into an Open Air License Agreement that, subject to the County's joinder and consent, would allow FTT to operate the farmer's market on APS property, including the plaza area, parking lots and a portion of the fields. The terms of this License Agreement are similar to those of the License Agreements that currently exist for the operation of other farmers markets throughout the County. The County Board is being requested to join in and consent to the attached License Agreement between APS, as Licensor, and FTT, as Licensee, because of the County Board's underlying leasehold interest in the library, plaza, parking areas and fields.

FTT would like to move some of the vendor booths onto a portion of the Property, and has requested an amendment to its special use permit (which is the subject of a separate Board Report) to allow it to operate a winter market during the months of December through March.

DISCUSSION: Open-air markets that operate on property in which the County has an interest require real property license agreements to allow the use of the real property, and in some cases, also require right-of-way permits. In this case, the County does not need to be a "party" to the subject License Agreement because APS owns the underlying fee interest in the Westover Library property and the County holds only a leasehold interest under the lease between the County and APS. The County must join in and consent to the License Agreement because of this leasehold interest in order to acknowledge its consent to the License Agreement. Use of the right-of-way will be regulated through the issuance of right-of-way permits by the County.

The market is not expected to impact Westover Library because the library is not currently open on Sundays. In the future, if the County decides to open the library on Sundays, the underlying use permit can be revised to make any necessary accommodations for the library and the License Agreement can be amended upon agreement by APS, FTT and the County. During the summer months, the market will not impact the library because the market will conclude at 12 noon and all areas will be cleaned up by 1 p.m. Branch libraries that are open on Sundays typically do not

open until 1 p.m. The County's Department of Parks and Recreation schedules use of the fields, but activities are not scheduled until 1 p.m. or later on Sunday afternoons.

The proposed License Agreement for the Westover Farmers Market is attached hereto as **Exhibit A**. Some of the pertinent provisions of the proposed License are as follows:

- FTT will be permitted to operate the open-air market on APS-owned property year round on Sundays during the months of December through April during the hours of 9 a.m. to 1 p.m. and during the months of May through November during the hours of 8 a.m. to 12 noon;
- The term of the License will be for a period of one (1) year, with automatic renewal for successive one (1) year terms, unless sooner terminated or extended as provided therein;
- APS or FTT may terminate the License, without cause and without penalty, by providing thirty (30) days prior written notice of such termination to the other party;
- FTT is required to pay to APS the amount of \$200.00 per year for use of the Licensed Premises and to cover APS's administrative costs for the License;
- FTT is required to have all sellers and vendors obtain the applicable permits for use of the Licensed Premises, and for the sale and/or serving of food and beverages;
- In the event of an emergency, APS, police, fire, building or health officials may require immediate removal of the market displays;
- FTT is required to remove all trash and debris from the Licensed Premises and to maintain the area in a clean, safe and sanitary condition;
- FTT is required to maintain a commercial general liability insurance policy.
- FTT is required to work with the surrounding neighborhoods and the County regarding appropriate signage, permissible parking locations, and noise restrictions.

FISCAL IMPACT: None.

CONCLUSION: It is recommended that the County Board join and consent to the License Agreement, as set forth in Exhibit A hereto; (ii) and authorize the Real Estate Bureau Chief, or his designee, to execute on behalf of the County Board, the Joinder and Consent to the License Agreement, subject to approval of the License as to form by the County Attorney after execution of the License Agreement by APS and the Licensee.

OPEN AIR MARKET LICENSE AGREEMENT

This OPEN AIR MARKET LICENSE AGREEMENT ("License") is entered into this 1st day of November, 2012, by and between the ARLINGTON COUNTY SCHOOL BOARD, a body corporate and politic ("Licensor") and FIELD TO TABLE, INC., a Virginia non-stock corporation with its principal place of operation at 6101 22nd Street North, Arlington, Virginia, 22205-2103 ("Licensee"). Hereinafter, the Licensor and Licensee are sometimes referred to collectively as the "Parties" or individually as the "Party".

