16807

CITY OF OLYMPIA AND OLYMPIA FARMERS MARKET OPERATION AND MAINTENANCE AGREEMENT

THIS AGREEMENT is made and entered into this 3rd day of March and supersedes any previous agreements by and between the City of Olympia, herein referred to as "Olympia," a Washington municipal corporation, and The Farmers Market, herein referred to as "the Market," a Washington State private nonprofit corporation.

WHEREAS, agriculture is one of the cornerstones of the local economy, and local growers and small businesses make an essential contribution to our local communities and to the well being of our citizens; and

WHEREAS, farmers markets are dedicated to supporting family farms and small businesses and to providing opportunities for our citizens to meet local producers and gain access to the bounty of locally grown products in all their diversity, fresh from the farm; and

WHEREAS, the congenial atmosphere of a farmers market appeals to local citizens and tourists of all ages and ethnic backgrounds, creates a positive social experience, and provides nutritional, economic, and educational benefits; and

WHEREAS, Olympia, the Port of Olympia and the Market have a history of cooperation and collaboration in providing a successful venue for a farmer's market over the years; and

WHEREAS, operation of a farmers market open to the public in downtown Olympia will further attract customers to the Olympia downtown and further the use of downtown businesses, providing for increased sales and creating tax revenue; and

WHEREAS, RCW 35.92.040 authorizes the City of Olympia to operate a public market on City-owned or leased property, or other property, for the purpose of providing farmers, crafts vendors and other merchants with retail space to market their wares to the public; and

WHEREAS, included within that authority is the power to contract with private nonprofit organizations to operate such a farmers market open to the public on City-owned or leased property, or other property; and

WHEREAS, the Market is a private nonprofit organization comprised of local growers, vendors of fruits and vegetables, processed food items, and hand crafted merchandise, and is qualified to operate such a farmers market open to the public; and

WHEREAS, insofar as the Market's operation will take place on publicly owned or leased property or right-of-way, the Market is performing this public market function on behalf of Olympia; and

WHEREAS, Olympia has negotiated with the Port of Olympia a lease (Port of Olympia Lease) covering the property described as follows:

Lot 3, SS-5888, Recorded under Auditor's File No. 3056940

WHEREAS, the Market has satisfied its obligation towards the retirement of the councilmanic bonds for the construction of the facility as of July 2005; and

WHEREAS, it is desirable that the parties set forth in this Agreement the terms and conditions under which a farmers market open to the public will be managed by the Market;

IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

A. RESPONSIBILITIES OF FARMERS MARKET

1. **Occupy, Operate and Manage:** The Market shall occupy, manage and operate a farmers market in Olympia's public market facility according to the provisions, terms and conditions of this Agreement and in accordance with all applicable laws as shall relate thereto.

   The Market shall be responsible for the costs of administration and daily operations, including all utility payments, of such a farmers market. The Market shall open the facility to the purchasing public during its hours of operation. The Market shall operate and administer the farmers market in a businesslike manner with emphasis given to good customer service, in recognition of the Market's role as a contractor for Olympia. The Market shall submit to Olympia copies of all policies, rules, and regulations that it enacts relative to the operation of the farmers market. The Market shall follow and abide by such rules and regulations.

2. **Nondiscrimination:** The Market agrees and promises to manage and operate the farmers market in a fair manner and that it will not, on the grounds of race, color, national origin, religion, age, sex, or sexual orientation discriminate against any person or group of persons. The Market shall maintain during the term of this Agreement a written policy and process governing selection of vendors. The policy and process shall give equal opportunity to all qualified vendors and contain criteria for selection consistent with this Agreement.

3. **Farmers Market Season:** A representative from the Market and Olympia shall meet prior to January 31st of each year at which time the Market shall notify Olympia of

the specific days and times of farmers market operation for the upcoming year, and of any substantial reduction in the length of the season or any substantial change in the days and hours of operation from the traditional opening on the first Thursday in April of each year. Any substantial reduction shall be subject to approval by Olympia

4. **Use by City:** The Market shall allow the City of Olympia or other organizations sponsored by the Olympia to make use of the farmer's market facilities or any portion thereof at no charge whenever the farmers' market facilities or said portion is not being used by the Market and such use does not conflict with Market uses authorized under this Agreement. Olympia shall give notice of such use to the Market representative within a reasonable amount of time prior to the use. Olympia further agrees to not use the Farmers Market facilities for any use that competes with the uses authorized for the Market under this Agreement. Olympia and Market representatives will communicate as frequently as needed for scheduling the use of the farmers market. The Market may charge reasonable out-of-pocket expenses incurred by the Market for overtime or extra staff being scheduled related to the said use of the Farmers' Market facilities. Organizations using the farmers market facilities shall complete the Olympia Farmer's Market Use and License Agreement and meet all requirements therein, including but not limited to required event insurance, alcoholic beverage permit, and the like.

5. **Financial Records:** The Market agrees it shall maintain fiscal records and accounts in accordance with systems and procedures prescribed by law for non-profit corporations. The Market shall annually provide to Olympia a financial report reviewed by the Market's retained C.P.A. which at a minimum includes income and expenses for a given year. In any year, the Market may not open until all quarterly reports for the previous year have been received by Olympia. The Market shall also submit to Olympia a quarterly financial report and activity or event report in a format acceptable to Olympia. The quarterly reports shall be submitted to Olympia within thirty (30) days of the end of each calendar quarter and the annual report shall be submitted to Olympia within thirty (30) days of the closing of the Market for the year. The quarterly and annual reports shall, among other things, break down the gross sales receipts into two categories: (1) producers, purveyors and growers of edibles; (2) receipts of crafts and miscellaneous vendors such as food concessions. Upon request, the Market shall allow access to Olympia to review and audit the Market's financial information, including revenues and expenses.

6. **Taxes and Obligations**. The Market shall be responsible for paying any leasehold excise tax or any other taxes or obligations owed the State of Washington or others arising from the Market's use of the Property and the farmers market facilities; provided, however, that with written consent of Olympia the same may be paid from the Capital Fund established pursuant to Section A.12 below.

7. **Port of Olympia Lease** Market acknowledges that it has reviewed the Port of Olympia Lease as set out in Exhibit "B", and agrees that the Market's operation under this Agreement will comply with the terms and requirements of Exhibit B. Further, the Market agrees that the rent provisions of the Port of Olympia Lease are agreeable to the Market and that, as provided below; the Market shall ensure payment annually to Olympia of an amount sufficient to cover said rent throughout the term of this Agreement, and as extended. If Olympia leases additional property from the Port of Olympia for use by the, Market, the Market agrees to pay the City of Olympia annually an amount sufficient to reimburse Olympia for all rent owed to the Port for the lease of such additional property. Modification of Exhibit "B" for the purposes of adding additional leased property will be allowed under the provisions of this contract subject to the approval of Olympia.

   The Market acknowledges and understands that Olympia is bound by all the provisions of the Port of Olympia Lease and that Olympia has no authority to act beyond or contrary to its terms. The Market specifically agrees to abide by all limitation and restrictions on the use of the Property set forth in the Port of Olympia Lease. Olympia shall provide ninety (90) days notice to the Market of any proposed changes to said lease initiated by either Olympia or the Port of Olympia; Olympia shall not execute any Olympia-initiated changes without agreement of the Market. Olympia shall cooperate with the Market, as staff and resources permit, to facilitate the Market's negotiations with the Port of Olympia concerning the Market's desire to lease the triangle of property located southeast of the Market Gardens from the Port.

8. **Parking:** The Market shall cooperate with the Port of Olympia implementing a plan of shared parking assignments on or adjacent to the Property, to be effective on each day the Market is opened, for Market vendors and customers. Until further agreement or development of parking solutions, the Market shall encourage its customers to park in said lots as provided for in the shared parking agreements. Olympia shall support the Market's efforts with parking management expertise as staff and resources permit, to facilitate the Market's negotiations with the Port of Olympia concerning the lease of any parking in addition to the 238 shared parking spaced provided by the Port of Olympia Lease. The Market shall be responsible for ongoing coordination with the Port of Olympia with respect to said shared parking spaces.

9. **Use of Sidewalks:** The Market may use the sidewalks within the Property as needed and agreed upon to support the Market and for public pedestrian use. The Market shall use its best efforts to prevent sidewalks along the streets on the periphery of the Market from being blocked with vehicles, merchandise, or other objects associated with Market activities. The Market shall at least annually inspect the sidewalks along the streets and the sidewalks within the property for damage or defects.

