

INDENTURE OF LEASE

THIS INDENTURE OF LEASE, executed this ____ day of _____, 2015 by and between:

CITY OF BANGOR, a municipal corporation organized and existing under the laws of the State of Maine, and having its principal offices at 73 Harlow Street, Bangor, Maine (hereinafter sometimes referred to as "Lessor")

AND

BANGOR FARMERS' MARKET ASSOCIATION, an association doing business in Penobscot County, State of Maine (hereinafter sometimes referred to as "Lessee")

W I T N E S E T H:

WHEREAS, the Bangor Farmers' Market Association wishes to establish a farmers' market in the City of Bangor and prefers to be in the downtown; and

WHEREAS, the City of Bangor is the owner of a parking lot on Harlow Street known as the Upper Abbot parking lot; and

WHEREAS, the parties agree that use of a portion of the Upper Abbot parking lot would be a suitable place for a farmers' market.

NOW, THEREFORE, the parties do mutually agree as follows:

ARTICLE I – PREMISES

The Lessor, for and in consideration of the rents to be paid and the obligations to be performed by Lessee as hereinafter provided, does hereby demise and Lease unto the Lessee, and the Lessee does hereby take and hire, upon and subject to the terms and conditions hereinafter expressed a portion the existing parking lot located on Harlow Street, Bangor, Maine and further described and shown on a plan attached hereto as Exhibit "A".

ARTICLE II – TERM

To have and to hold the demise premises for the following term:

May 1, 2015 through November 30, 2015,

May 1, 2016 through November 30, 2016,

May 1, 2017 through November 30, 2017.

The parties agree that this lease may be renewed under such terms and conditions as the parties may agree.

ARTICLE III – COMPUTATION OF ANNUAL RENTAL

The Lessee shall pay the Lessor \$300.00 for each of the three years of this Lease. The payment is due by May 1st of each respective year.

ARTICLE IV – USE, OCCUPANCY AND ALTERATIONS TO PREMISES

A. Lessee shall have the right to use, occupy and maintain the premises herein described in a reasonably businesslike, careful, clean, and reasonably safe manner for the purposes of conducting a farmers' market which sells produce and farm crafts according to Lessee's regulations.

B. Lessee shall not use, occupy or maintain said premises in any manner so as to violate any municipal, state, federal law or regulation.

C. Lessee shall only be permitted to use the premises on Sundays from 9:00 a.m. to 4:00 p.m. during the period of May 1, 2015 through November 30, 2015, May 1, 2016 through November 30, 2016, and May 1, 2017 through November 30, 2017.

D. Lessor shall have the right to designate vendor parking areas, customer parking areas, and traffic circulation within the demised premises. Traffic circulation shall be subject to approval of Lessor's Engineering or Community and Economic Development Department staff.

E. Vendor vehicles and customer vehicles shall only be placed in the paved parking areas. Overnight parking of vehicles is expressly prohibited.

F. Lessee shall be responsible for daily cleanup and removal of any litter associated in any way with the operation of the farmers' market.

G. Lessee shall be permitted to locate sandwich board signs which direct the public to the Farmers' Market as permitted by the Code of the City Bangor.

H. Lessor, or its agents, shall have at all reasonable times the right to go on and inspect the premises with an authorized representative of the Lessee, and the right of access to utility systems located on the demised premises for the purposes of maintenance, repair, correction, or inspection.

I. Lessor shall provide and install signs to restrict parking on the premises on Sundays during the period of May 1, 2015 through November 30, 2015, May 1, 2016 through November 30, 2016, and May 1, 2017 through November 30, 2017.

ARTICLE V – LIABILITY AND PROPERTY DAMAGE INSURANCE

The Lessee, during the entire term of this Lease, or any extension hereof, shall maintain, at its sole expense, insurance of the following types with companies authorized to do business in the State of Maine for the protection of the City of Bangor, which is to be named as an additional insured against all claims, including wrongful death, losses, costs or expenses arising out of injuries to persons whether or not employed by Lessee or damage to property whether resulting from acts, omissions, negligence or otherwise of the Lessee, its directors, officers, employees and agents and arising from Lessee's use of the premises or any part or portion thereof. In addition, Lessee shall name Republic Parking Systems, Inc. as an additional insured under all policies required herein.