RECITALS:

WHEREAS, the property, located at 1644 McKinley Road, Arlington, Virginia, 22205, identified by RPC # 10-022-030 ("Property") is owned by the Licensor; and

WHEREAS, the Arlington County School Board, as Lessor, and the County Board of Arlington County, Virginia, as Lessee, entered into a Deed of Lease dated May 22, 2008, with a commencement effective October 23, 2009 ("Lease"); and

WHEREAS, the Property is the site of the Reed School and Westover Library, the school operated by Licensor and the library by Lessee; and

WHEREAS, the Licensee desires to use a portion of the property owned by Licensor for the purpose of operating an open-air outdoor farmers market for the benefit of the community and the public at large; and

WHEREAS, the Licensor and Lessee have consented to the use of the Property by the Licensee, consistent with this License, for operation of an open-air market, provided Licensee's Special Use Permit Application No. U-3327-12-1, which has been submitted to the Arlington County Department of Community Planning, Housing and Development, Zoning Administration Office ("Special Use Permit") is granted; and

WHEREAS, the Licensor desires to permit the Licensee to use an area suitable for the open-air market, under the terms and conditions set forth in this License,

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00), the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Licensed Premises. Licensor hereby grants to Licensee, subject to the Lease, the right and license to use, upon the terms hereinafter provided, the area more particularly described in Exhibit A attached hereto ("Licensed Premises"), which Licensed Premises is located upon and within the Property. The Licensed Premises does not include a playground or play lot. This License is non-exclusive and does not permit restriction of the rights of the public for pedestrian passage to and through the Licensed Premises. The Licensee accepts use of the Licensed Premises in its "AS IS" condition.

2. Permitted Uses.

A. Licensee is permitted by this License to use the Licensed Premises solely for the operation of an open-air market ("Market"), as defined in Section 4.A.5.g. of the Arlington County Zoning Ordinance ("Zoning Ordinance"), for the benefit and use of the community and public at large on Sundays year round, during the Market operating hours of 9 a.m. to 1- p.m. for

the months of December through April, and the hours of 8 a.m. to 12 p.m. for the months of May through November, plus one hour before and after the respective times for Licensee, its sellers and exhibitors, to set up and depart the Licensed Premises (collectively, "Market Time Period"). Licensor further grants to Licensee the non-exclusive right of pedestrian ingress and egress over and across the Property and Licensed Premises, and vehicular ingress and egress only at the locations indicated on Exhibit A, in order to place, set up, secure, operate and maintain the Market and associated displays, during the Term (as hereinafter defined) of this License. The Market is an event at which groups of individual sellers offer food products and related items for sale to the public and may include the sale of food and non-alcoholic beverages for casual consumption on site during the Market Time Period ("Permitted Uses").

B. The Licensee may place, or permit the placement of, goods and products, including furniture, on benches and tables, inside small tents, inside portable kiosks, inside or beside small trucks or panel trucks (all having a registered gross weight of 7,500 lbs. or less) ("Market Displays") in the Licensed Premises. The Licensee may place up to forty (40) sellers and exhibitors in the Licensed Premises for operation of their Market Displays. The Licensee shall require that all sellers and exhibitors placing Market Displays in the Licensed Premises shall comply with all applicable provisions of this License, which requirements shall not relieve the Licensee of its independent obligation to comply with this License.

C. Licensee shall, in its performance of the Permitted Uses, comply with all applicable federal, state and local laws, rules, orders, ordinances and regulations and the Special Use Permit, including, but not limited to, requiring all sellers to obtain the applicable and required permits for sellers' use and sale of food and non-alcoholic beverages. The Licensee and all individual sellers, at all times, shall comply, without limitation, with the applicable provisions of Chapter 9.2 of the Arlington County Code, the Arlington County Food and Food Handling Code. The Licensee also agrees to comply with the rules and regulations listed on the attached document, entitled "Exhibit B - Rules of Operation and Compliance" ("Rules"), which Rules are a part of this License and incorporated herein by reference. The Rules are subject to change at the discretion of the Licensor.

D. The Licensor affirms that the Licensee shall have full control over selection of the sellers to offer food products and related items to the public, so long as the selected vendors have obtained and maintain all licenses, permits and inspections required by the Licensor or any other governmental authority.

E. Any use of the Licensed Premises other than the use specifically permitted herein by the Licensor shall not be permitted, except by prior written agreement between the Licensor and Licensee, which agreement must be in writing and approved in advance by the Licensor.

3. Term and Payments. This License shall take effect on the Effective Date, as defined in Section 26 below. Licensee's right to use the Licensed Premises shall begin on December 2, 2012, provided the Special Use Permit has been granted, and shall extend for one year thereafter ("Initial Term"), unless sooner terminated or extended hereunder or by law. On or before the first day of the Initial Term and of any Renewal Term, as hereinafter defined, Licensee shall pay to the Licensor the sum of Two Hundred Dollars (\$200.00) for the use of the Licensed Premises ("License Fee"). The License Fee shall be paid annually in advance by check. Payment should be delivered to: Arlington Public Schools, Attn: Finance Department, 1426 N. Quincy St.,

Arlington, VA, 22207. The manner and address of such payment may from time to time be modified by written notice from the Licensor to Licensee, without demand, deduction, setoff or counterclaim, except as hereinafter specifically provided. If Licensor shall at any time or times accept payment after such payment becomes due and payable, such acceptance shall not excuse delay upon subsequent occasions, or constitute, or be construed as a waiver of any or all of the Licensor's rights hereunder. If payment is not timely made, then Licensor may immediately terminate this License by giving notice of such termination to Licensee. Licensee, for itself, its sellers and exhibitors, agrees to immediately cease use of the Licensed Premises upon receipt of such notice.