10. **Facility Maintenance:**

Facility Maintenance responsibilities are set out in Exhibit "A" of this Agreement as follows -

General/Annual Maintenance: The Market shall be responsible, at the Market's sole cost, for performance of the General/Annual Maintenance items allocated to the Market in Exhibit "A" attached hereto. Additionally The Market shall be responsible for day-to-day cleaning and maintenance of the Market premises and restrooms so as to present a safe and clean venue to the community, including removal of snow, ice and debris from pedestrian walkways. The Market will furnish from its annual operating budget the funds to pay for the staff and supplies to maintain the above referenced services. The Market shall perform such general / annual maintenance in compliance with the same standards as Olympia applies to other Olympia -owned property, and shall provide Olympia with written verification that such maintenance work has been done within the timeframes set forth in Exhibit "A." Olympia shall have the right to approve or disapprove the quality of the work done by the Market under this section. Should the Market fail to perform such general / annual maintenance pursuant to Exhibit "A," Olympia is authorized upon thirty (30) days advance written notice to make such repair and maintenance and receive compensation therefore from the Market, and the Market shall pay such compensation to Olympia within thirty (30) days of receiving an invoice.

Major Repair & Replacement: No later than January 31st of each year, beginning with January 31, 2010, the Market shall pay the City Nineteen Thousand Eight Hundred and Eighty Eight Dollars ($19,888) for major repair and replacement items allocated to Olympia in Exhibit "A." The annual payment amount may be adjusted by the Market so as not to exceed an account balance of $100,000. The account balance shall be defined by subtracting encumbered expenses and unexpended appropriations from net assets as of January 1 of each year. At the expiration or termination of this Agreement, all funds in this account shall be retained by Olympia. The Market acknowledges and agrees that the $100,000 dollar cap may be eliminated in future amendments of this contract.

11. **Capital Fund:** In addition to the payments required above, the Market shall deposit into a Capital Fund account separate from its operation account an amount equal to one half percent (½%) of the annual gross sales. The Market shall hold such funds in a Capital Fund to be used for future farmers' market customer/vendor parking and possible expansion to the Olympia-owned farmers' market facilities. All expenditures from this fund must be approved in writing in advance by the Market and Olympia. This fund may not be used for General Maintenance or

Repairs, replacements, and Upgrades allocated to the Market in Section A11 and Exhibit A of this Agreement. At the expiration or termination of this Agreement, all monies in the Capital Fund shall be retained by the Market. The Market acknowledges and agrees it shall pay for all additional parking and other capital expenditures described herein and that Olympia is not obligated to nor has it agreed to pay for any such expenditures. If this Agreement is renewed, the Market may carry forward any funds in the Capital Fund into the Capital Fund account, if any, under the renewed Agreement.

12. Insurance:

12.1 The Market agrees to procure and maintain for the duration of this Agreement commercial general liability insurance with limits of liability not less than $1,000,000 per occurrence, and $2,000,000 in the general aggregate, for bodily injury, including personal injury or death, products liability and property damage. The commercial general liability insurance shall also include the following coverages:

A. Products and Completed Operations Liability;

12.2 Certificates of Insurance. The City shall be named as additional insured on all such insurance policies. The insurance provided to the additional insured shall be primary. Contractor shall provide certificates of insurance and an Additional Insured endorsement, concurrent with the execution of this Agreement, evidencing such coverage and, at City's request, furnish the City with copies of all insurance policies and with evidence of payment of premiums or fees of such policies. All insurance policies shall contain a clause of endorsement providing that they may not be terminated or materially amended during the Term of this Agreement, except after forty-five (45) days prior written notice to the City. If Contractor's insurance policies are "claims made" or "claims paid", Contractor shall be required to maintain tail coverage for a minimum period of three (3) years from the date this Agreement is actually terminated. Contractor's failure to maintain such insurance policies shall be grounds for the City's immediate termination of this Agreement.

12.3. Insurance Limits. The insurance limits stated above are not intended to be an indication of exposure nor are they limitations on indemnification.

12.4 Expiration/Termination of Insurance. The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

13. Indemnification. Furthermore, the Market agrees to defend, indemnify and hold harmless Olympia, its officers, officials, employees and volunteers from any

claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of the use of the premises or adjacent streets here in question, or from any activity, work or thing done, permitted, or suffered by the Market in or about the premises, which may arise out of the use of the public market facility, the Property, and adjacent streets by the Market, any vendor or concession permitted by the Market, or any of them; provided, that Olympia shall indemnify and hold the Market harmless from any claims, actions, damages or liability arising out of the sole negligence of Olympia. The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

B. RESPONSIBILITIES OF CITY

1. **Facility Ownership**: The parties acknowledge that the public market facilities constructed on the leased Property leased from the Port of Olympia are owned by the City of Olympia.; provided, however, that any materials and improvements that are not fixtures, and that were specifically contributed to the Market by either the Friends of the Market, a non-profit organization created to assist the Market or any other charitable entity are the property of the Market. On or before the end of each calendar year, a representative of the Market and Olympia shall identify specifically any materials and improvements which the parties agree were provided by the Friends of the Market and thereby qualify to be retained by the Market at the conclusion of this Agreement.

2. **Property Insurance:** Olympia shall maintain any and all fire casualty and extended coverage insurance, or a self insurance plan, on the public market facilities in such amount as Olympia deems appropriate. Any funds derived from such insurance shall be used to repair or replace the damaged portions of public market facilities.

3. **Major Repair and Replacement:** Olympia shall perform, as its sole cost, the major repair and replacement items allocated to Olympia in Exhibit "A" of this Agreement. The plan shall be reviewed by the parties annually after the close of the Market season to determine if updates need to be made. The parties shall work cooperatively in this review; however, Olympia has the authority to amend the plan as it deems necessary to preserve the Market facility. Olympia shall hold funds received from the Market under Section A.11.b in a separate account and may manage expenditures and disbursements from said account in its sole discretion. If this Agreement is renewed, any funds in the account at renewal shall be carried forward into the major maintenance and repair account, if any, called for by the renewed Agreement.

4. **Market Promotion:** Olympia will provide space on public rights-of-way as available for the Market to place banners in promoting the Market and subject to City policies on banners.

5. **Liaison:** Olympia will provide a liaison for the Market Board meetings to facilitate communications between Olympia and the Market.

C. MISCELLANEOUS TERMS OF AGREEMENT

1. **Assignment of Interests**: The Market shall not, either directly or indirectly, assign, transfer, mortgage, pledge, hypothecate, or encumber this Agreement or any interest therein, and shall not lease or sublet the Property or Market facilities or any part thereof, without the prior written consent of Olympia, which shall be in Olympia's sole discretion; and any attempt to do so without such consent being first obtained shall be wholly void and shall constitute a breach of this Agreement.

   Notwithstanding the foregoing, the Market shall have the right at any time, without Olympia and Port of Olympia's consent, to grant concessions on the Property and Market facilities to growers, makers, and catchers or produce, seafood, meat, poultry, sellers, and resellers of agricultural products, sellers of local crafts and sellers of prepared food; all in accordance with the requirements of this Agreement including, but not limited to, the restrictions on the use of the property contained in Section A.5 herein.

   No consent by Olympia to any assignments, leasing or subletting by the Market shall relieve the Market of any obligation to be performed by them under this Agreement, whether occurring before or after such consent, assignment, leasing or subletting. The consent by Olympia to any assignment, leasing or subletting shall not relieve the Market from obligation to obtain Olympia's express written consent to any other assignment, leasing or subletting. The acceptance of rent by Olympia from any other person shall not be deemed to be a waiver by Olympia of any provision of this Agreement or to be a consent to any assignment, leasing, subletting, or other transfer. Consent to one assignment, subletting, or other transfer shall not be deemed to constitute consent to any subsequent assignment, leasing, subletting or other transfer.

2. **Independent Contractor**: The parties agree that the Market's use of the Property and public right-of-way pursuant to this Agreement is as an independent contractor and not as a department of Olympia. Further, Market employees are not employees of Olympia.

3. **Implied Waivers**: Waiver by Olympia of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or of any subsequent breach of the same or any other term, covenant, or

condition herein contained. The subsequent acceptance of rent hereunder by Olympia shall not be deemed to be a waiver of any preceding breach by the Market of any term, covenant, or condition of this Agreement, other than the failure of the Market to pay the particular rental so accepted, regardless of Olympia's knowledge of such preceding breach at the time of acceptance of such rent.

4. **Right of Entry:** Olympia reserves, and shall at any and all reasonable times have the right to enter the Property site to inspect the Market facilities for any reason; provided, that Olympia shall exercise good faith in attempting to minimize the extent of any interference with the Market's operation of a farmers' market

5. **Term of Agreement; Improvements**: The term of this Agreement shall run from March 2, 2010 through March 2, 2015. The Market may terminate this Agreement prior to such expiration date by giving Olympia at least six (6) months notice prior to the scheduled opening date of the Farmers Market. Olympia may terminate this Agreement effective on its anniversary date of March 2 by giving notice thereof to the Market no later than April 15 of the preceding such anniversary date.

