

LEASE AMENDMENT NO. 1

PORT OF OLYMPIA GROUND LEASE

THIS LEASE AMENDMENT NO. 1 (this "Amendment") is made this _____ day of _____, by and between the **PORT OF OLYMPIA**, a Washington municipal corporation as Lessor (hereinafter referred to as the "Port") and the **CITY OF OLYMPIA**, a Washington municipal corporation (hereinafter referred to as "Tenant").

WITNESSETH:

WHEREAS, the Port and Tenant are parties to a Port of Olympia Ground Lease dated March 20, 1996 between the Port of Olympia, as Lessor, and the City of Olympia, as Tenant (the "Lease"); and

WHEREAS, the Port and Tenant now desire to amend the Lease for the purpose of restructuring the monthly rent and providing for a best practices assessment;

NOW THEREFORE, IT IS HEREBY MUTUALLY AGREED that the Lease between the parties is hereby amended as follows:

1. PARAGRAPH 1 – LEASE SUMMARY, SUBPARAGRAPH – RENT. Paragraph 1 – Lease Summary, subparagraph Rent, is deleted in its entirety and replaced with the following:

RENT.

Annual Rent. Rent for the Premises shall be based on Gross Receipts, and shall be the sum of the following:

- a. Farmers Market. 1.5% of Gross Receipts, which shall be the revenue reported by the Olympia Farmers Market, and which shall not include any revenue from activities included in subpart b. below.
- b. Other Revenues. 6% of Gross Receipts, which shall be all revenues from municipal-sponsored functions other than Farmers Market revenues, and shall be all 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 revenues; 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,

Annual Rent shall be payable in arrears on January 30 of each year for the Gross Receipts of the prior calendar year.

In addition, Tenant shall pay Leasehold Excise Tax; Insurance; Utilities; Fire Insurance; any and all assessments, charges, and fees by the City of Olympia, whether taxes or utility charges or otherwise in connection with the premises, the improvements located

thereon, or the activities conducted thereon; and any and all other assessments, charges, and fees.

Exhibit "E" -- Rental Schedule to the Lease is deleted in its entirety.

Rent Cap. Annual rent shall be capped at 6.65% of the fair market value of the premises as established by the Thurston County Assessor ("Rent Cap") for 2013 and every three (3) years thereafter. The Rent Cap for 2013 through 2015 shall be fixed at \$82,766 based on the \$1,244,600 fair market value of the premises as established by the Thurston County Assessor for 2013. For 2016 through 2018 the Rent Cap shall be based on the fair market value of the premises as established by the Thurston County Assessor for 2016; for 2019 through 2021 the Rent Cap shall be based on the fair market value of the premises as established by the Thurston County Assessor for 2019; and so forth for each successive three year period; provided however that the Rent Cap shall never be decreased. If the Thurston County Assessor does not establish a fair market value for the premises for any year in which the Rent Cap is to be adjusted, then the fair market value for such year shall be established by appraisal.

Appraisal. If the fair market value of the premises is to be established by appraisal, then such appraisal shall be conducted by an independent appraiser selected by the Port and approved by the City, which approval by the City shall not be unreasonably withheld, conditioned, or delayed. Such appraiser shall be a qualified MAI appraiser, with not less than 10 years experience appraising commercial real estate in Thurston County, Washington. A qualified MAI appraiser shall mean a member in good standing of the Appraisal Institute, or equivalent professional organization. In conducting an appraisal of the property, the fair market value shall be based upon the highest and best use of the property as if vacant, and the appraiser (a) shall consider sales of fee simple comparable properties in the general area; (b) shall appraise the property as if in private ownership and without discount or consideration for the property being owned by a municipal corporation; (c) shall appraise the property without regard to the premises being leased or the Tenant owning any improvements thereon; and (d) shall conduct and write the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice. Such determination and any Rent Cap revision resulting therefrom shall be retroactive to the date the Rent Cap was to be effective. The cost of any appraisal shall be shared equally by the Port and Tenant.

2. **BEST PRACTICES ASSESSMENT.** Paragraph 1 – Lease Summary is amended by adding the following subparagraph:

Best Practices Assessment. The Port and Tenant, Tenant consulting with the Farmers Market Association and the understanding by the Parties that the Market would not be obligated to implement any recommendations forthcoming, shall engage a qualified independent third party to conduct an assessment of the Olympia Farmers Market and prepare proposed best practices for the Farmers Market, with the goals of sustaining the Olympia Farmers Market Association, and maintaining and enhancing the viability of small farmer members of the Olympia Farmers Market Association. The assessment shall be completed during a portion of the 2013 market season, and results shall be

available and shared with the Olympia Farmers Market Association no later than September 30, 2013. Tenant shall obtain the participation, cooperation, and support of the Olympia Farmers Market Association and its members in the assessment and development of best practices to ensure the success of the project. The cost of the assessment and preparation of proposed best practices shall be shared equally between the Port and Tenant. The detailed scope of work and other terms of the engagement, shall be as mutually agreed to by the Port and Tenant.

3. **EFFECTIVE DATE.** This Lease Amendment No. 1 shall be effective as of January 1, 2013, and shall apply to Annual Rent due on January 30, 2014 and thereafter for Gross Receipts received in 2013 and thereafter. Rent for 2012 shall be calculated and payable pursuant to the terms of the original Lease.
4. Except as expressly modified by the provisions of this Lease Amendment No. 1, the rest and remainder of the Lease shall remain in full force and effect and is affirmed and ratified by the signature of the parties hereto.

LESSOR:

TENANT:

PORT OF OLYMPIA

CITY OF OLYMPIA

By: _____
E. B. Galligan
Executive Director
Date: _____

By: _____
Printed name: _____
Its: _____
Date: _____

APPROVED AS TO FORM:



City Attorney

STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

On this _____ day of _____, 20____, personally appeared before me **E.B. Galligan**, to me known to be the Executive Director at the Port of Olympia, the municipal corporation named in the within and foregoing **Lease Amendment No. 1**, 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 _____
My commission expires: _____, 20____

STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

On this _____ day of _____, 20____, personally appeared before me _____, to me known to be the _____ of the entity named in the within and foregoing **Lease Amendment No. 1**, 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 _____
My commission expires: _____, 20____

RATIFICATION

This Lease Amendment No. 1 shall be subject, as a condition subsequent, to ratification by the Port of Olympia Commission within thirty (30) days after the date set forth on Page 1. This Lease Amendment No. 1 shall be effective and binding on the parties until such time (and thereafter if ratified), the Executive Director having the authority to sign this Lease Amendment No. 1 and bind the Port to all of its material terms. If this Lease Amendment No. 1 is not ratified, it shall terminate and be of no further force and effect.

The undersigned confirms that this Lease Amendment No. 1 was ratified by the Port of Olympia Commission on _____, 20__.

Port of Olympia Commission

By: _____

Its: _____

Date: _____

STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

On this _____ day of _____, 20__, personally appeared before me _____, to me known to be the President of the Port of Olympia Commission, the municipal corporation named in the within and foregoing **Lease Amendment No. 1**, 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.

Print Name: _____
NOTARY PUBLIC in and for the State of Washington,
residing at _____
My commission expires: _____