4. Right to Renew. So long as this License has not terminated, or the Licensee is not in default under the terms of the License beyond any applicable notice and cure period and, subject to the termination provisions in Section 6 herein, this License shall be automatically renewed for successive one (1) year terms. Each renewal period shall hereinafter be referred to as a "Renewal Term". The Initial Term and any Renewal Term are collectively referred to hereafter as the "Term".

5. Prohibited Uses. Licensee shall neither itself, nor permit others to: (i) include as part of the Market any outdoor displays associated with motor vehicle dealerships; (ii) sell alcohol within the Licensed Premises; (iii) store, or allow others to store, overnight any equipment, goods, products, storage containers, furniture or tents, on the Property or Licensed Premises; (iv) install within the Licensed Premises any permanent improvements or fixtures, or construct any permanent structure including, but not limited to, buildings or fences; (v) park, or permit others to park, within the Property or Licensed Premises, the following types of vehicles as defined in Virginia Code § 46.2-100: automobile or water craft transporters, camping trailers, mobile homes, motor homes, school buses, semi-trailers, tractor trucks and trailers; (vi) park, or permit others to park, buses within the Property or Licensed Premises; (vii) park or permit others to park motor vehicles on the Property or Licensed Premises which vehicles are leaking gas, oil, refrigerants or any hazardous materials; or (viii) perform any motor vehicle maintenance or repair work in the Property or Licensed Premises.

6. Termination.

A. Notwithstanding anything herein to the contrary, the Licensor and Licensee each have the right to terminate this License at any time, without cause and without penalty, by providing forty-five (45) days, prior written notice of such termination to the non-terminating Party. If Licensee fails to terminate its use of the Licensed Premises and to vacate all areas of the Licensed Premises on the termination of this License, then Licensee shall be deemed a trespasser. Thereafter, Licensor may immediately remove Licensee and Licensee's (and others) property from the Licensed Premises, at Licensee's sole risk and expense. Notwithstanding any provision in this License to the contrary, the Licensor has the unilateral right to temporarily or permanently close the Licensed Premises in the interest of public health, safety and welfare, without liability of the Licensor to the Licensee or to others.

B. Licensor may immediately terminate this License by giving notice to Licensee of: (i) the failure of Licensee to timely pay the License Fee or all applicable taxes; (ii) the expiration or non-renewal of the Special Use Permit, any applicable zoning, special use or special event permit; (iii) the violation of any applicable federal, state or local health, safety and welfare laws, rules, orders, ordinances and regulations or the Special Use Permit; or (iv) the

failure of Licensee to comply with the requirement in Subparagraph C to remove Market Displays and return the Licensed Premises to prior condition or the requirement in Section 8 to remove trash and debris.

C. Promptly upon the termination of this License for any reason, at the end of any required notice period, and promptly at the end of the Market Time Period on each Sunday, as the case may be, Licensee, at its sole expense, shall remove all Market Displays from the Licensed Premises and restore the Licensed Premises to a condition equal to that which existed immediately prior to the commencement of each Market day. If Licensee has not removed all Market Displays from the Licensed Premises at the end of the Market Time Period each Sunday, or upon the expiration of this License, or at the end of any notice period, then the Licensor, in addition to exercising any other legal or equitable remedies available to Licensor, may remove the Market Displays and restore the Licensed Premises to a condition acceptable to Licensor. Licensee agrees to promptly pay to the Licensor the cost to remove the Market Displays and Licensor's cost to restore the Licensed Premises.

D. The Superintendent is authorized by the Licensor to execute this License and the Superintendent or his/her designee is authorized to exercise the Licensor's rights to terminate this License and to take other actions to enforce the Licensor's rights hereunder.

7. Emergency - Risk or Hazard to the Public Health, Safety or Welfare. Notwithstanding any provision herein to the contrary, if, at any time, Licensor or police, fire, building or health officials determine, in their sole discretion, that the existence of the Market on the Licensed Premises poses a risk or hazard to the public health, safety or welfare, or is immediately needed for parking, then the Licensee shall, upon receipt of written notice from Licensor, or in the event of a weather or other type of emergency, upon verbal notice by police, fire or other emergency officials, immediately remove the Market Displays, at Licensee's sole expense. If Licensee has not removed the Market Displays within one (1) hour after receipt of Licensor's written notice, or within one (1) hour after receipt of verbal notice, in case of an emergency, then Licensor may terminate this License without any liability whatsoever to Licensor. Thereafter, Licensor, in addition to exercising any other legal or equitable remedies available to Licensor, may remove the Market Displays and restore the Licensed Premises to a condition acceptable to Licensor. Licensee agrees to promptly pay to the Licensor the cost to remove the Market Displays and Licensor's cost to restore the Licensed Premises.

