

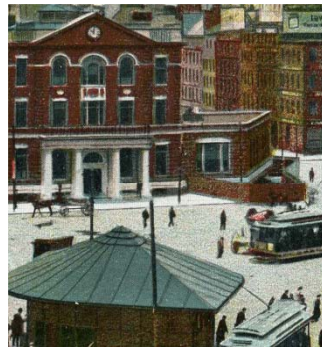
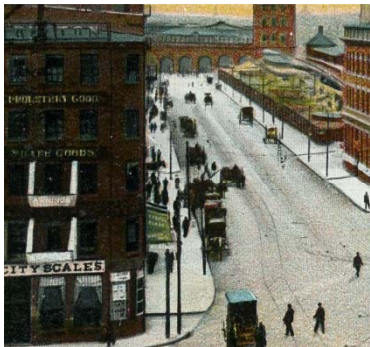
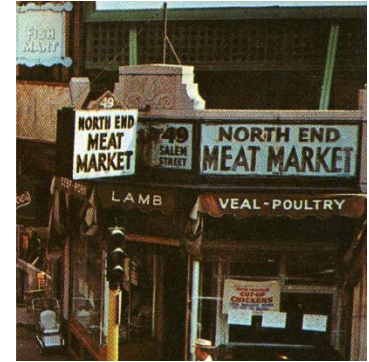
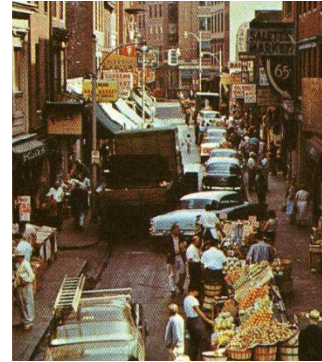
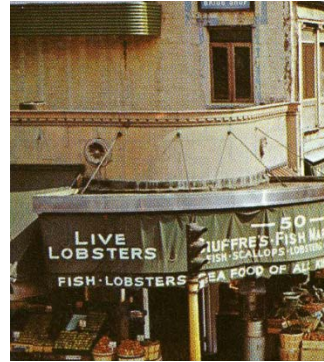
An Implementation Plan for a Public Market in Boston

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A Consumer Research PowerPoint

Boston Public Market Consumer Research



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Consumer demand & Merchandise mix

Economic conclusions

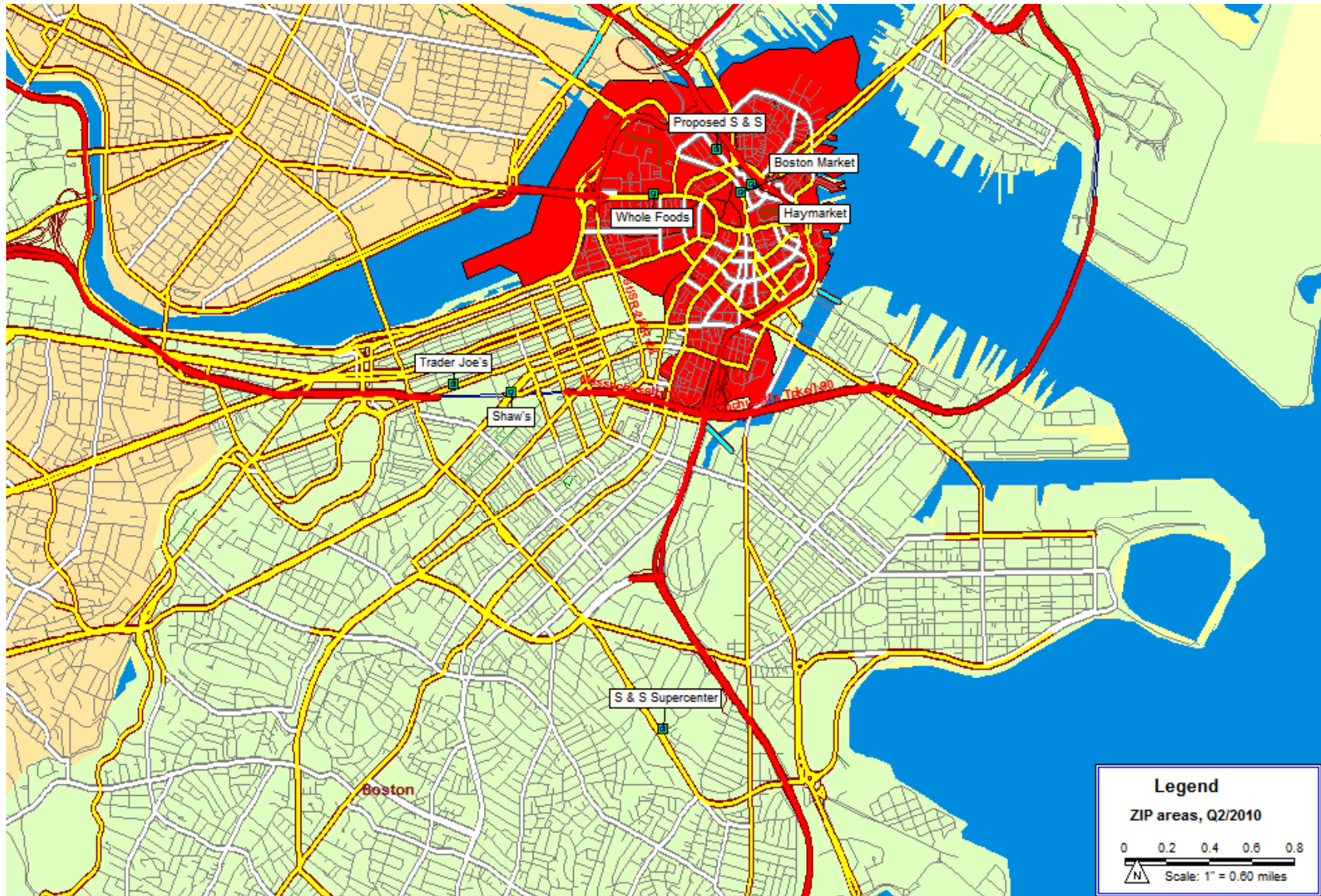
- Residential demand
 - Market sales estimated at \$19.5 million
 - Market sales loses 24% if Stop & Shop opens
 - Haymarket when open boosts Market sales
- Office demand
 - 56,668 employees with \$25 million lunchtime expenditure contribution – not included
- Tourism demand
 - 19.3 million visitors – not included

Fresh market demand

Huff gravity model

- Primary trade area (PTA) – Congress/Hanover by zip codes
- Estimated 17,383 households in PTA with total fresh food expenditures \$43.4 million.
- Huff Gravity Model estimates market share probability using two key variables:
Convenience and Selection
- Other factors affecting sales e.g. Quality, Price, etc. – under management's control
- The Gravity Model is a tool to assess potential

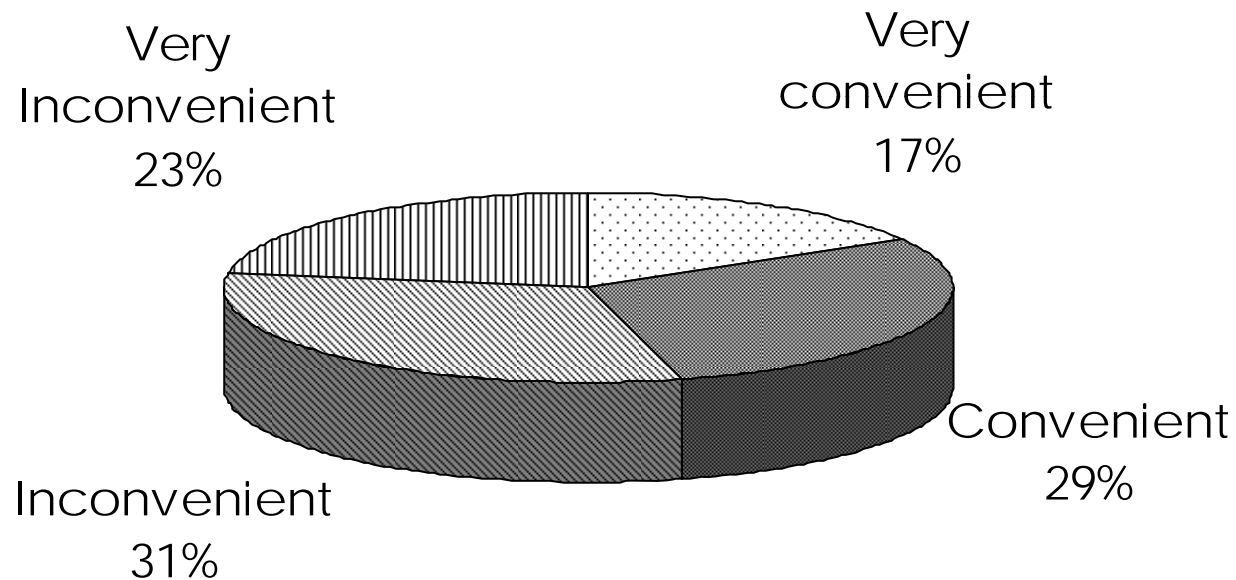
Primary trade area & key competitive alignment



Estimating market shares

- Primary trade area (PTA) – walking distance to Congress/Hanover by zip codes
- Estimated 17,383 households in PTA
- Huff Gravity Model estimates probability of market shares by two key variables: Convenience and Selection
- Other factors effecting choices also influence shares but subjectively assessed

Congress/Hanover as convenient place to shop for food



Survey results from area-wide respondents.

Sales potential

- Primary trade area gross expenditure for fresh foods estimated at \$33.8 million
- Primary trade area market share in four scenarios (Stop & Shop and Haymarket)
- Secondary trade area gross expenditure for fresh foods estimated at \$435 million
- Secondary market share estimated at 2%
- Secondary trade area sales estimated at \$8.7 million

Market share estimates

- Scenario 1: Market with Haymarket closed, with proposed Stop & Shop –18%
- Scenario 2: Market with Haymarket closed, without proposed Stop & Shop – 33%
- Scenario 3: Market with Haymarket opened with proposed Stop & Shop – 34%
- Scenario 4: Market with Haymarket opened, without proposed Stop & Shop – 51%

Estimated sales

Haymarket opened (two days) and closed are combined for total potential based on proposed Stop & Shop:

A. Without Stop & Shop

- \$375,000 week/\$19.5 million annually

B. With Stop & Shop

- \$285,000 week/\$14.8 million annually

Estimated Market Shares of Walking Distance Trade Area Under 4 Scenarios

	Scenario 1 Haymarket Closed/ w P S&S	Scenario 2 Haymarket Closed/ w/o P S&S	Scenario 3 Haymarket Operating/ w P S&S	Scenario 4 Haymarket Operating/ w/o P S&S
Market/Haymarket	18%	33%	34%	51%
S & S Superstore	--	7%	--	5%
Shaw's	9%	13%	7%	9%
Whole Foods	31%	44%	27%	33%
Trader Joe's	1%	2%	1%	2%
Proposed S & S (P)	41%	--	31%	--

Estimated Market Demand by Selected Fresh Food Categories

Selected Food Categories	PTA Gross Potential	Scenario 1 18%	Scenario 2 34%	Scenario 3 33%	Scenario 4 51%
Bakery (1)	\$6,545,000				
Meats (2)	\$9,057,000				
Poultry (3)	\$3,652,000				
Fresh Fish/Shellfish (4)	\$2,752,000				
Deli (5)	\$7,159,000				
Cheese (6)	\$3,425,000				
Fresh Produce (7)	\$10,856,000				
Total	\$43,446,000	\$7,820,000	\$14,772,000	\$14,337,000	\$22,157,000

Estimated market demand by fresh food categories

Selected Fresh Categories	Plan A Without Stop & Shop (000)	Plan B With Stop & Shop (000)
Bakery	\$2,822	\$2,140
Meats	\$4,422	\$3,356
Poultry	\$1,798	\$1,364
Fish/Shellfish	\$1,596	\$1,210
Deli	\$1,414	\$965
Cheeses	\$1,270	\$1,073
Fresh Produce	\$6,263	\$4,753
Total	\$19,585	\$14,861

Footnotes to expenditures

- (1) Bakery includes breads, cookies, biscuits, cakes, cupcakes, sweetbreads, donuts, and pies. The total includes frozen and refrigerated bakery products.
- (2) Meats include Beef, Pork, Sausages, and Lamb. It does not include other meats like frankfurters and luncheon meats, which are shown in Deli.
- (3) Poultry includes both fresh and frozen.
- (4) Fresh fish/Shellfish expenditures were adjusted by REPG by 1.5 to reflect higher consumption in Northeast U.S. per CES survey.
- (5) Deli includes frankfurters, luncheon meats, prepared salads, prepared deserts, and miscellaneous prepared food products.
- (6) Cheese includes both processed and artisan.
- (7) Fresh Produce. Overall, half of fruit expenditures go to "other" fruit items, and then apples represent 17% of fruit expenditures, bananas 14%, oranges 10%, and other citrus 9%. In vegetable expenditures, other vegetables represent 54% of expenditures, then potatoes represent 17%, then Tomatoes represent 16%, and then Lettuce has a 13% share.

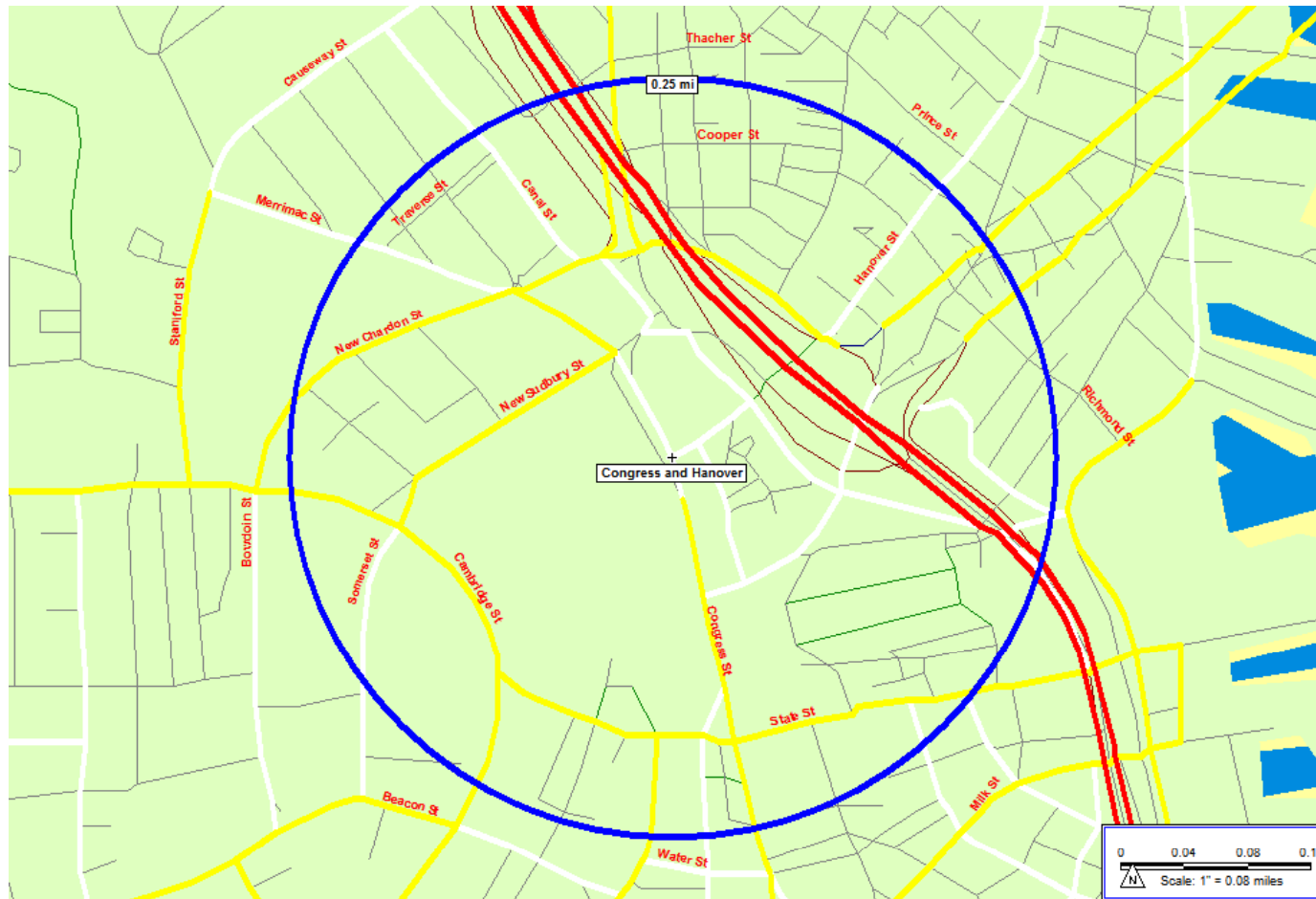
Reducing selection/variety reduces sales

- Food shopping82% weekly
 - Bakery67%
 - Beef34%
 - Poultry31%
 - Fresh Fish/Seafood ...15%
 - Fresh Produce72%

Drill down on weekly produce buying

- Produce72%
 - Fruits.....55%
 - Apples.....21%
 - Bananas37%
 - Oranges13%
 - Other citrus19%
 - Other fruits36%
 - Vegetables56%
 - Potatoes22%
 - Lettuce23%
 - Tomatoes25%
 - Other vegetables48%

Boston office population
56,668 – quarter mile



Office population generated gross demand:

- Estimated \$25 million in lunchtime demand
 - Office lunchtime business is not included in sales estimates and not a targeted business.
 - Lunch provides fallback for market if necessary. Will contribute for prepared foods
- Haymarket T Station 11,020 avg. daily entrance (2010) Parcel 7 entrance 3,300
 - Provides strong center for secondary trade area and for prepared foods

Annual tourism

- City of Boston – 19.3 million (2010)
- New England Aquarium - 1.3 million
- Faneuil Hall Marketplace – 18 Million (owners est.)
- Faneuil Hall 2nd fl. - 286,000 (2000)
- Freedom Trail
 - Paul Revere House (North End) - 264,841 visitors (2008)
 - USS Constitution - 300,000 visitors (2006)
 - Bunker Hill - 200,000 visitors (2004)
- Tourism is not estimated or targeted in study, but we anticipate demand for prepared foods

Focus group

Focus group room with one-way mirror



Focus group facility at Focus Pointe Global
18 Tremont St, Boston, MA

Focus group summary

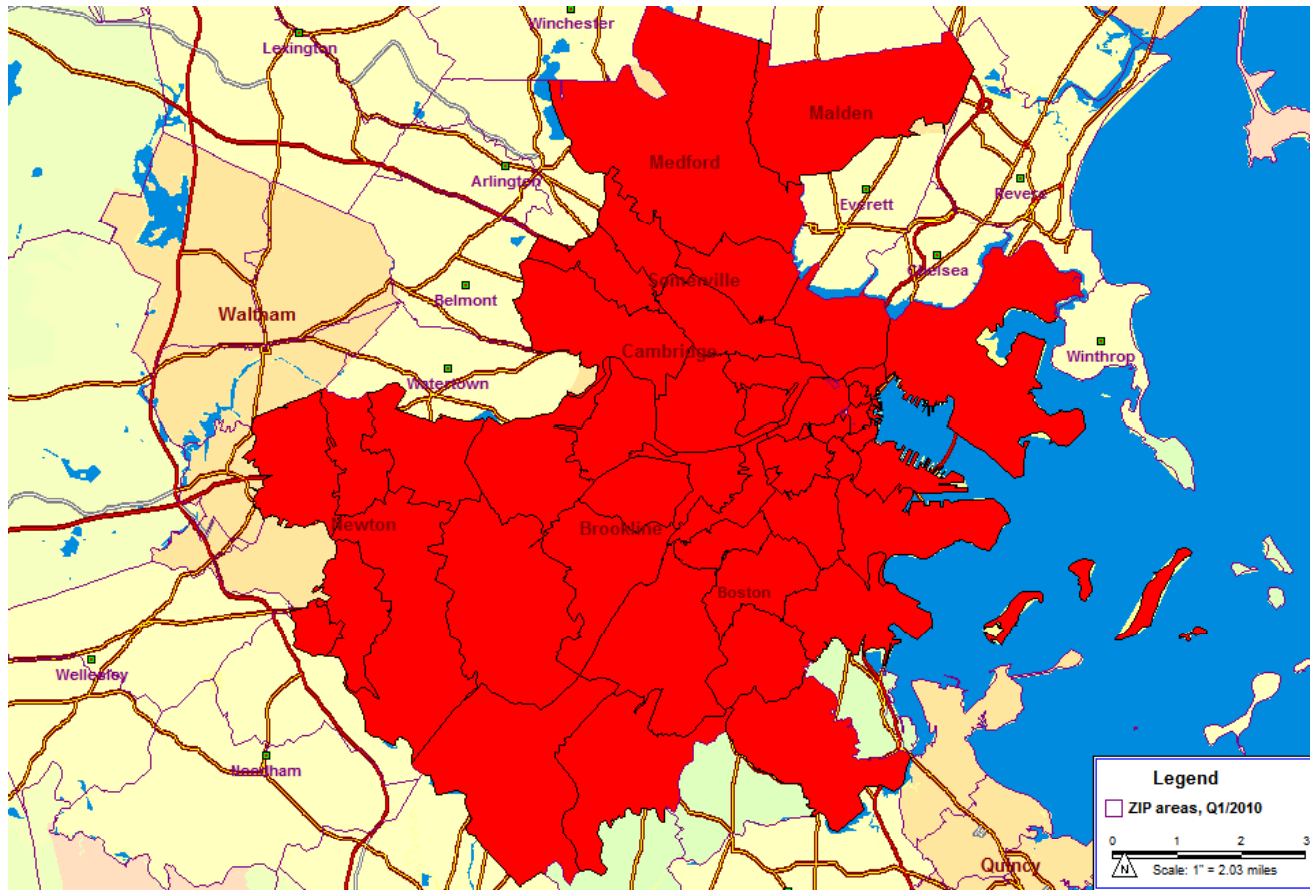
- Multi-store shopping to meet needs
- Find the right quality/value spot
- Convenience is important
- Little “brand” awareness of local Massachusetts food
 - Local food for economy - organic food for health
- Avoid becoming a Quincy Mkt. Food Hall
- Desire for a “Market” experience
 - No pre-wrapped foods
 - Personal service
- Understood role of Haymarket

Survey results

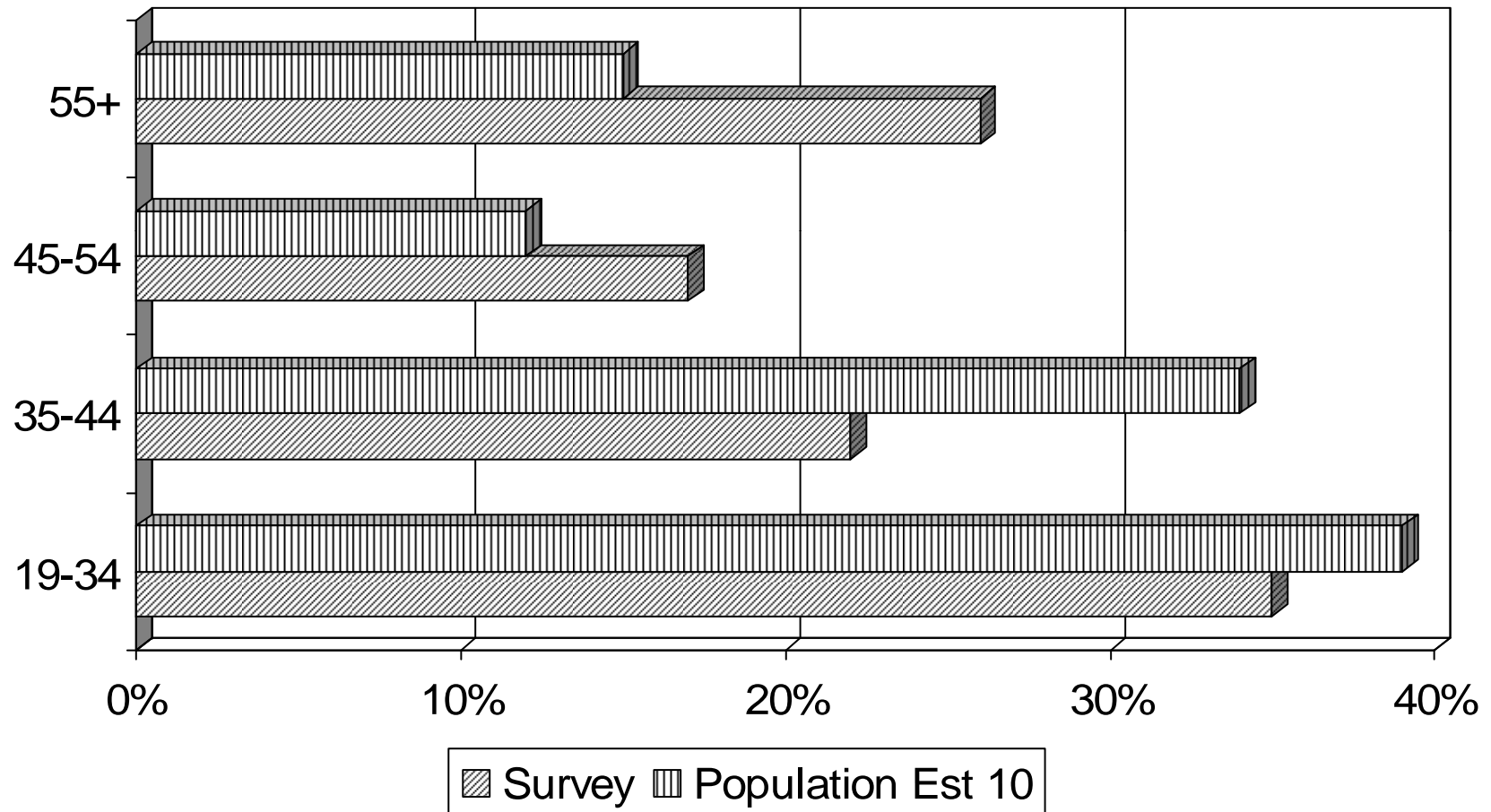
Survey methodology and structured target audience

- 400 completed surveys ($\pm 5\%$ / 95% confidence interval / level)
- Self-administrated surveys done online in February 2011 by Research Now
- Research Now compensated respondents
- Neither client nor purpose of survey disclosed to respondents.
- Qualifying questions: >18; gender 70%female/30% male; live in Boston or selected suburbs served by Green and Orange T lines; primary/shared equally in food shopping; shopped for food <14 days; primary food store among eleven choices
- Qualifying questions were disguised
- Survey response rate was not identified because we don't know the structure of the pool of recipients. Of those qualified to take the questionnaire, 88% completed the survey.
- Survey response choices were randomized with exception of importance/satisfaction matrix. This helps to reduce any bias resulting from response placement.

Survey area shaded -
41% respondents live City Boston
(10% within walking of Market)



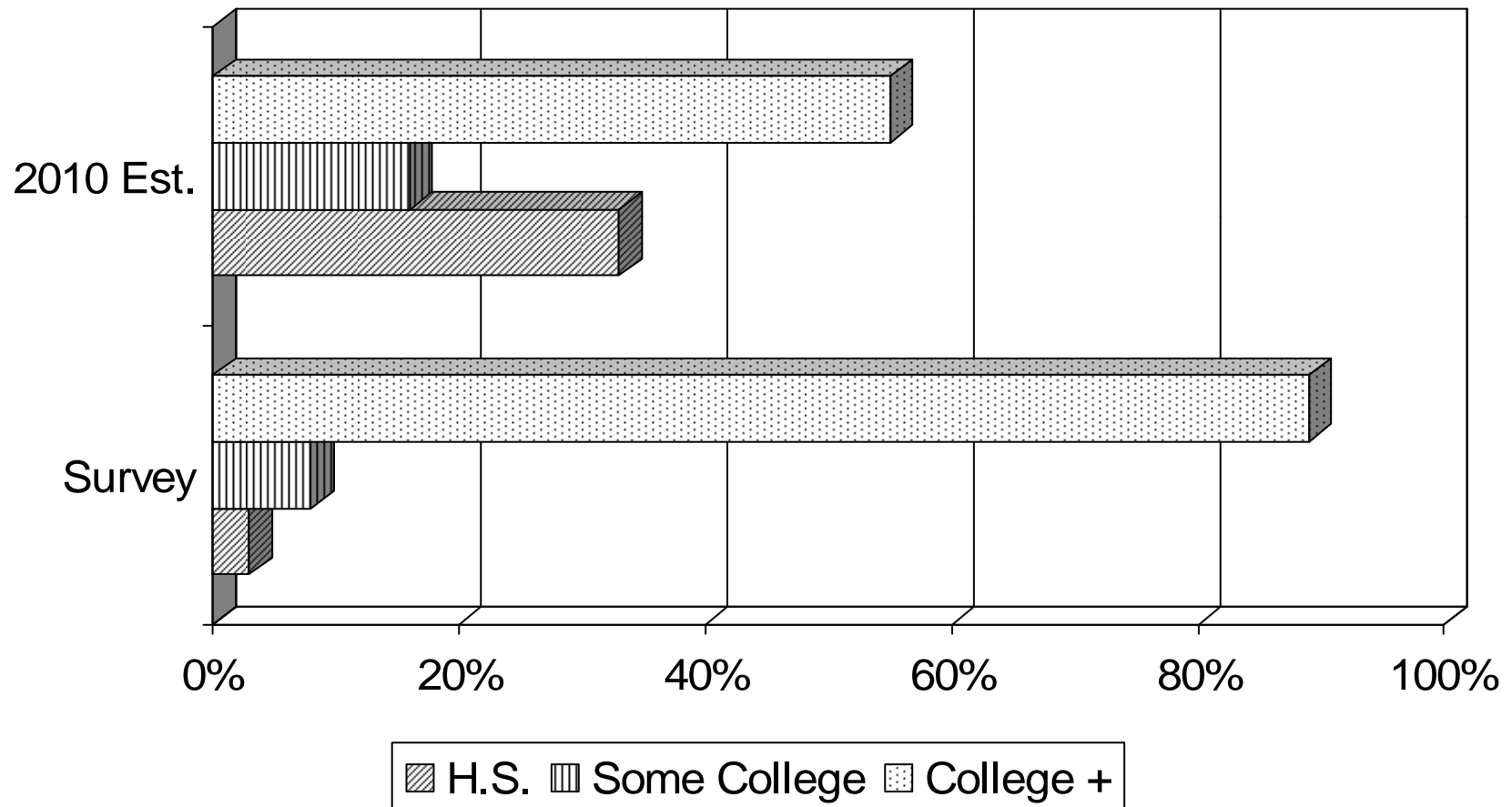
Survey respondent's age cohorts compared with survey area demographics



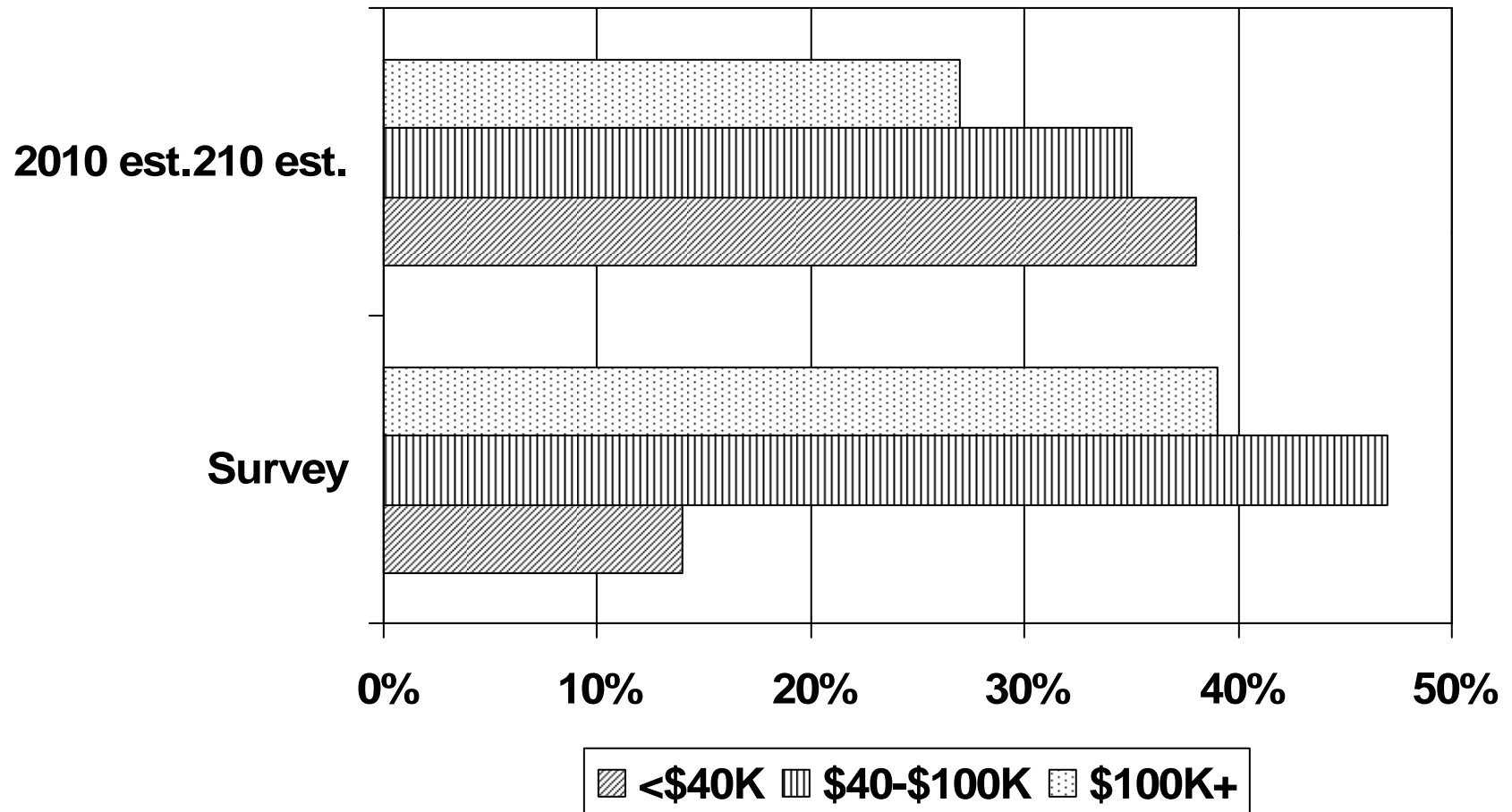
Household size- survey / survey area demographics

- Average 2.1 persons/ 2.4 (2010 Est.)
 - 37% One person household/ 38% (2010)
 - 41% Two person household/ 24% (2010)
 - 22% Three + person household/ 37% (2010)
- 22% had children <18 living at home/ 24%

Respondent's education level compared with survey area. Higher education from survey participants is positively correlated with data found at other markets.