Comprehensive Public Liability

Bodily Injury or Death
\$400,000.00 each occurrence, whether for
one person or more than one person
Property Damage
\$400,000.00 each occurrence

Lessor shall not be required to provide insurance coverage and shall have no responsibility for any property owned by the Lessee or third parties which may be located on the leased premises. Lessee shall cause to be furnished to the Lessor, upon execution of this Lease, evidence in the form of certificates of insurance of the existence and continuance in force of the insurance required hereunder. Said certificates shall be updated and provided to Lessor during this Lease. Lessor shall be notified of any changes or discontinuances of coverage. The minimum insurance coverage required under this Article shall be deemed to be automatically adjusted whenever the Maine State Legislature shall increase the Lessor's maximum liability for personal injury or property damage claims brought under the Maine Tort Claims Act. In the event of such an increase, the minimum insurance coverage required shall be no less than the Lessor's maximum liability for such claims under the Maine Tort Claims Act.

ARTICLE VI – INDEMNITY

During the term of this Lease and during any holdover tenancy following regular expiration or early termination hereof, Lessee shall protect, defend and hold Lessor, and its inhabitants, officers, employees and agents completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorneys' fees, court costs, and expert witness fees), of any nature whatsoever arising out of or incident to this Lease and/or the use, occupancy, conduct, or management of the leased premises or the acts or omissions of Lessee's officers, agents, employees, contractors, subcontractors, licensees, or invitees, except to the extent that such claims, suits, demands, judgments, costs, and expenses may be attributed to the acts or omissions of the Lessor, its agents, employees or invitees. The Lessee shall give to Lessor reasonable notice of any such claims or actions. The Lessee shall also use counsel reasonably acceptable to Lessor in carrying out its obligations under this Article.

During the term of this Lease and during any holdover tenancy following regular expiration or early termination hereof, Lessee further hereby expressly agrees that it will defend, indemnify and hold Lessor harmless from any and all claims made or asserted by the Lessee's agents, servants, members or employees arising out of the Lessee's activities under this Lease. For this purpose, the Lessee hereby expressly waives any and all immunity it may have under Maine's Workers Compensation Act in regard to such claims made or asserted by the Lessee's agents, servants, members, or employees. The indemnification provided under this paragraph shall extend to and include any and all costs incurred by Lessor to answer, investigate, defend and settle all such claims, including but not limited to Lessor's costs for attorneys fees, expert and other witness fees, the cost of investigators, and payment in full of any and all judgments rendered in favor of the Lessee's agents, servants, members, or employees against the Lessor in regard to claims made or asserted by such agents, servants, members, or employees.

ARTICLE VII – NONDISCRIMINATION

Lessee hereby agrees that it will conduct its operations only according to its written regulations or bylaws, but at no time shall it refuse to sell its produce or other wares to any person or entity because of the race, sex, religion, national origin, or physical or mental handicap of that person or entity. Notwithstanding the termination provisions of paragraph 3 of Article XIII, Lessee shall cure any breach of this non-discrimination covenant within five (5) days of written notice by Lessor of said breach, after which time Lessor has the right to terminate this Lease.

ARTICLE VIII – COVENANTS OF QUIET ENJOYMENT

The Lessee, subject to the terms and provisions of this Lease on payment of the rent, and observing, keeping and performing all the terms and provisions of the Lease on its part to be observed, kept and performed, shall lawfully, peaceably and quietly have, hold, occupy and enjoy the demised premises during the term hereof without hindrance or rejection by the Lessor or any other persons.

ARTICLE IX – LIENS

The Lessor agrees that it will promptly discharge (either by payment or by filing of the necessary bond or otherwise) any mechanics', materialmen's or other liens against the demised premises, any buildings, structures or improvements thereon, which liens may arise out of any payment due for labor, services, materials, supplies or equipment which may have been furnished to or for the Lessor, its agents, employee, members, or servants, related in any way to the terms of this Lease.