   At the expiration or earlier termination of this Agreement, Olympia agrees to discuss with the Market the possibility of removal of the public market facilities (which are owned by Olympia as set forth in Section B.1 above) on terms and conditions agreeable to both parties. The Market may, in its discretion, donate to Olympia any personal property provided to the Market by the Friends of the Market.

6. **Agreement Notices:** All notices under this Agreement shall be in writing and delivered in person or sent by certified mail, return receipt requested, to Olympia and to the Market at the addresses set forth below at such party's last known address, or at such other address as one party may request by written notice to the other party. Notices mailed as aforesaid shall be deemed given on the date of mailing or delivery, if delivered by hand.

   For the Farmers Market:
   President
   The Farmers Market
   P.O. Box 7094
   Olympia WA 98507

   For Olympia:
   City Manager
   City of Olympia
   P.O. Box 1967
   Olympia WA 98507-1967

The persons in the above positions, or their designees, shall be the official representatives for purposes of this Agreement.

7. **Entire Agreement**: This Agreement contains the entire Agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law. This agreement replaces all prior agreements pertaining to the operation and maintenance of the Farmers Market between Olympia and the Market.

8. **Assignment by Olympia**: In the event of any transfer of Olympia's interest in the Property, Olympia shall be and is hereby entirely freed and relieved of any liability or responsibility under any and all of its covenants and obligations contained in or derived from this Agreement upon such transfer; provided, that the person or entity acquiring Olympia's interest herein may, without any further agreement between the parties or their successors in interest assume and agree to carry out any and all of the covenants and obligations of Olympia under this Agreement.

9. **Applicable Law**: This Agreement shall be construed and enforced in accordance with the laws of the State of Washington.

10. **Attorney Fees**. In the event either of the Parties defaults on the performance of any terms of this Agreement or either Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, the prevailing party shall be entitled to its reasonable attorneys' fees, costs and expenses to be paid by the other Party. The venue for any dispute related to this Agreement shall be Thurston County, Washington.

11. **Attachments**: Exhibits attached to this Agreement are:

    Exhibit "A": General/Annual Maintenance, Repair Replacement Schedule Breakdown
    Exhibit "B": Port of Olympia Lease

DATED this 3rd day of March 2010.

CITY OF OLYMPIA

By: _____
Steven R. Hall, City Manager

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

On the 3RD day of MARCH 2010, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared STEVEN R. HALL, to me known to be the City Manager of the City of Olympia, a municipal corporation, who executed the within foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses, and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.

WITNESS my hand and official seal the day and year first above written.

CONNIE J. COBB
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
OCTOBER 29, 2010

Connie J. Cobb
Signature
Print Name: Connie J. Cobb
NOTARY PUBLIC in and for the State of Washington, residing at Olympia
My Commission expires 10-29-10

APPROVED AS TO FORM

By _____
Assistant City Attorney, City of Olympia

THE FARMERS MARKET

By: _____
President

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

On this 24TH day of MARCH 2010, before me personally appeared MICHAEL PERONI, to me known to be the President of The Farmers Market, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and on oath states that he is authorized to execute the said instrument.

WITNESS my hand and official seal the day and year first above written.

GERALD G. EAVES SR. NOTARY PUBLIC COMMISSION EXPIRES 7-29-11 STATE OF WASHINGTON

_____
Signature
Print Name: GERALD G. EAVES, Sr.
NOTARY PUBLIC in and for the State of Washington, residing at 1153 BELL HILL PLACE DUPONT, WA 98327
My Commission expires 7/29/2011

Farmers Market
Major Repair, Maintenance Replacement Fund
2010 Inventory
Exhibit "A"

Farmers Market Items				
Item or System	**Life Cycle (scheduled yr)**	**Current Cost**	**Life Cycle Cost@3%yrly**	**Annual Cost**
Roof/Skylights Repair				
Roof/Skylights Replacement	30yrs (2024)	$80,658	$153,250	$5,108
Facility Painting (Entire)	10yrs (2013)	$26,918	$34,262	$3,806
Facility Truses & support beams	unknown	unknown		
Gutters/Downspouts Replace.	15yrs (2019)	*$4,000*	$5,980	$398
Rolling Door Replacement	15yrs (2019)	$10,000	$14,500	$966
Annual Major Repair over $500	annual	unknown		
Exterior Door Replacement	15yrs (2012)	$4,500	$6,525	$544
Annual Major Repair over $250	annual	unknown		
Fire Alarm/Sprinkler System				
Repair/Replacement	unknown	unknown		
Security Lighting				
Relamping/Fixture Cleaning	7yrs (2010)	$1,500	$1,815	$260
Indoor Heating/Cooling				
Replacement	10 yrs (2011)	$3,000	$3,900	$390
Office Flooring Replacement	20 yrs (2017)	$3,000	$4,620	$256
Window Repair/Replacement				
Annual Major Repair over $250	annual	unknown		
Stage *& covered seating area*				
Annual Major Repair over $500	annual	unknown		
Compactor Replacement	10yrs (2014)	$10,000	$13,000	$1,300
Enclosure Replacement	*20yrs (2024)*	$4,100	$6,560	$328
Boiler/H2O Heater				
Replacement	15yrs (2014)	$2,500	$3,706.	$247
Electrical System	unknown	unknown		
Paved Area Maintenance				
sealing/repair	15yrs, (2021)	$5,060	$7,564	$504
Parking Lot Sweeping	*annual*	*$4,000*	*$4,000*	*$4,000*
Plumbing/Restroom Fixtures	10yrs(2015)	$6,212	$8,075	$807
Annual Major Repair over $500	annual	unknown		
Signs				
Building Sign	30yrs (2024)	$8,000	$15,200	$506
Irrigation				
Repair/Replacement	10yrs (2016)	$3,600	$4,680	$468
Sidewalks				
Repair	when needed	unknown		
Replacement	unknown	unknown		
Totals		$177,048	$287,637	$19,888

City of Olympia Items

Item or System	Life Cycle (scheduled yr)	Current Cost	Life Cycle Cost@3%yrly	Annual Cost
None				0

Exhibit "B"

DUPLICATE ORIGINAL

OPTION

THIS OPTION is entered into the 19th day of October, 1995, between the PORT OF OLYMPIA, a Washington municipal corporation, hereinafter referred to as "the Port," and the CITY OF OLYMPIA, hereinafter referred to as "Optionee" or "the City."

IT IS HEREBY AGREED AS FOLLOWS:

1. **Option to Lease.** In consideration of Optionee paying the sum of Ten ($10.00) Dollars and other good and valuable consideration, including all of the design and engineering work being done by Optionee in connection with the Farmers Market move, the Port does hereby grant to Optionee the exclusive Option to lease the following described real property, hereinafter referred to as "the property," to be used for purposes identified on Schedule "A":

> 60,000± square feet, identified as Lot 3 in a pending short plat application, subject to modifications as required by the City of Olympia.

The above consideration is nonrefundable and is intended to reimburse the Port for its costs in the preparation of this Option, its review of the engineering and plans of Optionee and such other related costs.

2. **Term of Option.** Optionee shall have the exclusive Option to lease the property for a period of one (1) year from the date hereof, and in the event Optionee does not exercise such option, this Option shall expire at 12:00 noon, one year from the date hereinabove written. The option will be extended for an additional one (1) year if the Optionee has secured all building permits and other permits necessary for the construction of the Farmers Market, consistent with the site plan approved by the Port Commission, and has awarded contracts for the completion of the market improvements within the extended option period.

3. **Notice of Exercise.** This Option is to be exercised and the lease term to commence upon the date of the first beneficial occupancy of the site for its intended use.

4. **Lease to be Signed.** Attached to this Option and marked Schedule "B" is the Port's Ground Lease, which contains the terms and conditions for leasing the property. Before the Port will sign the Ground Lease, Optionee must first have submitted to the Port, and the Port Commissioners have approved, Optionee's intended uses of the property, design and development plans and other required documentation so that development will be in harmony with the Port's long range plans for its property.

5. **Representations, Warranties & Covenants.** The Port represents and warrants to Optionee that it has good and marketable, indefeasible fee title to the property, and it has full power and authority to enter into this Agreement and, if the Option is exercised, the Lease. The Port and Optionee each covenant that it will indemnify and hold the other harmless from any and all claims from real estate agents and brokers alleged to have been hired by such person or other fees arising from or out of this Option of the Lease contemplated hereby and they will not place encumbrances or restrictions on the property during the term hereof or permit such to be placed on the property. See also site conditions on Schedule "A."

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6. **Permits.** Optionee shall file for and process all permits required for Optionee's intended use, which permits shall be consistent with all requirements of: (a) the site plan approved by the Port of Olympia and (b) the short plat pending before the City of Olympia, including any additional requirements of the City of Olympia specified for the market site due to the use of the lot as a market during plat approval. The City of Olympia is not responsible for the construction necessary to secure preliminary or final plat approval, nor is the City responsible for improvements to the parking lot.

