

**NAMING RIGHTS AGREEMENT**

THIS NAMING RIGHTS AGREEMENT (the "Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2011, (the "effective date"), by and between the Mayor and Council of Rockville, Maryland, a municipal corporation of the State of Maryland (the "City") and Street Retail, Inc., a Maryland corporation ("Street Retail").

**EXPLANATORY STATEMENT**

A. The City is the owner of certain real property described and depicted as Parcel B on that certain plat of subdivision entitled "Plat of Subdivision Lots 19, 21, 22 & Outlot A, & Parcel B, Block B & Street Dedication: North Maryland Avenue City Center," recorded among the Land Records for Montgomery, Maryland (the "Land Records") at Plat No. 22892, which real property consists of a public plaza intended for use by the general public, including a stage, pavilion and sound system, interactive fountain(s) and storm water management facilities located therein (hereinafter referred to as the "Public Plaza").

B. The Public Plaza is part of a mixed-use development located within the City of Rockville, Maryland commonly known as "Rockville Town Square," situated between East Middle Lane, Beall Avenue, North Washington Street and MD 355 ("Town Square"). Town Square is intended to be for the use and enjoyment of the general public and consists of (i) the Public Plaza owned by the City, (ii) a public library owned by the County of Montgomery County, Maryland, and (iii) certain real property and improvements, having mixed public and private uses, including retail, office, residential and cultural arts uses, owned by multiple condominium regimes in which there are multiple owners, and described and depicted on those certain plats of subdivision, recorded among the Land Records at Plats Nos. 22891, 22892

(excluding the Public Plaza shown thereon), 22893 and 23155 (hereinafter, collectively, the “Condominium Properties”).

C. The Condominium Properties have been subjected to five (5) separate master condominium regimes known as: (i) the Rockville Town Square Block 1/2 Condominium (the “Block 1/2 Condominium”); (ii) the Rockville Town Square Block 3A Condominium (the “Block 3A Condominium”); (iii) the Rockville Town Square Block 3B Condominium (the “Block 3B Condominium”); (iv) the Rockville Town Square Block 4 Condominium (the “Block 4 Condominium”); and (v) the Rockville Town Square Block 5 Condominium (the “Block 5 Condominium”).

D. The parties have entered into an Interim Management Agreement and intend to address the ongoing management and maintenance of the Public Plaza through a long term management agreement to be entered into between the City and Street Retail (the “Long Term Management Agreement”) pursuant to which Street Retail, and its successors and assigns, will assume responsibility for the ongoing management and maintenance of the Public Plaza.

E. Street Retail has entered into a contract with ET Rockville, LLC (“Tenant”) to operate a local grocery market known as Dawson’s Market on Lot 20 on that certain plat of subdivision entitled “Plat of Subdivision Lot 20, Block B & Street Dedication: Commerce Street and East Middle Lane City Center,” recorded among the Land Records at Plat 22891, and desires to name the Pavilion in the Public Plaza to advertise and promote the local grocery market.

F. Street Retail has agreed to sponsor the summer concert series, or other similar promotional events as provided herein, in the Public Plaza known as Concert in the Square.

G. The City desires to enter into this Agreement to grant Street Retail the naming rights to the Pavilion.

NOW, THEREFORE, in consideration of the recitals above, and further good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby mutually agree as follows:

1. The foregoing recitals are incorporated in and made a part of this Agreement.
2. The term of this Agreement shall be for a term that commences on the effective date of this Agreement and terminates on a date that is equal to the earlier to occur of (a) thirty-five (35) years from the Rent Commencement Date (defined below) of the Tenant's lease, or (b) the date Tenant permanently ceases to be regularly open to the public for business, unless terminated sooner in accordance with the terms in this Agreement. Street Retail shall give notice to the City of the Rent Commencement Date within seven (7) days thereof. This Agreement shall be of no further force or effect if the Rent Commencement Date is not within two (2) years from the effective date of this Agreement. Rent Commencement Date is defined as the date that is the earlier of (i) the date Tenant opens for business or (ii) 90 days after the Term Commencement Date. The Term Commencement date is the date that Street Retail delivers to Tenant its leased premises with the work Street Retail is required to perform substantially completed and a certificate of occupancy or temporary certificate of occupancy is issued, as more particularly set forth in the Tenant's lease.
3. Provided that the current agreement between Street Retail and Tenant for the operation of a local grocery market on the aforesaid Lot 20 is in full force and effect, and Tenant's grocery market continues to be regularly open to the public for business on Lot 20