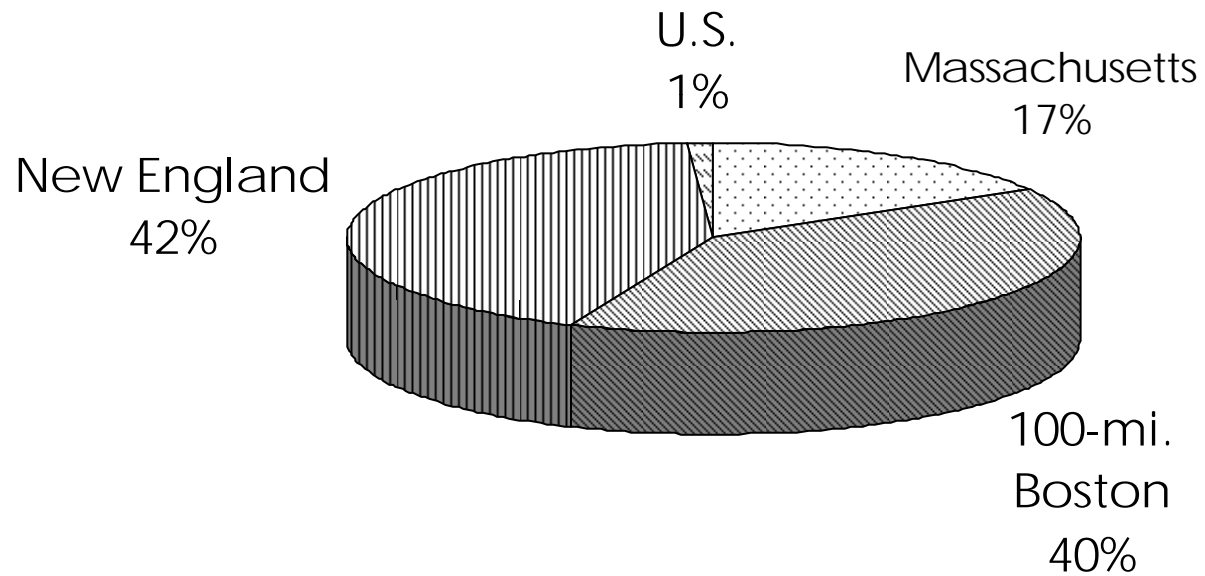


Respondent's income levels compared with survey area

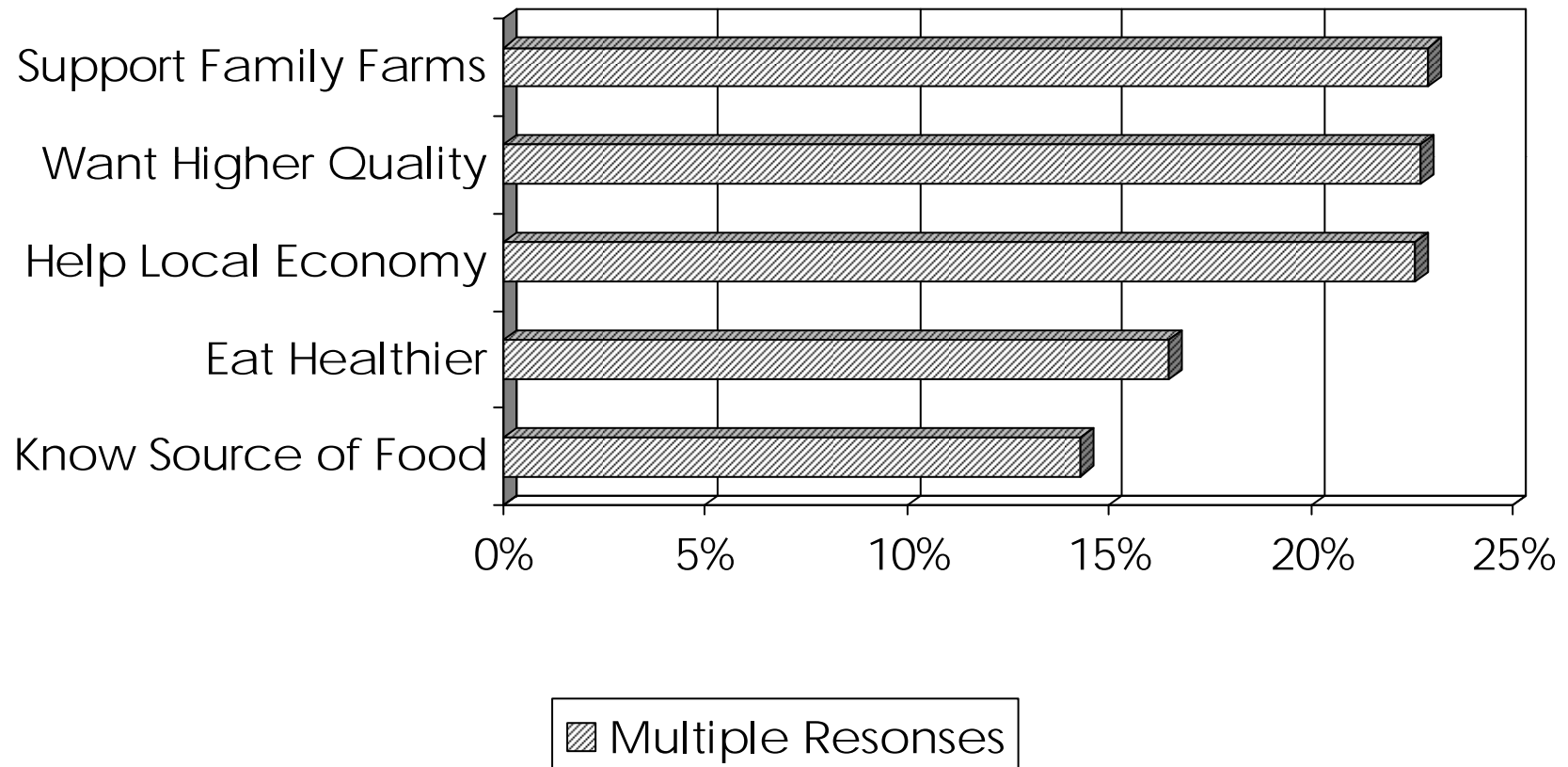


Locally
grown/raised/produced

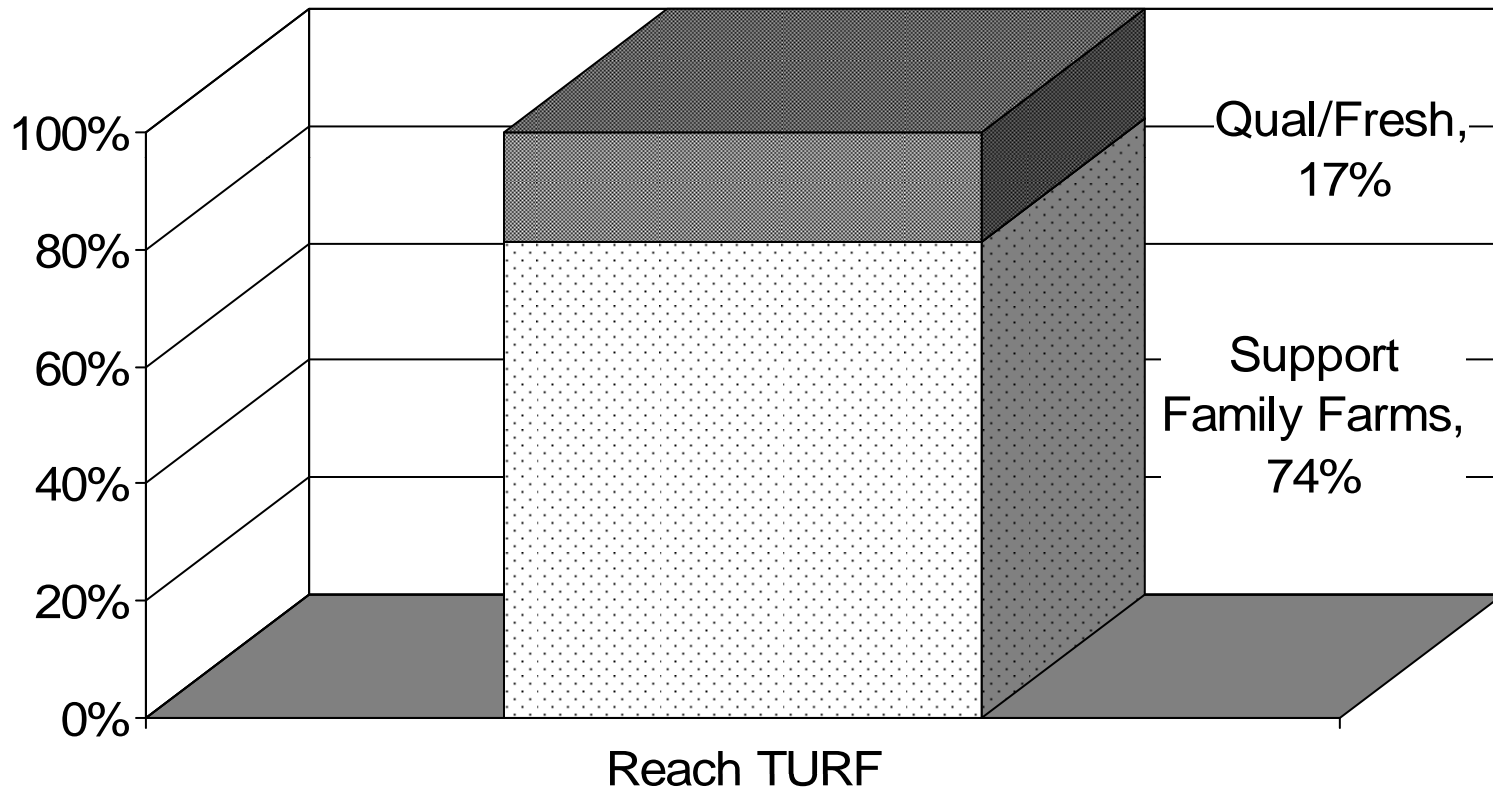
What is local?



Primary benefits of buying local



94% listed 2 major reasons for buying local



TURF: total unduplicated reach and frequency analysis

Agreement/Disagreement (4-point scale) for buying local food

	Strongly Agree	Avg. on 1-4 Agreement rating (4-highest)
Buy more if easier to identify	21.5%	2.9
Currently available	15.5%	2.8
Local cost too much	10.8%	2.6
Local doesn't matter to me	5.0%	1.9
No time to shop for local	3.0%	2.2

% Respondents who will to pay more for local
Premium (%) they would pay for local foods

	Produce	Meat	Fish
% Paying Premium	84.7%	65.8%	71.0%
Average Premium	17.9%	18.5%	19.1%
Median Premium	10%	10%	10%

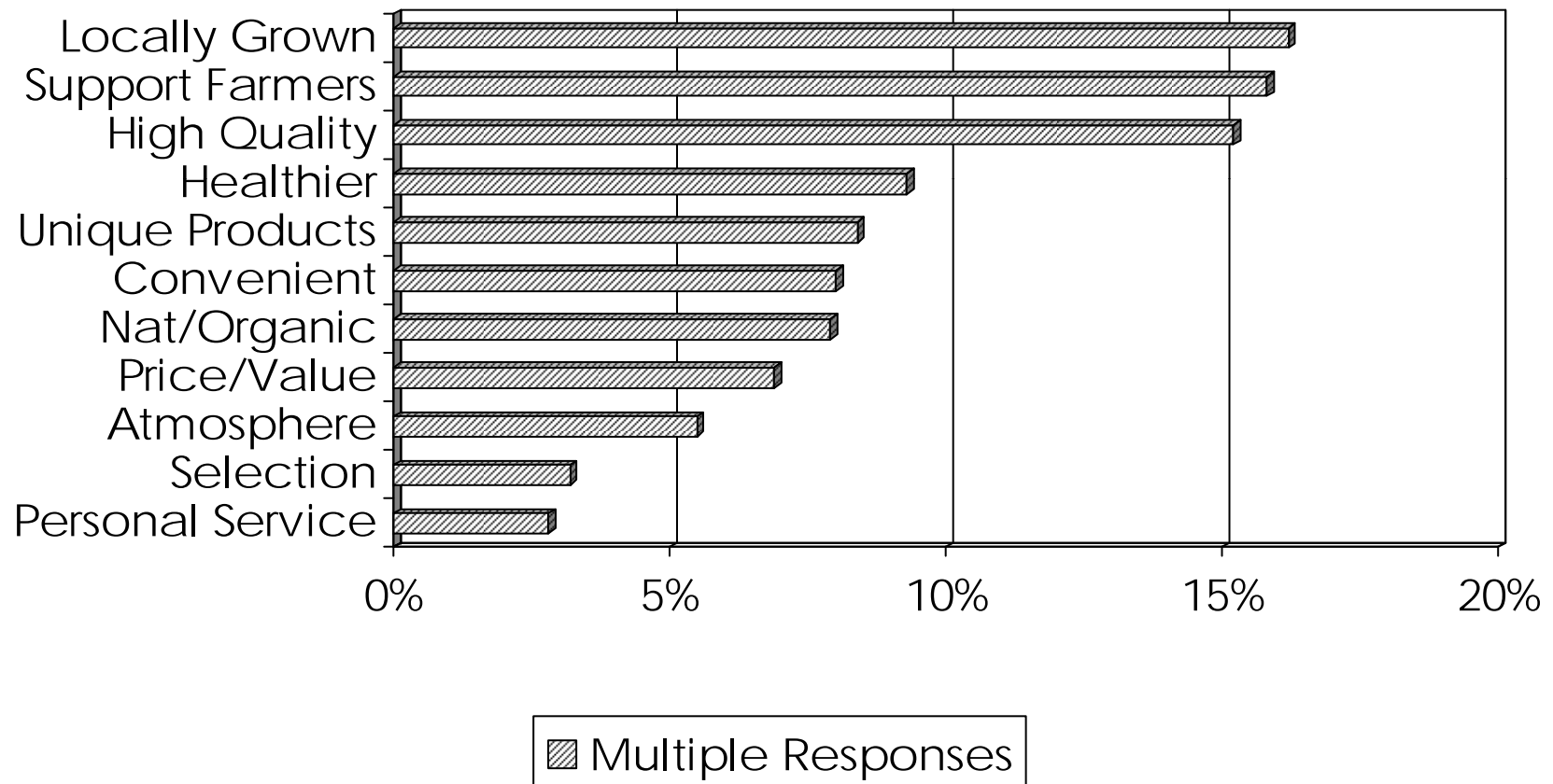
Farmers markets

65% of respondents shopped
at farmers markets
in past year

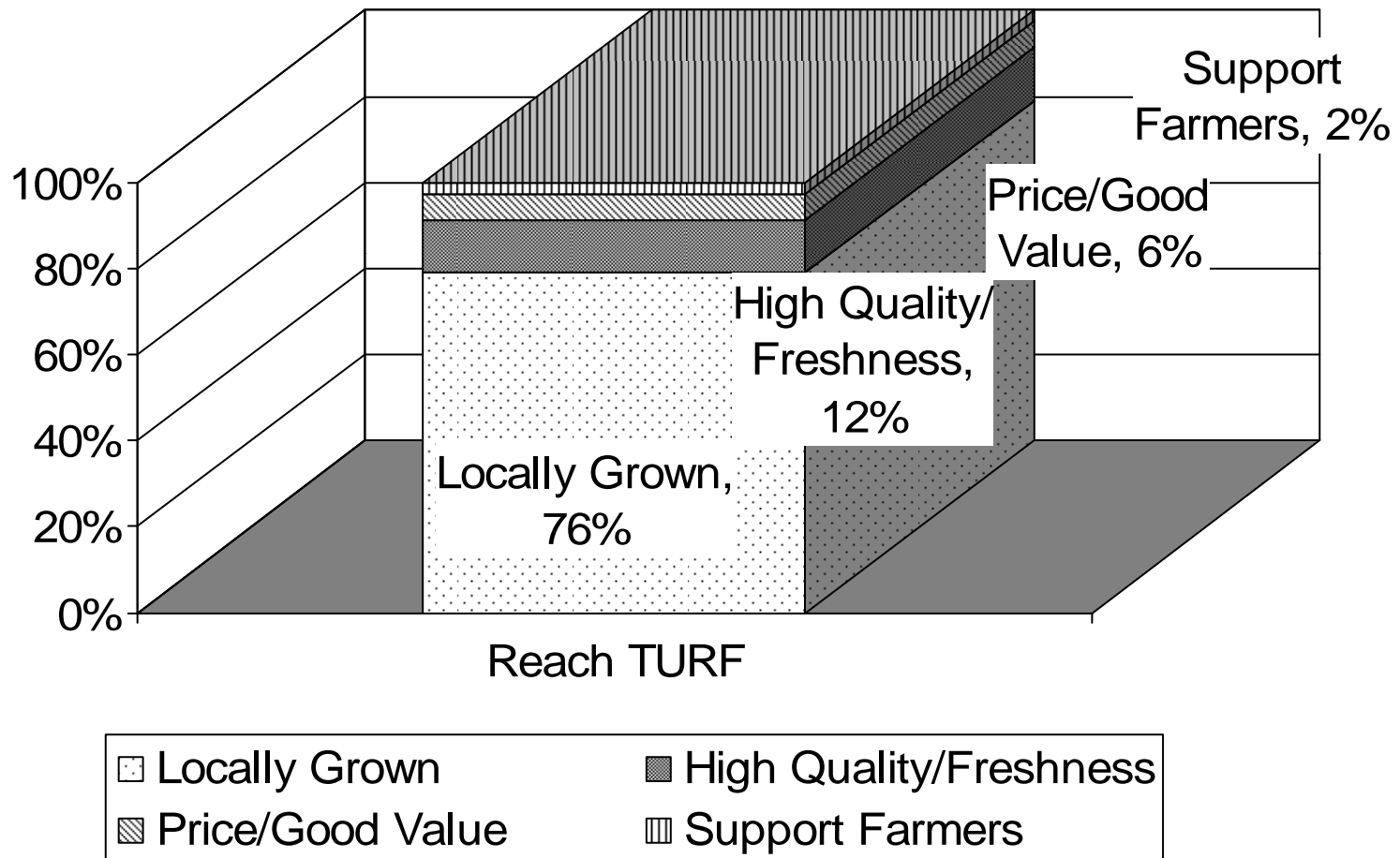
Farmers market

- 65% visited Farmers market last year
- 8.7 times visited Farmers market year
- 6 times where half households (median)
- 2 times most frequently mentioned
- 42% of Farmers Market shoppers visited the Haymarket last year
- 89% of Haymarket shoppers visited Farmers Markets last year

Primary reasons to shop at farmers markets



96% of visits to farmers markets explained by four reasons



TURF: total unduplicated reach and frequency analysis

Haymarket

Haymarket statistics

- 31% households visited Haymarket
- 9.1 Average number shopper visits year
- 4 visits per household by half of shoppers (median)
- \$23.67 average expenditure per visit
- \$15.00 expenditure by half of shoppers
- \$10.00 most frequent expenditure
- 89% visited Farmers Markets last year

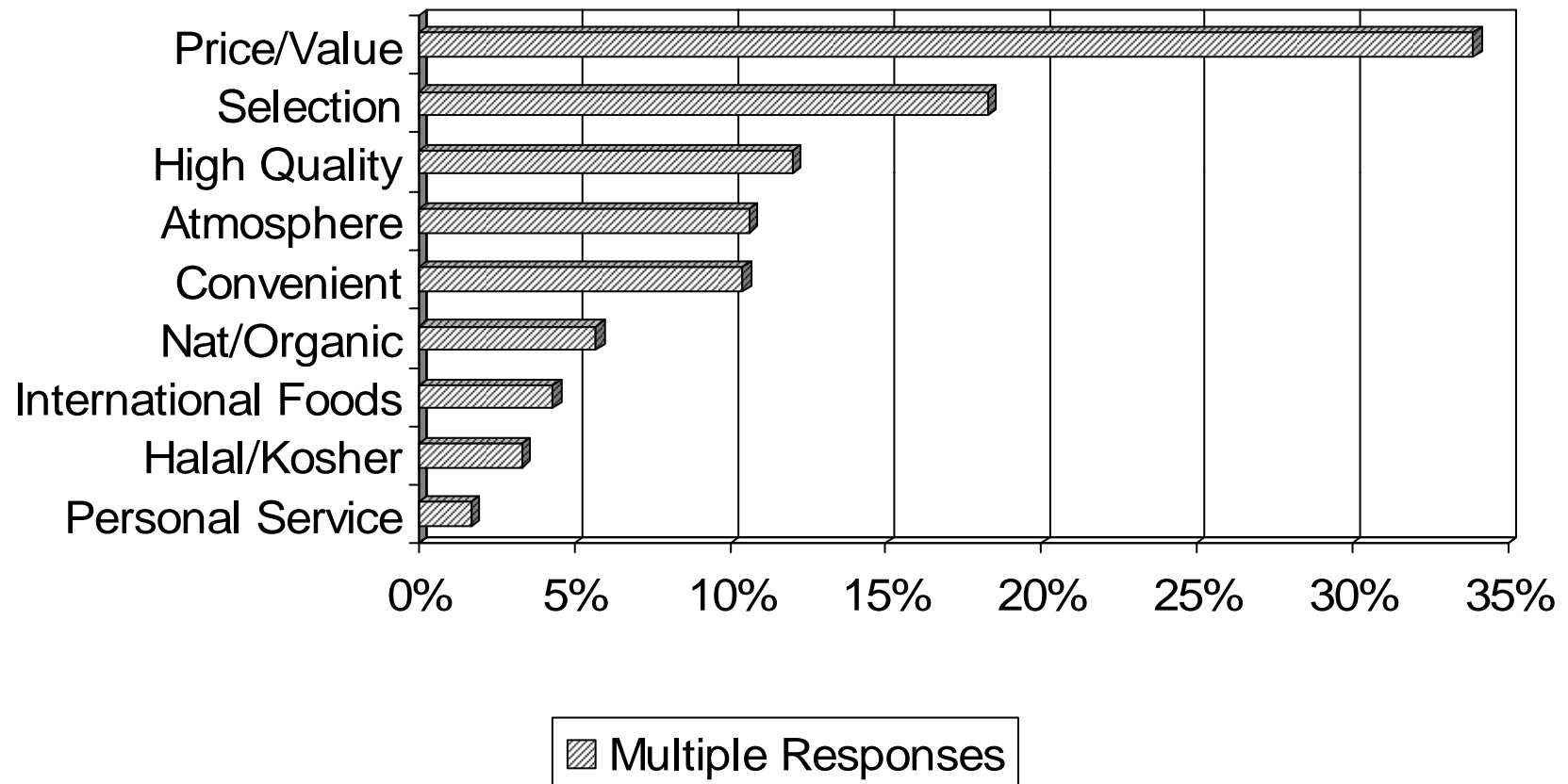
A. Haymarket estimated sales by customer share

- 405,478 households within survey area
- 31% shopped at Haymarket last year
- 4 = median number of visits annually
- \$23.67 average amount spent per visit
- \$11.9 million annual sales
- Equivalent to 4,835 shoppers daily (F/S)
- Estimate is at low end because survey respondents were

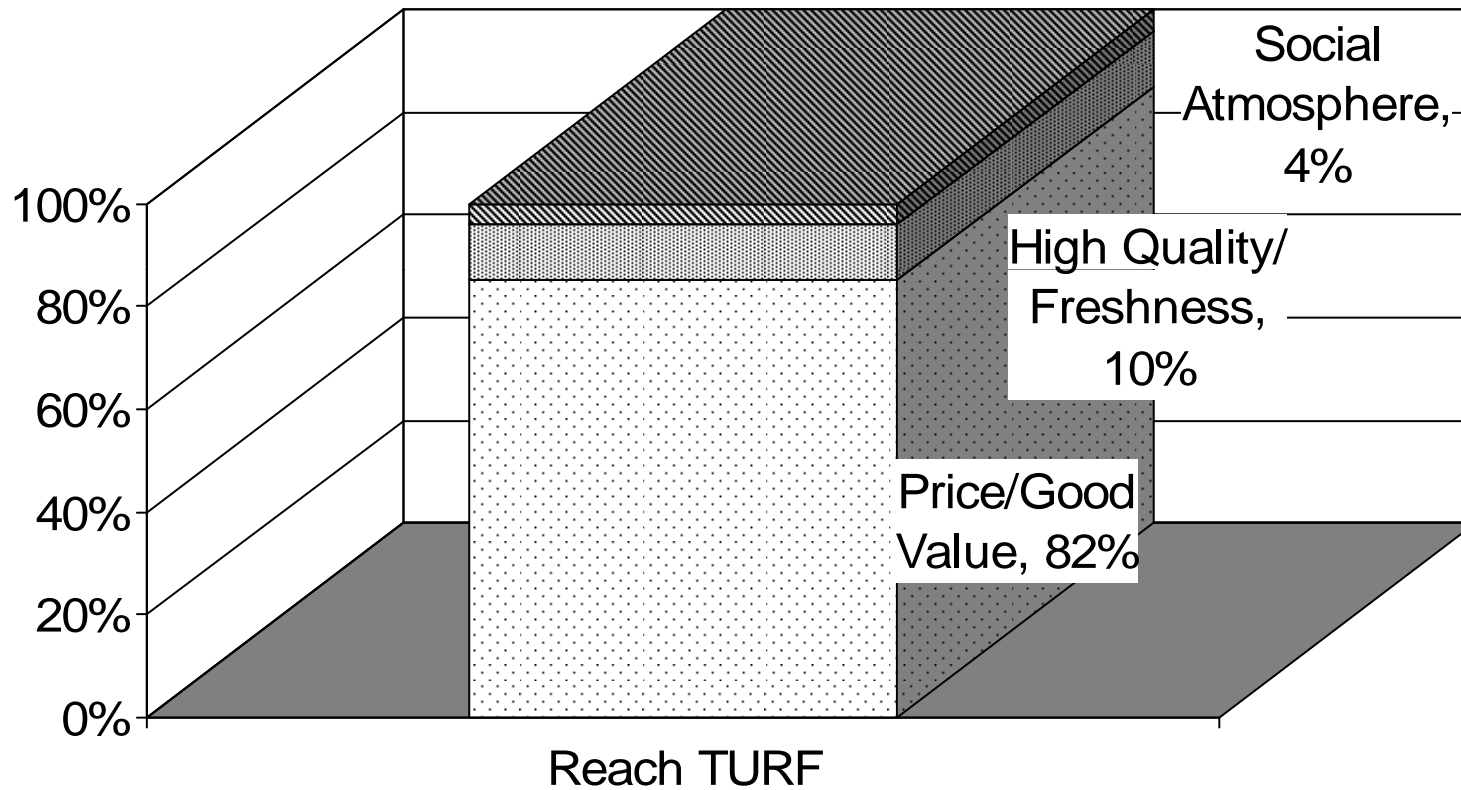
B. Haymarket estimated sales by shopper density measure

- Market approximately 800 linear feet
- 6-linear feet per person x 2-wide = average 267 persons in Market
- 20-minutes estimated avg. time shopping at Market
- Market operates 6 am to 5 pm – 11 hrs.
- Estimated customer turns 33 per day
- Total estimated average customers 8,800 day
- 8,800 customers @\$23.67 = \$208,000/day
- \$208,000 x 2 days = \$416,000 wk x 52 wks = say, \$21.6 million annually (estimate is high because it does not consider weather conditions or adjustments for peaks and lows during the day. Estimate considered a top range)

Primary reasons for shopping Haymarket



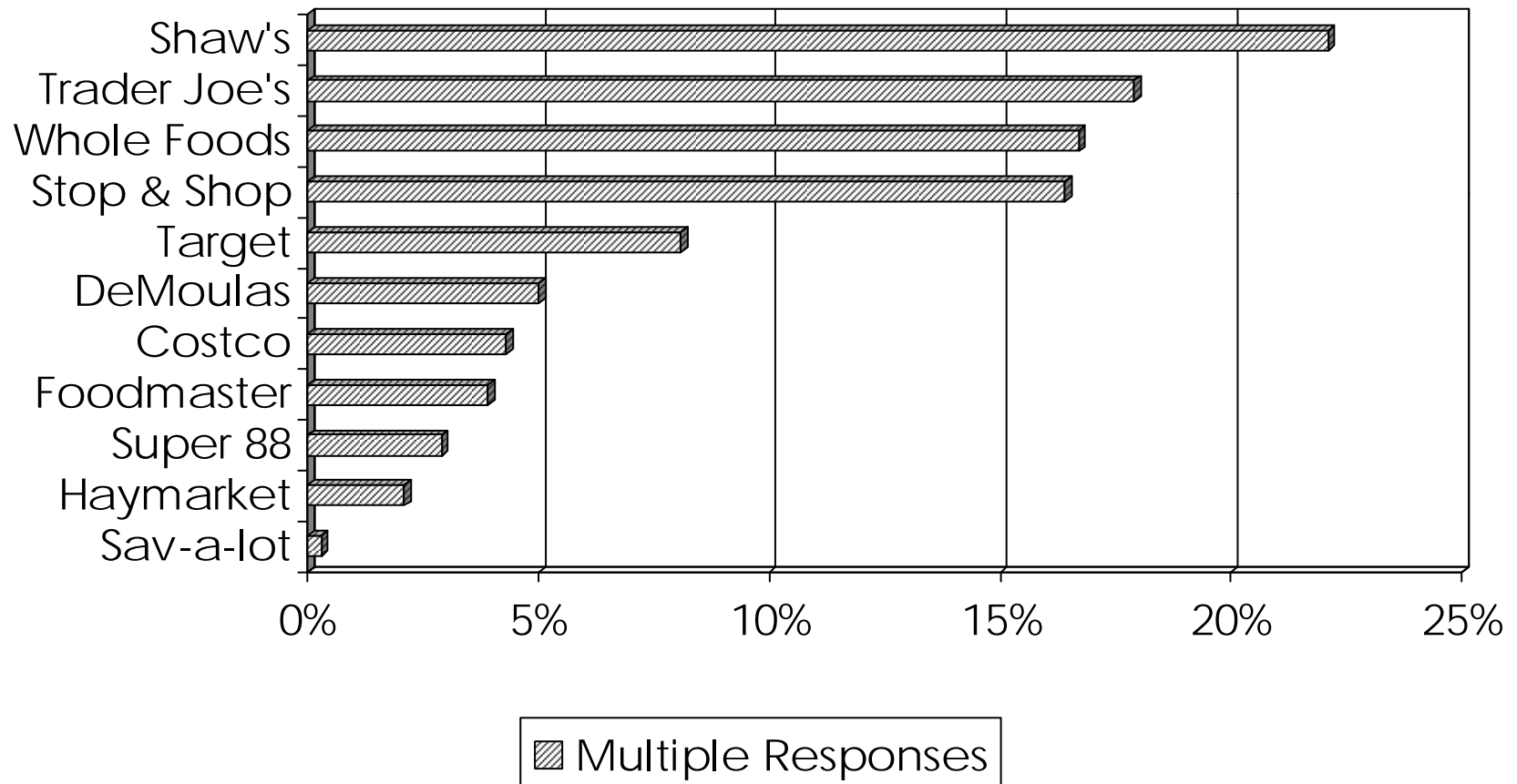
96% of visits to Haymarket explained by three reasons



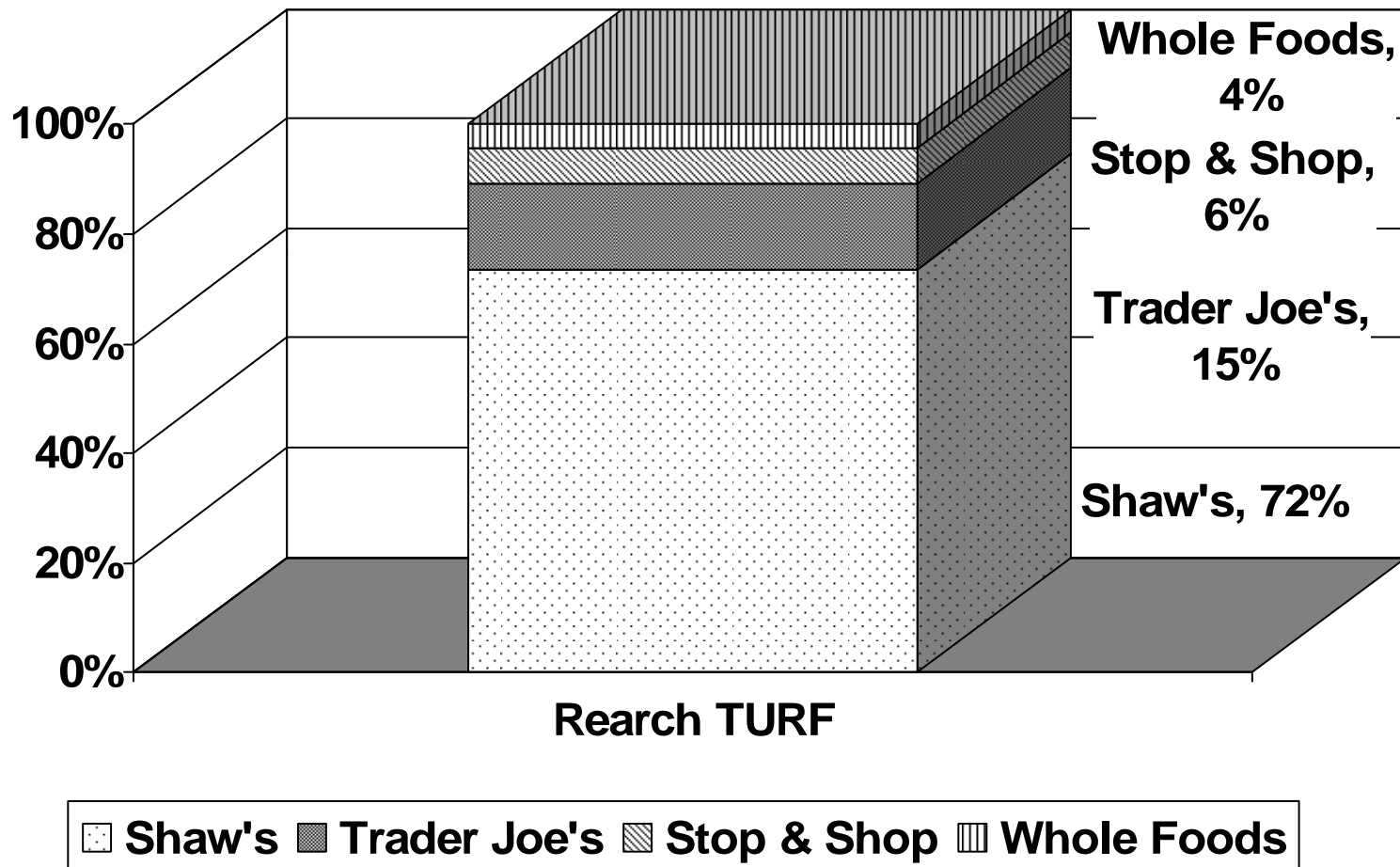
Price/Good Value High Quality/Freshness Social Atmosphere