7. **Return of Property.** If Optionee does not exercise this Option granted it hereunder, it shall return the property to the Port free and clear of any liens and any encumbrances arising out of its or its employees' efforts hereunder or those of its representatives or agents retained in connection herewith.

8. **Failure to Exercise Option.** If Optionee does not exercise this Option, the Optionee also would provide to the Port at no cost, any studies or reports done in connection with the specific site conditions, including design and engineering work. If Optionee does not exercise this Option as provided in this Agreement, all sums paid by Optionee are nonrefundable and shall be retained by the Port, free of all claims of Optionee, and neither party shall have any further rights or claims against the other.

9. **Exercise of Option.** If this Option is exercised as herein provided, the Port and Optionee will respectively perform the obligations set forth in the attached Lease and the collateral rules and regulations for development at the Farmers Market site and associated parking.

10. **Recording Option.** Optionee shall not record this Option with the Thurston County Auditor without first obtaining the written permission of the Port. If Optionee records this Option in violation of this clause, all the rights, powers and privileges of Optionee shall terminate automatically, and all monies paid by Option shall be considered forfeited. A memorandum of this option may be recorded with the Port's consent.

11. **Assignment of Option.** Optionee may not assign this Option. If Optionee attempts such transfer or assignment, all rights of Optionee herein are forfeited automatically.

OPTIONEE:
CITY OF OLYMPIA

By: Richard C. Cushing
Title: City Manager

PORT OF OLYMPIA

By: Richard O. Malin
Richard O. Malin, Acting Executive Director

Approved as to form:

By: Mark Foutch
Title: City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

On this 20th day of October, 1995, personally appeared before me Dick Malin, to me known to be the Acting Executive Director of the Port of Olympia, the municipal corporation named in the within and foregoing Lease, and acknowledged to me that he signed the same on its behalf, as he is so authorized to do, as his free and voluntary act and deed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Michele DiAlessandro

NOTARY PUBLIC in and for the State of Washington residing at Olympia

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

On this 19th day of October, 1995, personally appeared before me Richard C. Cushing, to me known to be the City Manager of the City of Olympia, the municipal corporation named in the within and foregoing Lease, and acknowledged to me that he signed the same on its behalf, as he is so authorized to do, as his free and voluntary act and deed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

NOTARY PUBLIC in and for the State of Washington residing at Olympia

SCHEDULE "A"

USE AND AVAILABILITY

Site and Use

Parcel 3 of the proposed subdivision shall be available to the City of Olympia for the design, construction, and operation of a Farmers Market and all associated structures on the site, including public restroom facilities.

An easement is granted to the City of Olympia for all studies, engineering, construction, and other purposes related to the design and construction of said market and public restroom facilities.

Environmental conditions and limitations. The site is delivered to the City of Olympia "as is." The only exceptions are those conditions represented in the Bradley Noble report on site conditions relating to MTCA and CERCLA contaminant issues. If subsequent investigation identifies potential MTCA and CERCLA contamination on site other than as represented in the Bradley Noble report, not attributable to the City, the Port of Olympia shall bear the cost of remediation of such additional contamination, not to exceed $100,000. In the event the total cost to the port of the remediation of any additional MTCA or CERCLA contamination other than as disclosed in the Bradley Noble report shall exceed $100,000, the Port shall, at the Port's sole discretion, have the right to terminate the option. The Port will accept, store, and dispose of at no cost to the City any soils identified under the terms of the letter from WDOE to the Port and City Re: New Farmers Market Site and Existing Conditions dated March 29, 1995 where the City agrees the Port may store such dirt on other Port property in Olympia. The City will obtain any permits required for bulk storage as part of its permit responsibilities.

Public Facilities - Restrooms

The Port Commission has identified a need for a restroom to serve not only the Farmers Market area but the general public using Port properties. Inasmuch as the restroom is to be constructed on the property to be leased to the City, the Port would pay the City the sum of $132,000 toward the cost of the restrooms which the City would otherwise be required to provide for the Market facility. The size and general configuration of the facility is reflected in the preliminary drawings shown to the Port. The funds would be paid to the City on three conditions:

A. Care, custody, and control of the restrooms, including the ownership, operation, maintenance, and security for the facilities, rests with the City for the duration of the lease.

B. The City would maintain the restrooms open to the general public on a schedule determined by the City. If the Port determines that the restrooms should remain open beyond the City schedule, it may do so in cooperation with the City, but shall reimburse the City for the additional maintenance costs attributable to the expanded schedule.

C. The Port approves the final the design of the facility. (To this end, The Port Commission requests that the City seek a "raised stage" rather than the flat stage shown in the preliminary drawings.)

SCHEDULE "B"

PORT OF OLYMPIA GROUND LEASE

THIS LEASE is made this _____ day of _____, 19___, by and between the PORT OF OLYMPIA, a Washington municipal corporation, Lessor, hereinafter referred to as "the Port," and the Tenant described below, hereinafter referred to as "Tenant" or "City," on the following terms and conditions:

1. **LEASE SUMMARY.**

TENANT.

Name:	CITY OF OLYMPIA
Address:	900 Plum Street
City, State, Zip Code:	Olympia, WA 98507
Phone Numbers:	753-8325

LEASED PREMISES.

60,000± square feet, identified as Lot 3 in a pending short plat, subject to changes imposed by City of Olympia through the platting process. See copy attached as Exhibit F.

TERM.

50 years beginning upon a beneficial occupancy of the Farmers Market site, ending 50 years thereafter, dates to be inserted at commencement of lease, with an option to renew the lease for an additional 30-year term.

RENT.

$20,000 per year, payable on December 15 of each year, plus: Leasehold Tax; Insurance; Utilities; Fire Insurance; Other: All assessments by the City of Olympia, whether taxes or utility charges in connection with the site, together with 6% of the annual gross proceeds from other than Farmers Market revenues derived from subtenants with rentals to other public or private groups. The additional rent shall not apply to City functions.
Rental revisions: as described in the rental schedule attached as Exhibit "E."

SURETY.

Amount: $100 Form: **Acceptable to the Port**
Expiration Date: Term of lease

USE OF PREMISES.

Construction of a public market and public restrooms, operation of the site for farmers markets, public markets, displays, festivals, or other activities in the approved facilities authorized by the City of Olympia.

INSURANCE.

Bodily Injury/Death: $500,000 per person and $1,000,000 per accident or occurrence.

Property Damage per Occurrence: $500,000

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EXHIBIT "A" REQUIREMENTS AS TO IMPROVEMENTS
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EXHIBIT "C" TOXIC, DANGEROUS AND HAZARDOUS SUBSTANCES STORAGE LICENSE
EXHIBIT "D" COMMON AREA AGREEMENT
EXHIBIT "E" RENTAL SCHEDULE
EXHIBIT "F" PENDING SHORT PLAT

THE PARTIES HEREBY AGREE AS FOLLOWS:

2. **LEASED PREMISES**. The Port hereby leases to Tenant, and Tenant hereby leases from the Port, the premises described in paragraph 1 above, located in Thurston County, hereinafter called "the premises."

3. **TERM**. This Lease shall be for the term specified in paragraph 1 above.

4. **RENT**. It is the intention of the parties hereto that the rent specified in the Lease shall be net to the Landlord in each year during the term of the Lease. Accordingly, all costs, expenses and obligations of every kind relating to the leased property (except as otherwise, specifically provided in the Lease) which may arise or become due during the term of the Lease shall be paid by Tenant and the Port shall be indemnified by the Tenant against such costs, expenses and obligations.

Tenant agrees to pay as rent for the use and occupancy of the premises during the term of this Lease, without deduction or offset, the rent specified in paragraph 1 above, payable to the Port on or before December 15 of each year the lease is in effect, at such place as the Port may designate.

If the Tenant does not pay the rent as provided above, then in addition to the overdue rent, Tenant shall pay a late charge on the rent payment then due of eighteen percent (18%) per annum or two (2) percentage points over the prime rate charged by commercial banks in the Olympia, Washington area, whichever is greater. Such late charge commences on the date the rent is due and continues until such rent is paid. In the event that Tenant does not pay the rent when due and a late charge is incurred each month for three (3) consecutive months, the rent called for herein shall automatically become due and payable quarterly in advance rather than monthly, notwithstanding any other provision in this Lease to the contrary, and regardless of whether or not the late charges are paid or collected. The imposition of such late charge does not prevent the Port from exercising any other rights and remedies under this Lease.

5. **LEASE SURETY**. Tenant shall, upon execution of this Lease, file with the Port a good and sufficient surety in accordance with the requirements of state law, the form and terms of which surety shall be subject to approval of the Port and in which the surety shall guaranty the full performance by Tenant of all the terms and conditions of this Lease and the payment by Tenant of the rents and all other amounts herein provided for the full term hereof. Initially, the surety required is set forth in paragraph 1 above. These provisions as to lease surety are subject to revision and adjustment as may hereafter result from changes in state requirements or as established by the Port Commission.