during the term of this Agreement, Street Retail shall have the right to name the Pavilion in the Public Plaza "Dawson's Market Stage", with signage to be placed on the Pavilion at Street Retail's cost and expense, in the locations shown on Exhibit A. The location of signage, and the logo and lettering depicted on Exhibit B, are hereby approved. If Street Retail wishes to change the logo and/or lettering of the signage during the term of this Agreement, it shall first obtain City Manager approval. The signs are to be located on the roofs of the east-facing and west-facing sides of the Pavilion. The total size of each sign is not to exceed 12 square feet, with dimensions not to exceed 12 feet in length by 12 inches in height.

4. Street Retail shall maintain the signage in good order and repair, at its sole cost and expense. The sign shall be maintained in a "first class manner". The term "first class manner" shall mean a quality of operation, maintenance and repair consistent with the quality found in other comparable commercial developments in the Washington Metropolitan Area.

5. Commencing in the spring of 2012, Street Retail agrees to sponsor the summer concert series in the Public Plaza, and shall coordinate the dates and times of the concerts with the City. The City hereby grants to Street Retail a revocable license to use the Public Plaza for such purpose, subject to the terms provided herein. The summer concert series consists of, and shall continue to consist of, at least seventeen (17) concerts conducted in the Public Plaza between the beginning of May and Labor Day known as the Concert in the Square. Sponsorship shall include scheduling the concerts, engaging the performers for the concerts, providing sound and stage lighting for the performances, obtaining the proper licenses for all copyrights or other similar rights necessary for the concert or other performances, maintaining appropriate volume levels during the performances, compensating the performers, set up and clean up, and repair of any damage to City property in connection with the concerts. Clean up is to be performed

immediately following each concert. If clean up is not performed by Street Retail within twelve (12) hours following the conclusion of a concert, the City shall have the right, in its sole discretion, to perform the clean up at Street Retail's cost and expense, and shall bill Street Retail for the cost of any such clean up. Street Retail shall reimburse the City for said costs within ninety (90) days of the date of said bill, or in accordance with any alternative payment schedule that may be mutually agreed upon in writing by the City and Street Retail. Should Street Retail fail to timely reimburse the City for said costs, said costs shall constitute a charge against the property of Street Retail and shall be a lien against said property, collectable in the same manner as City real property taxes are collected or in such other manner as permitted by law.

The foregoing notwithstanding, Street Retail may sponsor and conduct alternative promotional events in place of the concert series, if approved by the City.

6. Street Retail must, at all times, during the term of this Agreement, maintain such licenses and permits as required for the installation, erection and maintenance of the signage and for the concerts that are conducted as part of the summer concert series.

7. Street Retail shall comply with all orders issued by courts and administrative officers or entities of competent jurisdiction, promptly rectify any violations, and comply with all Federal, State and local laws and regulations.

8. Street Retail and its contractor(s) shall indemnify and hold harmless the City and all its officers, contractors, employees, agents, representatives, servants and assigns from any and all liability, loss, damages, claims, causes of action, judgments, and expenses, including reasonable attorneys' fees, in connection with, or arising from, the acts or omissions of Street Retail, or any of its contractors, employees, agents, officers, and servants, in the performance, or

failure to perform, under this Agreement, except for any liability or claims for damage caused by the negligence or intentional acts of the City. As long as this Agreement is in effect, Street Retail and its contractor(s) that install and maintain the signage permitted by this Agreement shall maintain insurance coverage naming the City as an additional insured so as to protect the City against any and all claims for personal and property injuries, including death, in the amount of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate, arising under this Agreement. Street Retail and its contractor(s) that install and maintain the signage permitted by this Agreement shall also secure workers' compensation coverage meeting Maryland statutory requirements and provide to the City a waiver of subrogation endorsement which documents the workers' compensation carriers agreement to waive all rights of subrogation against the City and all its officers, contractors, employees, agents, representatives, servants and assigns from losses which arise from the work performed by Street Retail or its contractor(s). Street Retail and its contractor(s) that install and maintain the signage permitted by this Agreement shall also secure appropriate Auto Liability Coverage in the amount of (a) Two Million Dollars (\$2,000,000.00) for Street Retail and (b) One Million Dollars (\$1,000,000.00) for Street Retail's contractors, combined single limit per accident for bodily injury and property damage. The City also requires that Street Retail and its contractor(s) secure appropriate insurance for any Street Retail organized special event held on the Public Plaza and that insurance secured be consistent with the expected or unexpected exposure generated by the special event. Such coverage may include liquor liability, environmental coverage, participant legal liability, third party property damage, or other such coverage that correspond to the specific special event. At the request of the City, but at least

annually, Street Retail shall provide the City with a certificate and endorsement evidencing that the insurance required herein is in effect and that the City is granted additional insured status.