Food stores

Food store market share past 30-days

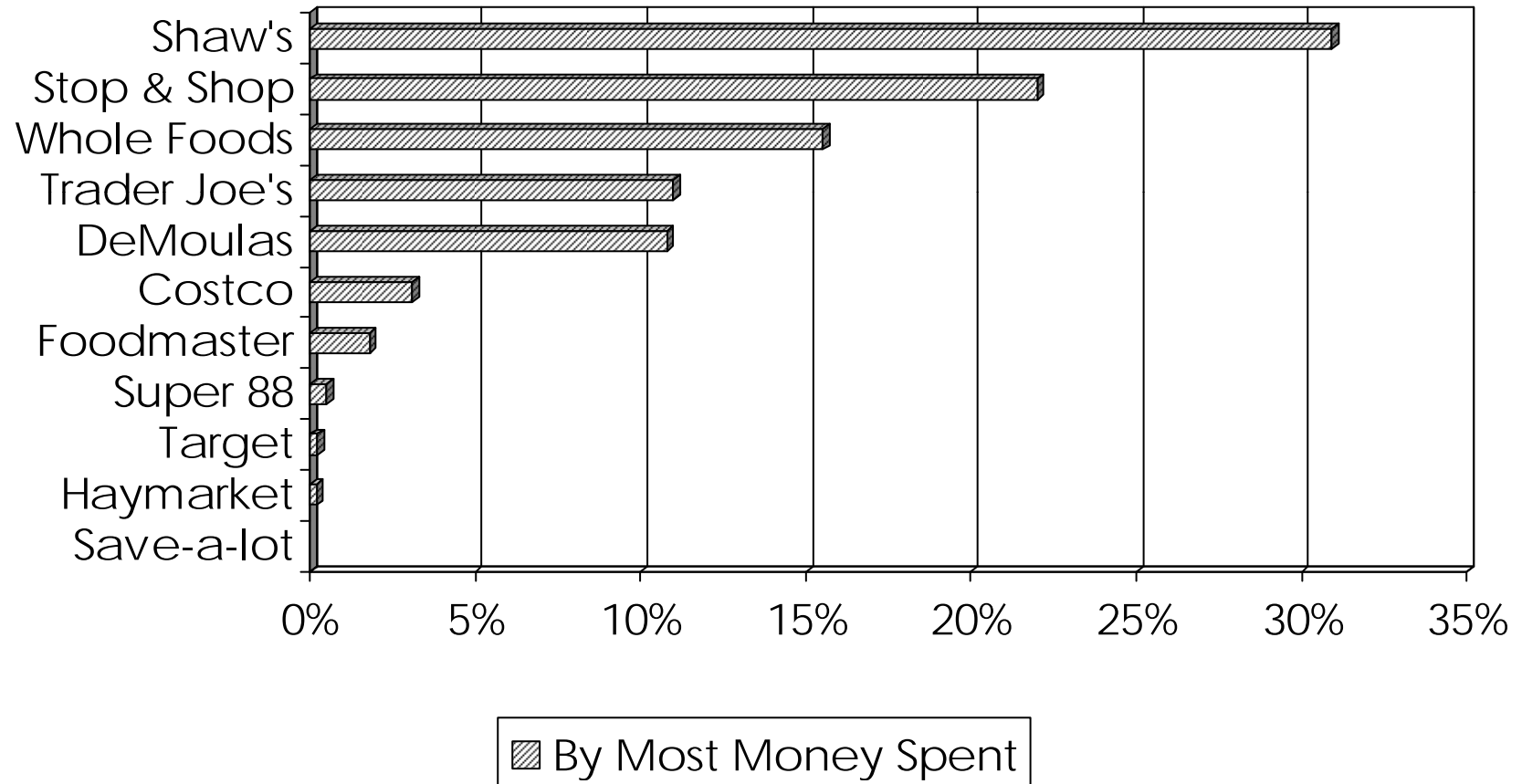


4 Food stores reach 97% of shoppers in past 30-days

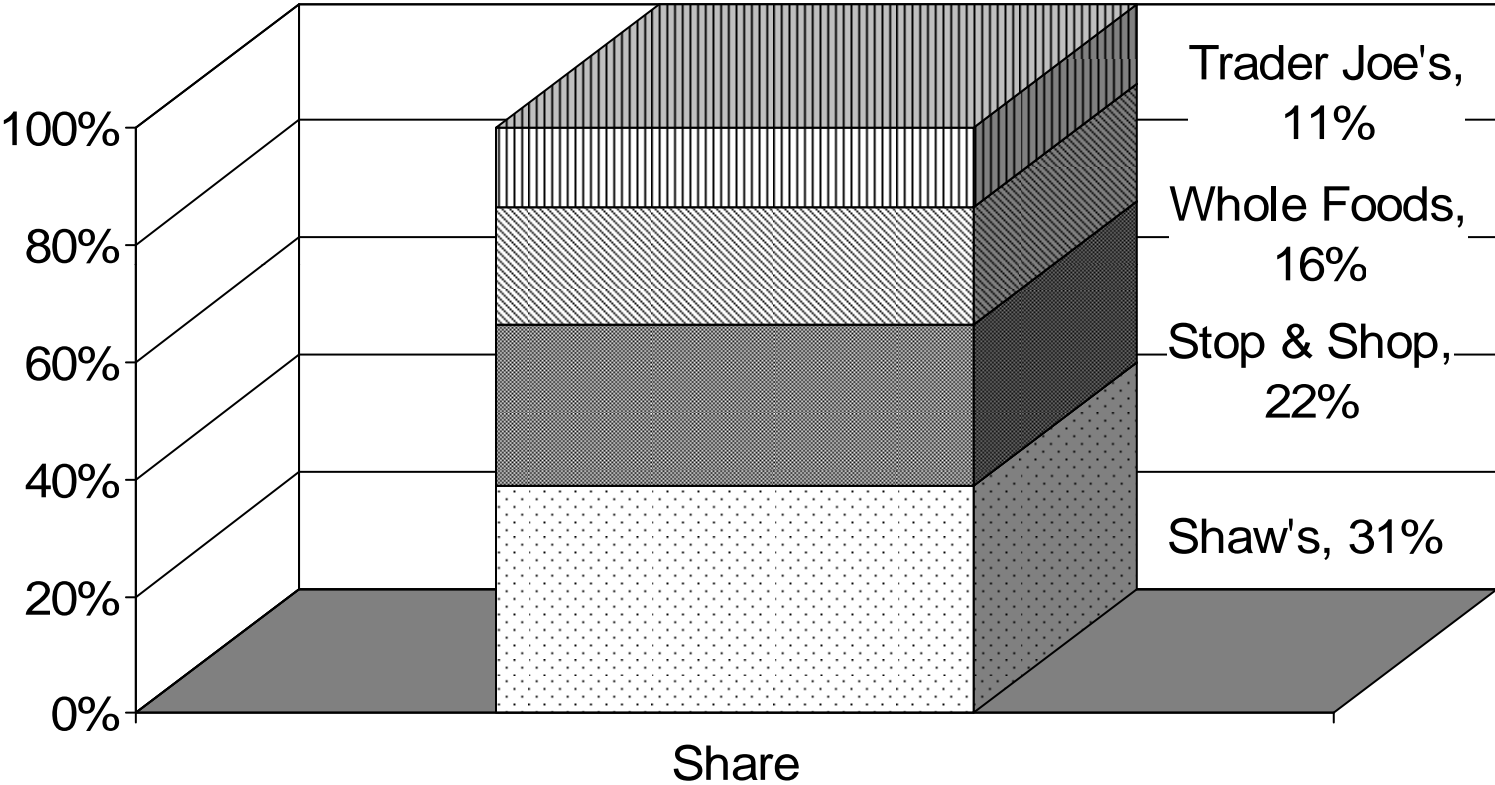


TURF: total unduplicated reach and frequency analysis

Primary food store



Primary food store four stores – 80% Share



Shaw's Stop & Shop Whole Foods Trader Joe's

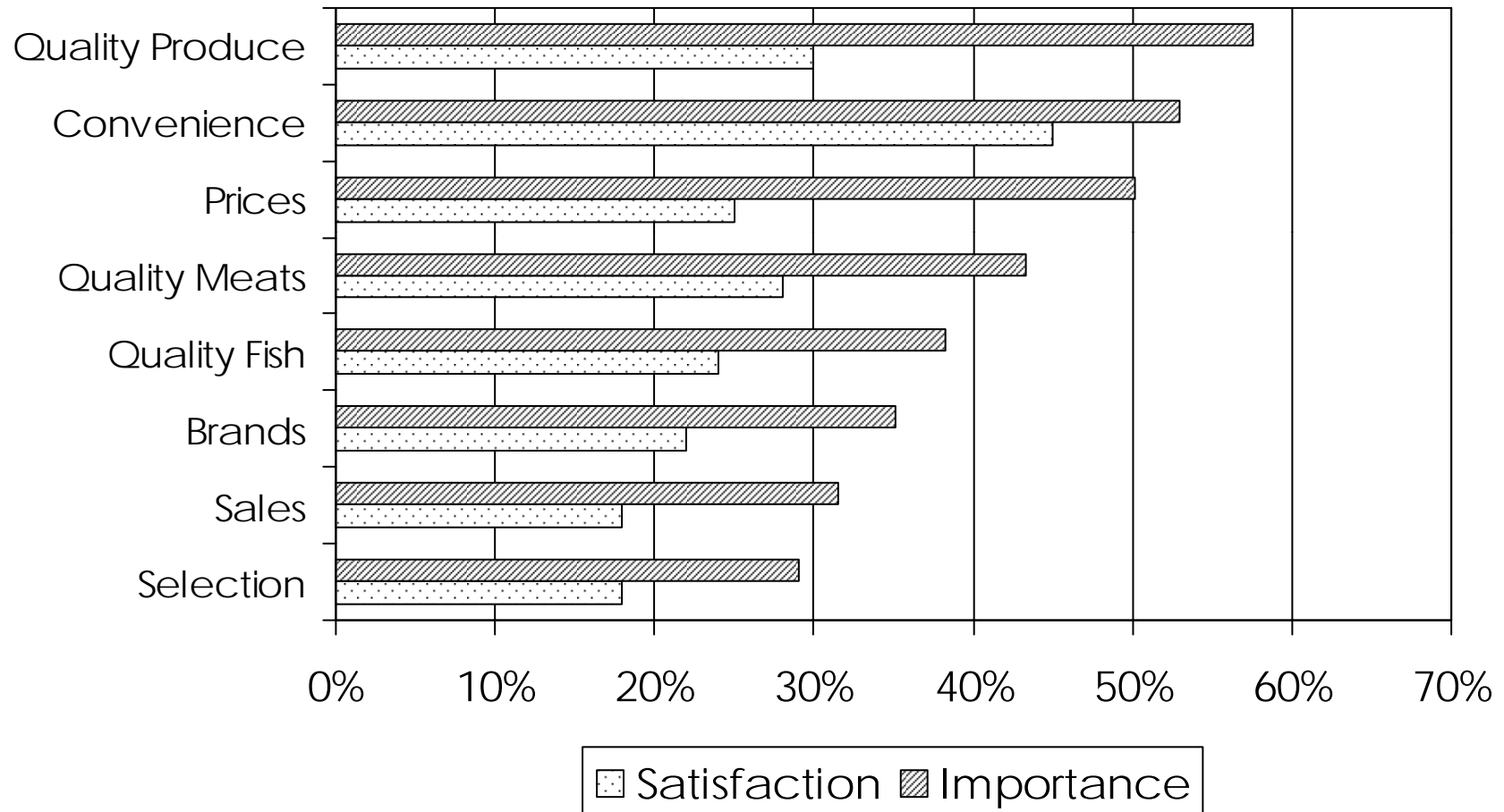
General importance in choosing primary store

	Very Important	Avg. Scale 1-6		Very Important	Avg. Scale 1-6
Quality Produce	58%	5.4	Quality Deli	25%	4.2
Convenience	53%	5.3	Quality Bakery	20%	4.2
Prices	50%	5.3	Natural/Organics	20%	3.9
Quality Meat	43%	4.8	Natural Products	17%	3.8
Quality Fish	38%	4.4	Local Foods	17%	4.2
Brands	35%	4.9	Atmosphere	15%	4.2
Sales	32%	4.6	Personal Service	12%	3.9
Selection/ Variety	29%	5.0	Prepared Foods	9%	3.6 54

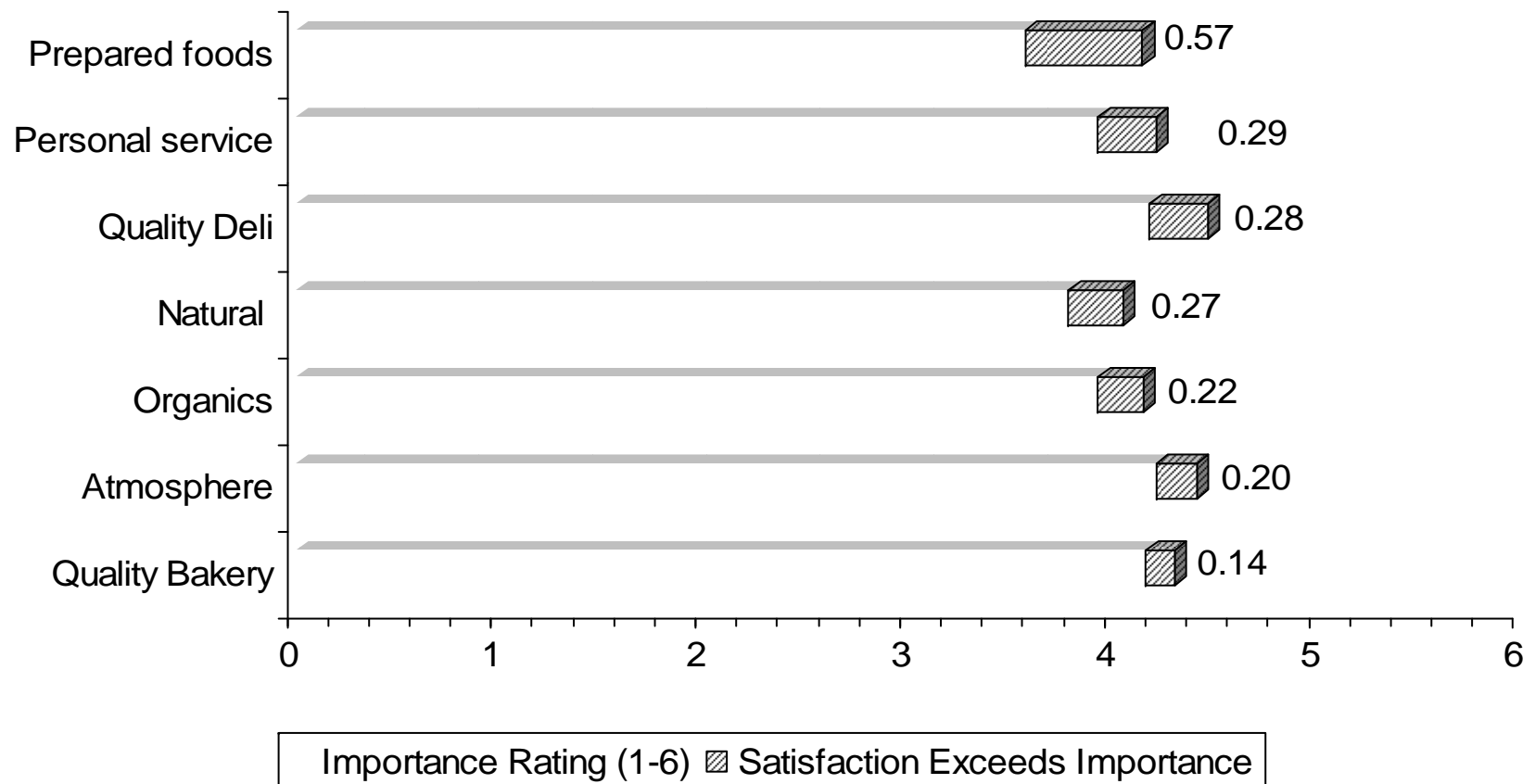
Satisfaction with primary store

	Very Satisfied	Avg. Rating Scale 1-6		Very Satisfied	Avg. Rating Scale 1-6
Convenience	45%	5.0	Personal Service	19%	4.2
Quality Produce	30%	4.7	Organics	19%	4.1
Quality Meat	28%	4.5	Sales	18%	4.5
Prices	25%	4.6	Selection/ Variety	18%	4.5
Quality Fish	24%	4.3	Quality Bakery	17%	4.3
Brands	22%	4.7	Natural Products	16%	4.0
Quality Deli	22%	4.5	Prepared Foods	15%	4.1
Atmosphere	22%	4.4	Local Foods	14%	4.0

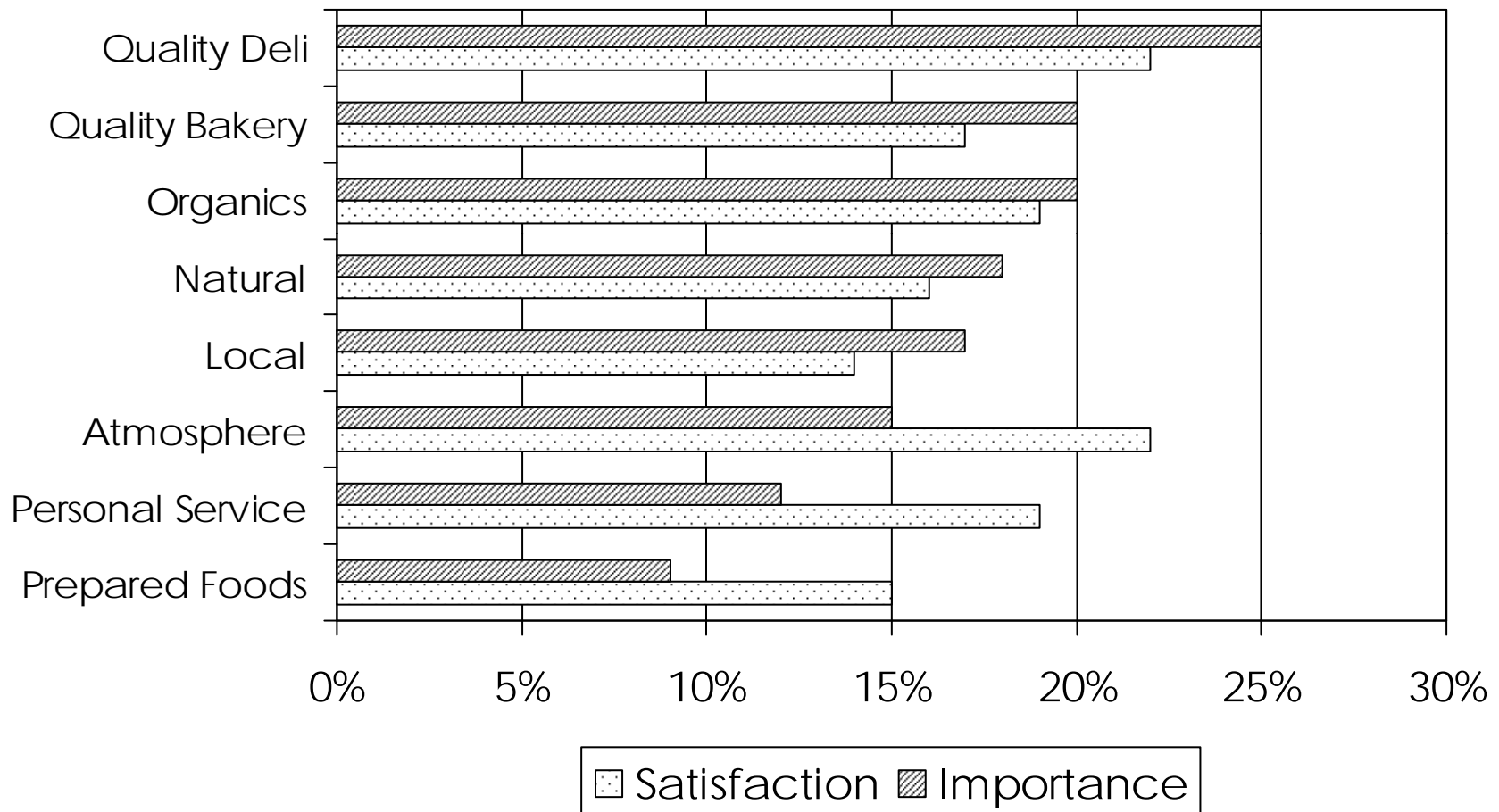
Comparison between very important and very satisfied



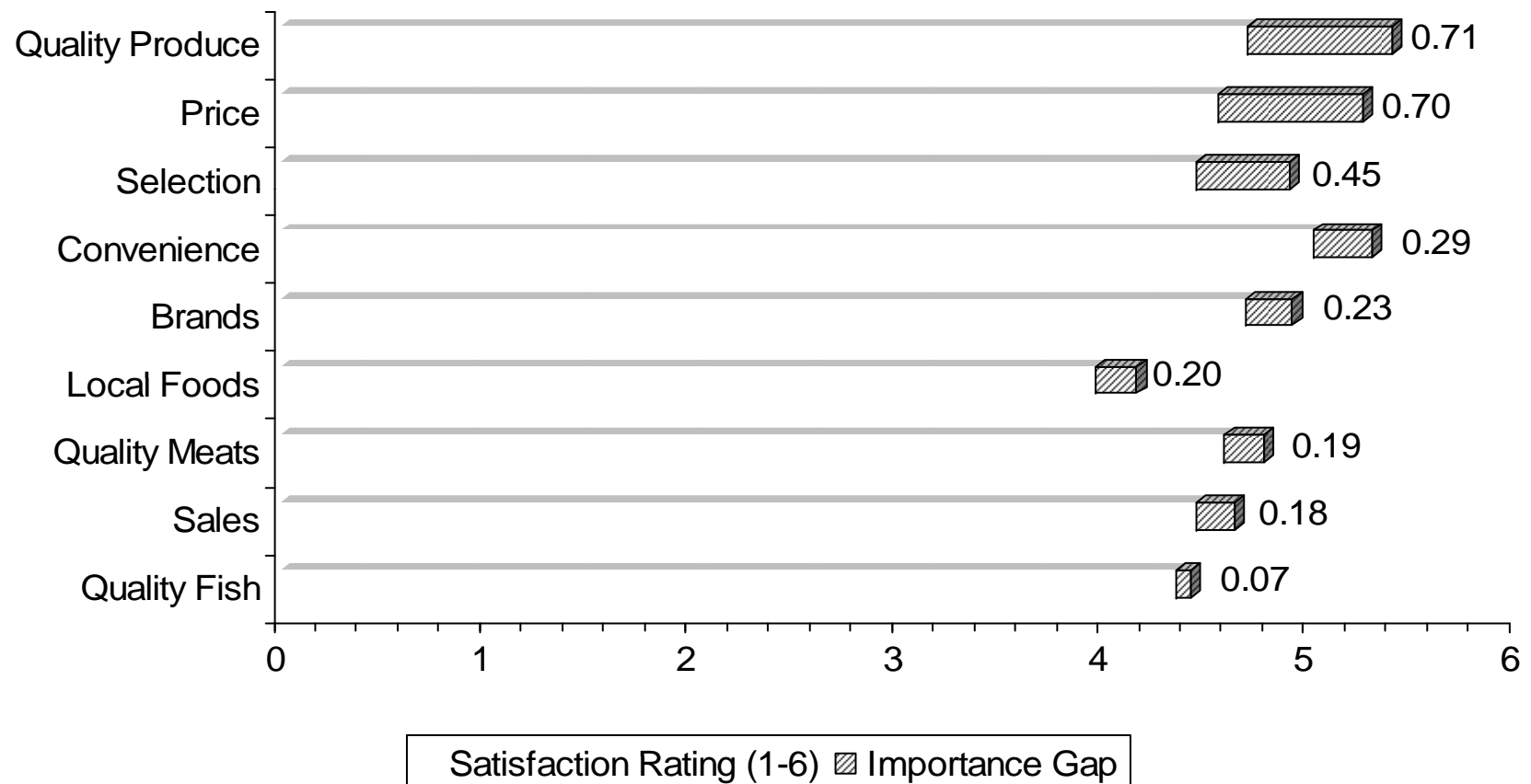
Where satisfaction exceeds importance



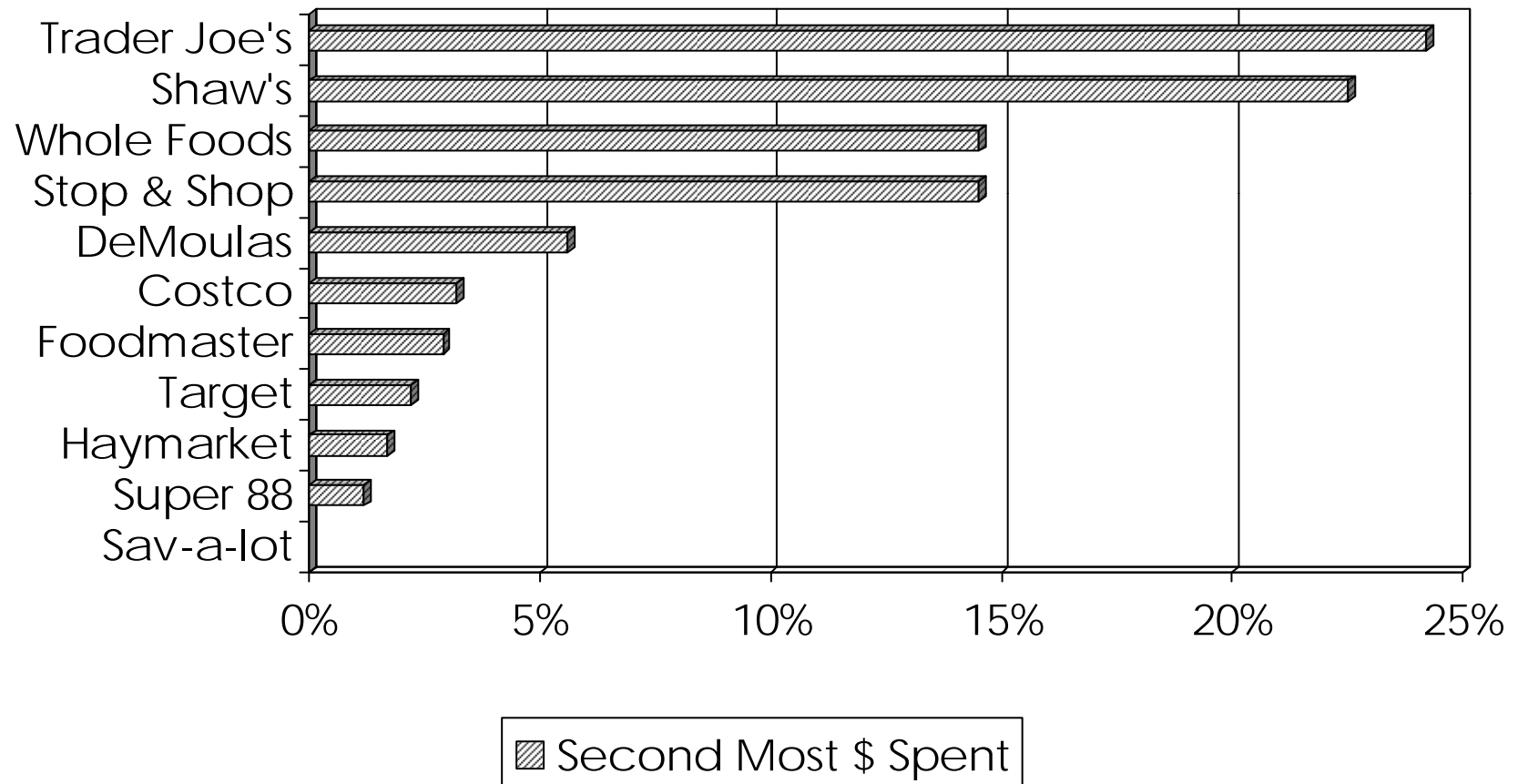
Comparison between very important and very satisfied (cont.)



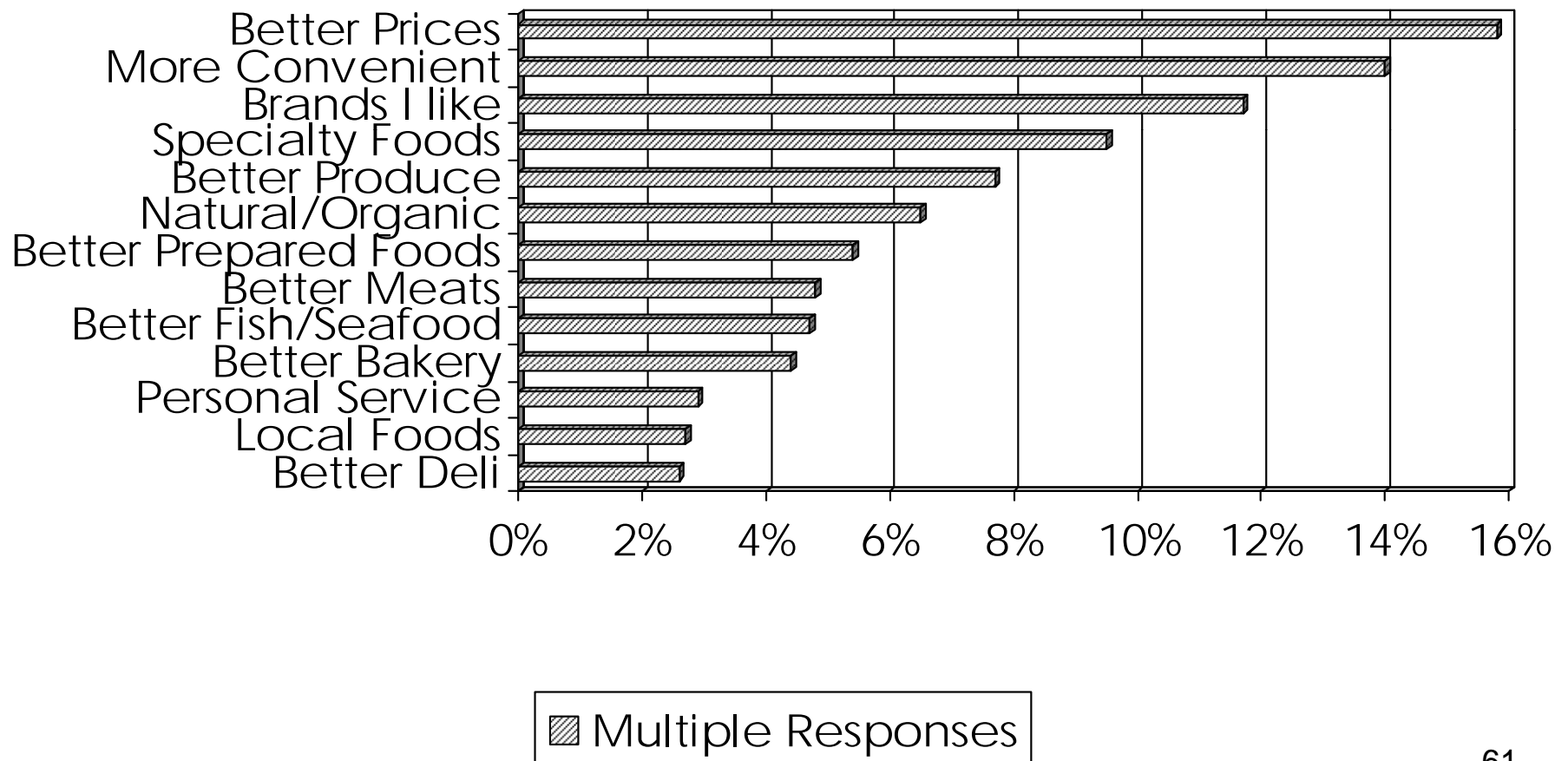
Gap where satisfaction falls below importance



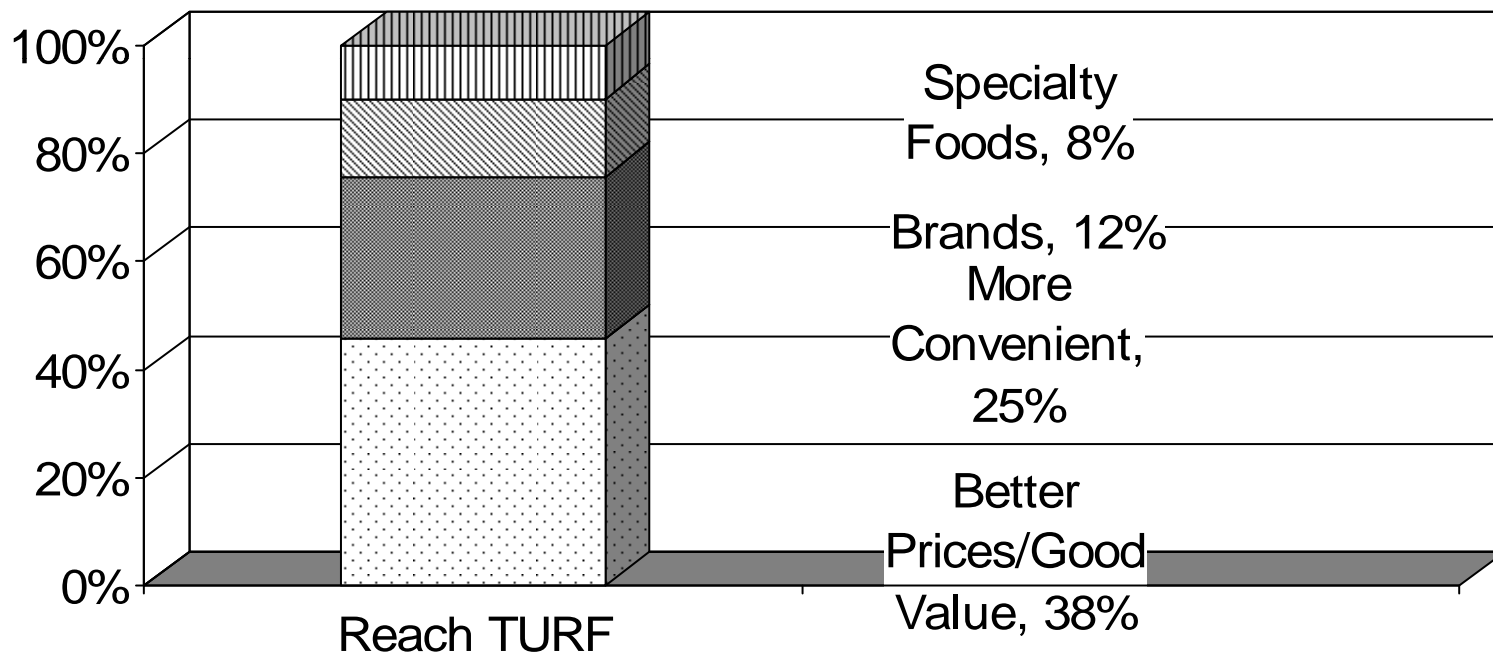
Secondary food stores



Major reasons for shopping at your secondary store rather than primary store



4 Reasons explain 83% for shopping secondary store



TURF: total unduplicated reach and frequency analysis

What drives customers to secondary store

- Trader Joe's
 - 21.3% Better prices
 - 17.9% Specialty foods
 - 13.3% Brands I like
- Whole Foods
 - 14.8% Natural/Organics
 - 13.6% Brands I like
 - 12.8% Specialty foods
- Shaw's
 - 22.8% More convenient
 - 16.9% Brands I like
 - 13.8% Better prices
- Stop & Shop
 - 21.9% More convenient
 - 21.0% Better prices
 - 15.1% Brands I like

Primary Food Store (N=413)

Importance/Satisfaction matrix & gap

(satisfaction exceeds (+) or falls below (-) rating of importance (Gap)
(Basis Points (BPS) 100=1.00%)