8. Removal of Trash and Debris from the Licensed Premises. Licensee shall continuously remove all trash and debris, and shall clean up all spills of all substances from the Licensed Premises during each Market Time Period. Licensee, at all times, shall maintain the Licensed Premises in a clean, safe and sanitary condition, and shall not cause any waste or injury thereto. At the end of each Market Time Period, the Licensee shall remove all trash, debris and recycle materials from the Licensed Premises and Property or place trash, debris or recycle materials in containers designated by Licensor, as required in Exhibit B – Rules of Operation and Compliance, so that at the end of the Market Time Period the Licensed Premises and Property are returned to the same condition that they were in at 7 a.m. on the day of the Market.

9. Damage or Loss. Licensee, and not the Licensor, shall be solely responsible for any damage to, or loss of, any and all personal property in the Market and in the Market Displays within the Licensed Premises.

10. No Liability, Indemnification.

A. All personal property of Licensee, its employees, agents, contractors, business invitees, licensees, customers, clients, and guests in and on the Licensed Premises, shall be and remain therein under any and all circumstances at the sole risk of the above-described persons and entities. The Licensor shall not be liable to any such person or entity for any loss, damage, stolen or destroyed personal property. In addition, the Licensor shall not be liable for any personal injury or bodily injury to the above-described persons and entities. The Licensee hereby agrees to defend, indemnify and hold harmless the Licensor and its elected and appointed officials, officers, employees, contractors and agents from any liability, cost and expenses for personal injury and for property damage including, without limitation, lost, stolen, damaged or destroyed personal property.

B. Licensee acknowledges that Licensor, its elected and appointed officials, officers, employees, contractors and agents shall not be liable for any damages, whether special, consequential or punitive damages, as a result of any claim relating to this License or Licensee's use of the Licensed Premises.

C. Licensee hereby agrees to defend, indemnify and hold harmless Licensor, and its elected and appointed officials, officers, employees, contractors, agents, successors and assigns, from and against all claims, causes of action, liabilities, losses, costs and expenses arising from or in connection with any injury or other damage to any person or property; which occurs in any part of the Licensed Premises and is caused by negligence or willful misconduct of Licensee, its agents, contractors, employees, customers, and invitees. The indemnification in this section shall survive the expiration or termination of this License.

11. Insurance.

A. Licensee, at its sole cost and expense, shall obtain and maintain a policy of commercial general liability insurance from an insurance carrier satisfactory to the Licensor, providing coverage for claims arising from, or in connection with, the exercise of the use and permissions granted hereunder to Licensee, for personal injury, death, property damage or loss suffered by any person or entity, with a minimum coverage of not less than Two Million Dollars (\$2,000,000) per occurrence. Such insurance coverage shall protect the persons and entities indemnified under Section 10 of this License from liability. Licensee shall maintain such insurance coverage in full force and effect continuously at all times throughout the Term and for one (1) year thereafter. The insurance policy and policy limits shall neither operate as a limit of Licensee's liability to the Licensor under this License, nor as a limit of Licensee's duty of indemnification hereunder.

B. Prior to the Effective Date of this License, and at the beginning of each year thereafter throughout the Term and for one (1) year thereafter, Licensee shall furnish the Licensor with certificates of insurance indicating that the insurance is prepaid for a one year policy period, that it insures all activities contemplated under this License, and that it contains a thirty (30) day notice provision prior to termination, cancellation, non-renewal, material change, or reduction of coverage except in the event of nonpayment of premium in which case such notice provision shall be ten (10) days. The policy shall provide, among other things, that the actions or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any insured party under the policy. No provision contained in this License shall act as a waiver of any rights of subrogation of the

insurance company which is the primary insurer for the Licensor.