6. **ACCEPTANCE OF PREMISES.**

a. Tenant has examined the premises, the adjoining premises and the premises of which this is a part, and accepts them in their present condition. There are no warranties expressed or implied as to condition apparent or unknown except as otherwise stated in this Lease.

b. The site did contain some petroleum products which required remediation consistent with the WDOE letter dated March 29, 1995. In the event hazardous waste or petroleum contamination is identified on site after the effective date of this Lease, which is attributable to occurrences prior to the date of this Lease not under the City's control, in excess of that described in the Bradley Noble report, and such discovery results in a requirement for further site remediation, the Port shall hold Tenant harmless from any liability therefore, including any costs to remediate such contamination as may be required by any State or Federal agency with jurisdiction. The Tenant agrees that the indemnity and additional cleanup shall be the Port's sole obligation and that the Tenant and its

subtenant agree to make available to the Port that portion or portions of the site required for study and further remediation.

The Tenant and its subtenants will make no claim for any indirect cost or loss due to the study or remediation actions of the Port, including but not limited to loss of use of all or any portion of the market site, rebuilding of any portion of the market facility, any loss of business, or diminution of value in the market or facility as a result of such cleanup activity. In the event any action described above disrupts market activity for more than 30 consecutive days, then for each such period of disruption, rent for the market will be abated on a prorata square foot basis for market building space loss. (e.g. If 10% of the market building area is affected for an entire market season, 10% abatement of the rent would be in order.)

7. **POSSESSION**. If the Port shall be unable for any reason to deliver possession of the premises or any portion thereof at the time of the commencement of this Lease, the Port shall not be liable for any damage caused thereby to Tenant, nor shall this Lease thereby become void or voidable, nor shall the term specified herein be in any way extended, but in such event Tenant shall not be liable for any rent until such time as the Port can deliver possession; provided that if Tenant shall take possession of any portion of the premises in the interim, it shall pay the full rent specified herein reduced pro rata for the portion of the premises not available for possession by Tenant; and provided further, that if the Port shall be unable to deliver possession of the premises at the commencement of this Lease, Tenant shall have the option to terminate this Lease by giving at least thirty (30) days' written notice of such termination, and this Lease shall terminate unless the Port shall deliver possession of the premises prior to the effective date of termination specified in such notice. If Tenant shall, with the Port's consent, take possession of all or any part of the premises prior to the commencement of the term of this Lease, all of the terms and conditions of this Lease shall immediately become applicable, with the exception that Tenant shall not be obligated to pay any rental for the period prior to the commencement of the term of this Lease unless otherwise mutually agreed.

8. **USE OF PREMISES**. Tenant shall use the premises only for those purposes stated in paragraph 1 above and shall not use them for any other purpose without the written consent of the Port; the premises will be used only for lawful purposes; the premises will be used in accordance with all applicable building, fire and zoning codes. Tenant shall use the entire premises for the conduct of said business in a first-class manner continuously during the entire term of this Lease.

9. **REQUIREMENTS AS TO IMPROVEMENTS**. The specific requirements as to the planning, construction and completion of any major improvements planned by Tenant on the subject premises are attached hereto as Exhibit "A" to this Lease, which by this reference is incorporated herein as if set forth in full. Prior to the submission of any plans for contemplated improvements on the leased premises, Tenant shall furnish a survey of the appropriate leased premises as prepared by a registered and licensed surveyor, all at Tenant's own expense. The schematic designs attached as Exhibit "B" are approved.

10. **RIGHTS-OF-WAY**. The Port agrees to grant other such right-of-way easements across the property of the Port for the installation and maintenance of necessary and adequate services to the premises of Tenant.

11. **RESERVATION OF RIGHTS**. *reserved*

12. **AIR SPACE RESERVATIONS AND USE RESTRICTIONS**. *reserved*

13. **UTILITIES AND SERVICES**. After Tenant's installation of all utilities and services as may be required by Tenant, Tenant shall be liable for and shall pay for all utility services furnished

to the premises, including but not limited to, electricity, water, sewerage, including any connection fees, and utility assessments, and any fire protection, police protection, or emergency health services provided to the premises.

14. **INDEMNIFICATION/LIABILITY INSURANCE**. The Port, its employees and agents shall not be liable for any injury (including death) to any persons or for damage to any property, regardless of how such injury or damage be caused, sustained or alleged to have been sustained by Tenant or by others as a result of any condition (including existing or future defects in the premises), or occurrence whatsoever related in any way to Tenant's premises and the areas adjacent thereto or related in any way to Tenant's use or occupancy of the premises and areas adjacent thereto, so long as such claim does not result from the direct action of the Port, its employees or agents. Tenant agrees to indemnify, defend and to hold and save the Port harmless from all liability or expense (including expense of litigation) in connection with any such items of actual or alleged injury or damage. Likewise, Port agrees to indemnify, defend and hold and save the City harmless from all liability or expense (including expense of litigation) arising out of any direct action by the Port, its employees or agents. In addition, Tenant shall, at its own expense, maintain proper liability insurance with a reputable insurance company[1] or companies satisfactory to the Port in the minimum policy limits set forth in paragraph 1 above, and hereafter in such increased amounts as the parties may from time to time mutually agree upon, to indemnify both the Port against such liability or expense. In the event of any sublease or rental of the premises, the Port shall be named as one of the insureds on the subtenants' policies and shall be furnished with a copy of such policy or policies of insurance, which shall provide that such insurance may not be canceled without the insurance company first having given the Port thirty (30) days' advance written notice of such intent to cancel. At the Port's option, Tenant may submit certificates evidencing compliance with this paragraph in lieu of furnishing the actual policies or copies thereof.

15. **WAIVER OF SUBROGATION**. The Port and Tenant hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective insurance contracts, including any extended coverage endorsements thereto, provided, that this paragraph shall be inapplicable to the extent it would have the effect of invalidating any insurance coverage of the Port or Tenant.

16. **TAXES**. Tenant shall pay all license and excise fees, occupation, leasehold, personal property and all other taxes and governmental charges, whether such charges are by contract or statute, during the term of this Lease. Tenant shall also pay a pro rata share of any L.I.D., U.L.I.D. or other governmental assessments for services or facilities benefiting the premises.

17. **MAINTENANCE AND REPAIR**. Tenant shall, at its own expense, keep the premises, structures and other improvements and the adjoining roadways, sidewalks and areas in a neat, clean, safe and sanitary condition and maintain and keep all of the premises maintained equal in quality to of other owners of similar class properties and conditions in the Thurston County, Washington area, reasonable wear and tear excepted, and to maintain the landscape and undeveloped areas in a clean, sanitary, orderly and attractive condition free from rubbish and debris. Tenant shall replace any and all improvements which become worn out, obsolescent, deteriorated, unsafe or unusable and shall replace such improvements with new fixtures and improvements of at least as good a quality as originally installed at the commencement of this Lease. In the event Tenant fails to properly maintain, repair and replace the premises or any improvements thereon, and if the Port shall give a ten (10) day written notice to Tenant, Tenant shall comply with Tenant's responsibilities under this paragraph, and the Port shall be entitled, but shall not be obligated, to enter the leased premises and perform such work as may be necessary to

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[1] Membership in WCIA or Company Self Insurance Program will constitute satisfaction of this provision.

restore the leased premises and improvements to the conditions set forth herein. The cost of such repairs shall be billed to Tenant by the Port and shall be payable upon receipt and subject to the same penalties for late payment as if such payment was additional rent.

Tenant shall be responsible for a prorata share of all costs of operation and maintenance of the parking lot abutting on Lot 2. Tenant may satisfy its entire obligation for this share by providing routine cleaning [sweeping] of the entire parking lot on Lot 2 and providing security for the entire parking lot on Lot 2 (see Exhibit D).

Tenant shall keep the premises free and clear of any liens and encumbrances arising or growing out of the use and occupancy of the premises by Tenant. At the Port's request, Tenant shall furnish the Port with written proof of payment of any item which would or might constitute the basis for such a lien on the premises if not paid.

18. **ALTERATIONS AND IMPROVEMENTS.** Tenant shall make no major structural alterations or improvements to or upon the premises without first obtaining written approval of the Port. Additions or modifications consistent with the approved site plans and elevations shall not be considered a major change. The Port's response to Tenant's requests for approval shall be prompt, and such approval shall not be unreasonably withheld. Upon installation, Tenant shall furnish the Port with a copy of the "as-built" drawings including utility installations and site plans detailing the nature of the additions, alterations or improvements. The Port reserves the right to have Tenant remove, at Tenant's sole expense, all or any of such alterations, additions or improvements at the end of the Lease term upon giving Tenant sixty (60) days' advance written notice of the Port's exercise of this option. If the Port exercises this option, all such alterations and improvements will be removed prior to the last day of the Lease term.