High Importance/ Low Satisfaction:

None

High Importance/ High Satisfaction:

Meat (-19 BPS)

Convenience (-29)

Price/Good Value (-70)

Produce (-72)

Low Importance/ Low Satisfaction:

Prepared Foods (+57 BPS)

Service (+29)

Natural (+27)

Organic (+22)

Bakery (+14)

Fish (-7)

Local (-2)

Low Importance/ High Satisfaction:

Deli (+28 BPS)

Atmosphere (+20)

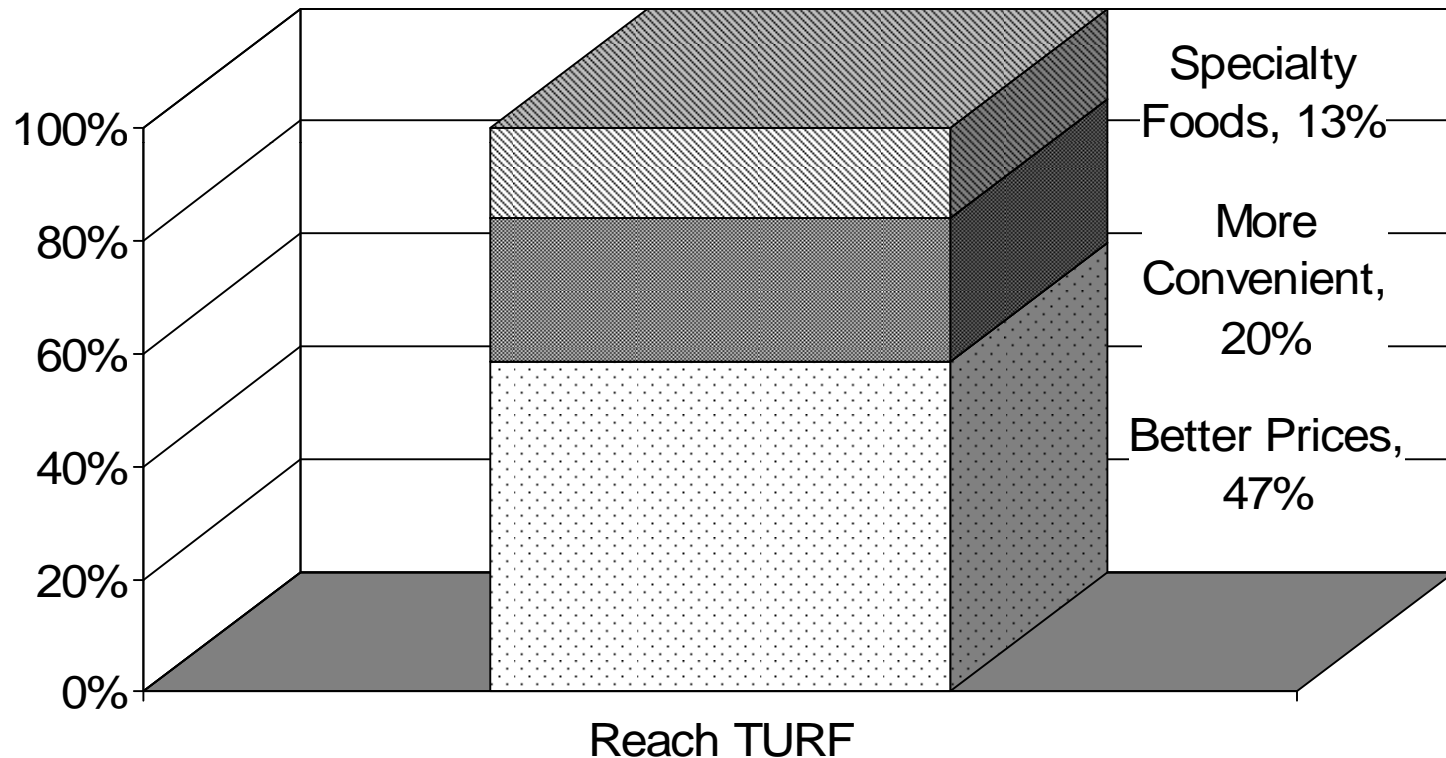
Sales (-18)

Brands (-23)

Selection Variety (-45)

Reasons Shaw's customers shop another store

3 Reasons explain 80%



TURF: total unduplicated reach and frequency analysis

Shaw's (N=138)

Importance/Satisfaction matrix & gap

(Satisfaction exceeds (+) or falls below (-) rating of importance (Gap)
(Basis Points (BPS) 100=1.00%)

High Importance/ Low Satisfaction:

Price/Good Value (-112 BPS)

High Importance/ High Satisfaction:

Deli (+8 BPS)

Meat (+20)

Brands (-24)

Location (-30 BPS)

Sales (-41)

Produce (-95)

Fish (-50)

Selection/Variety (-50)

Low Importance/ Low Satisfaction:

Service (+20 BPS)

Natural Foods (+18)

Organic (+8)

Bakery (+1)

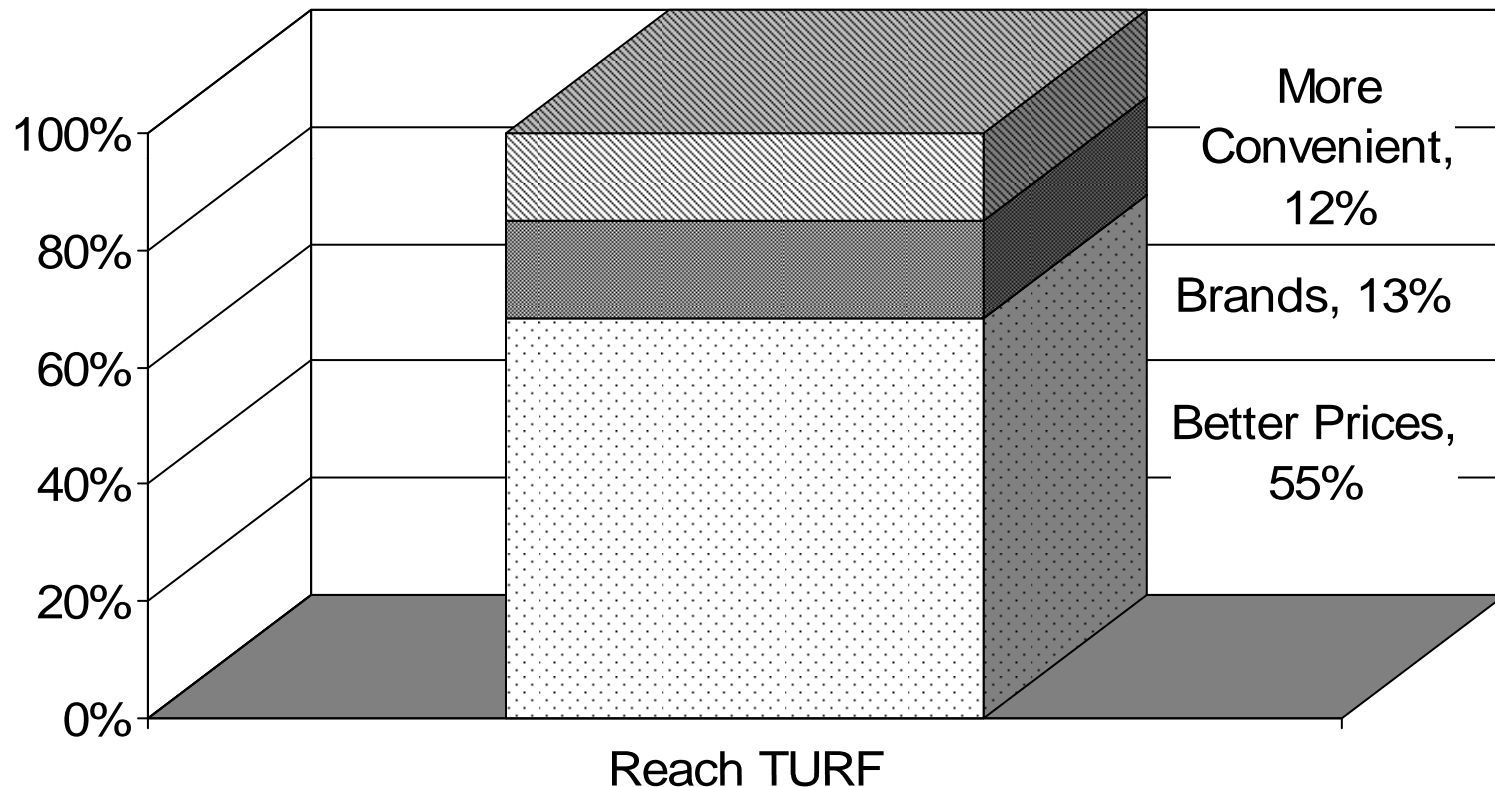
Local Foods (-30) Prepared Foods (-38)

Low Importance/ High Satisfaction:

Atmosphere (+16 BPS)

Reasons Whole Foods customers shop another store

3 Reasons explain 80%



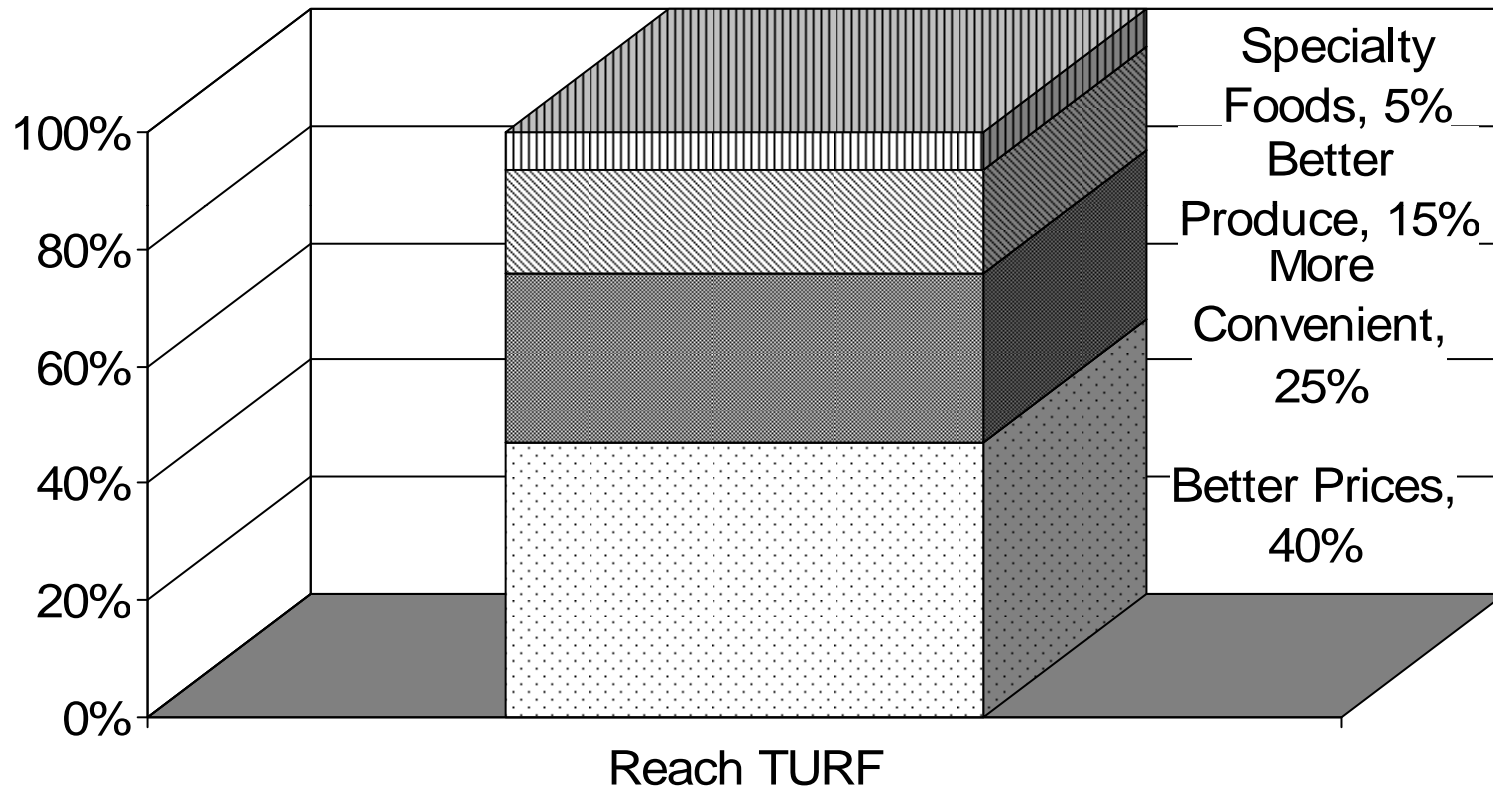
TURF: total unduplicated reach and frequency analysis

Whole Foods Market (N=67)
 Importance/Satisfaction matrix & gap
 (Satisfaction Exceeds (+) or Falls below (-) Rating of Importance (Gap)
 (Basis Points (BPS) 100=1.00%)

<p><i>High Importance/ Low Satisfaction:</i> Selection/Variety (-37 BPS)</p>	<p><i>High Importance/ High Satisfaction:</i> Fish (+58 BPS) Meat (+37) Produce(-2) Convenience (-18)</p>
<p><i>Low Importance/ Low Satisfaction:</i> Service (+82 BPS) Atmosphere (+81) Deli (+78) Bakery (+72) Sales (-12) Brands (-49) Price/Good Value (-63)</p>	<p><i>Low Importance/ High Satisfaction:</i> Natural Products (+90 BPS) Organic (+87) Prepared Foods (+82) Local (+42)</p>

Reasons Stop & Shop customers shop another store

4 Reasons explain 85%



TURF: total unduplicated reach and frequency analysis

Stop & Shop (N=93)

Importance/Satisfaction matrix & gap

(Satisfaction exceeds (+) or falls below (-) rating of importance (Gap)
 (Basis Points (BPS) 100=1.00%)

High Importance/ Low Satisfaction:

None

High Importance/ High Satisfaction:

- Location (-32 BPS)
- Sales (-32)
- Brands (-40)
- Meat (-47)
- Selection (-66)
- Price/Good Value (-80) Produce (-99)

Low Importance/ Low Satisfaction:

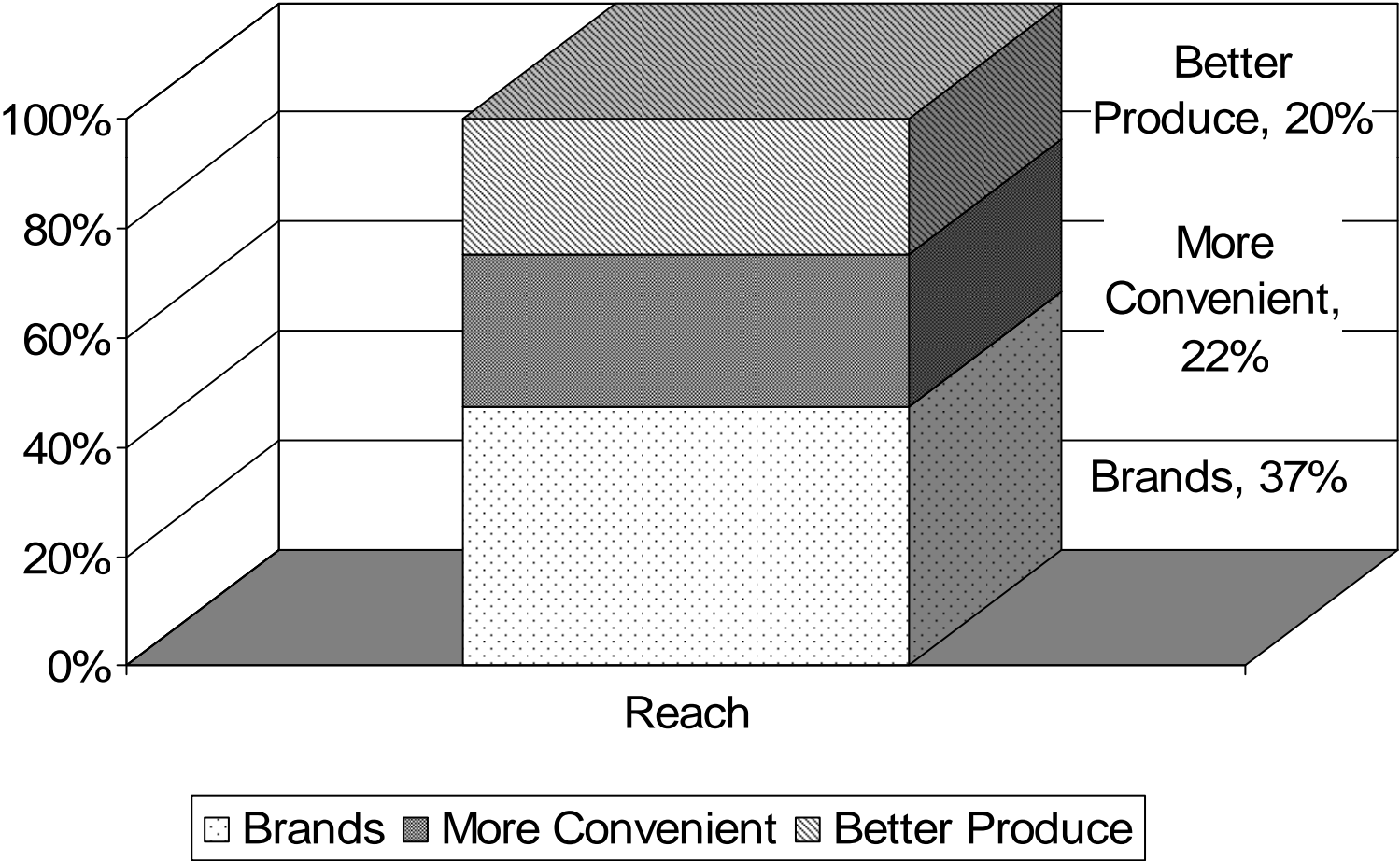
- Prepared Foods (+40 BPS)
- Natural Foods (+11)
- Organic Foods (+7) Fish (-32)
- Bakery (-4) Local (-47)
- Service (-10) Atmosphere (-20)

Low Importance/ High Satisfaction:

- Deli (+47 BPS)

Reasons Trader Joe's customers shop another store

3 Reasons explain 79%



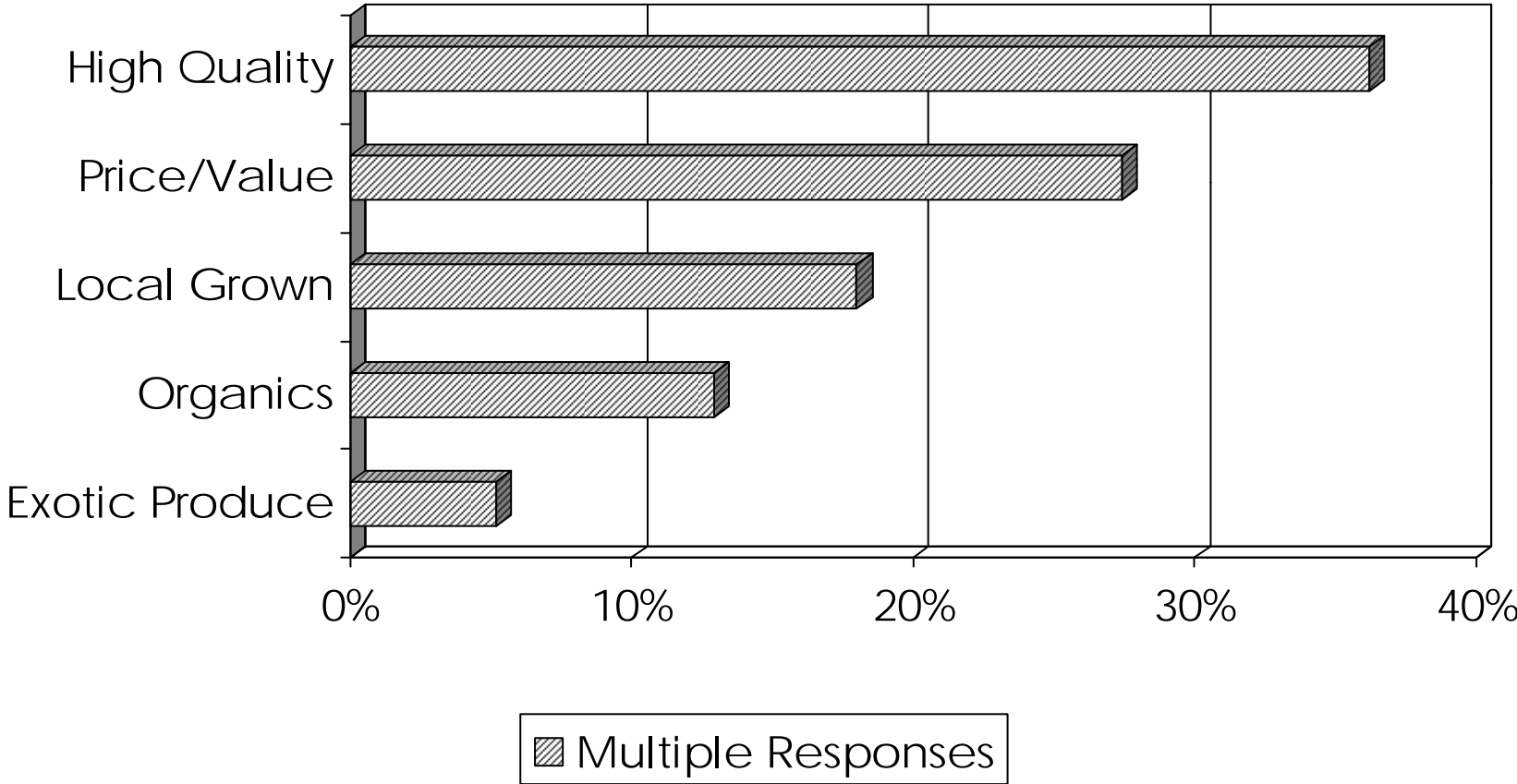
Trader Joe's (N=46)

Importance/Satisfaction matrix & gap

(Satisfaction exceeds (+) or falls below (-) rating of importance (Gap)
 (Basis Points (BPS) 100=1.00%)

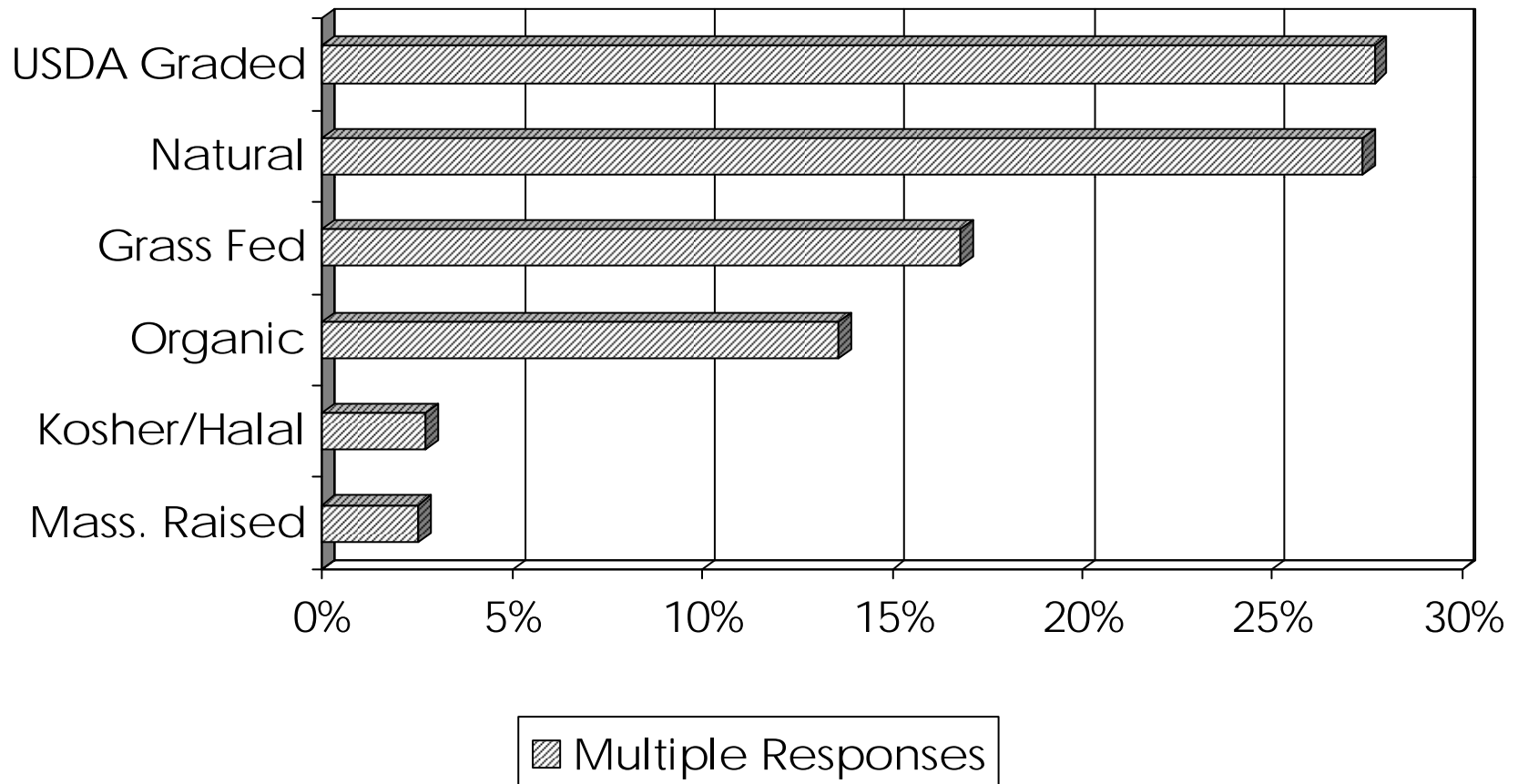
<p><i>High Importance/ Low Satisfaction:</i> Produce (-78 BPS)</p>	<p><i>High Importance/ High Satisfaction:</i> Location (-30 BPS) Selection/Variety (-15) Price/Good Value (-7) Brands (+15) Atmosphere (+94) Service (+96)</p>
<p><i>Low Importance/ Low Satisfaction:</i> Fish (-46 BPS)) Local Foods (-24) Meat (+9) Bakery (+41) Deli (+65) Sales (+87)</p>	<p><i>Low Importance/ High Satisfaction:</i> Organics (+54 BPS) Natural Foods (+57) Prepared Foods (+98)</p>

Very important features when shopping for fresh produce
TURF: 93% High Quality-Freshness/ 3.3% Price/ 2% Local
Grown/ 1% Organic



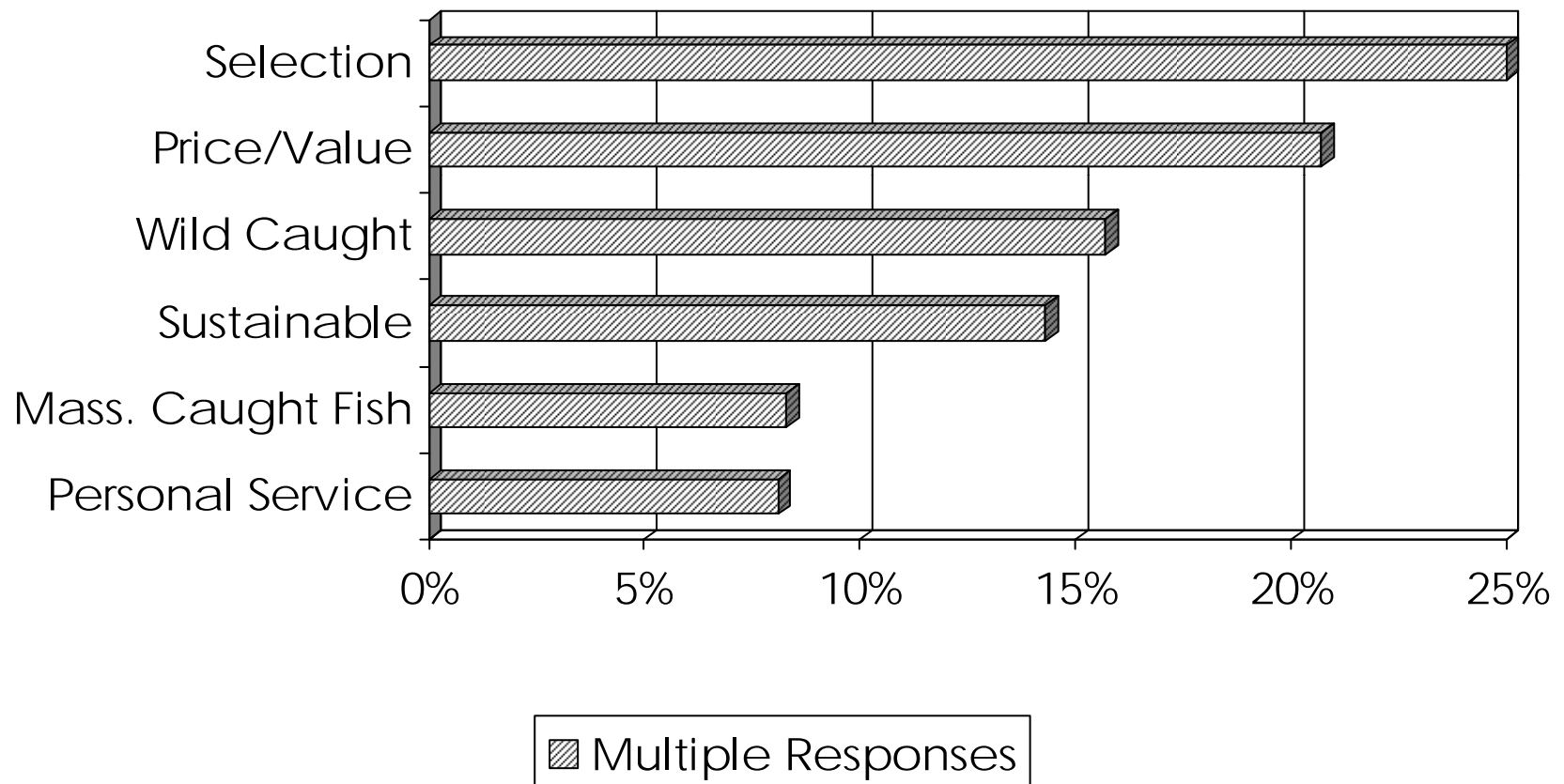
Very important features when shopping for fresh meat/poultry

TURF:53% USDA Graded/ 28% Natural/ 3% Organic/ 1%
Kosher-Halal/ 1% Mass. Grown/ 1% Grass Fed



Very important features when shopping for fresh fish/seafood

TURF: 60% Selection-Variety/ 12% Price, 4.2% Wild Caught/ 3% Sustainable/ 1% Mass. Fishermen/ 1% Personal Service

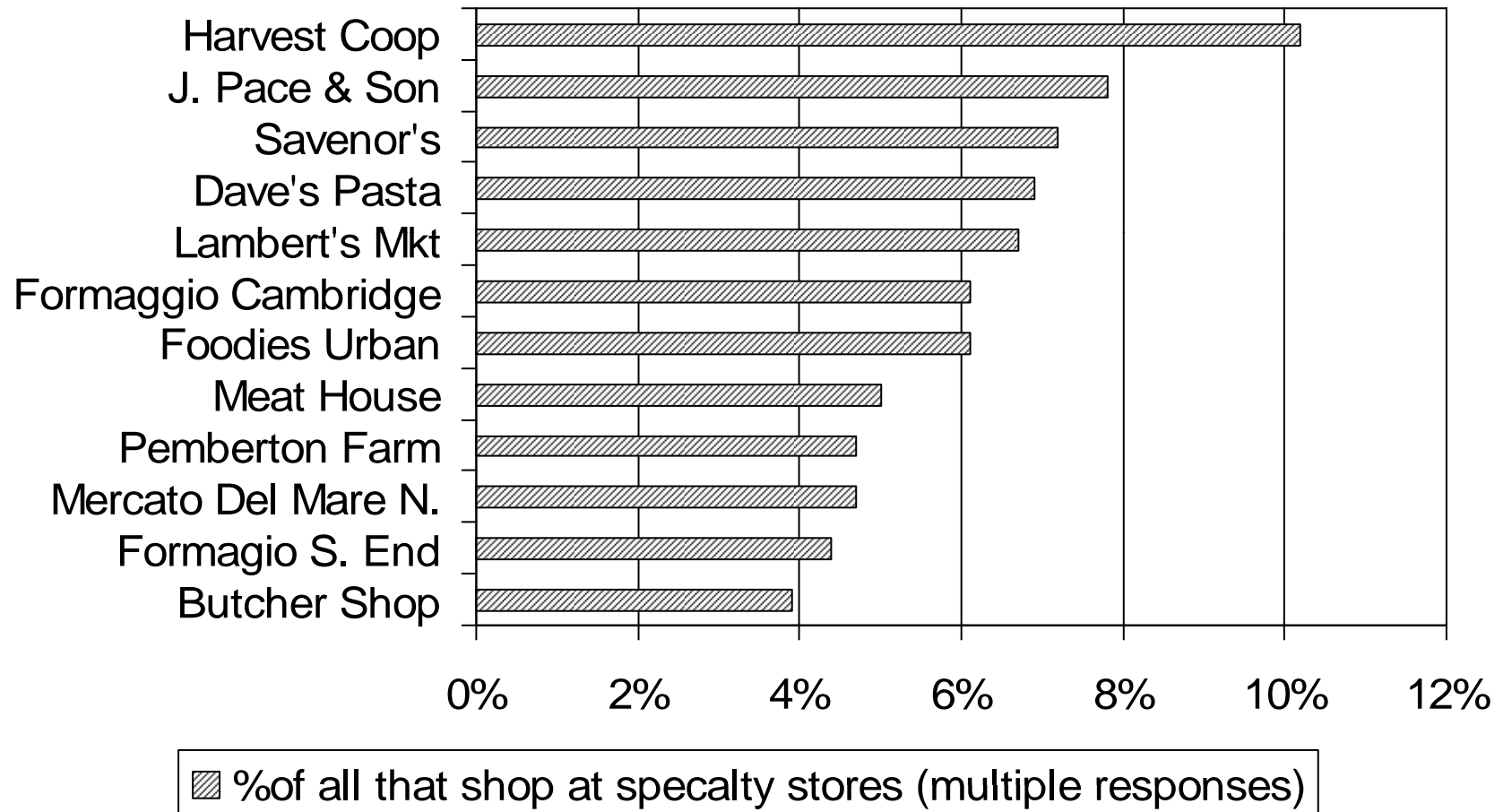


Fresh food market positioning

- Four major competitors: Trader Joe's, Shaw's, Whole Foods, and Stop & Shop
- Weaknesses:
 - Trader Joe's – High Quality Produce
 - Shaw's - Price/Value
 - Whole Foods – Selection/Variety
- Fresh Vendors to be competitive need:
 - High Quality/Fresh Produce
 - Feature Natural Meats
 - Fish/Seafood – Large selection/Variety