C. The insurance hereby required to be carried by Licensee shall be with an insurance company licensed to do business in the Commonwealth of Virginia and rated not lower than A-VII in the A.M. Best Rating Guide. Such insurance shall (i) contain an endorsement that such policy shall remain in full force and effect notwithstanding that the insured has released its right of action against any party before the occurrence of a loss; (ii) name the Licensor and others listed herein as additional insureds and loss payees; and (iii) provide that the policy shall not be canceled, failed to be renewed or materially amended without at least thirty (30) days' prior written notice to the Licensor except in the event of nonpayment of a premium, in which case such notice provision shall be ten (10) days. On or before the Effective Date and, thereafter, not less than thirty (30) days before the expiration date of the insurance policy, a certificate of insurance, together with evidence satisfactory to the Licensor of the payment of all premiums for such policy, shall be delivered to the Licensor. The Licensor, its elected and appointed officials, officers, employees, contractors and agents shall be named as additional insureds under all coverage maintained by Licensee hereunder and the certificate of insurance must so state. Coverage afforded under this section shall be primary as respects the Licensor, its elected and appointed officials, officers, employees, contractors and agents.

D. The following definition of the term "Licensor" applies to all insurance policies issued in fulfillment of Licensee's obligations contained in this License:

"The Arlington County School Board, its officers, elected and appointed officials, employees, agents and contractors, and any affiliated or subsidiary Board, Authority, Committee, or Independent Agency (including those newly or hereinafter constituted), provided that such affiliated or subsidiary Board, Authority, Committee, or Independent Agency is either a Body Politic created by the Arlington County School Board, or one in which controlling interest is vested in the Arlington County School Board or Arlington County School Board Constitutional Officers."

E. All insurance policies and certificates of insurance hereby required of Licensee shall be endorsed to include the following provision:

"It is agreed that this policy is not subject to cancellation, non-renewal, material change, or reduction in coverage until thirty (30) days prior written notice has been given to the Arlington County School Board."

12. No Permanent Rights. The Parties acknowledge that the intention of this License is for Licensor to grant a mere license to Licensee for Licensee's use and benefit, and that there is no intention whatsoever to grant to Licensee, its successors or assigns, or to any other person or entity, any permanent rights of any kind in Licensor's real or personal property.

13. No Assignment or Transfer. Licensee shall not assign, transfer, convey, or otherwise dispose of any or all of its rights, obligations, permissions, or interests under this License. All of Licensee's obligations and liabilities set forth in this License shall survive the expiration or termination of this License.

14. No Waiver of Sovereign Immunity by Licensor. Notwithstanding any other provisions of this License to the contrary, nothing in this License nor any action taken by Licensor pursuant to this License nor any document which arises out of this License shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of the Licensor, or of its elected and appointed officials, officers and employees.

15. Notices. All notices or other communications hereunder, with the exception of emergency notices that may be provided verbally as set forth in Section 7 herein, shall be in writing and shall be given to the other Party by hand delivery, by certified mail, return receipt requested, or by nationally-recognized commercial delivery service, next business day delivery, at the following addresses or such other addresses hereafter provided by notice to the other Party:

If to Licensor: Arlington County School Board
1426 North Quincy Street
Arlington, Virginia 22207
Attention: Director of Finance

with a required copy to: Superintendent
Arlington Public Schools
1426 North Quincy Street, 4th Floor
Arlington, Virginia 22207

with required copies to: Arlington County Attorney
2100 Clarendon Boulevard, Suite 403
Arlington, Virginia 22201

Real Estate Bureau Chief
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 800
Arlington, Virginia 22201

If to Licensee: Field to Table, Inc.
P.O. Box 5948
Arlington, Virginia 22205-0948

with a required copy to: Robert Swennes
6101 N. 22nd Street
Arlington, Virginia 22205-2103

16. No Partnership or Lease. The Parties agree that nothing contained in this License shall be deemed or construed as creating: (i) a partnership or joint venture between the Parties; (ii) a leasehold interest in the Licensed Premises; or (iii) the relationship of landlord and tenant between the Parties.

17. Taxes. Licensee, its exhibitors and sellers, shall each pay all applicable state and local taxes, including but not limited to, business, professional and occupational license (“BPOL”) taxes regarding the sale of goods and products. BPOL taxes, and all other County taxes, shall be paid directly to the Treasurer of Arlington County, Virginia.

18. Appropriation of Funds. Notwithstanding any provision of this License, all of Licensors’ duties and obligations under this License are subject to appropriation of funds by the County Board of Arlington County, Virginia for the specific purpose of satisfying the payment and performance of such obligations.

19. No Rights in Third Parties. The Parties hereto mutually agree that no provision of this License shall create in the public, or in any person or entity other than those signing this License as Parties hereto, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party hereto, to maintain any action for personal injury, property damage, or breach of contract pursuant to the terms of this License or otherwise.

20. No Indemnification or Hold Harmless. Notwithstanding any other term or provision of this License to the contrary, Licensor shall have no obligation to explicitly or implicitly indemnify or hold harmless the Licensee or any third party or parties from any liability whatsoever.