19. **DISPOSITION OF IMPROVEMENTS.**

a. Within sixty (60) days after the expiration or earlier termination of this Lease, the Tenant shall at Tenant's expense, promptly and diligently remove, demolish or clear off from the leased premises all or any designated portion of the improvements and other property owned by Tenant, and after such removal or clearance, Tenant shall restore the surface of the ground to a graded, properly filled, level and uniform condition, free from all debris; provided, however, that if Tenant at such time shall be in default in the payment of rents or any other charges hereunder, the Port shall have a lien on the improvements to secure payment of such rents or charges. Provided, however, the Port may at its sole discretion direct the City to leave the restroom facilities, in which event title to such facilities shall pass without further action of the parties.

20. **INSPECTION.** The Port reserves the right to inspect the premises at any and all reasonable times throughout the term of this Lease, provided that it shall not interfere unduly with Tenant's operations. The right of inspection reserved to the Port hereunder shall impose no obligation on the Port to make inspections to ascertain the condition of the premises, and shall impose no liability upon the Port for failure to make such inspections.

21. **RESTORATION.**

a. If any building or improvement erected by Tenant on the leased premises or any part thereof shall be damaged or destroyed by fire or other casualty during the term of this Lease, Tenant may, at its option, at its own cost and expense, repair or restore the same according to the original plans thereof or according to such modified plans as shall be previously approved in writing by the Port. Such work of repair or restoration shall be commenced within one hundred twenty (120) days after the damage or loss occurs and shall be completed with due diligence but not longer than one (1) year after such work

is commenced plus force majeure, and such work shall be otherwise done in accordance with the requirements of the provisions hereof pertaining to the construction of improvements upon the leased premises. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration, or if Tenant elects not to repair or restore, to the cost of removing, demolishing, or clearing off the building or improvements. If *(i)* there are not insurance proceeds, or *(ii)* the same shall be insufficient for said purpose, Tenant shall make up the deficiency out of its own funds. Should Tenant fail or refuse to make the repair, restoration or removal as hereinabove provided, then in such event said failure or refusal shall constitute a default under the covenants and conditions hereof, and all insurance proceeds so collected shall be forthwith paid over to and be retained by the Port on its own account, and the Port may, but shall not be required to, sue and apply the same for and to the repair, restoration or removal of said leased premises or improvements, and the Port may, at its option, terminate this Lease as elsewhere provided herein.

b. Notwithstanding anything to the contrary contained in the preceding section, if any building erected on said leased premises shall be damaged by fire or other casualty, and if the cost of repairing or restoring the same shall exceed the insurance payable for such damage, and if such damage shall occur during the term so that the remaining term of this Lease is of insufficient length to allow Tenant to finance such cost in a commercially reasonable manner, the Tenant shall have the option, to be exercised within thirty (30) days after such event, to repair or restore said building as hereinabove provided, or to terminate this Lease by written notice thereof to the Port.

22. **DEFAULTS**. Time is of the essence of this Lease, and in the event of the failure of Tenant to pay the rental or other charges at the time and in the manner herein specified, or to keep any of the covenants or agreements herein, the Port may elect to terminate this Lease and reenter and take possession of the premises with or without process of law, provided, however, that Tenant shall be given fifteen (15) days' notice in writing if the default is for the nonpayment of rent, or thirty (30) days' notice in writing stating the nature of the default in order to permit such default to be remedied by Tenant within the appropriate time periods. If the Port issues a notice of default for the nonpayment of rent, in order to cure such default, Tenant must pay the overdue rent, together with the late charge as set forth in paragraph 4 above, plus a Fifty Dollar ($50.00) lease reinstatement fee.

If upon such reentry there remains any personal property of Tenant or any other person's upon the premises, the Port may, but without the obligation to do so, remove said personal property and hold it for the owners thereof or may place the same in a public garage or warehouse, all at the expense and risk of the owners thereof, and Tenant shall reimburse the Port for any expense incurred by the Port in connection with such removal and storage. The Port shall have the right to sell such stored property, without notice to Tenant, after it has been stored for a period of thirty (30) days or more, the proceeds of such sale to be applied first to the cost of such sale, second to the payment of the charges for storage, and third to the payment of any other amounts which may then be due from Tenant to the Port, and the balance, if any, shall be paid to Tenant. Notwithstanding any such reentry, the liability of Tenant for the full rental provided for herein shall not be extinguished for the balance of the term of this Lease, and Tenant shall make good to the Port any deficiency arising from a reletting of the premises at a lesser rental than that chargeable to Tenant. Tenant shall pay such deficiency each month as the amount thereof is ascertained by the Port.

23. **ADVANCES BY PORT FOR TENANT**. If Tenant shall fail to do anything required to be done by it under the terms of the Lease, except to pay rent, the Port may, at its sole option, do such act or thing on behalf of Tenant, and upon notification to Tenant of the cost thereof to the Port, Tenant shall promptly pay the Port the amount of that cost. However, if the Port shall pay any monies on Tenant's behalf, Tenant shall repay such monies, together with interest thereon commencing on the date the Port paid such monies and shall be calculated at the rate of eighteen percent (18%) per annum, or two

(2) percentage points over the prime rate charged by commercial banks in the Olympia, Washington area, whichever is greater.

24. **HOLDING OVER.** If Tenant shall, without the consent of the Port, hold over after the expiration or sooner termination of this Lease, the resulting tenancy shall, unless otherwise mutually agreed, be on a month-to-month basis. During such month-to-month tenancy, Tenant shall pay to the Port the rate of four (4) times the then-current rental under the terms of the Lease, unless a different rate shall be agreed upon, the Tenant shall be bound by all of the additional provisions of this Lease.

25. **ASSIGNMENT OR SUBLEASE.** Except as provided below, Tenant shall not assign or transfer this Lease or any interest therein nor sublet the whole or any part of the premises, nor shall this Lease or any interest thereunder be assignable or transferable by operation of law or by any process or proceeding of any court, or otherwise, without the advance written consent of the Port. The Port does grant its consent to a sublease to The Olympia Farmers Market which incorporates the material terms of this lease and to the periodic use of the site by Tenant or to the rental of the site to other users where the terms of the rental is less than thirty (30) days. Nothing herein shall prevent Tenant from pledging, assigning, or otherwise hypothecating this Lease or any interest therein, or any improvements on the premises, for the purpose of obtaining financing for the acquisition of a building or buildings or any improvements to be located on the premises. If the Port shall give its consent to any assignment or sublease, Tenant shall remain liable under the terms of this Lease, and this paragraph shall nevertheless continue in full force and effect and no further assignment or sublease shall be made without the Port's consent.

26. **COMPLIANCE WITH PORT REGULATIONS/ALL LAWS.** Tenant agrees to comply with all applicable rules and regulations of the Port pertaining to the building or other realty of which the premises are a part, now in existence or hereafter promulgated for the general safety and convenience of the Port, its various tenants, invitees, licensees and the general public. The Port shall provide Tenant with current copies of all such rules and any updates or changes. Tenant further agrees to comply with all applicable federal, state and municipal laws, ordinances and regulations and to indemnify the Port for any costs or fees incurred by the Port due to Tenant's failure to comply with the requirements of this section. Costs and fees shall include all direct and indirect costs and professional fees, including engineering and attorney's fees. The parking lot on Lot 2 is owned by the Port and Tenant shall have the undivided right to use 238 stalls for one half of the time (a 1/3 use of the parking lot). Use of the lot will be subject to rules of operation adopted by the Port Commission.

27. **PETROLEUM, DANGEROUS, TOXIC AND HAZARDOUS MATERIALS.** Tenant agrees to abide by all federal, state and local laws pertaining to the handling, storage, use and transportation of petroleum, dangerous, hazardous and toxic materials. (For purposes of this Agreement, wood waste shall be considered a dangerous material to be handled in accordance with the Department of Ecology's requirements or guidelines for wood waste disposal.) Tenant further agrees in the event of any occurrence in violation of such laws (including but not limited to, any action resulting in a spill, emission, accumulation, contamination or fire, whether discovered during the term of this Lease or after termination or renewal thereof), Tenant shall take all steps required by law and the appropriate authorities to clean up and restore the premises, and any other contaminated or affected area, to the satisfaction of said authorities and to provide a letter from said authorities to the Port certifying that the premises and affected areas have in fact been cleaned or restored and are presently in compliance with all federal, state and local laws. Finally, Tenant agrees to indemnify the Port for any claims, damages, costs or professional fees incurred by the Port by reason of any event or occurrence involving petroleum, dangerous, toxic or hazardous wastes directly or indirectly attributable to Tenant's use of Port property.

28. **STORAGE TANK LICENSES.** All storage on site, whether permanent or mobile, capable of holding more than two hundred fifty (250) gallons either in bulk or in separate containers or

any material identified in Exhibit "C" shall require a separate hazardous materials license. Such license shall provide for appropriate handling and storage facilities, inspections, testing and clean up procedures and any special insurance provisions which may be required.