Specialty food stores

62% visited specialty food store past 30-days. Top 12 of 23 listed



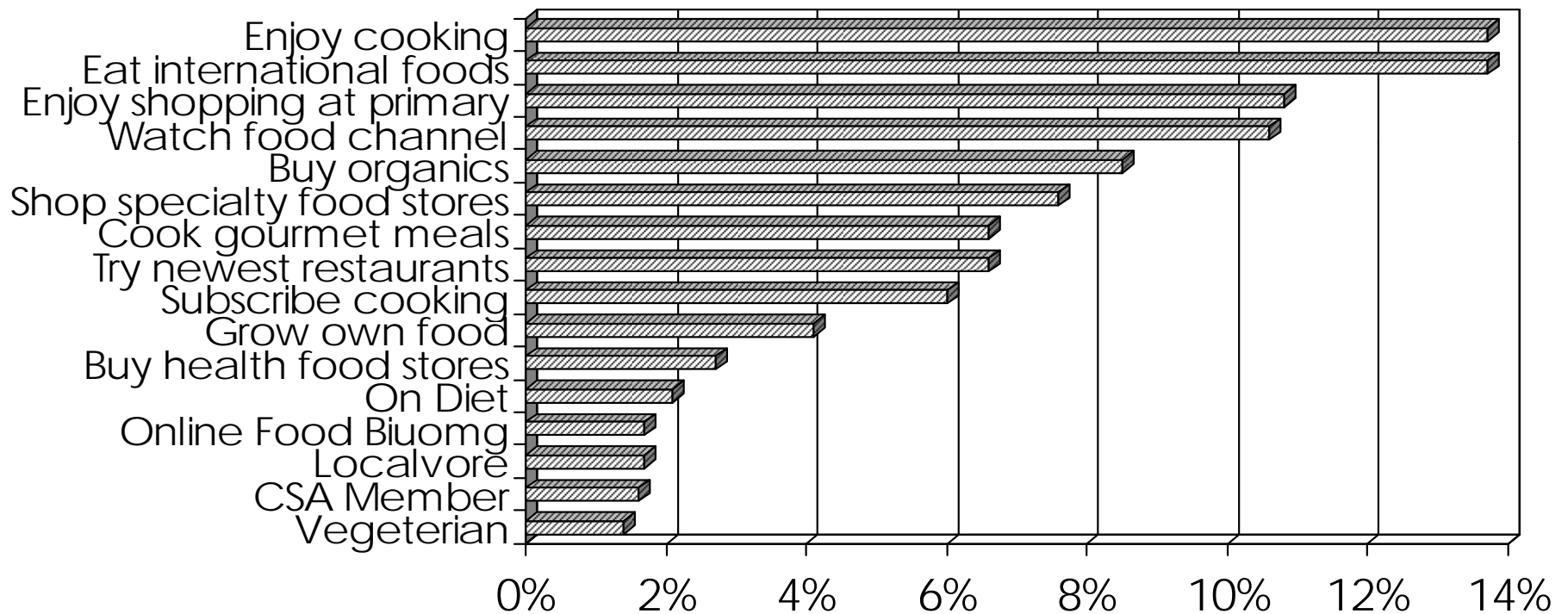
Prepared foods

Food store as restaurant as take-out or eat-in

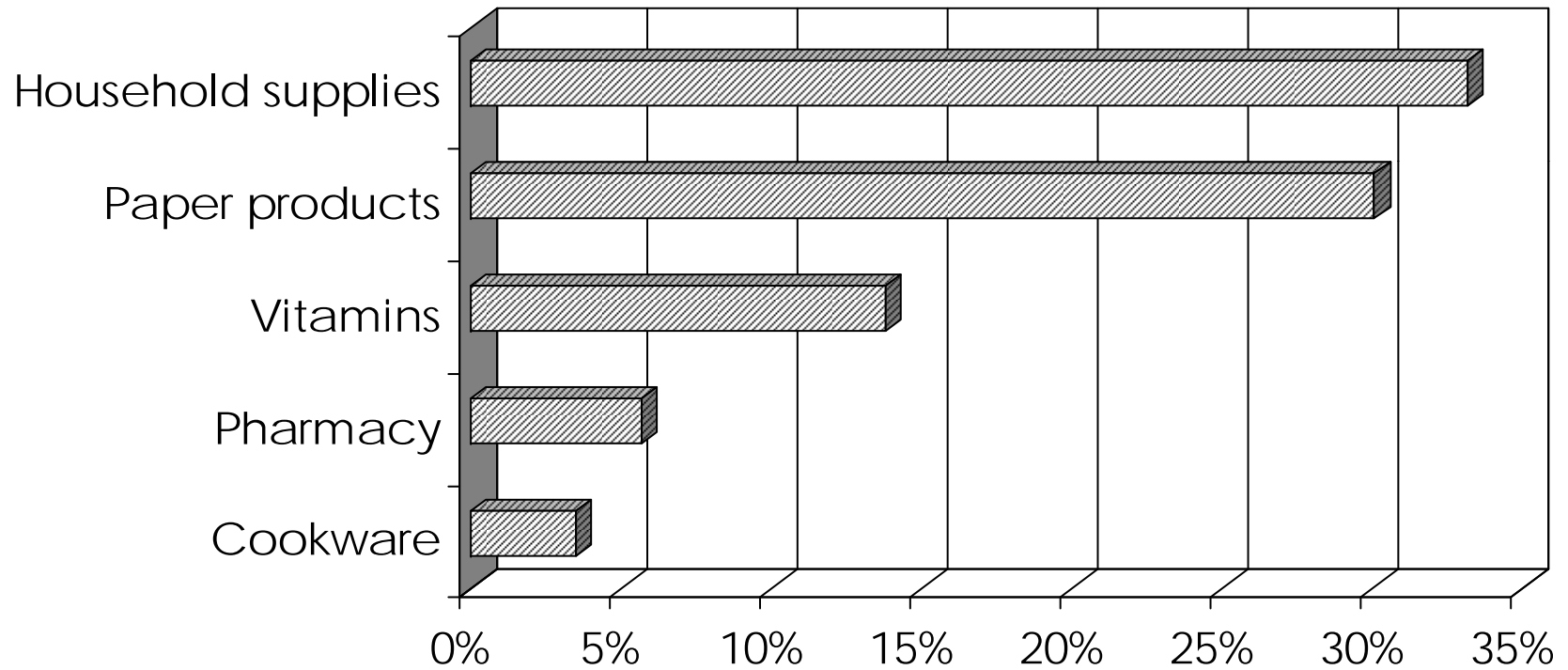
- 40% purchased prepared lunches at food store on average during week (7 days)
 - Averaged 1.8 meals (out of 7) week
 - 36% ate lunch inside the food store at least once (avg. 1.8 times)
- 47% purchased prepared dinners at food store on average during week (7-days)
 - Averaged 1.7 meals (out of 7) week
 - 23% ate dinner inside the food store at least once (avg. 1.8 times)

Other factors

Activates respondents partake



Items purchased at primary food store



B Interview List for Vendor Study

Boston Public Market Implementation Plan Project: Vendor Interest Interviews

Last Name	First Name	Title	Organization	City/Town
Botelho	Michael	Commonwealth Quality Program Coordinator	MDAR	Boston
Bowen	Sean	Aquaculture Program Coordinator	MDAR	Boston
Christie	Margaret	Buy Local and Special Projects Coordinator	CISA	S. Deerfield
Cogswell	Sarah	Buy Local Project Coordinator	SEMAP	W. Wareham
Coutts Chateaufneuf	Allison	Executive Director	MA Specialty Foods Association	Boxboro
Czajkowski	Joe	Produce Farmer, Consolidator	Joe Czajkowski Farm	Hadley
Docter	Michael	Producer Farmer	Winter Moon Farm	Hadley
Dumarasq	Dave	Produce Farmer	Brox Farm	Dracut
Facey	Angie	Dairy Farmer, past OFF manager	Our Family Farms Milk	Leyden
Fellows	Jeannette	Dairy Farmer, Cheese Maker	Chase Hill Farm	Warwick
Hanley	Barbara	Cheese Maker/Commodity Organizer	Shy Brothers Farm/Hannahbell Cheese	Westport
Hartman	Lynn	Executive Director	MA Roadside Stands and PYO Association	Barre
Hashley	Jennifer	Program Coordinator	Tufts University Entry Sustainable Farming Program	Lowell
Jordan	Mary	Agriculture Development Director	MDAR	Boston
Karlen	Ann	Executive Director	Fair Food/Fair Food Farmstand	Philadelphia, PA
LeBlanc	Richard	Agri-Tourism and Website Coordinator	MDAR	Boston
Mallett	Peg	Farmers Market Manager	Wayland Winter Farmers Market	Wayland
Moriera	Maria	New Farmer Program Coordinator	Flats Mentor Farm	Lancaster
Oehlke	Bonita	Foreign Trade, Specialty Foods Program Coordinator	MDAR	Boston

Pitcoff	Winton	Executive Director	MA Maple Producers Association	Plainfield
Powell	Betsy	Member Services Manager	River Valley Market	Northampton
Rozyne	Michael	Co-Executive Director , Distributor	Red Tomato	Canton
Schaefer	Gary	Owner	Bart's Homemade and Snow's Ice Cream	Greenfield
Shaw	Warren	Dairy Farmer	Shaw Farm	Dracut
Stillman	Kate	Produce Farmer	Stillman's at the Turkey Farm	Hardwick
Voiland	Ryan	Produce Farmer	Red Fire Farm	Granby
Webber	David	Farmers Market Program Coordinator	MDAR	Boston
Wilkinson	Fan	Local Food Program Coordinator	Sustainable Business Network, Boston	Boston
Woods	Dave	Owner, manager	Dave's Fresh Pasta	Somerville

C Vendor Interest Survey Results_ Aggregate

Boston Public Market Vendor Interest Survey

Q1. Please fill in some basic information about yourself and your business.

<i>Answer Options</i>	<i>Response %</i>	<i>Response Count</i>
Name	100.0%	134
Business Name	95.5%	128
Business Zip Code	96.3%	129
Email	97.8%	131
Phone Number	94.8%	127
	answered q	134
	skipped q	4

Q2. What products that you grow, raise, catch or make yourself are you currently selling? (Year-round or Seasonally)

<i>Answer Options</i>	<i>Year-round</i>	<i>Seasonally</i>	<i>Response Count</i>
Vegetables	18	35	48
Fruit	7	25	30
Meat	14	1	14
Poultry	3	7	9
Eggs	14	5	17
Fish/Seafood	6	3	7
Dairy	6	0	6
Cheese	6	0	6
Bread and/or Baked Goods	20	5	23
Specialty Food and/or Value-Added Products	41	8	44
Flowers and/or Bedding Plants	9	29	33
Vinegars, Oils and/or Spices	12	0	12
Prepared Foods/Ready to Eat	18	3	20
Beer/Wine/Spirits	6	0	6
Comments			34
		answered q	105
		skipped q	33

Q3. What products that you do not produce (purchased from other farmers, vendors or co-packers) are you currently selling? (Year-round or Seasonally)

<i>Answer Options</i>	<i>Year-round</i>	<i>Seasonally</i>	<i>Response Count</i>
Vegetables	15	12	27
Fruit	11	9	20
Meat	10	1	11
Poultry	7	0	7
Eggs	9	1	10

Fish/Seafood	6	0	6
Dairy	13	4	16
Cheese	15	6	20
Bread and/or Baked Goods	15	6	21
Specialty Food and/or Value-Added Products	22	8	30
Flowers and/or Bedding Plants	7	9	16
Vinegars, Oils and/or Spices	12	3	15
Prepared Foods/Ready to Eat	12	1	13
Beer/Wine/Spirits	6	0	6
Comments			12
		answered q	57
		skipped q	81

Q4. Where do you sell your product(s)?

<i>Answer Options</i>	<i>Response %</i>	<i>Response Count</i>
Wholesale	61.3%	73
My own store	24.4%	29
A stand on my farm	32.8%	39
Farmers Markets	67.2%	80
Restaurants	44.5%	53
Schools	11.8%	14
Grocery Stores	38.7%	46
Internet	33.6%	40
Comments		23
	answered q	119
	skipped q	19

Q5. What is your business's average annual sales (including wholesale, direct sales, etc.)? (Optional)

<i>Answer Options</i>	<i>Response %</i>	<i>Response Count</i>
Less than \$50,000	31.0%	31
\$50,000-100,000	11.0%	11
\$101,000-150,000	12.0%	12
\$151,000-200,000	6.0%	6
Greater than \$200,000	40.0%	40
	answered q	100
	skipped q	38

Q6. In the past five years, have your sales:

<i>Answer Options</i>	<i>Response %</i>	<i>Response Count</i>
Increased	79.3%	88
Decreased	5.4%	6

Stayed the Same	15.3%	17
	answered q	111
	skipped q	27

Q7. Are you interested in selling your products at the proposed Boston Public Market?

<i>Answer Options</i>	<i>Response %</i>	<i>Response Count</i>
Yes	71.9%	87
No	3.3%	4
Maybe (please explain)	24.8%	30
	answered q	121
	skipped q	17

Q8. What are the barriers for your business participating in the Boston Public Market? (Check all that apply)

<i>Answer Options</i>	<i>Response %</i>	<i>Response Count</i>
Time	50.8%	32
Distance	44.4%	28
Product Availability	30.2%	19
Employee Capacity	54.0%	34
Distribution/Delivery	22.2%	14
Comments		43
	answered q	63
	skipped q	75

Q9. What type of vending options would interest you at the proposed Boston Public Market?

<i>Answer Options</i>	<i>Response %</i>	<i>Response Count</i>
A full-time, permanent stall	45.9%	51
A part-time, farmers market-type day stall	43.2%	48
Sell my products to an independent vendor selling at t	10.8%	12
	answered q	111
	skipped q	27

Q10. What range of daily sales would you hope to achieve if selling at the proposed Boston Public Market?

<i>Answer Options</i>	<i>Response %</i>	<i>Response Count</i>
\$0-500	12.1%	13
\$501-1000	33.6%	36
\$1001-2000	32.7%	35
\$2001 and above	21.5%	23
	answered q	107
	skipped q	31

Q11. How would you prefer to pay rent at the proposed Boston Public Market?

<i>Answer Options</i>	<i>Response %</i>	<i>Response Count</i>
Flat rate	61.4%	51
Percentage (%) of sales	38.6%	32
	answered q	83
	skipped q	55

Q12. If rent at the Boston Public Market were based on a percentage (%) of total sales, what do you think would be a reasonable amount for your business to pay?

<i>Answer Options</i>	<i>Response %</i>	<i>Response Count</i>
1%	10.3%	9
2%	13.8%	12
3%	11.5%	10
4%	14.9%	13
5%	27.6%	24
6%	1.1%	1
7%	5.7%	5
8%	2.3%	2
9%	0.0%	0
10%	12.6%	11
	answered q	87
	skipped q	51

Q13. What days of the week would you like to participate in the proposed Boston Public Market? (Check all that apply)

<i>Answer Options</i>	<i>Response %</i>	<i>Response Count</i>
Sunday	65.4%	70
Monday	54.2%	58
Tuesday	61.7%	66
Wednesday	65.4%	70

Thursday	72.0%	77
Friday	76.6%	82
Saturday	78.5%	84
	answered q	107
	skipped q	31

**Q14. What months of the year would you like to participate in the proposed Boston Public Market?
(Check all that apply)**

<i>Answer Options</i>	<i>Response %</i>	<i>Response Count</i>
January	77.7%	87
February	77.7%	87
March	83.0%	93
April	78.6%	88
May	81.3%	91
June	84.8%	95
July	87.5%	98
August	84.8%	95
September	87.5%	98
October	91.1%	102
November	89.3%	100
December	87.5%	98
	answered q	112
	skipped q	26

Q15. May MDAR or PPS contact you with additional information and opportunities?

<i>Answer Options</i>	<i>Response %</i>	<i>Response Count</i>
Yes	99.1%	112
No	0.9%	1
	answered q	113
	skipped q	25

D Vendor Meeting Notes_February 24, 2011

Vendor Informational Meeting, February 24, 2011

Questions from Vendors:

Will the Market Research Information be made public?

What size is a Day Stall?

- We are used to 10' by 10'
- We need space for coolers
- 6' is small
- Could there be a mix of sizes?
- Will you get the same location every time you are there?

How much will it cost to be in the market?

Loading / Unloading

- How?
- Where?
- When?
- Assistance in Vendor Loading?

Vendor Parking

- Where?
- When will it open?

Vending: Temporary vs. Permanent?

- What is the time commitment (hrs, days, months) for vending?

Could there be a farmers market on the Greenway?

Could there be refrigeration/storage in the Congress St. and Sudbury St. corner?

Will there be storage, etc. for day stalls?

Health Codes

- How will they affect the displays?
- What are the permits/health dept rules for food preparation at the market?

Will there be traceability/inspections?

What will be the Hours of Operation?

- 7 days?
- Do all the stalls need to be open at the same time?
- Early AM – late?

Could vendors share spaces?

Will there be public seating?

Will there be demonstration areas for cooking and productions?

How will the leasing work?

Who will do the leasing?

What is the size of permanent spaces?

What will happen with Haymarket?

- Cleanliness?
- Space?

Will there be another permanent market in Boston?

Who will get to sell in the market? Agricultural Producers (small producers) vs. large, non-local chains

Will permanent space be built out?

Will vendors need to use union labor for tenant fill-out?

What is the market's operating expenses?

Who will pay for utilities?

E Case Studies of Local Food Businesses

Case Studies of Local Food Businesses

The following case studies developed through several interviews with staff and owners identify how several businesses are consolidating, distributing and/or selling local food.

River Valley Market, Northampton, MA

- A 20,000 square foot full-service cooperative market, open since 2008, with sales over \$12 million and a clear mission of selling local product and increasing economic opportunity to local farms and independent businesses.
- During the growing season, local produce is plentiful but market does not stop selling fresh produce when it is not available from MA.
- RVM's goal of selling 20% local/regional product has been surpassed and they always strive to increase that amount but they do not restrict product offerings on a year round basis.
- RVM is developing partnerships with cooperatives from other parts of the country, most notably the Federation of Southern Cooperatives, which sells products from southeast US family farms, especially fresh produce during times when it's not available in the northeast.
- Selling MA products is important but organizers must ensure that the market, first and foremost, is a financially viable business. If RVM sold only MA grown produce, the market could not survive and shoppers wouldn't shop there.
- Year-round fresh produce selection from MA will always be limited but customers are always going to want produce that they've come to expect to be available. "We provide what the customer asks for, not just what we think the customer should have. While selling raspberries in December may seem to go against all of our beliefs, we aren't going to not carry them. We just might carry a small amount to satisfy customers who have asked for them," said Powell.
- RVM believes it is important to not be judgmental of their customers. Telling them what is right or wrong to purchase will turn off customers and they might not return.

Enterprise Farm, Whately, MA

- A vegetable operation that sells at numerous summer and winter farmers markets and has a weekly on-farm winter market.
- The farm has developed partnerships with a number of farms in Florida from whom they purchases a wide variety of warm weather produce including lettuces, peppers and citrus fruit.
- The farm also sells produce that was purchased from local farms.
- The farm does not purchase product from large wholesalers and source-identifies all produce for sale.

- By selling warm weather produce in MA in the winter, the farm has been able to expand its customer base and it has been able to offer family farms in Florida a new direct market for their product.
- Although this farm has been successful and could serve as a very good model for bringing fresh produce to the Boston Public Market during the winter months, Mr. Jackson has met resistance from other farmers at winter farmers markets who suggest that he is cheating or not competing fairly with those whose products are limited to winter storage crops.

Fair Food Farmstand, Reading Terminal Market, Philadelphia, PA

- Fair Food Farmstand began in 2003 operating one day a week as an educational kiosk at the market. Demand for local products was high and their products sold quickly so they were offered a small stand and their business grew rapidly.
- The Farmstand carries a variety of fresh produce, meats, poultry, dairy, eggs and cheese from organic and sustainable farms throughout the southeast Pennsylvania region and it emphasizes local and artisanal foods from small-scale producers, such as humanely raised meats, organic and specialty fruits and vegetables, and raw milk cheeses.
- Approximately 100 producers are represented at the stall.
- In 2009, they were moved to a popular space (750 sq ft) in the market, and have seen a 40% increase in business.
- The Farmstand currently has a grant to measure profitability and replication potential from the Wallace Foundation.
- Ms. Karlen offered the following comments:
 - Definition of a public market is **not** a producer-only market.
 - Criteria for the products they sell is shifting from focus on miles traveled to relationships with farmers---Food Sheds, not miles.

Red Tomato, Canton, MA

- Red Tomato describes itself as “a unique non-profit with a not so easy goal: help our region's farmers bring their fresh, sustainably-grown produce to the local grocery store, at a fair price.”
- Red Tomato markets fruits and vegetables, fresh and in season, from family farms in the Northeast US: New England, Pennsylvania, New York, and New Jersey. They also work with the Federation of Southern Cooperatives to bring fresh product to the Northeast.
- Red Tomato source-identifies all of its products and ensures verifiability by inspecting their producers’ farms.
- Red Tomato provides marketing assistance and has developed a highly recognizable trademark label that has come to mean produced by local, sustainable farms.

- Because their main focus is to bring family farm products to market, Red Tomato may be interested in playing a role in consolidating and distributing MA and regional products to the Boston Public Market and, perhaps, consider ways to retail that product, too.

F Vendor Feasibility Studies

Vendor Feasibility Studies

Introduction

Three vendors were interviewed and/or agreed to provide detailed information about their costs to start and operate a market business and to report sales levels.

- Permanent Stall, Butcher – fresh meats
- Permanent Stall, Fishmonger – fresh fish, seafood and prepared/cooked fish
- Daystall, Farmer - vegetables

Key Findings

- The butcher and fishmonger, both currently in public markets, have annual sales in the \$2000/square foot range. These are mature businesses and it took several years to ramp up sales to this level.
- While success is never guaranteed at a market, these profiles show that a vendor with the right products, location and operation can do very well and that the projected sales, rents and expenses are reasonable and achievable.
- Start-up costs can vary dramatically from the farmer who needs little beyond the actual selling area – to a permanent vendor with equipment for display, preparation and storage.
- Tenants can always make additional improvement to their market stalls over time, and do not need to spend inordinately in the beginning.
- The construction budget for the project has allocated tenant improvement dollars to assist tenants with the fit out of their stalls.

Vendor Feasibility Study: Permanent Stall, Butcher – retail meats, poultry (no prepared foods)

Operating Hours: Seven days a week, 8am to 6pm

Size of Stall: 500 square feet, plus 200 square feet of remote cold storage (includes freezer)

Lease term: 5 years, plus a 2 year option

Planning Time: eight months to one year

Stall Improvements: Tenant was responsible for all fit-out costs for leasable area; there was no tenant improvement allowance. Market has a ½ below prime loan fund for tenants who want to make improvements after they open.

Financing for Start-up Costs: Bank loan for \$1250/ month – 15 year loan

Stall characteristics: 32 feet of glassed, refrigerated display cases, 16 feet of work counters on the perimeter, central work table with saws and grinders. One cold storage box within leased space.

Inventory: Approximately \$10,000 on hand in store at all times

Start Up Costs	
Equipment (sinks, slicer, saws, grinders, scales, etc)	\$30,000
Carpentry	\$5,000
Signage	\$5,000
Lighting	\$5,000
Display Fixtures (refrigerated, glass display cases)	\$45,000
Plumbing	\$5,000
Electric	\$5,000
Security Deposits	\$5,000
Website	\$2,000
Graphics	\$2,000
TOTAL START UP COSTS	\$125,000
Start-Up Costs per Square Foot (500 sq. ft. stall)	\$250

Monthly Operating Costs	
Labor (5-7 employees, depending on day)	\$15,000
Advertising	\$500
Administration	\$500
Supplies	\$250
Insurance	\$400
Rent/CAM (includes RE Taxes - \$100, Use & Occupancy Tax - \$100, Parking System - \$100)	\$2,800

Utilities	\$700
Bank Loan	\$1,250
TOTAL OPERATING COSTS	\$21,000

Monthly Break Even: \$95,000

Annual Gross Sales: \$1.5 million

Annual Sales per Square Foot: \$2,000 +

Percentage of Sales for Rent/CAM (\$2800/month): 2.2%

Key Factors to Success

- Good value – customers are extremely price sensitive, 35% of the butcher’s sales are through SNAP/EBT transactions.
- Good looking stall – lighting and displays are very important
- Good customer service - owner is on site
- Consistency of quality and service

Vendor Feasibility Study: Permanent Stall, Fishmonger – Seafood, retail fresh and smoked fish, prepared fish foods

Operating Hours: Six days a week, Tuesday-Friday (7am – 7pm), Saturday (8am -6pm), Sunday (9am – 4pm)

Size of Stall: 850 square feet

Lease term: Eight years

Planning Time: One year

Stall Improvements: Tenant responsible for complete fit out. Landlord provided plumbing and electric stubs

Financing for Start-up Costs: Bank loan

Product Characteristics: 2/3 fresh fish, 1/3 prepared fish

Stall Characteristics: 300lb capacity lobster tank, 54 feet of linear display cases (24 ft - filleted fish, 14ft - cooked/prep fish, 12 ft – shellfish, 4ft - smoked fish), Kitchen (w/exhaust system), 135 sq. ft. cold storage box (has smaller freezer inside cold box)

Vendor Characteristics: re-seller, does all of her own purchasing at the wholesale market

Sales Markup: 100% for fresh fish and 250% for prepared foods

Inventory: Average of \$15,000 at any time

Start Up Costs	
Equipment (kitchen, exhaust, etc)	\$75,000
Carpentry	\$20,000
Signage	\$5,000
Lighting	\$15,000
Display Fixtures (refrigerated, glass display cases)	\$200,000
Plumbing	\$15,000
Electric	\$13,000
Security Deposits	\$5,000
Graphics	\$2,000
TOTAL START UP COSTS	\$350,000
Start-Up Costs per Square Foot (850 sq. ft. stall)	\$411

Monthly Operating Costs	
Labor	\$25,000
Advertising	\$500
Administration	\$500
Supplies	\$500
Insurance	\$500
Rent/CAM	\$10,000 (\$141/sq ft)
Utilities	\$2,000
TOTAL OPERATING COSTS	\$39,000

Annual Gross Sales: \$1.8 million

Annual Sales per Square Foot: \$2,117

Percentage of Sales for Rent/CAM (\$10,000): 6.6%

Vendor reports that sales have increased steadily each year.

Key Factors to Success

- Freshness and quality of product
- Good selection
- Attractive displays
- Well-paid and loyal employees
- Owner oversight everyday

Vendor Feasibility Study: Daystall, Farmer – vegetables

Operating Hours/Days/Months: Year-round

Size of Stall: 12 ft display area

Lease term: Annual application, daily/weekly/monthly rentals

Planning Time: Eight hours (already organized to sell at similar markets)

Financing for Start-up Costs: Savings

Inventory: Organic root crops (carrots, beets, parsnips, turnips, radishes, etc)

Pre-Opening Planning:

- Evaluating sales
- Informal focus groups with customers

Characteristics of Market Space:

- “Pile it high, watch it fly” – abundant displays
- Sampling – everyone who tastes our carrots, buys our carrots; known for flavor and quality.
- Minimalist approach to set up, which helps insinuate the affordability of roots (as compared to other produce) and obscures the fact that customers are actually paying a price premium.

Start Up Costs	
Tables	\$250
Signage	\$200
Cash register	\$450
Scales	\$350
Display (baskets, materials, etc)	\$200
TOTAL START UP COSTS	\$1,450

Monthly Operating Costs	
Inventory	\$30,000
Labor	\$5,480
Advertising	\$0
Administration	\$548
Supplies	\$200

Insurance	\$875
Rent/CAM	\$900
Utilities	\$0
TOTAL OPERATING COSTS	\$39,803

(Note: Operating costs above assume the vendor is participating every day the market is open)

Monthly Sales: \$45,000


Profit Margin: \$5,198

G MassDOT Parcel 7 Memo

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
INTEROFFICE MEMORANDUM

To: Helmut Ernst, MassDOT Highway Division District 6 Director

cc: Peter M. O'Connor, Director, Office of Real Estate and Asset Development
Peter Cavicchi, District 6

From: Anthony Duros, District 6 Mechanical / Electrical Lead Engineer
William Tuttle, Deputy Director, Office of Real Estate and Asset Development 

Date: March 11, 2011

Subject: **Central Artery Parcel 7 – Considerations for Development of a Public Market**

Background

The Massachusetts Department of Agricultural Resources (“DAR”) has commissioned a feasibility study by the Project for Public Spaces (“PPS”) to test the feasibility of and begin planning for the creation of a public food market on the first floor Central Artery Parcel 7. The market is intended to provide an outlet for Massachusetts and regional agricultural and fisheries products.

MassDOT is working with DAR to accommodate the proposal. This memo is intended to outline considerations for the physical development and operations of the market, which must share the building with MassDOT’s ventilation facility, the MBTA station, the parking garage, and the future development of the upper floors for office or other uses. This memo addresses issues related to: the development of the market within the existing building facility, building repairs required to accommodate the market, operations of the market, and coordination with other entities.

The considerations in this memo are provided for guidance in the feasibility study only. All of the matters addressed here will need to be more fully considered in light of the actual proposed design and proposed operation. The design and operating plan will be subject to review and approval by MassDOT.

Market Program

Although the full program for the market will not be known until PPS completes its study, certain aspects of the program have emerged from discussions with PPS and DAR. In addition to the sale of vegetables and fruits, the market is likely to include the sale fresh fish, meat, and dairy products. It also is likely to include one or more restaurants and food preparation areas. Key aspects of the market program that will affect the facility and other uses within the building include:

- Service bay. Efficient deliveries to the market is critical.
- Entrances and windows. PPS has suggested the possibilities of adding entrances to the building, reconfiguring some of the existing entrances, and replacing some windows to allow portions of the building to be opened to the surrounding sidewalk.

- Interior walls. PPS has suggested the possibility of changes to interior walls to improve circulation.
- Rest rooms. Additional restrooms beyond the two provided will likely be necessary for the market.
- Utilities. The market will need adequate electrical and water utilities.
- Floor drainage. PPS is working on approaches to provide for floor drains to allow at least some portions of the market to be washed down regularly.
- HVAC. HVAC will need to be provided, and if restaurant or food preparation facilities are included in the market, additional ventilation will be required.
- Sidewalks and plazas. PPS has proposed that the market should spill out on to the surrounding sidewalks, particularly the large sidewalk plaza on the Greenway side of the building.

Building Facility Considerations

Considerations in the development of a market with respect to the building itself include:

1. Floor drainage and added restroom drainage. There are several possible solutions to providing floor drains and drainage for added restrooms for the market:
 - a. Raised floor. Create a raised false floor adjacent to the sections of the floor that are already raised and provide for drainage below the false floor but above the existing floor slab.
 - b. Roof drain channel. Use the existing channel below the floor with removable panels that currently acts as a route for the roof drain. It appears that there is adequate space within this channel to locate additional drainage. It will not be possible to connect directly to the roof drain system, however, because it is a storm drain and the floor drainage from the market must connect to the sanitary sewer system. Use of this channel is complicated by the need to provide a route for the market drainage to the sanitary sewer connection within the mechanical area on the opposite side of a slurry wall from the channel, preferably without passing through the electrical room below. Some combination of coring through the slurry wall and/or floor slabs may be required.
 - c. MBTA and restroom drain. It may be possible to connect to an existing drain currently cast into the floor slab that provides drainage for the MBTA space and the planned restrooms. It should be noted that this drain currently does not work properly due to a construction defect that resulted in a low point requiring periodic flushing as maintenance. It is also likely that this line does not have the capacity to accommodate the market's floor drains, and additional restroom facilities, if required. If a connection to this line is sought, the defect should be remedied during construction.
 - d. Maintenance responsibility. It will be the responsibility of the market operator to maintain new and existing drainage systems used by the market space.
2. Heating, Ventilation, and Air Conditioning. No HVAC system has been built for the space. The market developer must provide an independent HVAC system for the first floor. The location of the ventilation route and outlet for the system needs to be determined. Ventilation of a restaurant or food preparation area alongside the south exhaust ventilation stack may be possible, but must be examined

in detail. Creating openings in the garage structural floor system to allow vertical ventilation runs is unlikely to be approved.

3. Electrical. The market developer must install an electrical distribution system from the NSTAR transformer in the vault in the mechanical area of the building. The market developer must determine if the current service to the building is adequate to handle the additional loads of the market, and make any provisions if additional service is required. The system should be separately metered from other uses in the building. Consideration should be given to a bus duct suspended from the ceiling to distribute power to individual vendor locations in the market. The market developer also must provide accessible chases or other spaces for electrical service to be provided to the upper floors of the building. Existing electrical cables within the market space need to be surveyed by MassDOT and, if they pose obstructions, bypassed and/or removed prior to market construction.
4. Water. Water service is provided from the mechanical area in the basement. The market developer must provide a feed from this area to the market space and a distribution system. The market developer also must provide an accessible chase or other space for water service to be provided to the upper floors of the building.
5. Fire protection. A full sprinkler system will need to be built out for the market space. The space currently is provided with a 6-inch wet header line. The market developer must provide for branching from this header line. This system is and should remain independent from the rest of the building.
6. Fire detection. The market developer must provide a detection system with both heat and smoke detection. The system should be an independent system that connects to the building's main fire detection system.
7. Entrances, windows, and exterior wall changes. Changes to the building entrances and first-floor façade are allowed, so long as they provide adequate building egress and are sealed and secured appropriately. Note that any changes to the exterior of the building are subject to review and approval of the Massachusetts Historic Commission, acting in its role as the State Historic Preservation Officer. Use of the existing entrance directly from the MBTA station and the introduction of any additional entrances from the MBTA station must be approved by the MBTA.
8. Interior walls. In general, interior existing walls are fixed and cannot be moved or reconfigured. In the area of the narrow passage between the west corner and the center of the building, a cast-in-place supports the garage ramp above and cannot be altered. The concrete masonry unit wall on the other side of the passage forms the edge of the MBTA station; any alterations to this wall must be approved by the MBTA. On the Blackstone Street side of the building, it may be possible to remove one interior wall, as noted below under security issues.
9. Ceiling. The first-floor market space was originally intended to have a ceiling. The market architect and engineer must determine if it is feasible and advisable to build out the space without a ceiling, or an appropriate ceiling must be provided.
10. Ventilation exhaust stacks. The highway ventilation exhaust stacks on both sides of the office lobby are enclosed by a protective CMU wall, not to be breached or affixed against under any circumstances. The market design should provide an additional interior wall spaced from the CMU wall by at least the depth of a standard interior stud. This wall is not to be attached to the CMU protective wall.

Required Building Repairs

11. Garage leaks. The garage is located over approximately half of the market space. There are two major leaks from the garage into the first floor, both of which need to be addressed in order for the market to use the ground floor below the garage:
 - a. Expansion joints. Each of the garage floors has a horizontal expansion joint located at approximately the center of the building. In addition, there are vertical expansion joints in the walls at these locations. Due to age, vibration, and damage, all of the horizontal expansion joints need to be replaced in their entirety, including the water catchers located under each joint. Consideration also should be given to the installation of devices to reduce vertical movement between the two sides of the expansion joints. A cost estimate for these repairs should be prepared.
 - b. Stairwell joints. The joints between the north stairwell tower and the garage floors appear to be leaking and in need of repairs.
12. Elevators. There are two hydraulic garage elevators in the shared lobby that will connect the garage to the market space. Elevator #1 is currently operating but needs to be refurbished with respect to interior finishes, including floor, walls, and ceiling. Elevator #2 is currently inoperable due to a bent shaft that must be replaced, and also needs new interior finishes.
13. Lobby doors. The elevator lobby doors, which are shared with the market, do not automatically close. These doors need inspection and repair.