21. [Intentionally deleted]

22. Survival. Expiration or termination of this License for any cause shall not release either Party from any liability that, at the time of termination, has already accrued to it or that may thereafter accrue with respect to acts or omission made prior to such termination, and shall not affect in any way the survival of any right or obligation of either Party which is expressly or implicitly stated in this License to survive termination hereof.

23. Compliance with Laws. In performing its obligations under this License, Licensee shall comply with applicable federal, state, and local laws, ordinances, regulations, policies and procedures and the Special Use Permit.

24. Entire Agreement/Applicable Law. This License contains the entire agreement of the Parties hereto with respect to the subject matter hereof. All representations, inducements, or agreements, oral or otherwise, between the Parties not contained in this License shall be of no force and effect. This License shall not be modified, changed or terminated, in whole or in part, in any manner other than by an agreement in writing signed by duly authorized representatives of the Licensor and Licensee. This License shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia, without regard to choice of law principles. All legal actions and suits arising out of this License shall be brought in the Circuit Court or the General District Court of Arlington County, Virginia, and in no other court.

25. Recitals. The Recitals set forth above are incorporated into this License.

26. Effective Date. This License shall not become effective unless and until the attached Joinder and Consent has been executed on behalf of the County Board and the License has been signed on behalf of the Licensor, after this License is first signed on behalf of the Licensee. This License shall be effective on the date when it is last signed by all of the Parties and the Joinder and Consent has been executed on behalf of the County Board (the "Effective Date").

WHEREFORE, this License is executed by persons duly authorized to bind the Parties.

WITNESS:

LICENSEE:

FIELD TO TABLE, Inc.,
a Virginia non-stock corporation

BY: _____

TITLE: _____

DATE: _____

WITNESS:

LICENSOR: ARLINGTON COUNTY SCHOOL
BOARD

BY: _____

TITLE: _____

DATE: _____

Exhibit A
Vicinity Map
The plat depicts the Licensed Premises

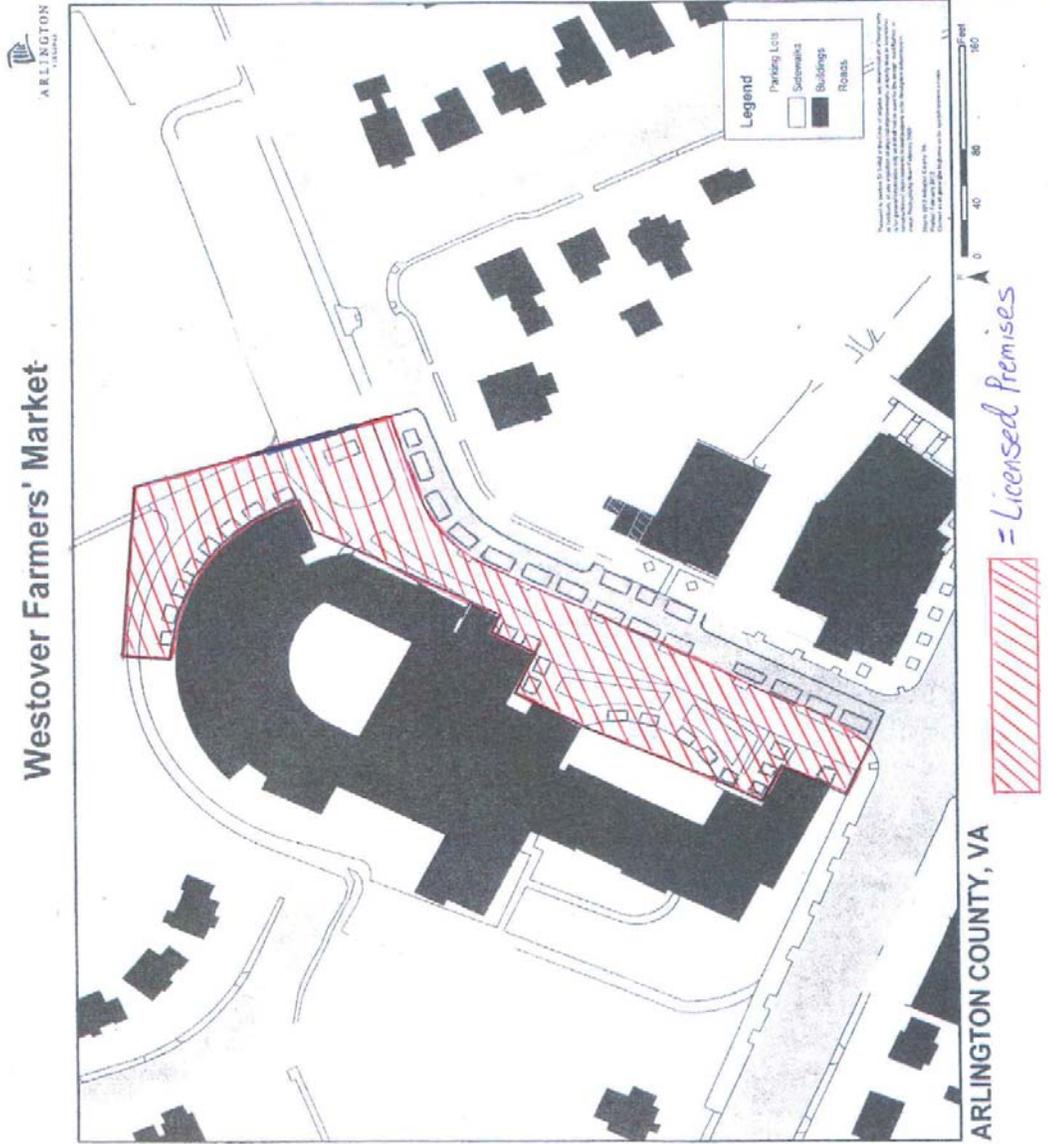


Exhibit B
Rules of Operation and Compliance

1. The Licensee agrees that the hours of operation for the Market shall be limited to Sundays only, between the hours of 9 a.m. to 1 p.m. Eastern Time for the months of December through April and between the hours of 8 a.m. to 12 p.m. Eastern Time for the months of May through November, plus one hour before and after the respective times for Licensee, its sellers and exhibitors, to setup, clean up and depart the Licensed Premises. During the one hour clean up period on Sundays, Licensee agrees to inspect and ensure that all trash, debris and spills of all substances are removed from the Licensed Premises or placed in trash/recycle receptacles designated by Licensor.
2. The Licensee shall work with the surrounding neighborhoods, and the County, to provide adequate signs, but only as permitted by local laws, ordinances and regulations, including, but not limited to, the Arlington County Zoning Ordinance, at appropriate locations identifying the location of the Market and directing sellers and patrons into appropriate legally permissible parking areas. Such signage shall be approved by the Superintendent or his designee as consistent with the sign ordinance prior to issuance of the Special Use Permit. Such signage shall include one or more temporary signs to be displayed on the Licensed Premises during the Market Time Period.
3. Upon the commencement of the Initial Term, the Licensee shall identify a person who will serve as liaison to the community throughout the operation of the Market. The liaison's name shall be submitted to APS Facilities and Operations, Arlington County Zoning Administrator, the Leeway Overlee, Highland Park-Overlee Knolls, Westover Village and Tara-Leeway Heights Civic Associations, and the Westover Business Alliance (collectively, the "Associations"), prior to Licensee's use of the Licensed Premises.
4. The Licensee agrees to meet all applicable County requirements and work cooperatively in doing so with the Police Department, the Fire Department, the Community Code Enforcement Office, the Department of Environmental Services and APS-Facilities Maintenance.
5. The Licensee agrees to provide all sellers, including all sellers who have not previously participated in the Market at this location, with a document that lays out the preferred approach routes for vehicles and identifying major arterial roadways to avoid the use of neighborhood residential streets. This document shall be provided to the Zoning Administrator for approval at least two (2) weeks prior to the issuance of the initial Special Use Permit, and any renewals thereof, and shall then be provided to the Associations prior to the issuance of the Special Use Permit.
6. The Licensee agrees to take all practical measures to encourage the use of public transportation and to encourage customer parking in adjacent parking facilities as designated in the parking plan. The Licensee agrees that such measures will include, but

will not be limited to verbal and written documents (including maps) directing patrons to the Metro access points, public transportation and public parking garages in the area.

7. The Licensee agrees to comply with, among other ordinances, the requirements of the County's Noise Ordinance. The Licensee shall ensure that no amplified sound that can be heard beyond the perimeter of the Market site occurs at any time. In any case, no amplified sound of any kind, including music or announcements shall occur on the day of operation of the Market prior to 7 a.m. Eastern Time, if the Market operates on weekdays, or 10 a.m. Eastern Time, if the Market operates on a Saturday, Sunday or County holiday.
8. In the event of a conflict or inconsistency between these Rules and any provisions, requirements or conditions of the Special Use Permit authorizing the use of the Licensed Premises for a Market, the provisions, requirements and conditions of the Special Use Permit shall prevail.

JOINDER AND CONSENT

The County Board of Arlington County, Virginia, hereby joins in the annexed Open Air Market License Agreement solely for the purpose of consenting to the license rights and interests therein granted. The Lease shall otherwise remain in full force and effect.