9. Street Retail shall be solely responsible for all costs associated with the illumination of the sign on the Pavilion, in addition to the costs associated with the production of the summer concert series.

10. Street Retail may hire contractors, consultants, and vendors in connection with the rights and services to be provided by Street Retail under this Agreement, or delegate such obligations to Tenant (with the exception of the obligations provided in Paragraph 5 herein, which may not be delegated to Tenant), without the consent of the City. Notwithstanding any such delegation, Street Retail shall remain wholly responsible under the terms of this Agreement to fulfill its obligations as provided herein. Street Retail is an independent contractor and not an employee or agent of the City. In the event that Street Retail dissolves and therefore no longer exists, its obligations herein shall transfer to Federal Realty Investment Trust, its successors, and assigns.

11. None of the rights, duties and obligations of Street Retail under this Agreement shall in anyway be construed to create any liability for the City with respect to any third parties.

12. If at any time the City shall determine that (i) Street Retail is in default under this Agreement, then the City shall provide written notice (as provided below) of such default (each, a "Default") to Street Retail. Before exercising any rights or remedies that it may have as a result of a Default, the City shall give prior written notice (the "Default Notice") to Street Retail specifying in reasonable detail the nature of the Default and indicating that such Default must be cured within fourteen (14) days after the date upon which the Default Notice is given to Street

Retail, unless the Default relates to the clean up work related to a summer concert performance, in which case the Default must be cured within twenty-four (24) hours of the Default Notice. If Street Retail fails to cure the Default within the designated time period, then the City may, in its sole discretion, exercise any and all rights and remedies that it may have as a result of such Default. Notwithstanding the preceding sentence, if Street Retail acts promptly, using its best efforts, to cure any Default with respect to which a Default Notice is given pursuant to this paragraph, and if Street Retail is nevertheless unable to cure the Default within the designated time period, then, as long as Street Retail continues to use its best efforts to cure the Default, it shall have such additional time as is reasonably necessary to cure the Default, but not more than one hundred and eighty (180) days, before the City may exercise any rights or remedies that it may have as a result of such Default.

13. The City, in its sole discretion, may terminate this Agreement under any of the following circumstances: (a) If Street Retail substantially breaches this Agreement and fails to cure such breach as provided in Paragraph 12 above; or (b) if the contract between Street Retail and the Tenant for the operation of Dawson's Market terminates. Street Retail's reimbursement obligations as provided herein, shall survive the termination of this Agreement.

14. In addition to any rights or remedies that are available under this Agreement, or that are otherwise provided in law or equity, in the event that Street Retail fails to properly perform the services and discharge its obligations under this Agreement, the City may perform such services and obligations and charge Street Retail with the cost actually incurred by the City to perform such services and obligations.



16. This Agreement may be executed in several counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same instrument.

17. If any term of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement shall not be affected, and each term of this Agreement not held invalid or unenforceable, shall continue to be valid and enforceable to the fullest extent permitted by law.

18. This Agreement may not be modified orally or in any other manner than by an agreement in writing signed by the City and Street Retail and contains the entire agreement of the parties. The parties will not be bound by any verbal or oral agreements or understandings that have not been expressly incorporated into this Agreement.

19. No obligation or provision of this Agreement shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

20. This Agreement represents the results of bargaining and negotiations between the parties and of a combined draftsmanship effort. Consequently, the City and Street Retail expressly waive and disclaim, in connection with the interpretation of this Agreement, any principle of construction requiring that ambiguous or conflicting terms be construed against the party whose attorney prepared this Agreement or any earlier draft of this Agreement.

21. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Maryland.