ARTICLE X – MAINTENANCE AND REPAIRS

Lessee shall, at its sole expense and cost, throughout the term hereof, repair any damage to the premises and nearby grounds and landscaping which may have been or was actually caused by the members, agents, employees, servants, or customers of Lessee. Lessee and Lessor shall inspect the premises together immediately prior to May 1st of each year of the term of this Lease for reference purposes. Normal wear and tear deterioration of the pavement surface is excepted from this Article.

ARTICLE XI – REMOVAL OF PROPERTY

No permanent improvements shall be made except signage permitted by the Code of the City of Bangor. No personal property on the premises after 4 p.m. Any personal property remaining after 4 p.m. shall be removed by Lessor.

ARTICLE XII - SURRENDER OF POSSESSION

Subject to the provisions contained in Article XIII, the Lessee shall, upon the termination of this Lease, surrender the quiet and peaceable possession of the demised premises.

ARTICLE XIII – TERMINATION

It is covenanted and agreed that:

(1) This agreement can be terminated by either party without cause by providing notice on or before December 31st of each year of the term;

(2) If the Lessee shall neglect or fail to pay the rent or other charges payable hereunder and such default shall continue for a period of ten (10) days after written notice thereof by Lessor;

(3) If Lessee shall neglect or fail to perform or observe any of the other covenants, terms, provisions, or conditions on its part to be performed, or observed pursuant to this Lease, and such neglect or failure shall continue for a period of thirty (30) days after written notice thereof by Lessor, or if such covenants, terms, provisions or conditions cannot be performed or observed within said thirty (30) day period, if Lessee fails to diligently prosecute the curing of such neglect or failure;

(4) If the estate hereby created shall be taken on execution or by other process of law;

(5) If the Lessee shall be declared bankrupt or insolvent according to law;

(6) If any assignment shall be made of the property of the Lessee for the benefit of creditors;

(7) If a receiver, guardian, conservator, or trustee in bankruptcy or other similar officer shall be appointed to take charge of all or any substantial part of the Lessee's property by a Court of competent jurisdiction;

(8) If a petition shall be filed for a reorganization of the Lessee under provisions of the Bankruptcy

Act now or hereafter enacted; or

(9) If the Lessee shall file a petition for such reorganization or for arrangements under any provision of the Bankruptcy Act now or hereafter enacted.

THEN, IN ANY OF THE SAID CASES (notwithstanding any license of any former breach of covenant or waiver of the benefit hereof or consent in a former instance), the Lessee may be considered in default hereunder, and the Lessor lawfully may, immediately or at any time thereafter, and without demand or notice, enter into and upon the said premises or any part thereof, in the name of the whole and repossess the same as of the Lessor's former estate, and expel the Lessee and those claiming through or under it and remove its or their effects (forcibly if necessary) without being deemed guilty to any manner of trespass, and without prejudice to *any* remedies which might otherwise be used for arrears of rent or preceding breach of covenant. Upon such entry, this Lease shall terminate, and the Lessee shall be liable to pay as rent, amounts equal to the several installments of rents and other charges reserved as would have become due under this Lease if this Lease had not been terminated or if the Lessor had not entered or reentered as aforesaid. Lessee shall not be entitled to any refund, in whole or in part, of any rents paid to Lessor prior to said termination.

ARTICLE XIV – ATTORNEY’S FEE

The Lessee shall pay to the Lessor a reasonable attorney's fee in the event the Lessor employs an attorney to collect any rents due hereunder and secures a judgment in connection with collection of said rent, or legal process is levied upon the interest of the Lessee in this Lease or in said premises, or in the event Lessee violates any of the terms, conditions or covenants on the part of the Lessee herein contained, provided that Lessee fails to promptly correct the violation of any term, condition or covenant after receipt of notice that it is in violation thereof.

In the event Lessor employs its City Solicitor or an assistant solicitor to collect rents or otherwise protect Lessor's interests under this Lease, "reasonable attorneys fees" under this Article shall mean the reasonable cost of services provided by Lessor's Solicitor or assistant solicitor, at the rate charged for similar services by private attorneys in the Bangor area.