GIVEN under my hand and seal this _____ day of _____ 2012.

THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA, a body corporate and
politic

By: _____

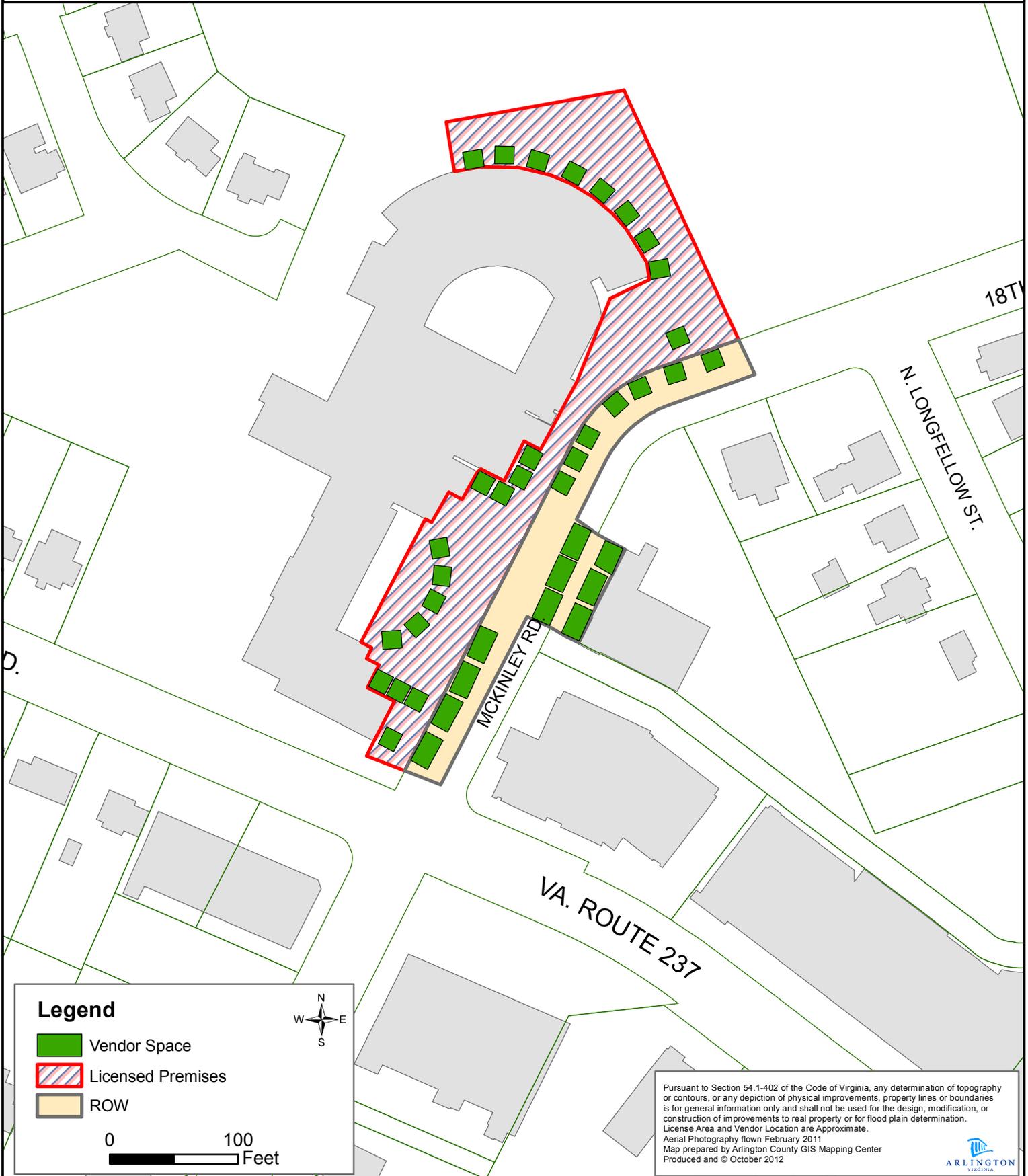
Name: _____

Title: _____

APPROVED AS TO FORM:

County Attorney

Vicinity Map Westover Farmers' Market 1644 McKinley Road



Pursuant to Section 54.1-402 of the Code of Virginia, any determination of topography or contours, or any depiction of physical improvements, property lines or boundaries is for general information only and shall not be used for the design, modification, or construction of improvements to real property or for flood plain determination. License Area and Vendor Location are Approximate. Aerial Photography flown February 2011. Map prepared by Arlington County GIS Mapping Center. Produced and © October 2012.



Vicinity Map Westover Farmers' Market 1644 McKinley Road