22. This Agreement may not be assigned by Street Retail without the approval of the City, except in connection with Street Retail's sale of its interest in the Town Square to a person

that assumes Street Retail's obligations under this Agreement. The foregoing notwithstanding, upon an assignment of this Agreement in connection with Street Retail's sale of its interest in the Town Square, the obligations under Section 5 of this Agreement shall terminate, and Street Retail shall pay to the City one (1) lump sum, in an amount equal to the net present value, calculated using an interest rate of ten percent (10%), of the "Annual Payment" (as hereafter defined), for each year of the then remaining term of this Agreement. The Annual Payment shall mean Eighteen Thousand Dollars (\$18,000.00), increased by the percentage positive change, if any, in the U.S. Bureau of Labor Statistics, [Revised] Consumer Price Index, "United States City Average for Urban Wage Earners and Clerical Workers, Selected Data (1982-84 = 100) all items (seasonally adjusted) between the date of this Agreement and the effective date of Street Retail's assignment of this Agreement ("Assignment Date"), due on each anniversary of the Assignment Date. If such index shall be discontinued, then any successor consumer price index of the United States Bureau of Labor Statistics, or an alternate means of cost price measurement, shall be used. Street Retail shall make such lump sum payment to the City within sixty (60) days of such assignment.

*(Signature page follows)*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

WITNESS:

CITY:

**THE MAYOR AND COUNCIL OF  
ROCKVILLE, MARYLAND**, a municipal  
corporation of the State of Maryland

\_\_\_\_\_

By: \_\_\_\_\_ [SEAL]  
Name: Scott Ullery  
Title: City Manager

WITNESS:

MANAGER:

**STREET RETAIL, INC.**, a Maryland  
corporation

\_\_\_\_\_

By: \_\_\_\_\_ [SEAL]  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SHEET S-20

10 ft - 0 in

# ROCKVILLE MARKET PAVILION

1/8"

Type: Identity at Pavilion

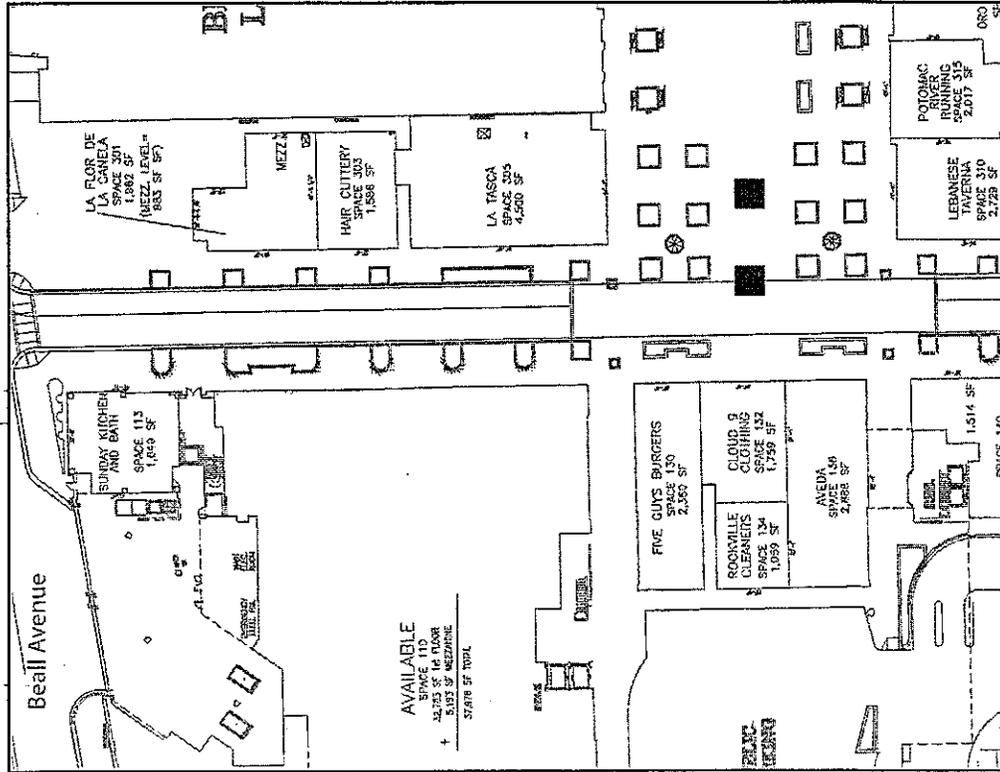
Sign Dimensions: 9" x 10'-0" (7.5 sq.ft)

Description: Painted metal letters pinned off painted metal panel.

Two painted metal channels to provide illumination for the signs.

Quantity: 2

Sign Concept  
NTS



Location Plan

Reference Image

**DAWSON'S MARKET STAGE**

**DAWSON'S MARKET STAGE**