ARTICLE XV – ASSIGNMENT, SALE AND SUBLETTING

The Lessee shall not at any time assign, sell, convey or transfer this Lease or any interest therein, or sublease or sublet or rent the premises, or any part thereof, without the prior written consent of the Lessor. In the event of such consent, all provisions of this Lease shall extend to, bind and inure to the benefit of the Lessor and Lessee, or its members, employees, agents, or servants, and also to Lessor's and Lessee's successors and assigns. To the extent Lessee's written regulations or bylaws provide for payment of rents or fees for the right to participate in any way in Lessee's operations, Lessor hereby consents; it being understood and agreed by the parties hereto that such payments bind the payors as noted above.

ARTICLE XVI – AUTHORITY TO ENTER INTO AGREEMENT

The Lessor hereby represents and warrants that it has taken all necessary procedural and legal steps as required by federal, state and local laws and regulations for the purpose of authorizing the execution of this Lease and that execution of this Lease by the City Manager renders this Lease a valid and binding document on the part of the Lessor and the same is fully enforceable in all of its terms and conditions by the Lessee.

Lessee hereby represents and warrants that it has taken all necessary procedural and legal steps as required under all state, local and federal laws and regulations, and all necessary corporate action to authorize the execution of this Lease by its undersigned corporate officer and that upon such execution this Lease is a valid and binding document on the part of the Lessee and is fully enforceable in all of its terms and conditions by Lessor.

ARTICLE XVII – WAIVER

Failure on the part of the Lessor to complain of any action or nonaction on the part of the Lessee no matter how long the same may continue shall never be deemed to be a waiver by the Lessor of any of Lessor's rights hereunder. Further, it is covenanted and agreed that no waiver at any time of any of the provisions hereof by Lessor shall be construed as a waiver of any other provisions hereunder, and that a waiver at any time of any of the provisions hereof shall not be construed at any subsequent time as a waiver of the same provisions. The approval of Lessor of any action by the Lessee requiring the Lessor's consent or approval shall not be deemed to waive or render unnecessary the Lessor's consent or approval of any subsequent similar act by the Lessee.

ARTICLE XVIII - NOTICES

Notices to the Lessor provided for in this Lease shall be sufficient if sent by registered or certified mail, return receipt requested, postage prepaid to:

City Manager
City of Bangor
City Hall
73 Harlow Street
Bangor, ME 04401

and notices to Lessee are to be sent by registered or certified mail, return receipt requested, postage prepaid, addressed to:

Bangor Farmers Market Association
c/o Molly Crouse
Nettie Fox Farm
2348 Kennebec Road
Newburgh, Maine 04444

or to such other respective addressees as the parties may designate to each other in writing from time to time.

ARTICLE XIX – INVALIDITY OF PARTICULAR PROVISIONS

If any term or provisions of this Lease or the application thereof to any person or circumstances is hereafter determined to be to any extent, invalid or unenforceable, the remainder of this Lease or the application of such terms and provisions to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected hereby and such term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

ARTICLE XX – CONSTRUCTION

The headings appearing in the Lease are intended for convenience and reference only and not to be considered in construing this Lease.

ARTICLE XXI – NO PARTNERSHIP OR JOINT VENTURE CREATED

Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent or of partnership or of joint venture between the parties, it being understood and agreed that neither the method of computation of rent nor any other provision contained herein nor any acts of the parties shall be deemed to create any relationship between the parties other than the relationship of landlord and tenant.

In exercising its rights hereunder, Lessee shall at all times be regarded as an independent entity conducting its own business and operations and shall not at any time act, hold itself out, or purport to act, as an agent, contractor, co-partner, joint venture, or employee of Lessor.

ARTICLE XXII – GOVERNING LAW

This Lease shall be governed exclusively by the provisions hereof and by the laws of the State of Maine, as the same may from time to time exist.

ARTICLE XXIII – AMENDMENT TO LEASE

This Lease contains all the terms and conditions between the parties hereto and no alteration, amendment or addition hereto shall be valid unless in writing and signed by both parties hereto.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year written above.

Witness: City of Bangor

By: _____
Catherine M. Conlow
Its City Manager

Witness: Bangor Farmers' Market Association

By: _____