Operational Considerations

14. Service bay. MassDOT currently uses the service bay regularly and will need 24-hour access for ventilation building operations. The market's use of the service bay cannot obstruct the ventilation building freight elevator, the service bay entrance door to the ventilation building, or the roll-up door providing equipment access to the ventilation building. Specific considerations or proposals with respect to the service bay include:
 - a. Division of service bay. Although MassDOT is open to other approaches that meet these operational requirements, MassDOT proposes that the service bay be striped down the center and moveable cones used to limit the market's use of the bay to the western half. To ensure flexibility for MassDOT use of the service bay for emergencies and major ventilation building repairs, no fixed division of the service bay is recommended. If the market uses a compactor or dumpster, it can be located immediately alongside the loading dock ramp in order to maintain MassDOT access. It should be noted that there is potential storage space on the west side of the loading dock underneath the garage ramps that could be made available to the market.
 - b. Gate replacement. To better enable shared use of the service bay and to provide additional security, MassDOT believes it would be preferable to replace the current swinging gates at the entrance with a roll-up door. The interior clearance for the swinging doors currently limits the space within the service bay that can be occupied. The posts which support the swinging doors also narrow the entrance, limiting it to one large vehicle entering at a time, rather than two vehicles, which the width of the service bay appears to otherwise accommodate.

- c. Snow melter. In addition to the gate, a snow melter is located at the entrance to the service bay. Either the existing snow melter must remain in place, or a functionally equivalent snow melter installed to keep the entrance to the service bay clear.
 - d. Supervision and hours of delivery. Deliveries must be supervised directly by market personnel to ensure that market delivery vehicles do not at any time impede MassDOT access to the ventilation building. Market deliveries should be scheduled to minimize conflicts and traffic impacts. Such supervision could be provided by a dedicated service bay attendant to support routine delivery hours.
 - e. Traffic management. The traffic implications of market deliveries also should be analyzed. The possible need for a police detail to direct street traffic at the service bay at key delivery times should be considered.
 - f. Alternate delivery locations. In lieu of sharing the existing service bay, the creation of alternative delivery entrances or curbside delivery for the market also should be considered. All such alternative arrangements will be subject to review and approval by the Boston Transportation Department.
 - g. Emergency and maintenance uses. In cases of emergencies, emergency repairs, or scheduled major renovations and repairs at the ventilation building, MassDOT must retain the right to use the entire service bay. Every effort will be made to coordinate these activities with the market's use of the service bay.
15. Security. Multiple uses of the Parcel 7 building will require that appropriate measures be taken to provide for security for MassDOT facilities. The ventilation building areas are considered security sensitive areas and must be secure from public access. Specific security measures required will be:
- a. Service bay. Added security measures, including enhanced locking systems and alarms must be put in place on all ventilation building entrances from the service bay, including the roll-up door, the entrance door, and the freight elevator.
 - b. Market, office, and ventilation building emergency exit. Currently there is a shared emergency exit to the plaza from the market space, the second-floor of the office space, and the ventilation building. Security measures must be introduced to ensure that this market emergency egress does not provide access into the ventilation building.
- If the market introduces a new street entrance adjacent to this emergency exit, it may be possible to eliminate the first-floor egress hallway altogether, adding its floor area to the market. To do so, emergency egress from the office and ventilation building would have to be into the market and out the new entrance. This would simplify building security and widen this passage within the market. Any such proposal must be reviewed and approved by appropriate permitting authorities to ensure that the reconfigured building will meet applicable codes.
- c. Garage elevator lobby. Added security measures must be put in place on the entrance to the ventilation building and building mechanical area located in the garage elevator lobby. Required measures could include enhanced locking systems and alarms. In addition, protocols for shared access to the building mechanical area must be developed with MassDOT.

- d. Office. The office lobby area was originally conceived to be an entrance into the market area which can be closed at certain hours. If used as a market entrance, the existing interior doors are likely to be secured when the office is not open. Access and circulation for the market should be planned accordingly.
16. Cleanliness and pest control. The market operator will be responsible for maintaining a clean operation throughout the building that does not attract rats, insects, or other pests, particularly in storage and compactor/dumpster areas. If any rat or other pest problems develop anywhere in the building, the market operator will be responsible for eliminating it.
17. Snow removal and sidewalk maintenance. The public market operator will be responsible for snow removal and sidewalk maintenance around the building.
18. Use of garage. The garage will be available for patron parking with the same validation program offered to the Haymarket Pushcart Association and other North End businesses. Use of the garage for deliveries is unlikely to be approved, due to height limitations, internal garage traffic considerations, and elevator access to the garage. The maximum height to enter the first through third levels of the garage is 7 feet, 6 inches; the maximum height to go to the roof level is 6 feet, 8 inches.
19. Use of office space. Development plans, including uses, for the four floors of office over the east side of the market space have not been determined. Although it may be possible to locate market administrative offices upstairs, this should not be assumed in any analysis or planning for the market. The office space is not to be used as a storage area for the market.

Coordination and Permitting

20. MassDOT. All design and construction work for the market must be reviewed and approved by MassDOT through the Highway Division District 6 office.
21. Federal Highway Administration. The FHWA has review and approval authority over both the design of the market and the lease or other agreement assigning rights to the space. Typically, the design will be forwarded to FHWA for review after complete review and approval by MassDOT.
22. City of Boston. The design and operation of the market is subject to various City of Boston review and approval procedures, including zoning, building, health, fire, and traffic approvals. The market project should continue to be coordinated closely with the Boston Redevelopment Authority.
23. Historical Reviews. Changes to the exterior of the building probably will require review and approval of the Massachusetts Historical Commission, acting as the State Historic Preservation Officer, in consultation with the Boston Landmarks Commission.
24. Haymarket Pushcart Association. The market must be operated in a manner that complements the activities of the Haymarket Pushcart Association. Operation of the market cannot directly compete or conflict with the HPA operations.

H Community Meeting Notes_February 23, 2011

Community Workshop Notes: February 23, 2011

Look and Feel

- Sustainable and green/promote good health (6 comments)
- Light/bright, more natural light (6)
- You know you are in Boston (5)
 - Not generic tourist market
 - Tie in with North End parks and festivals
 - Traditional NE celebration
 - Traditional design like wicker baskets for produce
- Colonial/New England Traditional (4)
- Comfortable, Accessible, Inclusive (4)
- The outside invites you inside and the inside is NOT confining and stuffy (3)
- Cozy rustic (3)
- Bright and colorful (2)
- Mixed with history-like Boston, mix of modern and historic (2)
- Welcoming (2)
- Materials:
 - Wood (2)
 - Brick (2)
 - Cobblestones
- Cobblestones and Brick (2)
- “Special” feel, not like grocery store (2)
- Cutting edge green sustainable-LEED certified (2)
- Apps for tourists
- Family friendly bathrooms
- Not modern, not “band new”
- Homey
- Not too noisy
- Eclectic
- “Proudly Public”
- NOT industrial kitchen feel
- Show cultural side of Boston
 - Mixed with exits and layouts
- Attraction for all ages
- “Modern Future”
- Integrated modern elements
- Not a bus terminal
- Wide aisles
- Year-round access
- Plenty of restrooms
- Low rent stalls for greater diversity
- NO kitsch

- Signage!
- Good path through market
- Handicap accessible
- Wide pathways
- Bike delivery co.
- Flexible floor-plan
- Sidewalk trees and landscaping
- Rooftop garden/apiary
- Reading Terminal, not like Ferry Terminal
- Map w/ origins located
- No corporate presence
- Glass, Stainless, Tile-subway, Clean
- Earth tones
- Lots of seating, stools, benches
- Not like a mall
- Vibrant and busy
- Smells wonderful
- Inspires
- Civic
- Connection/ part of the Greenway

Inside Activities

- Educational (25+)
 - Cooking classes/schools (14)
 - Seasonal (5)
 - Kids Activities General (4)
 - School fieldtrips (3)
 - Kids in the kitchen
 - School Tours
 - Youth food forum
 - Meet your farmer/vendor” (2) “
 - Flower Arranging (2)
 - Cooking contests (2)
 - Vegetable preparation/butchering(2)
 - Guided market tours
 - Children’s theatre
 - Interactive cooking space dedicated to ‘preserving the season’
 - Apprenticeship program: learn to butcher, make cheese, market internship
 - Lear how to cook soups
 - Cooking on a budge
 - Gardening
 - Book signings
 - Stress reduction and healthy living programs

- Allergy Awareness
- Family Education: Waste Management/ House Sustainability
 - Mass Farmers-Maple Syrup, Grape crushing, Weavers, Wool spinning, canning, pickling
- Restaurant or Bar (Local Food, Microbrewery) (4)
- Seating area for eating/resting (3)
- History displays/exhibits (2)
 - Scavenger hunt
- Tastings, generally (2)
- Beer/Wine tasting (2)
- Rotating art demonstrations (2)
- Local Jewelry and Artisans (2)
- Mini amphitheatre/classes/demo area (2)
- Music (2)
 - Roving Musicians
- Coffee/tea/cocoa tasting
- Coffee Roasting
- Place to wash fruit and vegetables so one can eat them right away
- Auctions
- Gardening advice
- Ice sculptures
- Public Art
- Local Personalities
- Restaurant Stalls
- Spinning and weaving
- Chicken Incubator
- Tech-Based
- Web-cam
- Free Wi-Fi
- Food themed library
- Large Program Area
- Event space to host events like, Lamb Jam, Cochon 555, Bacon & Beer Fest.
- Dedicated market evening - open late
- Community run 'food network'
- Loading zone for restaurants
 - Sourcing/distribution
- Beehive
- Disposal of leftovers to charity
- Acoustic music
- Programs with food network WGBH

Outside Activities

- Live music/entertainment (10)

- Benches, seats and tables for eating/congregating (10)
- For demonstrations (10+)
 - Occasional livestock (5)
 - General (3)
 - Milking
 - Cheese making
 - Soap making
 - Nut roasting
 - Ice Cream Making
 - Cranberry BOG Demo
 - Candle Making
 - Food/Drink competitions – fundraising
 - Flowers
 - Kid oriented festivals
- Children’s Space (5)
- Food trucks (5)
- Recycling/Compost site (4)
- Seasonal Vendors: Christmas Trees, Turkeys (3)
- Café/Wine Bar (3)
- Bike racks (3)
- Vendor Stalls (3)
- Pop-up restaurants (3)
- Learning/community garden (2)
- Space for dancing (2)
- Public art, sculptures (2)
- Movie screening (2)
 - Kid-oriented
 - Documentaries
- Artshows, Arts group installations, mural images of veggies
- Sheep Shearing
- Something besides pavement
- Dog friendly area
- Bocce Court
- Scavenger Hunt
 - Art, clowns, farming, candles, planting, etc.
- Chess Tables
- Cook-offs
- Non-profit tents
- Local book store
- Book signings – celebrity chefs
- Sell plants in flats
- Greenway Food Service
- Stage/seating
- Buskers
- Sidewalk Sam

- Art Vendors
- Small community garden
- Farm animals/petting zoo
- Greenhouse
- Water feature
- Demo on urban gardening
- Politicians-meet your local rep
- Competition-interactive best produce of week vote, etc.
- Exercise
- Monthly event-field trip offered, to go to vendors farm/etc.-possible fundraiser activity

Potential Partners

- Culinary Schools, Cambridge Culinary (7)
- Colleges/Universities (BU, Newbury College, Tufts) (7)
- Hospitals (4)
 - MGH and MEEI
 - Harvard Pilgrim (2)
 - Children's
- Mass Farm Bureau/ Dept. of Agri. (3)
- Professional sports teams (3)
- Local Chefs/Restaurants, Chefs Collaborative (3)
- Mass. Restaurant Assoc. (2)
- BPMA (2)
- Tourism bureau-by location, by day (2)
- MFA / ICA (2)
- Kids can cook/ Agriculture in classroom(2)
- Boston Food Bank (2)
- Banks (2)
- WIC (2)
- Insurance companies (2)
- High-tech businesses (2)
- Museums, Aquarium, Children's and Science (2)
- Hotels
- Michelle Obama/Jamie Oliver Grants
- Future chefs
- Farm Aid
- Dole & Bailey
- Mass Roadside Stand Assoc.
- Local Small Farms
- Cape Cod Cranberry Growers Assoc.
- Boston Center for Adult Ed.

- Mass. Brewers Guild
- Humane Society
- Vegetable Circus
- Bikes not bombs, boston bike, boston cyclist union
- CHIVE Sustainable Event Design and Catering, www.chiveevents.com
- County Ag. Organizations
- City of Boston
- Culinary Guild
- Regional and state Reps.
- BCAE/CCA
- Bunker Hill
- UMass Extension
- Blue Cross Blue Shield
- Haley House
- Food Project
- Project Bread
- Crop Circle Kitchen
- Food Project
- Building owners
- Nutrition community
- Land preservation
- MDAR
- Local gyms
- Yoga studios
- Comcast
- Google
- Microsoft
- Real estate developers
- Corporations
- Whole Foods
- Harpoon Brewery
- Main St. Initiatives
- Symphony
- Groupon/Constant Contact
- Lydia Shire
- Jasper White
- Food Network
- WGBH
- Cooks Illustrated
- Greenway Conservancy
- Boston Opera Co.
- Public Schools

Products

Food

- Cheese (14)
 - H&S
- Fish and Seafood-affordable (14)
 - Shellfish (2)
 - Oysters (1)
- Produce – Fruit and Vegetables (13)
- Bread (12)
 - Sandwich loaves
 - Pastries (5)
 - Pies
 - On-site bakery
- Meat and Poultry (11)
- Locally Produced (9)
 - Grown
 - Crafted (2)
 - Caught
 - Harvested
 - How is this defined? NE? (RI, MA, ME, VT)
 - Wine (3)
 - Meat
- Wine (8)
- Beer (8)
- Eggs (7)
- Locally Roasted Coffee/Tea (7)
- Prepared food
 - Healthy local, “Grab n’ go” dinners for commuters (6)
 - Sandwich, sauce, jam (2)
 - Artisan-made products like vinegar and salsa
 - Hummus
 - Noodles
 - Sausages (2)
 - Ethnic Specialties (5)
 - Gluten free foods
 - Dear’s Beans
- Spices (6)
- Herbs (5)
- Pasta-fresh and dry (5)
- Maple and honey products (4)
- Nuts and Dried Fruit (4)
- Artisan Chocolates (3)
- Honey (3)
- Dairy, milk and yogurt (3)
- Specialty produce (3)

- kohlrabi
- Ethnic ingredients (Asian) (2)
 - okra
 - kousa
 - bitter melon
- Delicatessen and Charcuterie (2)
- Ice cream (2)
- Juices and lemonade (2)
- Grains (2)
- Game
- Organic/Traditional
- Smoothie
- Brewery and wine-making supplies
- Liquor
- Mead
- Foraged items – mushrooms, berries, etc.
- Rotating stands-farmers aren't stretched so thin, more variety, different vendors, different days
- Central shipping area for tourists, ability to send food/product home
- Coop/Bulk Wine Purchasing (Bring your own Jug) & Grains & Olive Oil
- Responsible growers/producers

Non-Food

- Flowers (9)
- Plants and seeds (3)
- Wool, hemp, weavers, Mass. Forest Products (3)
- Craft (3)
- Soap (3)
- Kitchen gear-tools, utensils (3)
- Scented candles (2)
- Local art (2)
- Jewelry
- Bedding plants
- Seeds
- Food/farming books (local authors)
- Potpourri
- Knife Grinding
- Gardening supplies
- Bike-deliverables service for locals
- Sustainable (not disposable) products

I Conceptual Cost Estimate

Project:Boston Public Market Implementation Plan - Parcel 7

Owner: Massachusetts Dept. of Transportation

Consultant: Project for Public Spaces

Cost Estimator: North Bay Company, Inc., 125 Church St., Unit 90-123, Pembroke, MA 508-686-2781

Date:3/31/2011

Conceptual Cost Estimate

Introduction

Project Description:

Infrastructure and Fit-out of raw leasable space for the Boston Public Market

Project Particulars:

Boston Market Preferred Concept Layout dated March 25, 2011 prepared by Projects for Public Spaces
Detailed quantity takeoff from these documents where possible.

Project Assumptions:

Construction will be phased to allow each trade to perform their work with least amount of impact on other trades and occupants
Building will be occupied with the safety and protection of the occupants included
Access for workers will be provided through the interior of the building
The project will be publicly bid and performed by a Prime General Contractor certified by DCAM using prevailing wage rates
Costs are based on a competitive bid process in all trades and sub-trades
Unit costs and labor are based on current construction costs in Metro Boston
General Requirements value covers bonding and insurances for the GC

Project Exclusions:

Site or existing conditions surveys
Hazardous materials survey, report and removal
Regulated material removal or disposal
Printing and Advertising
Testing and Inspections
Independent structural or fireproofing inspections
Demising walls or corridors at loading dock area
Repair expansion joints at garage to prevent leaking into space
Sidewalk replacement above and beyond repair at utilities
Elevator cab refurbishments, shaft and rail repairs
Installation of extensive floor drainage system

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Date: 3/31/2011

Conceptual Cost Estimate

No. of SF: 27,300

Grand Summary

DIVISION	ELEMENT	Preferred Layout
TOTAL DIRECT COSTS INCLUDING GENERAL CONDITIONS		\$ 4,391,710
	OVERHEAD AND PROFIT (7.5%)	\$ 329,378
	TOTAL - DIRECT COST AND OH&P	\$ 4,721,089
	CONTINGENCY (15%)	\$ 708,163
	SUBTOTAL INCLUDING CONTINGENCY	\$ 5,429,252
	ESCALATION (3%)	\$ 162,878
	SUBTOTAL INCLUDING ESCALATION	\$ 5,592,129
	ARCHITECTURAL, ENGINEERING AND SUBCONSULTANT FEES (7%)	\$ 391,449
	SUBTOTAL INCLUDING DESIGN FEES	\$ 5,983,579
TOTAL - CONCEPTUAL COST ESTIMATE		\$ 5,983,579
	COST PER SQUARE FOOT	\$ 219.18
ALTERNATES		\$ 1,653,786
	Mezzanine Allowance	\$ 160,048
	Tenant Interior Allowance - Inclusive of Equipment and Lighting	\$ 1,085,175
	Bakery Café Allowance - Inclusive of Equipment and Lighting	\$ 125,108
	Day Stall Allowance	\$ 213,840
	Office Allowance	\$ 69,615
TOTAL - CONCEPTUAL COST ESTIMATE (INCLUSIVE OF ALTERNATES)		\$ 7,637,365
	COST PER SQUARE FOOT	\$ 279.76

Project:Boston Public Market Implementation Plan - Parcel 7

Date:3/31/2011

No. of SF: 27,300

Building Summary

DIVISION	ELEMENT		DIVISION TOTAL	% OF PROJECT	COST/SF
1	GENERAL CONDITIONS AND REQUIREMENTS		\$ 612,731	14%	\$ 22.44
2	SITWORK		\$ 147,429	3%	\$ 5.40
	Selective Demolition	\$ 52,234			
	Earthwork	\$ 800			
	Unit Paving, Curbs and Gutters	\$ 29,395			
	Utilities	\$ 35,000			
	Site Improvements	\$ 30,000			
3	CONCRETE		\$ 39,920	1%	\$ 1.46
4	MASONRY		\$ 81,100	2%	\$ 2.97
5	METALS		\$ 118,150	3%	\$ 4.33
6	WOOD, PLASTICS AND COMPOSITES		\$ 36,940	1%	\$ 1.35
	Rough Carpentry	\$ 11,790			
	Finish Carpentry and Millwork	\$ 25,150			
7	THERMAL AND MOISTURE PROTECTION		\$ 29,690	1%	\$ 1.09
8	OPENINGS		\$ 383,340	9%	\$ 14.04
	Doors, Frames, and Hardware	\$ 46,070			
	Storefront, Glass and Glazing	\$ 337,270			
9	FINISHES		\$ 630,452	14%	\$ 23.09
	Gypsum Board Assemblies	\$ 149,590			
	Acoustical Ceilings	\$ 98,625			
	Flooring and floor covering	\$ 320,687			
	Painting	\$ 61,550			
10	SPECIALTIES		\$ 429,968	10%	\$ 15.75
11	EQUIPMENT		\$ 177,400	4%	\$ 6.50
12	FURNISHINGS		\$ 82,500	2%	\$ 3.02
13	SPECIAL CONSTRUCTION		\$ -	0%	\$ -
14	CONVEYING SYSTEMS		\$ -	0%	\$ -
15	MECHANICAL		\$ 1,079,233	25%	\$ 39.53
	Fire Suppression	\$ 89,100			
	Plumbing	\$ 360,400			
	HVAC	\$ 629,733			
16	ELECTRICAL		\$ 542,857	12%	\$ 19.88
TOTAL DIRECT COSTS INCLUDING GENERAL CONDITIONS			\$ 4,391,710	100%	\$ 160.87

Project: Public Market Implementation Plan - Parcel 7

Date:3/31/2011

Conceptual Cost Estimate

Trade Cost Details

DIVISION	ELEMENT	QTY	UNIT	UNIT COST	SUBTOTAL
1	GENERAL REQUIREMENTS				\$ 612,731
	Dumpsters	7	EA	\$ 935.00	\$ 6,545
	Engineering & Layout	12	DYS	\$ 1,200.00	\$ 14,400
	Fire Watch	20	DYS	\$ 1,200.00	\$ 24,000
	Police Details	90	DYS	\$ 1,200.00	\$ 108,000
	Street & Sidewalk rental	20	DYS	\$ 2,000.00	\$ 40,000
	Temporary electrical consumption	9	MOS	\$ 1,000.00	\$ 9,000
	Temporary toilet rentals	40	WKS	\$ 200.00	\$ 8,000
	Temporary walls	400	SF	\$ 6.00	\$ 2,400
	Cleaning and waste management	20	DYS	\$ 800.00	\$ 16,000
	Final cleaning	40	HRS	\$ 200.00	\$ 8,000
	Labor steward	1,440	HRS	\$ 110.00	\$ 158,400
	Carpenter steward	800	HRS	\$ 120.00	\$ 96,000
	Small tools, saw blades, demo tools	1	LS	\$ 3,500.00	\$ 3,500
	misc. safety equipment, protection	1	LS	\$ 4,000.00	\$ 4,000
	Project Manager / Supervisor	40	WKS	\$ 1,800.00	\$ 72,000
	Permitting -- \$100 + \$9.10 per \$1000 of const value	1	LS	\$ 6,470.00	\$ 6,470
	Final clean by GC	16	HRS	\$ 76.00	\$ 1,216
	Bonding - 0.75%	1	LS	5,250	\$ 5,250
	General Liability Insurance - 0.065%	1	LS	4,550	\$ 4,550
	Winter Conditions	5	MOS	5,000	\$ 25,000
2	SITWORK				\$ 147,429
	Selective Demolition				\$ 52,234
	Remove existing pair of drs, frms, hdwr	2	EA	\$ 135.00	\$ 270
	Remove drs, frms hdwr	4	EA	\$ 106.00	\$ 424
	Light fixture removal	8	EA	\$ 55.00	\$ 440
	Rubbish handing	90	EA	\$ 150.00	\$ 13,500
	Dumpsters/Trucking	4	EA	\$ 935.00	\$ 3,740
	Sawcut, break, slab demo, trenching	3,000	SF	\$ 9.93	\$ 29,790
	Misc. coring	37	EA	\$ 110.00	\$ 4,070

DIVISION	ELEMENT	QTY	UNIT	UNIT COST	SUBTOTAL	
	Earthwork					\$ 800
	paving stone dust	2	CY	\$ 400.00	\$ 800	
	fine grade material			\$ -	\$ -	
	Unit Paving, Curbs and Gutters					\$ 29,395
	Remove and replace brick unit paving	800	SF	\$ 35.00	\$ 28,000	
	Remove and reset cut stone curbs	30	LF	\$ 46.50	\$ 1,395	
	Utilities					\$ 35,000
	Natural gas	1	LS	\$ 35,000.00	\$ 35,000	
	Sanitary connection		LS		\$ -	
	Water		LS		\$ -	
	Site Improvements					\$ 30,000
	Misc site improvements	1	LS	\$ 30,000.00	\$ 30,000	
3	CONCRETE					\$ 39,920
	Slab repair and patching	27,300	SF	\$ 0.40	\$ 10,920	
	Concrete pads for equipment	1	LS	\$ 3,000.00	\$ 3,000	
	Form and place concrete stairs at raised floor	2	EA	\$ 2,500.00	\$ 5,000	
	Form and place concrete ramps	30	CY	\$ 700.00	\$ 21,000	
	Polish concrete floor			See floor finishes		
4	MASONRY					\$ 81,100
	CMU Partitions	2,460	SF	\$ 30.00	\$ 73,800	
	CMU patch and repair at new openings	100	SF	\$ 35.00	\$ 3,500	
	Repair and patch brick veneer at new openings	100	SF	\$ 38.00	\$ 3,800	
5	METALS					\$ 118,150
	Structural Steel					\$ -
	Miscellaneous Metals					\$ 118,150
	Misc. metals	2	TNS	\$ 7,500.00	\$ 15,000	
	Metal stairs	0		\$ -	\$ -	
	Metal railings at raised floors and loading dock	200	LF	\$ 54.50	\$ 10,900	
	Toilet partition supports	9	EA	\$ 550.00	\$ 4,950	
	Steel angles at vanity counters	264	LF	\$ 75.00	\$ 19,800	
	Strutural steel at new slab openings for shafts	700	LF	\$ 89.00	\$ 62,300	
	Supports for mechanical equipment	200	SF	\$ 26.00	\$ 5,200	
	Grating				\$ -	

DIVISION	ELEMENT	QTY	UNIT	UNIT COST	SUBTOTAL
6	WOOD, PLASTICS AND COMPOSITES				\$ 36,940
	Rough Carpentry				\$ 11,790
	Misc. rough carpentry -- blocking, temp walls	27,300	SF	\$ 0.20	\$ 5,460
	Roof curbs	140	LF	\$ 7.50	\$ 1,050
	Storefront blocking	1,200	LF	\$ 4.00	\$ 4,800
	Backboards	96	SF	\$ 5.00	\$ 480
	Finish Carpentry and Millwork				\$ 25,150
	Millwork	1	LS	\$ 15,000.00	\$ 15,000
	Counter tops and laboratory tops	70	SF	\$ 145.00	\$ 10,150
7	THERMAL AND MOISTURE PROTECTION				\$ 29,690
	Roofing				\$ 10,000
	Patch roofing at mechanical penetrations and misc. repairs	400	SF	\$ 25.00	\$ 10,000
	Sealants				\$ 13,930
	Fire safing	27,300	SF	\$ 0.10	\$ 2,730
	Exterior joint sealants at glazing and louver penetrations	3,500	LF	\$ 3.20	\$ 11,200
	Fireproofing				\$ 5,760
	Patch existing fireproofing	4	DYS	\$ 1,440.00	\$ 5,760
	New fireproofing at new structural steel	0	LF		\$ -
8	OPENINGS				\$ 383,340
	Doors, Frames, and Hardware				\$ 46,070
	Hollow metal doors and frames	14	EA	\$ 900.00	\$ 12,600
	Specialty hardware - door pedestrian counters	10	EA	\$ 480.00	\$ 4,800
	Hardware	14	EA	\$ 265.00	\$ 3,710
	Replace swinging gates at service bay with 2 new overhead coiling doors	2	EA	\$ 12,480.00	\$ 24,960
	Storefront, Glass and Glazing				\$ 337,270
	Remove double pair of doors at CL A	1	LS	\$ 650.00	\$ 650
	Add 2 new pair of store front doors east corner	4	EA	\$ 3,200.00	\$ 12,800
	New entrance at delivery zone	2	EA	\$ 3,200.00	\$ 6,400
	Add pair of storefront doors at bakery café	1	EA	\$ 3,200.00	\$ 3,200
	Interior vestibule doors	8	EA	\$ 3,200.00	\$ 25,600
	New storefront glass and glazing	1,200	SF	\$ 62.00	\$ 74,400
	Nana Wall - operable glass wall systems	960	SF	\$ 154.00	\$ 147,840
	Revolving door entrances	1	EA	\$ 49,100.00	\$ 49,100
	New entrance to T Station	240	SF	\$ 72.00	\$ 17,280

DIVISION	ELEMENT	QTY	UNIT	UNIT COST	SUBTOTAL
9	FINISHES				\$ 630,452
	Gypsum Board Assemblies				\$ 149,590
	Back up at exterior wall	2,100	SF	\$ 6.40	\$ 13,440
	Shaft wall	3,200	SF	\$ 7.50	\$ 24,000
	False wall at vent shafts	3,600	SF	\$ 6.00	\$ 21,600
	Utility closet walls, toilet rms, elec closets	7,540	SF	\$ 7.50	\$ 56,550
	Gypsum ceilings	1,000	SF	\$ 9.50	\$ 9,500
	FRP panels on walls	3,500	SF	\$ 7.00	\$ 24,500
	Acoustical Ceilings				\$ 98,625
	Acoustical ceiling		SF	\$ 5.89	\$ -
	Specialty ceilings - grid system in market	26,300	SF	\$ 3.75	\$ 98,625
	Flooring and floor covering				\$ 320,687
	Scarify, polish or etched concrete slab	22,460	SF	\$ 3.25	\$ 72,995
	Floor prep.	22,460	SF	\$ 0.40	\$ 8,984
	Vinyl composite tile		SF	\$ 4.00	\$ -
	Raised access flooring	6,200	SF	\$ 37.00	\$ 229,400
	Vinyl base	1000	LF	\$ 2.70	\$ 2,700
	Porcelain tile	100	SF	\$ 20.00	\$ 2,000
	Removable floor covering at roof drain trench conc. Panels	384	SF	\$ 12.00	\$ 4,608
	Painting				\$ 61,550
	Paint underside of structure and fireproofing above grid	27,300	SF	\$ 1.20	\$ 32,760
	Paint GWB	25,000	SF	\$ 0.60	\$ 15,000
	Doors and frames	20	EA	\$ 100.00	\$ 2,000
	CMU	2,000	SF	\$ 1.80	\$ 3,600
	Misc. patch and repair	27,300	SF	\$ 0.30	\$ 8,190
10	SPECIALTIES				\$ 429,968
	Interior signage	27,300	SF	\$ 0.40	\$ 10,920
	Exterior signage and marketing signage allowance	1	LS	\$ 300,000	\$ 300,000
	Fire extinguishers and cabinets	5	EA	\$ 327.60	\$ 1,638
	Toilet accessories and mirrors	4	SETS	\$ 1,000.00	\$ 4,000
	Toilet Compartments	13	EA	\$ 894.00	\$ 11,622
	Corner gaurds	26	EA	\$ 38.00	\$ 988
	Protective Covers - fabric awnings	5,600	SF	\$ 18.00	\$ 100,800
11	EQUIPMENT				\$ 177,400
	8x10 Cold storage units	12	EA	\$ 6,450.00	\$ 77,400
	Commercial baking ovens, Ice making machines, Fryolators, 12" hoods for fryolators, Service line equipment, Misc. kitchen equipment			See Tenant Allowance	
	Maintenance Equipment, Ice Melter, Trash Compactor, etc.	1	LS	\$ 100,000.00	\$ 100,000
12	FURNISHINGS				\$ 82,500
	Entrance floor mats and frames	1	LS	\$ 7,500.00	\$ 7,500
	Seating - tables and chairs	1	LS	\$ 50,000.00	\$ 50,000
	Site furnishings - benches, bike racks, planters, litter bins, bollards	1	LS	\$ 25,000.00	\$ 25,000
13	SPECIAL CONSTRUCTION				\$ -

DIVISION	ELEMENT	QTY	UNIT	UNIT COST	SUBTOTAL
14	ELEVATORS				\$ -
	Elevators - refurbish interior finishes		Not Included		
	Repair existing bent shaft, rail, damaged equipments		Not Included		
15	MECHANICAL				\$ 1,079,233
	Fire Suppression				\$ 89,100
	Fire suppression system, wet pipe - branching lines from existing 6" header line	27,300	SF	\$ 3.00	\$ 81,900
	dry pipe sprinkler systems	1,500	SF	\$ 4.80	\$ 7,200
	Plumbing				\$ 360,400
	Infrastructure - Water distribution and sewerage	27,300	SF	\$ 8.00	\$ 218,400
	Urinals - wall hung w/ hanger and self closing valve	3	EA	\$ 2,300.00	\$ 6,900
	Water closets w/ flush valve, seat, 1.6 gpf	13	EA	\$ 3,400.00	\$ 44,200
	Lavs	13	EA	\$ 3,400.00	\$ 44,200
	Service sink, wall mounted, 22"x18"	2	EA	\$ 3,500.00	\$ 7,000
	Drinking water fountains, dual level for handicapped	1	EA	\$ 3,400.00	\$ 3,400
	Kitchen & Café Plumbing		See Tenant Allowance		
	Natural gas to roof top AHU's	150	LF	\$ 66.00	\$ 9,900
	Natural gas to kitchen equipment	400	LF	\$ 66.00	\$ 26,400
	HVAC				\$ 629,733
	Testing, adjusting, and balancing	80	HRS	\$ 120.00	\$ 9,600
	Duct and pipe thermal insulation	27,300	SF	\$ 1.00	\$ 27,300
	Control wiring and instrumentation	28	PTS	\$ 1,150.00	\$ 32,200
	Forced draft cooling tower w/ pumps and piping	131	TNS	\$ 973.00	\$ 127,463
	DX AHU	1	LS	\$ 175,000.00	\$ 175,000
	Self contained single package - 30 ton	1	LS	\$ 47,600.00	\$ 47,600
	Hydronic heating radiators	300	LF	\$ 150.00	\$ 45,000
	Spiral ductwork distribution	16,380	lbs	\$ 9.00	\$ 147,420
	Kitchen equipment exhaust w/ ansul system		See Tenant Allowance		
	Baking oven manifold ventilation		See Tenant Allowance		
	Fuel fired unit heaters w/ cabinets, grilles, fan, and piping	4	EA	\$ 2,500.00	\$ 10,000
	Pipe identification labels	50	EA	\$ 75.00	\$ 3,750
	Toilet exhaust	4	EA	\$ 1,100.00	\$ 4,400










DIVISION	ELEMENT	QTY	UNIT	UNIT COST	SUBTOTAL
16	ELECTRICAL				\$ 542,857
	Permitting --	1	LS	\$ 5,500.00	\$ 5,500
	Service and distribution	27,300	SF	\$ 1.92	\$ 52,416
	Panel boards and Infrastructure	27,300	SF	\$ 5.35	\$ 146,000
	Emergency Generator System	1	LS	\$ 29,484.00	\$ 29,484
	Equipment connections	27,300	SF	\$ 2.78	\$ 75,894
	Public Market lighting	25,917	SF	\$ 4.33	\$ 112,117
	Restaurant and Café lighting			See Tenant Allowance	
	Telephone and data	1	LS	\$ 13,377.00	\$ 13,377
	Electronic detection and fire alarm	27,300		\$ 1.53	\$ 41,769
	temp. electrical	9	MOS	\$ 1,300.00	\$ 11,700
	Wiring and devices	27,300		\$ 1.23	\$ 33,579
	Kitchen equipment power and feeders			See Tenant Allowance	
	Security System w/ video monitoring	27,300		\$ 0.77	\$ 21,021
TOTAL DIRECT COSTS					\$ 4,391,710