29. **INSPECTIONS AND NOTICE OF CHANGE.**

a. Tenant agrees that inspections may be required by the Port at the Tenant's expense to assure compliance with paragraphs 27, **PETROLEUM, DANGEROUS, TOXIC AND HAZARDOUS MATERIALS,** and 28, **STORAGE TANK LICENSES.** Such inspections shall be made once every five (5) years or at any time the Port has good cause to believe a problem may exist.

b. The Tenant shall annually identify any materials listed in Exhibit "C" used in the course of its ordinary business.

30. **TERMINATION BY THE PORT FOR PUBLIC USE.** *reserved*

30A. **TERMINATION BY THE TENANT.** If during the term of this Lease the current Farmers Market organization terminates or abandons its use of the premises and the Tenant determines it is not feasible thereafter to operate a Farmers Market on the premises or on other sites, Tenant shall have the right to terminate this Lease upon giving the Port twelve (12) months notice; provided, that Tenant shall not have the right to terminate under this provisions prior to five (5) years from the date this Lease is signed. If the Tenant terminates the Lease pursuant to this provision, Tenant shall remove the improvements constructed thereon at its own expense, except for the restroom facility. The restroom facility shall be removed only at the Port's request. This provisions shall be considered authority in addition to that provided either party in other portions of this Lease.

31. **TERMINATION FOR GOVERNMENT USE.** In the event that the United States government, the State of Washington or any agency or instrumentality other than the Port thereof shall, by condemnation or otherwise, take title, possession or the right to possession of the premises or any part thereof, the Port may, at its option, terminate this Lease as of the date of such taking, and if Tenant is not in default under any of the provisions of this Lease on said date, any rental prepaid by Tenant shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly returned to Tenant. Any compensation due to the termination shall be distributed in accordance with an agreement of the parties or by an order of the appropriate court.

32. **INSOLVENCY.** If Tenant shall file a petition in bankruptcy, or if Tenant shall be adjudged or insolvent by any court, or if a receiver of the property of Tenant shall be appointed in any proceeding brought by or against Tenant, or if Tenant shall make an assignment for the benefit of creditors, or if any proceedings shall be commenced to foreclose any mortgage or any other lien on Tenant's interest in the premises or on any personal property kept or maintained on the premises by Tenant, the Port may, at its option, terminate this Lease, provided, however, that these provisions shall not apply so long as Tenant, or any assigns, trustee or receiver, is not in any way in default under the terms of this Lease.

33. **PROMOTION OF PORT COMMERCE.** The purpose of the Port is to encourage the development of commerce within the Port district, and to every reasonable extent possible, increase the movement of passengers and freight through Port facilities. In furtherance of this purpose, Tenant agrees to cooperate with the Port in the promotion of these purposes during the term of this Lease, and wherever reasonably possible, to utilize the Port's facilities in the movement of freight and passengers as a part of Tenant's business activities. Nothing in this paragraph shall be construed to obligate Tenant to accept signs, provide facilities, or spend monies in the Port's promotional advertising, nor shall this paragraph apply to the conduct of general city business, comprehensive planning, zoning or to other city functions

beyond those incidental to the City's role as a tenant under this Lease, but Tenant does agree to supply such information and data for the Port's promotional and advertising activities.

34. **ATTORNEY'S FEES AND COSTS.** Should a dispute arise between the parties hereto as to the effect of any provision hereof and said dispute is referred to an attorney, the losing party shall pay the prevailing party's actual and incurred attorney's fees; costs of court, including such fees and costs of any appeal; other legal expenses; and collection costs, except that the amount of such fees, costs or expenses taken separately or in the aggregate, shall not be unreasonable. If such dispute arises and is later settled by the parties, such settlement shall include a specific allocation of disposition of attorney's fees on both sides.

35. **NONDISCRIMINATION - SERVICES.** Tenant agrees that it will not discriminate by segregation or otherwise against any person or persons because of race, creed, color or national origin in furnishing, or by refusing to furnish, to such person or persons the use of the facility herein provided, including any and all services, privileges, accommodations and activities provided thereby.

It is agreed that Tenant's noncompliance with the provisions of this clause shall constitute a material breach of this Lease. In the event of such noncompliance, the Port may take appropriate action to enforce compliance, may terminate this Lease, or may pursue such other remedies as may be provided by law.

36. **NONDISCRIMINATION - EMPLOYMENT.** Tenant covenants and agrees that in all matters pertaining to the performance of this Lease, Tenant shall at all times conduct its business in a manner which assures fair, equal and nondiscriminatory treatment of all persons without respect to race, creed or national origin, and in particular:

a. Tenant will maintain open hiring and employment practices and will welcome applications for employment in all positions from qualified individuals who are members of racial or other minorities; and

b. Tenant will comply strictly with all requirements of federal, state or local laws or regulations issued pursuant thereto relating to the establishment of nondiscriminatory requirements in the hiring and employment practices, and assuring the service of all patrons or customers without discrimination as to any person's race, creed, color or national origin.

The Port reserves the right to take such action as the appropriate governmental authority may direct to enforce these provisions.

37. **APPRAISAL PROCEDURE.** *reserved*

38. **ARBITRATION PROCEDURE.** *reserved*

39. **JOINT AND SEVERAL LIABILITY.** Each and every party who signs this Lease, other than in a representative capacity, as Tenant, shall be jointly and severally liable hereunder.

40. **INVALIDITY OF PARTICULAR PROVISIONS.** If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

41. **NOTICES**. All default and other substantial notices required under the provisions of this Lease may be personally delivered or mailed. If mailed, they shall be sent by registered mail to the following addresses:

To the Port:
Port of Olympia
915 Washington Street N.E.
Olympia, WA 98501-6931

To the Tenant:
City of Olympia
900 Plum Street
Olympia, WA 98507

or to such other respective addresses as either party hereto may hereafter from time to time designate in writing. Notices sent by mail shall be deemed to have been given when properly mailed, and the postmark affixed by the United States Post Office shall be conclusive evidence of the date of mailing.

42. **WAIVER**. The acceptance of rental by the Port for any period or periods after a default by Tenant hereunder shall not be deemed a waiver of such default unless the Port shall so intend and shall so advise Tenant in writing. No waiver by the Port of any default hereunder by Tenant shall be construed to be or act as a waiver of any subsequent default by Tenant. After any default shall have been cured by Tenant, it shall not thereafter be used by the Port as a ground for the commencement of any action under the provisions of paragraph 24, **HOLDING OVER**.

43. **BINDER**. This Lease is binding upon the parties hereto, their heirs, personal representatives, successors in interest and assigns, including all subtenants or licensees.

LESSOR:

PORT OF OLYMPIA, a Washington municipal corporation,

By:_____
Executive Director

TENANT:

CITY OF OLYMPIA, a Washington municipal corporation,

By:_____
Title:_____

Approved as to form:
By:_____
Title:_____

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

On this _____ day of _____, 19___, personally appeared before me _____, to me known to be the Executive Director of the Port of Olympia, the municipal corporation named in the within and foregoing Lease, and acknowledged to me that he signed the same on its behalf, as he is so authorized to do, as his free and voluntary act and deed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

_____

NOTARY PUBLIC in and for the State of Washington residing at_____

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

On this _____ day of _____, 19___, personally appeared before me _____, to me known to be the _____ of the City of Olympia, the municipal corporation named in the within and foregoing Lease, and acknowledged to me that he signed the same on its behalf, as he is so authorized to do, as his free and voluntary act and deed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

_____

NOTARY PUBLIC in and for the State of Washington residing at_____

EXHIBIT "A"

REQUIREMENTS AS TO IMPROVEMENTS

These conditions relating to improvements in this Exhibit "A" shall control unless the Port and Tenant have otherwise separately agreed to more specific time periods for production and coordination of drawings, financing and commencement of construction. In the event such additional documentation becomes a part of this Lease, then the time periods set forth in such documents shall be logically coordinated, the intent being that the shorter time periods should control the parties' respective performances.

1. **PORT APPROVAL OF TENANT IMPROVEMENTS**. As used herein, the terms "improvements" or "structures" shall mean and include without limitation all permanent buildings, and all other major structures or improvements of any kind located above the ground level of any site, plus any replacements, additions, repairs or alterations thereto. No improvement shall be constructed or maintained on the leased premises until the Port has first approved the design, density, size, appearance and location thereof. Before commencing any work of improvement or applying for any governmental permit or approval, Tenant shall first deliver to the Port for approval two (2) sets of schematic plans and preliminary specifications, including grading and drainage plans, exterior elevations, floor plans, site plans, and showing in reasonable detail existing topography and proposed type of use, size, land coverage, shape, height, location, material and elevation of each proposed improvement, all proposed ingress and egress to public or private streets or roads, all utilities and service connections, and all proposed landscaping, exterior materials and fences, parking, exterior lighting, signs, cut and fill, finished grade, runoff and concentration points. Nothing in this paragraph shall imply a submission standard higher than that required for a building permit, except as it relates to land use(s), utilities, infrastructure and impact upon adjoining properties and use(s) of adjoining properties.