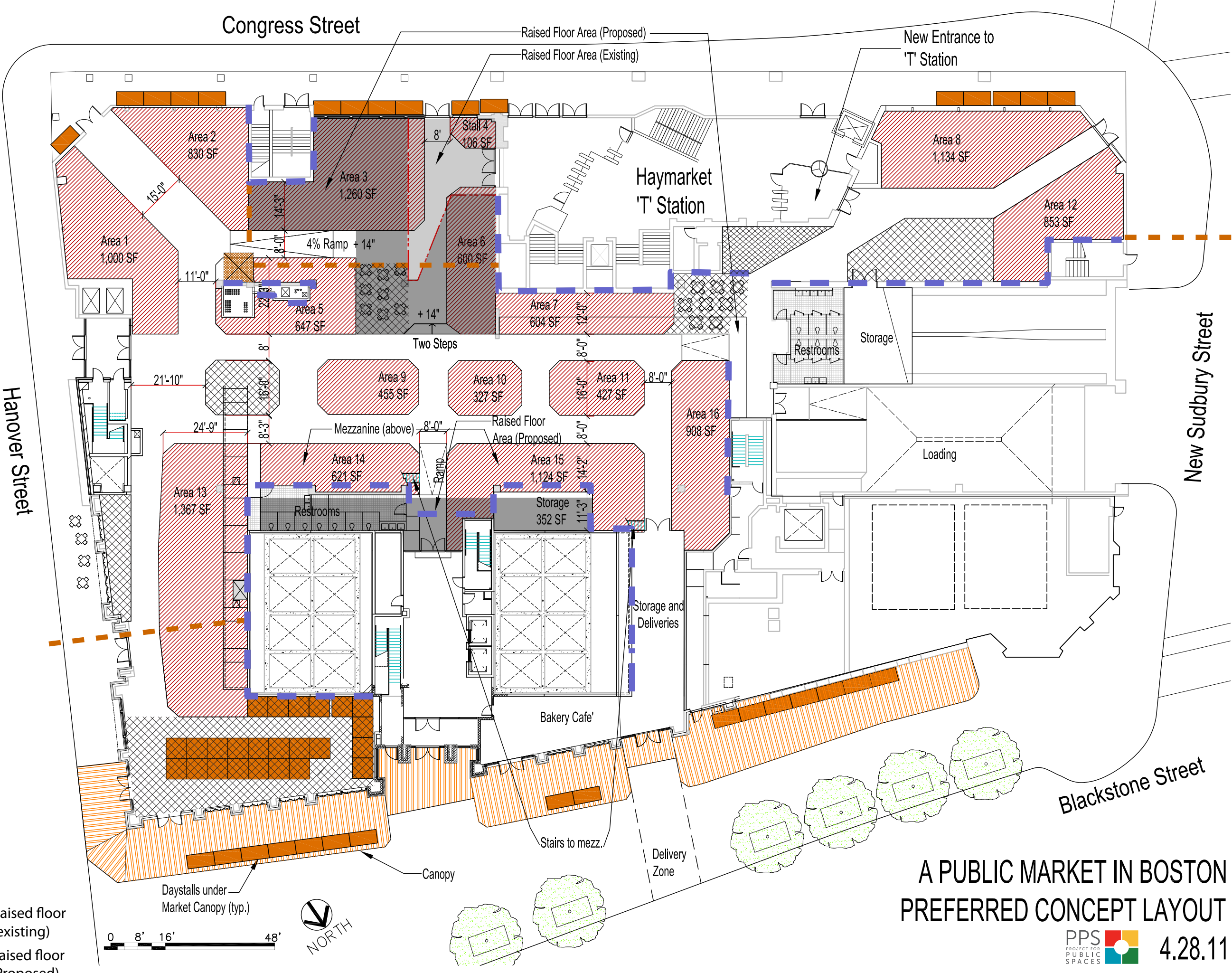
DIVISION	ELEMENT	QTY	UNIT	UNIT COST	SUBTOTAL
ADD ALTERNATES AND ALLOWANCES					
	Mezzanine Allowance	2,858	SF	\$ 56	\$ 160,048
	Tenant Interior Allowance - Inclusive of Equipment and Lighting	14,469	SF	\$ 75	\$ 1,085,175
	Equipment			\$ 612,650	
	Misc kitchen equipment	1	LS	included above	
	Commerical baking ovens with exhaust manifolds	10	EA	included above	
	Ice making machines	2	EA	included above	
	exhaust hoods w/ ansul systems	12	EA	included above	
	Tenant Build-Out			\$ 472,525	
	wall systems, finishes, and lighting			included above	
	Bakery Café Allowance - Inclusive of Equipment and Lighting	629	SF	\$ 199	\$ 125,108
	Day Stall Allowance	27	EA	\$ 7,920	\$ 213,840
	Office Allowance	500	SF	\$ 139	\$ 69,615

J Public Market Conceptual Layout

Leasable Retail Space:	
Area 1	1,000 SF
Area 2	830 SF
Area 3	1,329 SF
Area 4	106 SF
Area 5	647 SF
Area 6	600 SF
Area 7	604 SF
Area 8	727 SF
Area 9	455 SF
Area 10	327 SF
Area 11	427 SF
Area 12	853 SF
Area 13	2,005 SF
Area 14	621 SF
Area 15	1,124 SF
Area 16	908 SF
Bakery Café	629 SF
Interior day stalls @50% of Flex area	953 SF
Total Leasable Retail Space	14,145 SF
Other Leasable Space	
Storage area	TBD SF
Flexible area	2,185 SF
Mezzanine /storage/office	2,858 SF
Total Gross SF =	27,300 SF

LEGEND

-  Permanent Stalls
-  Flexible Space/ Daystalls
-  Daystalls
-  Drainage opening to Level B1
-  Vents for cooking
-  Drainage
-  Wet walls
-  Raised floor (existing)
-  Raised floor (Proposed)



**A PUBLIC MARKET IN BOSTON
PREFERRED CONCEPT LAYOUT**

K Sample Tenant Design Criteria

Tenant Design Criteria Reading Terminal Market Philadelphia

1 Introduction

1.1 History

The Reading Terminal Market traces its roots back to the trading that occurred on the banks of the Delaware following confirmation of William Penn's land grant from Charles II in 1682. The first account of the market is recorded in 1693 when Markham's Council (Markham was William Penn's Lieutenant Governor) suggested numerous regulations for the establishment and management of a market to be located on High Street, later to be named Market Street, after the Market. In 1893 the Market opened at its present location, having moved from Market Street to allow for subway construction. Today the Market is both the heart and soul of the city, providing rich fare and a diverse regional and ethnic sampling of Philadelphia's multi-faceted culture.

1.2 Historical Requirements

Important historical artifacts have been identified in the *Reading Terminal Market Historical Survey* prepared by the Reading Terminal Market Preservation Fund. Items shown in that document may only be altered or removed with the written consent of the Owner and concurrence of the Philadelphia Historical Commission.

1.3 The Market's Future

The traditional close relationship between the merchant and customer that has characterized the Market's past is to be continued. The Tenant is encouraged to develop bold and creative designs for his stand within a set frame work that ensures a lively but orderly character for the entire Market. The stand should allow open and clear contact between merchant and customer and generous and attractive display of all products.

2 Merchant Design Objectives Tenant Design Criteria

2.1 *General Character*

The regular layout of the Market's streets and avenues and the open plan of the stands are critical to easy orientation within the Market and clear accessibility to its offerings. The stand of unpretentious design that acknowledges the tradition and history of the setting has proven itself to be the greatest success for merchant and Market alike, and is highly recommended.

2.2 *Visibility and Open Plan*

Much of the visual excitement of the Market depends on the openness of each stand allowing simultaneous short and long views of the Market as a whole. Each separate stand must be laid out so that it is both an attractive statement in itself and a window providing views to the rest of the Market beyond.

2.3 *Merchandising Objectives*

The goal is the effective display of the full range of products, without clutter and confusion, while maintaining easy but secure access for both customer and merchant. The character of each stand should reinforce the basic product group it offers. A good design allows the product to speak for itself.

2.4 *Durability of Design and Materials*

The long success of the Market is itself one of its greatest strengths. Only durable design and materials will hold up under the high volume usage experienced on a daily basis over the long term. Like any business investment, the stand should be seen as a capital asset that will retain its value only if well planned and properly maintained.

2.5 *Relationship with Contiguous Stands.*

The optimum balance in the Market derives from individual stands that provide unity to the site as a whole while remaining unique unto themselves. Compatibility with adjacent counters, signage and presentation must be taken into consideration and will be reviewed during the approval process.

3 Approval Process Tenant Design Criteria

3.1 *General Procedures*

Each stand will be designed by the Tenant and is subject to the following approval process directed by the General Manager. The General Manager may make an exception to the Design Criteria for one party without allowing any other exception of a similar kind. Tenant design submissions and approvals will be required for the following three phases.

3.2 *Schematic Phase*

The following must be submitted for review and approval by the General Manager:

- A. **Written Material:** One page general description of the Tenant design, materials and approach to merchandising and how these complement the general character and function of the Market.
- B. **Graphic Material:** Plan of the Tenant premises and elevations of all aisle frontage and significant interior construction at $1/2" = 1'-0"$. Throughout the approval process drawings should include the first five feet of construction adjacent to the premises.

3.3 *Design Development Phase*

Drawings at $1/2" = 1'-0"$ scale representing each of the following disciplines shall be submitted for review and approval by the General Manager:

- A. Architectural
- B. Structural
- C. Mechanical
- D. Electrical and Lighting
- E. Plumbing

Additional submissions include:

- F. Cuts of all lighting fixtures, including means of attachment
- G. A drawing of the sign at no less than $3" = 1'-0"$, including means of attachment
- H. Samples of key materials such as tile and countertop

3 Approval Process Tenant Design Criteria

3.4 *Construction Documentation Phase*

Completed Construction Drawings noted above and Specifications must be submitted for review by the General Manager before being submitted for approvals by the Department of Public Health and permits issued by the Department of Licenses and Inspections.

3.5 *Construction Phase*

Before construction may begin the following documents must be submitted to the General Manager: 1. A final set of drawings with all permits and approvals affixed. 2. Approval by the Philadelphia Historical Commission. 3. Certificates of Insurance for all trades. 4. A waiver of liens in recordable form from the general contractor, or a bond in lieu thereof in the amount of the construction contract. 5. The names and addresses of all contractors and subcontractors intended to be employed by the Tenant. These contractors must be accepted in writing by the General Manager. The Tenant shall not employ any person not qualified in the work he is performing; or anyone required by any ordinance to be licensed who is not, in fact, licensed or any workman that is incompatible with the balance of the work force, or who will cause labor disputes or work stoppages.

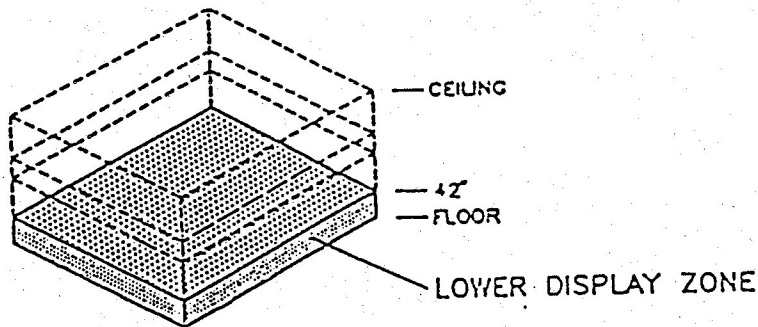
4 Design Criteria Tenant Design Criteria

4.1 General Organization

The Design Criteria provide a framework within which the Tenant can plan and design his premises.

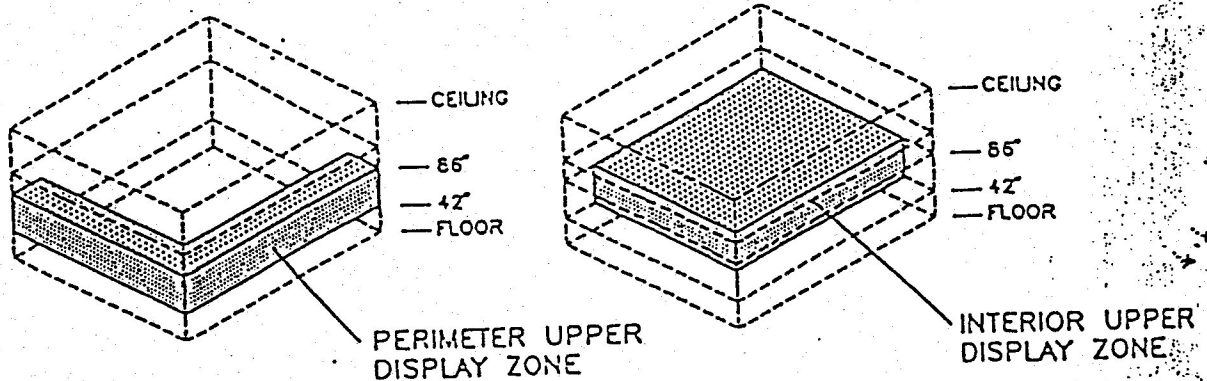
4.2 There are four Design Control Zones measured vertically from the aisle floor;

A. Lower Display Zone - From the floor to 42 inches above the floor and with approval up to 56 inches above the floor: All permitted fixtures and equipment are allowed. All aisle frontage must be used for product display or service activity, with the exception of access openings. Goods within display cases should be maintained as presentation (not storage.)



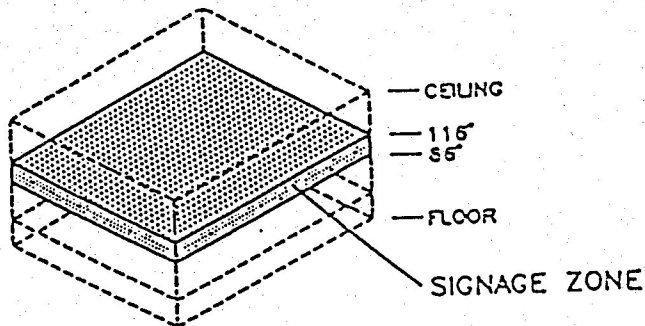
B. Upper Display Zone - There are two subdivisions within this zone;

1. Perimeter Upper Display Zone, from the lease line to 42 inches in from the lease line on the east/west aisles and from the lease line to the column line on north/south aisles: no fixtures or equipment allowed except approved refrigerated display equipment. 2. Interior Upper Display Zone; remainder of Upper Display Zone, excluding Perimeter Upper Display Zone.

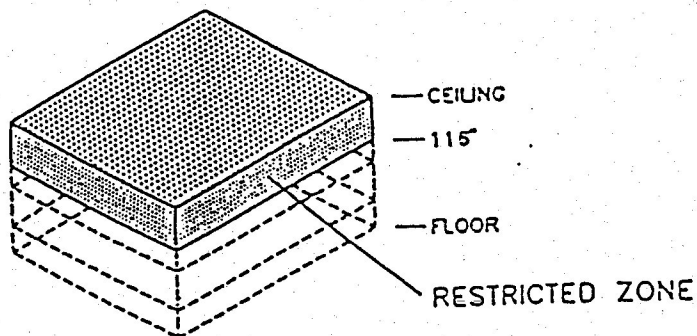


4 Design Criteria Tenant Design Criteria

C. *Signage Zone* - From 86 inches to 116 inches above the floor and higher with written approval of the General Manager : See: 4.6 *Signage*.



D. *Restricted Zone* - More than 116 inches above the floor: Awnings, canopies and ceilings are specifically prohibited in this zone or anywhere else.



4.3 Materials

All fixtures, equipment and construction materials must be durable, easy to maintain and must comply with all codes and regulations.

A. Construction materials used for vertical surfaces are limited to ceramic, stone or earthen tile, glass and finished solid wood siding. Solid wood siding may only be used in non-food areas.

B. Construction materials used for horizontal surfaces are limited to stainless steel, natural butcher block, polyethylene cutting board, glass, ceramic, stone and earthen tile, marble and corian-type materials.

C. Particle board, plywood and plywood paneling are prohibited anywhere in the public view.

D. Plastic laminates are not permitted and may not be used in work area countertops or in high wear or high visibility areas.

E. Steel or other hard metal corner guards are required at all intersecting aisles.

4 Design Criteria Tenant Design Criteria

4.4 Floor

- A. Floors must be made of masonry material with an epoxy or approved industrial grade finish, durable trowelled synthetic resin material or wet laid tile and should have a non-slip finish.
- B. Stall floors must be designed so as to be drained within their own area.
- C. No grey brick paver in the aisle may be removed or altered for any purpose. No grey brick paver inside the lease line may be removed or altered without written approval.
- D. Raised floors are not permitted.
- E. Smooth, durable, cleanable surfaces are required between the floor and 4 inches above the floor. Wood, wood composite materials and non-factory painted finishes are not permitted in this area.

4.5 Signage

- A. Tenant must provide at least one permanent sign per stall, to be located within the signage zone (see: 4.2 C, Signage Zone.)
- B. Two types of permanent stand signage are permitted, all limited to the signage zone: 1. Within and parallel to the lease line, not to exceed 8 feet per panel on large frontages, not to exceed 6 feet per panel on smaller frontages, and 2. Projecting from the lease line, not to exceed one per tenant and not to exceed four square feet in area nor 3 linear feet in any one dimension.
- C. All permanent signs shall contain only the store name and logo or a design representing the goods or services offered for sale. No listing of merchandise or services will be permitted unless it is part of the name.
- D. Pictographic, carved, neon and similar special signage types are encouraged.
- E. No animated component, flashing light, fabric, canvas, formed plastic, backlit glass, plexiglass or injection molded signs are permitted.
- F. Temporary signs for the announcement of special, daily or seasonal items are permitted with the following restrictions: 1. They should be used only for truly temporary purposes and not as a substitute for a permanent sign or menu board. 2. They are only permitted within the primary or secondary display zones and should not be attached to the permanent sign or menu board. 3. They are not to exceed 100 square inches and are to be made of card stock or better material. 4. They must be clean and orderly.

4 Design Criteria Tenant Design Criteria

4.5 Signage (continued)

G. Permanent window signage for stands that are located at an exterior window are permitted with the following restrictions: 1. One per window is allowed, not to exceed 4 square feet, and with all applicable restrictions of permanent stand signage noted above. 2. In addition, the sign is to be located 6 inches from the face of the window, must be mounted on transparent material and hung with stainless steel or similar cable.

4.6 Window Treatment

A. Stands that are located at an exterior window must maintain those windows as though they are presentation areas for their stand and the Market as a whole. No storage or similar uses may be made of the window spaces.

4.7 Lighting

The Landlord will provide common area general illumination only. It is the responsibility of the tenant to provide area and focus lighting within his premises. Brightness of illumination is subject to landlord approval. Light sources creating glare in the common area are not allowed. While general illumination may be used in task areas, focus lighting with dramatic effect is encouraged for display areas within the primary and secondary display zones.

A. Light sources must be equipped with baffles or diffusers to shield lamps from view from the common area at 5'-6" eye level, unless otherwise approved by the landlord.

B. The Landlord reserves the right to adjust or call for baffles or diffusers after fixture installation is complete.

C. Light color should be as close to natural light color as possible. Fluorescent lighting shall be deluxe warm white lamps only.

D. No animated or flashing lighting may be used.

4 Design Criteria Tenant Design Criteria

4.8 Storage

Experience shows that storage needs are frequently underestimated and can become a significant problem in the efficient operations of the stand if not properly accommodated in the initial design. Two general locations for storage are permitted: 1. In-stand Storage - enclosed by cabinets within the stand. 2. Remote Storage - located within designated areas in the Market and leased to the Tenant specifically for the purpose. In both areas the appropriate capacity should be carefully determined in order that appearance and efficiency are maintained. Areas for designated storage must appear on the submitted drawings and will be reviewed for approval during the design process.

4.9 Utilities

The Landlord will provide at the Tenant's expense within the Tenant's lease line the utilities listed below. It is the Tenant's responsibility to have related equipment connected by installers licensed by the City of Philadelphia. All necessary permits as required by the City of Philadelphia must be acquired in advance of construction and be posted as mandated. All permits that are issuable after the completion of the improvements must be obtained in a timely fashion following completion of construction.

- | | | |
|-------------------|--------------|--------------|
| A. Electrical | C. Sanitary | E. Telephone |
| B. Domestic Water | D. Sprinkler | F. Gas |
- G. Exhaust Ducts (may be supplied subject to constraints)

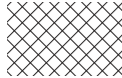






4.10 Codes

The Tenant has total responsibility for compliance with all Federal, State and Local Codes and Ordinances which relate to the use and occupancy of his stand in the Market.

A. The following checklist is offered for general reference only and should not be regarded as exhaustive: 1. State of Pennsylvania Uniform Construction Code. 2. BOCA Basic Building Code. 3. National Electric Code. 4. Philadelphia Building Code. 5. City of Philadelphia Public Health Department Regulations. 6. Philadelphia Plumbing Code.

B. All Tenants selling food must submit drawings and equipment lists to the Food Protection Services section of the Department of Public Health.

L Merchandising Diagram

- Legend
-  Flexible Space/ Daystalls
 -  "Wet" Stalls
 -  "Dry" Stalls
 -  "Cooking" Stalls
 -  High Visual Impact
 -  Anchor Tenant
 -  Commuter Anchor Tenant

0 8' 16' 48'

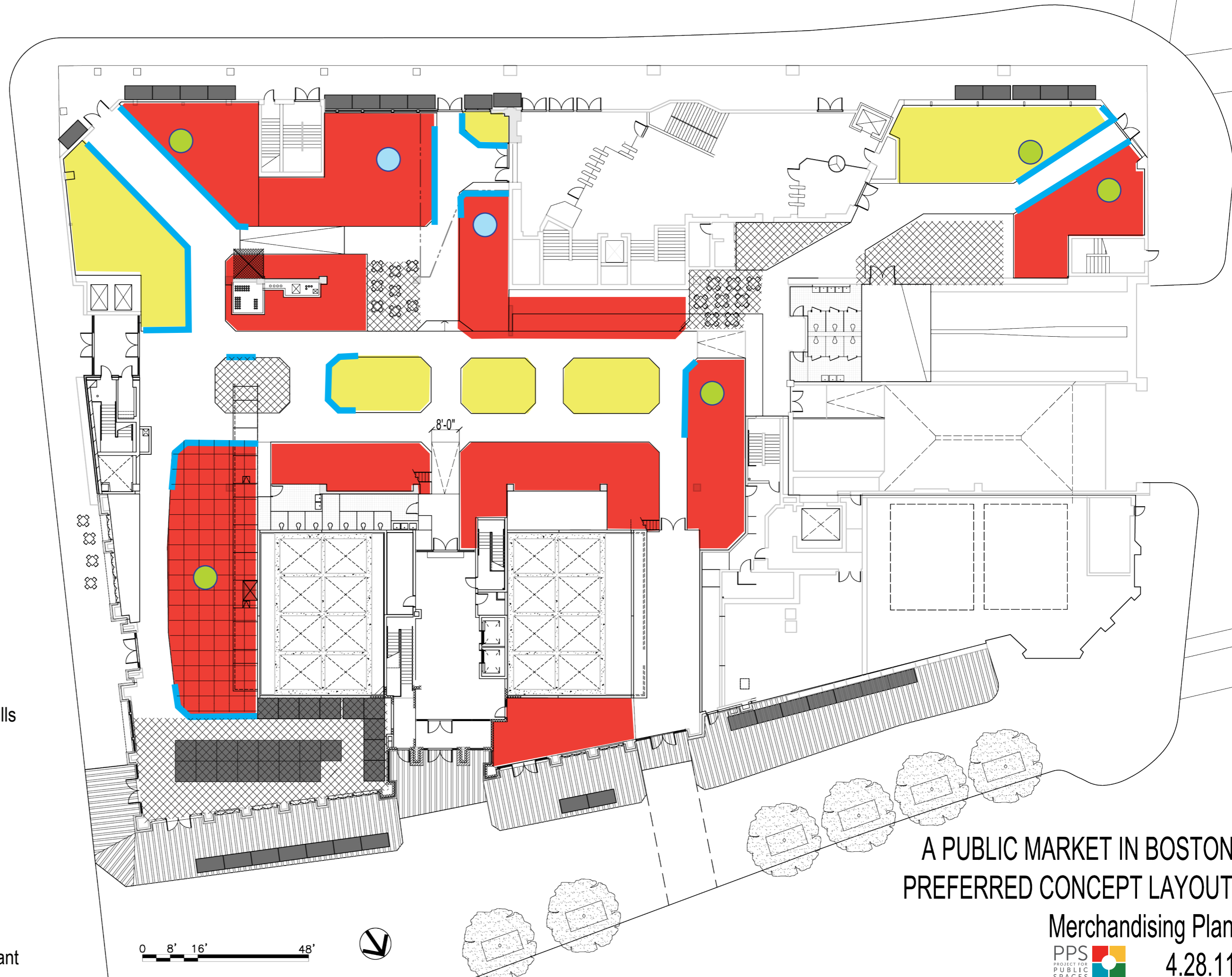


A PUBLIC MARKET IN BOSTON
PREFERRED CONCEPT LAYOUT

Merchandising Plan



4.28.11



M Public Market Organizational Options

Public Market Organizational Options

This document provides an overview of management systems – and specific market examples - as a primer for the Task Force responsible for the implementation of a public market in Boston.

Market Authority or Market Commission

Market authorities and market commissions are terms that are used interchangeably by different cities. In this market management system, a city commission or authority is generally appointed by the Mayor, City Council, or some combination thereof to oversee the market. Market staff reports to the commission or authority, which operates relatively independently although some cities have a specific agency to provide staff support. An authority is similar, except that the market may have bonding capacity.

Example:

Richmond Farmers Market – Richmond, Virginia

The historic Richmond Farmers Market is a series of open sheds occupying land originally donated in 1780 by a private citizen for use in perpetuity as a market. Once surrounded by wholesale and retail food businesses near downtown, the Shockoe Bottom district now is a busy nighttime entertainment district with restaurants, nightclubs, and bars. Over its history, the market has had numerous structures. In 1985, a new market shed was built at a cost of \$600,000. Although the market has a striking architectural character, the market subsequently lost all of its farmer producers, leaving the market with only six produce retailers.

In 1994, the market's lackluster performance prompted the City of Richmond to create the Farmers Market Commission by public ordinance to assure “the preservation, maintenance and operation of the Farmers Market and its grounds.”

The market operations are run out of the city's department of Parks and Recreation, and a full time manager was recently hired to implement a strategic plan for the market. The commission acts as a board for the management of the market. Market management staff are city employees and operations are subsidized annually by the city as occupancy and revenues are still low.

The commission has seven members, of which six are appointed by the City Council for two-year terms. (The seventh member is a representative of Downtown Richmond, Inc.) The six council appointed members are as follows: Two members representing the agricultural community, three representing the Shockoe Bottom Association, and the Director of Parks and Recreation.

Enterprise Funds

This form of city operation – often used for entities like airports -- simply puts all revenues and expenses in a separate city account so that costs can be better monitored, rather than intermingled within agencies. In other words, the market generates its own revenues and spends what it makes, and any surplus is kept by the market. Market employees are city employees, and there is usually an oversight commission appointed by the city associated with it.

Example:

River Market - Little Rock, Arkansas

The River Market is owned by the city of Little Rock and was developed and initially operated by the Downtown Partnership, a 501 c3, and is now operated by the city's Dept. of Parks and Recreation. The River Market anchors a 'district' approximately 8 square blocks on the edge of downtown. The market has been the catalyst for redevelopment in the immediate area including apartments, retail, offices, the new Clinton presidential library and a park. Future development includes a five story parking deck, movie theaters, IMAX, aquarium and more retail and apartments.

The changeover in management occurred because the city was already operating areas adjacent to the market (Riverfront Park, outdoor concert area, public spaces) and it was felt that this would be more efficient. Shannon Jeffrey, the market manager, likes this current arrangement, and she can call any department in the city for assistance with plumbing, electric needs etc. and gets prompt attention. The market is the 'shining star' for the city and hence gets its requests moved to the top of the list.

The market has a staff of eight and an annual operating budget of \$600,000. The city is contributing about \$200,000 a year to make up operating deficits. It is envisioned that the market will eventually be self sustaining.

Management Contract

The city establishes an oversight committee, but the actual operation of the market is undertaken by a private or non-profit corporation, usually selected through competitive bid. Generally the city must periodically re-bid the management contract competitively.

Examples:

City Market – Kansas City, Missouri

City Market is located on the site of the original trading post that became Kansas City. City Market itself has been established for over 135 years, and was recently renovated by the city. Its central shed structures for farmers are surrounding by a variety of retail food businesses and restaurants; an art market now occurs on Sundays throughout the summer.

Following its renovation, the city issued an RFP to solicit qualified outside management. There is also a nine member Oversight Committee that acts as a watchdog for the market's interest. Seven of the seats are occupied by the City and two were recently added (see Sample Management Structures).

Although the market has greatly increased revenues under private management, the city continues to subsidize market operations and pay for capital improvements.

Broad Street Market – Harrisburg, Pennsylvania

The Broad Street Market, located in downtown Harrisburg, was established in 1861 and still occupies the same handsome stone market hall. The market was historically operated by the city.

After making nearly \$3 million dollars in capital improvements, the city decided to get out of the market management business and awarded a management contract to Historic Harrisburg Association (HHA), a 501c3 corporation. A lengthy negotiation hammered out a management agreement specifying the responsibilities of each party.

Private, Non-Profit (501c3)

Many markets have converted to private, non-profit management over the past twenty years. Under this system, the city retains ownership and control over the facility, and establishes a long-term lease with an independent, 501c3 corporation to operate the market. The lease spells out the terms of the agreement, and varies according to each city. The structure of most of the non-profits includes a broad-based board of directors, including citizens, vendors, nearby businesses, and usually one or more representatives of the city government.

Examples:

Lexington Market – Baltimore, Maryland

The historic Lexington Market, located on the edge of downtown Baltimore, traces its beginnings back to the late 1700's. The current market complex was built in the 1950's and encompasses 260,000 square feet.

The city established the non-profit Lexington Market Corporation in 1979 and wrote a Lease and Charter Agreement establishing the parameters of control and obligation for the city and the corporation. The agreement contains a renewable 20-year lease for \$10 a year. All operating profits go to the city. However, prior to the 1979 agreement, there were many years of losses which is now depreciated against market revenues and the corporation has not paid the city any rent over the \$10. This allows the market to put operating profits into a capital fund. The market still, on occasion, receives capital assistance from the city.

The Market Corporation board has eleven members who were originally appointed by the mayor. There are three city appointed seats on the board and the remaining eight seats are filled by the board itself. There are no market tenants on the board.

The market does receive some “off the books” help from the city. They get free trash pickup and all of the revenues from the market parking garage. Combined, these are equivalent to nearly half a million dollars a year in revenue to the market.

North Market – Columbus, Ohio

North Market, a public market founded in 1876, is located near downtown Columbus and the new convention center. Located for nearly 50 years in a Quonset hut after a disastrous fire destroyed the original market building, North Market recently underwent a multi-million relocation and expansion program, which was completed in 1995.

The City of Columbus owns North Market and leases the market to the North Market Development Authority, Inc. (NMDA). NMDA is a non-profit 501c3 corporation organized in 1987 to preserve and promote the market. The city, which was considering closing the market and tearing it down, gave NMDA a five year lease on the market in 1988, although the city continued to subsidize its operations. Beginning in 1989, a master planning process was initiated. Following the city’s purchase of a vacant two story brick warehouse to house the relocated market in 1992, NMDA entered into a Memorandum of Understanding with the city, describing the roles of the city and the authority in the development of the expanded North Market. In 1994, the city entered into a development agreement with NMDA authorizing the Authority to go out for public bid as the developer of the project. The new home for the market along with an enlarged farmers market and parking facilities cost \$5.2 million. NMDA signed a new 20-year lease of the market with the city in 1995.

NMDA has as seventeen member volunteer board. In addition to revenues from the market vendors, North Market splits revenue from an adjacent parking lot with Capitol South Urban Redevelopment Corporation; in this lot, shoppers pay \$1-2 for the most convenient parking spaces.

Public, Non-Profit (501c3)

Example:

Pike Place Market – Seattle, Washington

When Pike Place Market opened in 1907, farmers originally met in this downtown location to sell their wares from the backs of their wagons; as trade grew, individual stalls were constructed. Near death in the 1970’s, the market almost closed, but residents rallied together and in 1976 the market was saved, preserved as a historic district and has continued to grow in popularity, size and selection. The current indoor/outdoor market encompasses more than seven acres, three

floors and over 300 stalls, 100 farmers, more than 200 artists and craftspeople, many businesses and restaurants and approximately 450 residents.

The Pike Place Market Preservation and Development Authority (PDA) is a non-profit public corporation chartered by the City of Seattle in 1973 to serve as caretaker and steward of the city's historic public market center. The market also has a 501c3 – The Market Foundation – which works to support human service agencies, advocate for low income and needy residents, and raise funds to support the public purposes of the PDA.

PDA staff activity is governed by the PDA Council, a 12-member volunteer board consisting of four mayoral appointees, four members elected by the Market constituency and four members appointed by the PDA Council itself. Council members serve four-year terms.

PDA serves as the landlord and manager for 80% of the properties located within the nine-acre Market Historical District. Various private interests own the remaining properties. All buildings and activities within the Pike Place Market, regardless of ownership, are governed by the covenants and ordinances designed to protect and preserve the traditional commercial and cultural uses of the market. Revenues for the market are derived through property management activities. The market is not tax supported.

The Pike Place Market Historical Commission is an arm of the City of Seattle Department of Neighborhoods. The Historical Commission has authority over allowable design and use of space within the market, in accordance with city guidelines and policies designed to maintain and preserve the market's historic character. Commission members are appointed from property owners, merchants and residents within the Historic District.