The Port shall then have twenty (20) days during which to accept and approve or reject such preliminary plans and specifications. Once the preliminary plans and specifications have been approved, but prior to commencing any such work, Tenant shall submit to the Port for approval of final plans and specifications for any proposed improvements in the same manner as provided above.

All plans and specifications for grading or improvements to be submitted to the Port hereunder shall be prepared by a licensed or registered architect or engineer, as the case may be. All grading, piling, footing and foundation work must be conducted under the supervision of an appropriate licensed engineer. At the Port's option, a final certification by a licensed soils engineer or geologist must be filed with the Port upon completion of the grading work. The Port shall not unreasonably withhold its approval of any such plans or specifications.

The Port shall be conclusively deemed to have given its approval unless, within thirty (30) days after all such plans and specifications have been received by the Port, the Port shall give Tenant written notice of each item of which the Port disapproves. Unless so disapproved, the Port shall endorse its approval on at least one set of plans and return the same to Tenant. The Port may disapprove any plans which are not in harmony or conformity with other existing or proposed improvements on or in the vicinity of the leased premises, or with the Port Master Plan or other plans or criteria for the leased premises in the general area in which the leased premises are located, the sole discretion as to such adequacy remaining with the Port. Notwithstanding the foregoing, Tenant may, in accordance with the lease, repair, replace, alter or reconstruct any improvement on the leased premises for which plans were previously approved by the Port as provided above, but only if such repair, replacement, alteration or reconstruction is substantially identical to the improvement previously approved.

Concerning utility installations, Tenant, at Tenant's sole cost, including any connection fees, assessments or changes, shall be responsible for the installation on the leased premises of all utilities required by Tenant's use of the premises, assuming such utility services are available to the leased premises. Any contractual arrangements with any municipal supplier with respect to the improvements or utility installation shall not be entered into by Tenant without first obtaining the Port's approval. In the event that such utility services are not readily available at the leased premises, Tenant, at Tenant's sole cost, shall pay for the extension of such utilities to the leased premises.

The Port shall not be liable for any damages in connection with the approval or disapproval of any plans or specifications, any construction or performance by Tenant on the leased premises in connection with the erection of such improvements, any mistake in judgment, negligence or omissions in exercising its rights and responsibilities hereunder, or the enforcement or failure to enforce any provisions contained in the Lease. The Port's approval of plans and specifications shall not constitute the assumption of any responsibility by the Port or its representatives for the accuracy, efficacy or sufficiency thereof, and Tenant shall be solely responsible therefor.

2. **CERTIFICATES OF COMPLIANCE.** Tenant shall obtain all necessary permits and shall send copies of same to the Port, as well as copies of Certificates of Completion/Occupancy associated with such permits and pay the cost thereof. Prior to commencement of any such work of improvements, Tenant shall supply to the Port a certificate from a licensed civil engineer or land surveyor verifying that the proposed improvements will be located on the correct parcel and in accordance with plans previously approved by the Port. The Port may waive such requirement if the Port has already surveyed the proposed premises. Upon completion of any such improvements, Tenant shall supply to the Port a further certification by Tenant's architect (including the landscape architect in the case of improvements consisting of landscaping) that the improvements, as designed by the architect, have been completed in accordance with the plans previously approved by the Port. Final landscaping as approved by the Port shall be completed within sixty (60) days after completion of the structure. Tenant shall also supply to the Port one (1) set of "as-built" grading plans showing all underground installations within sixty (60) days following completion of any substantial improvement within the leased premises. Tenant shall also furnish the Port with a complete set of "as-built" building plans and an itemized statement of the actual construction cost of such improvements, not later than sixty (60) days after completion.

3. **DILIGENT COMPLETION AND COMPLIANCE.** After commencement of construction, Tenant shall diligently complete the construction so that the improvements will not remain in a partly finished condition any longer than is reasonably necessary, and Tenant shall comply with all applicable governmental laws, ordinances and other requirements or conditions and restrictions which may affect the leased premises, all at the sole cost and expense of Tenant.

EXHIBIT "B"

SCHEMATIC DESIGNS

The schematic designs dated August 21, 1995 meet Port requirements and are approved for purposes of this Lease, including the approval requirements of Section 9 and Exhibit "A."

EXHIBIT "C"

TOXIC, DANGEROUS AND HAZARDOUS SUBSTANCES STORAGE LICENSE

(License required for any material covered by
Dangerous Waste Regulations in WAC 173-303
as amended and 40 CFR Part 116-117 as amended,
copies are on file in the Port of Olympia offices)

Licensee:_____
Lease:_____
Term:_____ (Not to exceed 5 years.)
Fee:_____
Insurance:_____ The Port must be named insured and entitled notice prior to cancellation.

Renewable: For life of underlying lease so long as conditions below are met:

1. Facilities approved for installation and use:

_____
_____
_____

2. Preconstruction approvals required:

_____
_____

3. Preoccupancy approvals required:

_____
_____

4. Inspections required:

a. _____
_____

b. At any time the Port has good reason to believe a problem may exist.

c. At a minimum, all tanks shall be pressure tested at least once every five (5) years to assure no loss of product into the environment (air, soil, surface or ground water).

5. Materials authorized for storage:

a. _____
_____

b. Any additional materials require the consent of the Port.

6. Additional terms:

a. The Port Engineer shall have the right to terminate this license at any time and in his own discretion, if the facilities fail to meet all federal, state or local requirements or otherwise pose a hazard of unlawful contamination or pollution and such failures are not cured within thirty (30) days of written notice or such lesser time as appropriate under emergency circumstances.

b. The licensee agrees to bear all costs of construction, operation, maintenance, inspection or repair of the approved facilities and to keep the same in good operating repair during the term of this license, and the cost of any cleanup or other activities required in the event of a spill, leak or other pollution causing event.

c. The licensee agrees at any time that the approved facilities cease to be subject to a valid license agreement, for any reason, that the licensee shall, at its own cost, remove the facilities and restore the site to its original condition (including removal of all contaminated soils or water).

d. The Port shall have the right to terminate this license upon breach of any term herein or termination of the specified lease. Breach of any term of this license shall constitute a breach of the specified lease.

e. The licensee shall compensate the Port for all costs incurred by reason of any breach of this license.

LICENSEE:

By:_____
Title:_____
License Date:_____

PORT OF OLYMPIA;

By:_____
Title:_____

EXHIBIT "D"

COMMON AREA AGREEMENT

A. The Port shall complete the parking substantially as shown on the pending short plat for Lot 2. The City shall be granted an undivided license to use up to 238 parking stalls on the abutting Lot 2 on a one-half time basis. Costs of the parking lot operation and maintenance shall be allocated among all users on a prorata basis. For purposes of this allocation the parties agree that the City shall provide (1) security services for the entire parking lot (not limited to market operations) and (2) periodic sweeping as necessary to keep the entire lot clean and suitable for use (at least monthly and after major events at the Farmers Market). So long as such services are provided, the services are deemed equal to the Tenant's share and shall constitute the City's prorata share under this provision.

Should the City cease to provide the requisite services, the common area maintenance would be provided on a prorata basis based on stall usage identified above and charges allocated to all Tenants using the parking lot.

B. Use of the parking facilities shall be subject to the use rules and regulations which may be imposed from time to time by the Port Commission for the parking property. The Port shall provide Tenant with current copies of all such rules and any updates or changes.

EXHIBIT "E"

RENTAL SCHEDULE

The rent for the premises leased shall be $20,000 per year base rent. In addition to the base rent, the Tenant shall pay a supplemental rent based on gross receipts, which shall be the sum of the following:

a. Farmers Market

Gross Receipts from Farmers Market Operations	Supplemental Rent
0 - $2,000,000	-0-
$2,000,001 - $3,000,000	1% of gross receipts over $2,000,000
$3,000,001 - $4,000,000	2% of gross receipts over $3,000,000
$4,000,001 - $5,000,000	3% of gross receipts over $4,000,000
$5,000,001 - no limit	4% of gross receipts over $5,000,000

b. Other Revenues

6% of gross receipts from municipal-sponsored functions other than Farmers Market revenues.

"Gross receipts" shall be calculated as the revenue reported by the Olympia Farmers Market for (subsection (a)). For subsection (b) gross receipts shall be City revenues derived from any other private group authorized to use the market property for commercial purposes, and any gross receipts from municipal sponsored functions other than the Farmers Market; provided, however, gross receipts shall not include interfund transfers which do not involve direct proceeds from the public or any private group for activities on market property.