N Public Market Management Structures

Public Market Management Structures

Reading Terminal Market, Philadelphia PA

Owner: Pennsylvania Convention Center Authority (PCCA)

Operator: Reading Terminal Market Corporation, 501c3

Operator Selection Process: Corporation formed collaboratively by the City and State

Oversight:

- Operating Agreement – Lease and Services Agreement
- Reading Terminal Market Corporation Board Composition – 7 members
 - 1) PCCA Appointee
 - 2) Philadelphia City Council Appointee
 - 3) Mayor of Philadelphia Appointee
 - 4) Reading Terminal Merchants Association Appointee
 - 5) Reading Terminal Market Preservation Fund Appointee
 - 6) Preservation Alliance of Philadelphia Appointee
 - 7) Board Chair chosen by the above 6 members
- Key Lease Terms
 - Reading Terminal Market Corp. pays no rent to PCCA
 - Reading Terminal Market Corp. is responsible for raising capital improvement funds

City Market, Kansas City, MO

Owner: City of Kansas City

Leased to: Planned Industrial Expansion Authority to facilitate renovations and improvements

Operator: Commercial Real Estate Management Company

Operator Selection Process: Public RFQ process directed by City

Oversight:

- Operating Agreement – Property Management and Leasing Agreement
- City Market Oversight Committee – 9 members
 - 1) The Mayor or designee
 - 2) Chair of City Plans and Zoning Committee
 - 3) Second District Councilperson
 - 4) Second District At-Large Councilperson
 - 5) The City Manager or designee
 - 6) Chair of Market Area Development Corporation
 - 7) Chair of Planned Industrial Expansion Authority
 - 8) Representative of consumers of the City Market
 - 9) Representative of businesses or residents from City Market area
- Key Lease Terms

- City pays Real Estate Management Company a fee based on revenues
- Real Estate Management Company responsible for all market operations
- All leases and terms are submitted to Oversight Committee for approval
- All budgets are submitted to Oversight Committee for approval
- Real Estate Management company estimates and submits capital improvement needs
- Oversight committee approves and raises money for capital improvements

Eastern Market, Detroit, MI

Owner: City of Detroit

Lessee and Operator: Eastern Market Corporation, 501c3

Operator Selection Process: Formed collaboratively with City, market interests and downtown development organizations

Oversight:

- Operating Agreement – Eastern Market Management and Promotion Agreement
- Eastern Market Corporation Board Composition – 15- 21 members
 - All initial board members were appointed by Mayor
 - All future board members are recommended by the Eastern Market Corporation and approved by the Mayor
 - 1/3 representing City and government interests
 - 1/3 representing Eastern Market stakeholder interests
 - 1/3 representing Eastern Market District interests and funding representatives
- Key Lease Terms
 - Eastern Market Corporation pays no rent to City – but any excess operating funds after all obligations, including debt service, go into City’s general fund.
 - The City of Detroit’s City Representative is the primary point of contact for the market.
 - City of Detroit will continue to make efforts to secure funding such as CDBG dollars.
 - Eastern Market Corporation is responsible for all operations, promotions, improvements in the market and is the umbrella organization for the market district.

O Sample RFQ for Market Operator

CITY MARKET PROPERTY MANAGER

The City Market, which has been in existence since 1857, is owned by the City of Kansas City. The City has leased the Market to the Planned Industrial Expansion Authority (PIEA) for a term that ends April 15, 2025. The PIEA will execute a contract for services of the City Market Property Manager.

In 1989-91, the City spent approximately \$14 million to convert space, formerly housing wholesale produce tenants, to retail space. The City is currently in the midst of additional renovations to the Market, having spent over \$4 million in a planned \$8 million in improvements to the Market.

The City Council has established a City Market Oversight Committee which is responsible for establishing policies for the Market, approving the Market's annual budget, and monitoring compliance with existing state laws and city ordinances governing the operation of the City Market. The Committee consists of three members of the City Council and six other individuals who represent parties interested in the City Market. The Committee also makes recommendations to the City Market Manager and the City Council on issues affecting the City Market.

dining, shopping



Urban



KANSAS CITY, MISSOURI

R F Q

REQUEST FOR QUALIFICATIONS



City of Kansas City, Missouri
*City Planning and
Development Department*

DEADLINE:

Tuesday, June 29, 2004
Submit ten copies to
City Planning & Development Dept.
by 5:00 p.m.

SUBMIT TO:

Claude Page, Development Specialist
City Planning & Development Dept.
16th Floor, City Hall
414 E. 12th Street
Kansas City, MO 64106

CONTACT:

Claude Page, Development Specialist
(816) 513-2890
Claude_Page@kcmo.org

City Market Property Manager

Issued June 2, 2004

The City of Kansas City, Missouri is seeking responses from experienced commercial property management firms, or teams, to market, manage, lease, and operate Kansas City's City Market.

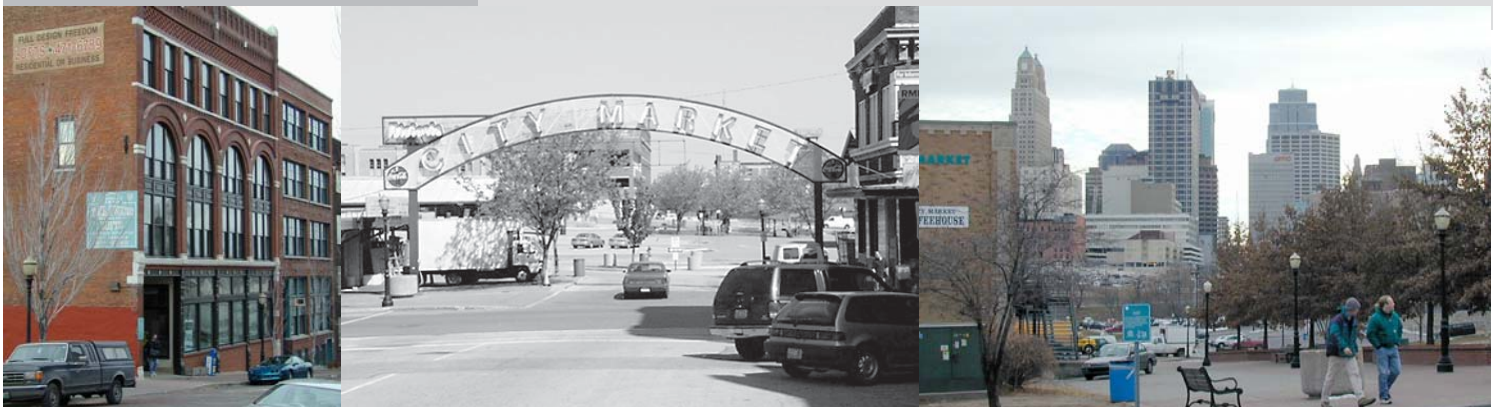
Overview

The City Market covers an area of nearly 11 acres and is bounded by 3rd and 5th Streets, Grand Boulevard on the east, and extends west to the alignment of Main Street (extended). Included is approximately 150,000 sq. ft. of permanent retail space, 146 Farmers Market stalls, 8 residential units, and approximately 35,000 sq. ft. of museum space. On-site parking is also included.

The City Market is a unique property in Kansas City. The Saturday Farmer's Market is the largest in six states, and is an anchor for the surrounding River Market area. The Market is successful financially; expansion of the Market's days beyond Saturday is a continuing goal.

In the last few years, rental of the Market for concerts and festivals has been a significant source of revenue. Maximizing this benefit to the Market's bottom line, and to Market tenants, is important to the Market's future.

The City Market Oversight Committee's vision for the Market includes maintaining the multi-ethnic flavor of the shopping experience, while continuing to build the facility as a unique place to be. Challenges to the Market's retail spaces are an antiquated physical plant, and the configuration and size of retail spaces.



REQUEST FOR QUALIFICATIONS



Responsibilities

The selected management team will conduct the following duties:

OPERATIONS

1. Manage the day-to-day activities of the City Market in a professional manner and in such a way that residents of the greater Kansas City area and others frequently will visit the City Market and do business with the tenants and vendors.
2. Maintain the physical plant of the City Market in good working order and state of repair.
3. Maintain the areas in the City Market that are open to the public in a safe, clean, sanitary condition.
4. Enforce the rules and policies approved by the City Market Oversight Committee with respect to the operations of the City Market.
5. Promptly advise and consult with City staff about any material issue arising with respect to the operation of the City Market.
6. Efficiently operate the Farmer's Market.

TENANT RELATIONS AND LEASING

1. Lease space in the City Market buildings to qualified tenants who will conduct business year-round and whose food/products reflect a diverse merchandise mix that is in keeping with the City Market Oversight Committee's Policy on City Market Tenant Mix, as amended from time to time.
2. Rent stalls on the islands in the City Market to vendors who, on a seasonal basis or more often if feasible, engage primarily in the sale of produce, flowers, meats, prepared foods, and artworks and handmade crafts.
3. As a vacancy occurs in the City Market, act promptly to secure a new, qualified tenant.
4. Promptly handle any complaint made by a member of the public, any tenant or vendor.
5. Negotiate leases with tenants/vendors within the parameters set by the City Market Oversight Committee.
6. Enforce the provisions of each lease, including those pertaining to the payment of rent.

FINANCIAL

1. Operate the City Market within the constraints of the annual budget approved by the Oversight Committee and the City of Kansas City, Missouri, and minimize, to the extent reasonably possible, the degree to which the City must contribute funds to the operating budget (as opposed to the capital budget).
2. Increase net revenue from City Market operations.
3. Maintain accurate financial records concerning the City Market's operations, and provide financial reports, on a monthly basis, to City staff and the CMO. Procure an annual report from an outside auditor.
4. Increase outside (non-City) sources of financial support.

RFQ

REQUEST FOR QUALIFICATIONS



PROGRAMMING, PLANNING AND DEVELOPMENT

1. Retain successful programs and present new programs that generate (i) significant public attendance and (ii) sales opportunities for tenants.
2. Advertise the City Market and its activities through various media.
3. Present new programs to keep the Market competitive and exciting. Plan for growth of the physical plant, attractions and revenues of the Market.
4. Attempt to quantify the benefits, if any, realized from advertising/programs to determine whether the expenditure is warranted.
5. Make recommendations to the City Market Oversight Committee for such capital improvements as are necessary to improve the efficiency/profitability of the City Market operations.

Oversight

Direct coordination and staff assistance will be provided through the City's Planning and Development Department. The Market Manager will work closely with the City Market Oversight Committee, which reviews budgets, rental rates, outside contracts, operating procedures, and similar issues, and makes recommendations to the City Council on issues requiring Council action. The Oversight Committee meets quarterly. The annual rent structure and the operating procedures are established by Council ordinance.

Compensation

The selected management team will be compensated for all personnel costs associated with the management and operation of the Market, and receive a leasing commission. All costs associated with the operation of the Market will be reimbursable. On-site office space is available, at no cost to the Property Manager.

Elements of the Response

Management teams interested in submitting responses to this RFQ should provide, at a minimum, the following information:

1. Management Team:

- a. Leader of Team
- b. Members of Team, with identification of key personnel for day-to-day management of the Market's operations
- c. Qualifications and experience of both the team and the participating individuals
- d. Experience and knowledge in managing facilities similar to public markets

RFQ

REQUEST FOR QUALIFICATIONS



- e. Experience in corporate sponsorship development, and fundraising
- f. Experience in working in marketing and public relations
- g. Awareness and knowledge of Kansas City's City Market
- h. Any relationships with existing tenants in the City Market
- i. Any relationships in the general River Market area with property owners, development entitles, or any other entity which might affect the team's management abilities

2. MBE/WBE Utilization

The response shall demonstrate how the consultant will use its best efforts to meet the City's goals for MBE/WBE utilization. The City has established the Minority and Women's Business Enterprise Program (MBE/WBE) in order to ensure that MBE/WBE's have equal opportunity to participate in City contracts, subcontracts and procurements. Goals for individual contracts and procurements are flexible and are to be determined on a contract-by-contract basis depending on the availability of qualified certified MBE/WBE's to perform all or part of the contract.

Qualifications

The selected team should consist of an experienced full-service commercial/residential property management group with the additional capabilities of preparing and analyzing market analyses, managing facility renovation activities, managing urban commercial projects, managing specialty retail and market-type areas, and conducting all activities within an oversight framework established by a public government body.

Selection Procedure

1. Written responses to this RFQ must be received at the address shown below by 5:00 p.m., Tuesday, June 29, 2004.

*Claude Page, Development Specialist
City Planning and Development Department
16th floor, City Hall
414 E. 12th Street
Kansas City, MO 64106*

No facsimile submittals will be accepted.

2. Submissions should be clearly marked "City Market Property Manager, Request for Qualifications".

RFQ

REQUEST FOR QUALIFICATIONS



3. The City may issue written addenda regarding this Request to all RFQ package recipients to clarify, comment, correct, or as otherwise required to facilitate the process.
4. No submittals will be accepted after the closing date listed above and no modifications to those already submitted will be permitted, with the exception of those cases where the City requests more information for clarification or enhancement purposes.
5. The City reserves the right to reject any and all responses to this RFQ received either in whole or part, with or without cause. The City reserves the right to waive any requirement or informalities or deficiencies in any response if such action is deemed to be in the best interest of the project and the City.
6. The City reserves the right to proceed utilizing any combination of existing and additional vendors.
7. Ten (10) copies of the written response package are required with this submission.
8. All submittals shall become the property of the City and be a part of the public record.

Questions regarding this RFQ or requests for additional information should be addressed to:

*Claude Page, Development Specialist
City Planning and Development Department
16th floor, City Hall
414 E. 12th Street
Kansas City, MO 64106
(816) 513-2890
claude_page@kcmo.org*

Selection and Schedule

Upon receipt of responses, a technical committee will review the submittals and develop a shortlist. A Selection Committee will review the shortlist of responses, conduct interviews, and select a Property Manager(s) for the project.

The interviews will be held July 23, 2004, beginning at 9:00 a.m. A firm will be selected directly following the interviews.

A contract will then be negotiated with the selected firm. If successful negotiations cannot occur, the City will proceed to negotiate with the next most qualified Property Manager from the shortlist. The City Council of Kansas City, Missouri will have final authority over contract terms and award.

The City Market property manager will begin a new contract on October 1, 2004.

P Pike Place By Laws

CHARTER
OF
PIKE PLACE MARKET PRESERVATION AND DEVELOPMENT AUTHORITY

As amended, Aug 28, 2003

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Mayor's Statement of Intent of 1992 Amendments

The amendments made in 1992 to this Charter are intended to eliminate the possibility the public will ever again risk losing control of any of the property in the Market Historical District as occurred with the Urban Group partnerships. For clarity, therefore, a copy of this Charter showing, by strikeout and underlining, the amendments made on this date shall also be filed with the Clerk of The City of Seattle.

_____, 2003

CHARTER
OF
PIKE PLACE MARKET PRESERVATION AND DEVELOPMENT AUTHORITY

ARTICLE I
NAME AND SEAL

The name of this corporation shall be Pike Place Market Preservation and Development Authority (hereinafter the "PDA"). The PDA seal, as set forth below, shall be a circle with the name "PIKE PLACE MARKET PRESERVATION AND DEVELOPMENT AUTHORITY" inscribed therein.

ARTICLE II
AUTHORITY AND LIMIT ON LIABILITY

Section 1. Authority.

The PDA is a public corporation organized pursuant to RCW 35.21.660, 35.21.670, and 35.21.730 -755, and Seattle Municipal Code Ch. 3.110.¹

Section 2. Limit on Liability.

All liabilities incurred by the PDA shall be satisfied exclusively from the assets and properties of the PDA and no creditor or other person shall have any right of action against The City of Seattle on account of any debts, obligations, or liabilities of the PDA.

¹ This Charter is subject to the constitutions and laws of the United States and the State of Washington, regulations adopted under those laws, and the Seattle Municipal Code.

Section 3. Mandatory Disclaimer.

The following disclaimer shall be posted in a prominent place where the public may readily see it in the PDA's principal and other offices. It shall also be printed or stamped on all contracts, bonds, and other documents that may entail any debt or liability by the PDA.

The Pike Place Market Preservation and Development Authority ("PDA") is organized pursuant to Seattle Municipal Code (SMC) 3.110 and RCW 35.21.660, 35.21.670, and 35.21.730 -.755. RCW 35.21.750 provides in part as follows: "All liabilities incurred by such public corporation, commission, or authority shall be satisfied exclusively from the assets and properties of such public corporation, commission or authority and no creditor or other person shall have any right of action against the city, town, or county creating such corporation, commission, or authority on account of any debts, obligations, or liabilities of such public corporation, commission, or authority." The powers of the PDA are limited by state and federal law and regulations, ordinances of The City of Seattle, and other elements of the local regulatory scheme.

ARTICLE III

DURATION

The duration of the PDA shall be perpetual.

ARTICLE IV

PURPOSES

The purpose of the PDA is to provide a legal entity under RCW (()) 35.21.730, et seq., and City of Seattle Municipal Code Ch. 3.110 through which citizens may fulfill the aims and objectives of the Pike Place Market Historical District Ordinance 100475, the Historical Preservation Plan for the Pike Place Market Historical District (hereinafter the "Market Historical District") (as amended),² and the redevelopment plan for the Pike Place urban renewal area. The PDA will also be concerned with the rehabilitation and redevelopment of the surrounding areas which may affect the character of the Market Historical District.

² Throughout this Charter all references to the Market Historical District shall include all amendments to the size and scope of the Market Historical District as may be made from time to time.

Employing the unique powers and capabilities conferred by State law and City ordinance, the PDA, as a public trustee with the mission to ensure that the traditional character of the Public Market is preserved, is authorized to perform the renewal, rehabilitation, preservation, restoration, development, and nonprofit management of structures and open spaces in the above-described areas in a manner that affords a continuing opportunity for Public Market farmers, merchants, residents, shoppers, and visitors to carry on their tradition and market activities. In addition to upgrading structures and public amenities in and around the Market Historical District, the PDA will initiate programs to expand food retailing in the Market Historical District, especially the sale of local farm produce; to preserve and expand the residential community, especially for low-income people; to promote the survival and predominance of small shops, marginal businesses, thrift shops, arts and crafts, and other enterprises, activities, and services which are essential to the functioning of the Public Market.

The PDA shall provide a structure within which all public agencies, private groups, organizations, and individuals whose concerns and interests relate to the preservation of Seattle's Public Market area may work together to accomplish the above purposes and goals

In undertaking these purposes, the PDA will initiate and carry out studies to determine what kinds of programs will fulfill the above-stated goals. Such research activities will constitute the initial steps in the implementation of specific projects.

ARTICLE V

POWERS

Subject to the limitations in Article VI and other limitations elsewhere in this Charter, the PDA shall have and exercise all powers necessary or convenient to effect the purposes for which

the PDA is organized, and perform authorized PDA functions, including but not limited to the power to:

1. Own and sell real and personal property;
2. Contract for any PDA purpose with the United States, a state, and any subdivision or agency of either, and with individuals, associations and corporations;
3. Sue and be sued in its name;
4. Lend and borrow money;
5. Do anything a natural person may do;
6. Perform all manner and type of community services and activities utilizing federal or private funds;
7. Administer and execute federal grants and programs;
8. Receive and administer federal funds;
9. Provide and implement such municipal services as the City Council and Mayor may by ordinance direct;
10. Transfer, with or without consideration, any funds, real or personal property, property interests, or services received from federal government or private sources or, if otherwise legal, from a state or any of its political subdivisions or agencies;
11. Receive and administer private funds, goods, or services for any lawful public purpose;
12. Purchase, lease, exchange, mortgage, encumber, improve, use, or otherwise transfer or grant security interests in real or personal property or any interests therein; grant or acquire options on real and personal property; and contract regarding the income or receipts from real property;

13. Issue negotiable bonds and notes in conformity with Seattle Municipal Code 3.110.420 and applicable provisions of the Uniform Commercial Code and state law in such principal amounts as, in the discretion of the Council, shall be necessary or appropriate to provide sufficient funds for achieving any PDA purposes; or to secure financial assistance, including matching funds from the United States, for corporate projects and activities;

14. Contract for, lease, and accept transfers, gifts, or loans of funds or property from the United States, a state, and any political subdivision or agency of either, including property acquired by any such governmental unit through the exercise of its power of eminent domain, and from corporations, associations, individuals or any other source, and to comply with the terms and conditions therefor;

15. Manage, on behalf of the United States, a state, and any political subdivision or agency of either, any property acquired by any such entity through gift, purchase, construction, lease, assignment, default, or exercise of the power of eminent domain.

16. Recommend to appropriate governmental authorities public improvements and expenditures in areas of the City in which the PDA by its Charter has a particular responsibility;

17. Recommend to the United States, a state, and any political subdivision or agency of either, any property which, if committed or transferred to the PDA would materially advance the public purpose for which the PDA is chartered;

18. Initiate, carry out, and complete such improvements of benefit, to the public consistent with this Charter as the United States, a state, and any political subdivision or agency of either may request;

19. Recommend to the United States, a state, and any political subdivision or agency of either such tax, financing, and security measures as the PDA may deem appropriate to maximize the public interest in the Pike Place urban renewal area;

20. Lend its funds, property, credit, or services for PDA purposes; or act as a surety or guarantor for PDA purposes;

21. Provide advisory, consultative, training, educational, and community services or advice to individuals, associations, corporations or governmental agencies, with or without charge;

22. Control the use and disposition of PDA property, assets, and credit;

23. Invest and reinvest its funds;

24. Fix and collect charges for services rendered or to be rendered, and establish the consideration for property transferred;

25. Sponsor, lease, manage, construct, own, or otherwise participate in housing projects, where such activity furthers the public purpose for which the PDA is chartered;

26. Maintain books and records as appropriate for the conduct of its affairs;

27. Conduct PDA affairs, carry on its operations, and use its property as allowed by law and consistent with Seattle Municipal Code Ch. 3.110, its Charter, and its Rules and Regulations; name PDA officials, designate agents, and engage employees, prescribing their duties, qualifications, and compensation; and secure the services of consultants for professional services, technical assistance, or advice;

28. Identify and recommend to the United States, a state, and any political subdivision or agency of either, the acquisition by the appropriate governmental entity -- for transfer to or use by the PDA -- of property and property rights which, if so acquired, whether

through purchase or the exercise of eminent domain, and so transferred or used, would materially advance the purpose for which the PDA is chartered; and

29. Exercise and enjoy such powers as may be authorized by law.

ARTICLE VI

LIMITS

The PDA in all activities and transactions shall be limited in the following respects:

1. Management.

The PDA's management of its properties cannot be relinquished, transferred, or delegated; *provided*, however, that in furtherance of the financing of the development of a mixed-use project consisting of low-income housing, a new facility for the Pike Market Senior Center and various other commercial space to be completed through the rehabilitation of the La Salle Apartments and the acquisition and development of the Creamery site (the "LaSalle/Creamery Project"), the PDA is authorized to enter into agreements providing for the management of all or a portion of the LaSalle/Creamery Project by one or more limited liability companies or limited partnerships managed by the PDA or by a successor nonprofit or public entity approved by the City. Any such agreement shall be consistent with Ordinance No. ___ of the City, passed April 28, 2003, as the same may be amended from time to time.

2. Public Review.

The PDA shall comply fully with all laws then applicable to municipal corporations regarding public access to and review and disclosure of meetings and records. Without limiting the generality of the preceding sentence, the PDA shall in particular be bound by the provisions of RCW 35.21.747 as it may from time to time be amended. That section presently requires the

PDA to provide at least thirty days' written notice of any proposed sale or encumbrance of any real property transferred to it by The City of Seattle. At present, that section further provides:

At a minimum, such notice shall be provided by such public corporation . . . to the chief executive or administrative officer of such city, . . . and to all members of its legislative body, and to each local newspaper of general circulation, and to each local radio or television station or other news medium which has on file with such corporation . . . a written request to be notified.

3. Prohibition on Sale of Property.

The PDA shall not sell or otherwise transfer or convey any interest in real property located in the Market Historical District, except that the PDA may authorize a potential future conveyance to the extent necessary to give legal effect to an encumbrance permitted under Article V and not prohibited by Article VI, Paragraph 4, of this Charter; *provided*, however, that that in furtherance of the financing of the development of the LaSalle/Creamery Project, the PDA is authorized to sell, transfer or convey all or a portion of the LaSalle/Creamery Project to one or more limited liability companies or limited partnerships managed by the PDA. Any such agreement shall be consistent with Ordinance No. __ of the City, passed April 28, 2003, as the same may be amended from time to time.

4. Limitations on Encumbrance of Property.

(a) The PDA shall not lease, mortgage, or otherwise encumber any of its interest in real property located within the Market Historical District unless such encumbrance is necessary for the purpose of:

(i) Repair, renovation, rehabilitation, or improvement of property within the Pike Place Market Historical District; or,

(ii) Furthering a public market purpose as defined in the PDA Charter, the Pike Place Market Historical District Ordinance, the Pike Place Market Urban Renewal Plan or other applicable Seattle ordinance or State law; or,

(iii) Fulfilling a requirement of federal, State, or City of Seattle law or ordinance.

(b) All encumbrances allowed by the terms of this Charter shall be subject to the following conditions in addition to restrictions imposed elsewhere in law or in this Charter:

(i) The provisions of RCW 35.21.747 and Article XV of this Charter must have been satisfied; and

(ii) All legal instruments related to the encumbrance shall expressly require operation of the property consistent with the Market Historical District Ordinance, this Charter, specified provisions of the Pike Place Market Urban Renewal Plan, and all applicable Seattle, State and federal laws.

(c) For the purposes of this Charter, the term "encumbrance" shall include any lease, mortgage, pledge, grant of easement or other encumbrance on real property, but shall not include any sale or conveyance.

(d) Notwithstanding any other provisions of this Charter, the PDA may not, under any circumstances, encumber its property in the Market Historical District for the purpose of acquiring property outside the Market Historical District.

5. Use of Funds.

All funds, assets, or credit of the PDA shall be applied toward or expended upon services, projects, and activities authorized by its Charter. No part of the net earnings of the PDA shall

inure to the benefit of, or be distributable as such to, the Council members, officers of the PDA or other private persons, except that the PDA is authorized and empowered to:

(a) Compensate PDA officials and others performing services for the PDA a reasonable amount for services rendered and to reimburse reasonable expenses actually incurred in performing their duties;

(b) Assist the PDA officials as members of a general class of persons to be assisted by the Council-approved project or activity to the same extent as other members of the class as long as no special privilege or treatment accrues to such PDA official by reason of his or her status or position in the PDA;

(c) Defend and indemnify any PDA official (including employees), any former PDA official, and their successors, against all costs, expenses, judgments, and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him or her in connection with or resulting from any claim, action, or proceeding, civil or criminal, in which he or she is or may be made a party by reason of being or having been a PDA official, or by reason of any action alleged to have been taken or omitted by him or her as such official, provided that he or she was acting in good faith on behalf of the PDA and within the scope of duties imposed or authorized by law. This power of indemnification shall not be exclusive of other rights to which PDA officials may be entitled as a matter of law;

(d) Purchase insurance to protect and hold personally harmless any of its officials (including its employees and agents) from any action, claim, or proceeding instituted against the foregoing individuals arising out of the performance, in good faith, of duties for, or employment with, the PDA and to hold these individuals harmless from any expenses connected with the defense, settlement, or monetary judgments from such actions, claims, or proceedings.

The purchase of such insurance and its policy limits shall be discretionary with the PDA Council, and such insurance shall not be considered to be compensation to the insured individuals. The powers conferred by this subsection shall not be exclusive of any other powers conferred by law to purchase liability insurance; and

(e) Sell assets for a consideration greater than their reasonable market value or acquisition costs, charge more for services than the expense of providing them, or otherwise secure an increment in a transaction or carry out any other transaction or activity subject to the limitations in Article VI and other limitations elsewhere in this Charter, as long as such gain is not the object or purpose of the PDA transactions or activities and is applied to or expended upon services, projects, and activities as aforesaid.

6. Lobbying.

No funds, assets, or property of the PDA shall be used for any partisan political activity or to further the election or defeat of any candidate for public office; nor shall any funds or substantial part of the activities of the PDA be used for publicity or educational purposes designed to support or defeat legislation pending before the Congress of the United States, or the legislature of this State, or the City of Seattle Council; provided, however, that members and officials of the PDA may respond to requests by contacting members of Congress, State legislators, or City of Seattle Council members for information and may appear before any such legislative body in connection with funding and other matters directly affecting the PDA or its ability to carry out the purposes for which it is chartered.

7. Eminent Domain and Taxes.

The PDA shall have no power of eminent domain nor any power to levy taxes or special assessments.

8. Non-recourse to City.

The PDA may not incur or create any liability that permits recourse by any contracting part or members of the public to any assets, services, resources, or credit of The City of Seattle.

9. No Private Gain.

The PDA shall not issue shares of stock, pay dividends, make private distribution of assets, or make loans to its corporate officials or engage in business for private gain.

ARTICLE VII

COUNCIL

Section 1. Council Composition.

Management of all PDA affairs shall reside in the Council. The Council shall be composed of twelve (12) members selected as follows:

1. Within eighteen (18) months of the issuance of this Charter, the initial Council as designated in the application for this Charter shall by resolution divide the members of the Council into four classes of three (3) members each (designated Class I, Class II, Class III, and Class IV).

2. At the regular meeting of the Council that coincides most closely with the second anniversary of the issuance of this Charter, the terms of those members of the Council that are in Class I shall expire, provided that they shall continue in office until their successors are selected and qualified as provided in the Rules and Regulations.

3. The Council vacancies created by the expiration of the term of the Class I members shall be filled with:

- (a) One member selected by the Constituency,
- (b) One member selected by the Mayor of the City of Seattle, and

(c) One member selected by the Council of the PDA.

4. The names of members selected by the Constituency, by the Mayor, and by the Council shall be promptly submitted to the City Council for confirmation. Any such person whose name and supporting documentation have been submitted to the City Council shall, unless and until his or her name has been rejected by the City Council, have full powers and responsibilities of a confirmed Council member. No such person shall have or purport to have or exercise such powers and responsibilities until his or her name and all supporting documentation required by the City Council have been submitted to the City Council for confirmation.

5. This reappointment and confirmation procedure shall continue annually as to successive classes, so that at the regular meeting of the Council that coincides most closely with each anniversary of the issuance of this Charter, a new class of Council members shall take office; provided, however, that each person so selected shall hold office for the four-year term for which he or she is selected and until his or her successor shall have been selected and qualified; and provided that there shall be no restriction on members of the Council serving successive terms.

6. If a member appointed by the Mayor resigns, or becomes ineligible to serve, or becomes unable to serve, the Council shall request that the Mayor appoint a new member to serve the balance of the unexpired term of such member.

7. In addition to Intervention and Trusteeship, as provided in Seattle Municipal Code 3.110.440 and 3.110.450, respectively, if it is determined for any reason that any or all of the Council members should be removed from office, after a full public hearing, and after selection of appropriate replacements by the Mayor and City Council pursuant to this section, the Mayor and City Council may by ordinance remove any or all voting Council members from office. The

term of any Council member removed pursuant to this section shall expire when the member receives a copy of the ordinance removing him or her from office and a letter signed by the Mayor advising him or her that he or she has been removed pursuant to this section. Any person appointed to the Council pursuant to this section shall be appointed by the Mayor and confirmed by the City Council in the same way other persons appointed to positions requiring City Council approval are appointed and confirmed. The term of any person appointed and confirmed pursuant to this section shall begin at the expiration of the term of the person being replaced and shall continue until the regular expiration of the term of the position being filled.

Section 2. Council Concurrence Required.

General or particular authorization or concurrence of the Council by resolution shall be necessary for any of the following transactions:

1. Transfer or conveyance of an interest in real estate other than a release of a lien or satisfaction of a mortgage after payment has been received and the execution of a lease for a current term of less than one year;
2. The contracting of debts, issuance of notes, debentures, or bonds, and the mortgaging or pledging of corporation assets to secure the same;
3. The donation of money, property, or other assets belonging to the PDA;
4. An action by the PDA as a surety or guarantor;
5. All transactions in which: (i) the consideration exchanged or received by the PDA exceeds ten thousand dollars (\$10,000), (ii) the performance by the PDA shall extend over a period of one year from the date of execution of an agreement therefor, or (iii) the PDA assumes duties to the City of Seattle, the State, or the United States;
6. Any project or activity outside the limits of the City of Seattle;

7. Adoption of an annual budget and a separate capital budget, when annual capital expenditures are expected to exceed one hundred thousand dollars (\$100,000);
8. Certification of annual reports and statements to be filed with the City of Seattle Clerk as true and correct in the opinion of the Council and of its members, except as noted;
9. Proposed amendments to the Charter and to the Rules and Regulations; and
10. Such other transactions, duties, and responsibilities as the Charter shall repose in the Council or require Council participation by resolution.

Section 3. Council Review.

At least quarterly, the Council shall review monthly statements of income and expenses which compare budgeted expenditures to actual expenditures. When the operating budget is in excess of one million dollars (\$1,000,000), the Council shall also review on a quarterly basis balance sheets for the previous three months. The Council shall review all such information at regular meetings, the minutes of which shall specifically note such reviews, and include such information.

Section 4. Council Concurrence and Quorum Defined.

"Council concurrence," as used in this Article, may be obtained at any regular or special Council meeting by an affirmative vote of a majority of the Council members voting on the issue, provided that such majority equals not less than one third of the council voting membership.

A quorum to commence a Council meeting shall be no fewer than a majority of the Council's total voting membership. Voting membership means the total number of voting positions on the Council authorized by the Charter, whether filled or vacant. The Rules and Regulations of the PDA may prescribe Council quorum restrictions which equal or exceed the

quorum restrictions imposed in this Section 4. Council members present at a duly convened meeting may continue to transact business notwithstanding the withdrawal of enough members to leave less than a quorum.

Section 5. Officers and Division of Duties.

The PDA shall have two or more officers. The same person shall not occupy both the chief executive office of the PDA and the office responsible for the custody of funds and maintenance of accounts and finances. The initial officers of the PDA shall be the Chairman, Vice-Chairman, Secretary and Treasurer of the Council. Additional officers may be provided for in the Rules and Regulations of the PDA. The Chairman shall be the agent of the PDA for service of process; the Rules and Regulations may designate additional corporate officials as agents to receive or initiate process. The corporate officers, who shall be selected from among the membership of the Council as provided in the Rules and Regulations, manage the daily affairs and operations of the PDA. The Council shall oversee the activities of the corporate officers, establish and/or implement policy, participate in corporate activity in matters prescribed in Section 2 of this Article VII, and shall have stewardship for management and determination of all corporate affairs except as may be specifically reposed in the Constituency under Article VIII hereof.

Section 6. Executive Committee.

The Rules and Regulations may provide for an Executive Committee, which shall be appointed or removed by the Council, and shall have and exercise such authority of the Council in the management between meetings of the Council, as may be specified in the Rules and Regulations.

ARTICLE VIII
CONSTITUENCY

Section 1. Composition.

1. The Constituency of the PDA shall consist of its general membership, which shall be open to all persons sixteen years of age and over who shall pay dues, as provided in the Bylaws of the Constituency. The Rules and Regulations shall provide for meetings of members, including notice, quorum, and other provisions dealing with the membership.

2. For purposes of notice, the Constituency shall consist of members of record who have paid their annual dues, as provided in the Bylaws of the Constituency.

Section 2. Constituency Concurrence Required.

The concurrence of the Constituency shall be required on the following matters:

1. Any proposed amendments to the Charter;
2. Any proposed amendments to the Rules and Regulations of the PDA if said amendment deals with matters which are within the power and responsibility of the Constituency as set forth in this section;
3. Proposed amendments of the provisions of the Rules and Regulations governing procedures for meetings of the Constituency;
4. Annually fixing the compensation of Council members, if any, and the nature and limit of expenses incurred by Council members that may be reimbursed;
5. Election or selection of an independent auditor; and
6. Election of one member to the class of the Council membership expiring each year, as provided herein.

Section 3. Constituency Concurrence Defined.

Constituency concurrence, as used herein, shall be defined as follows:

1. Concurrence by the Constituency as required in Section 2, paragraphs (1), (2), (3), (4), and (5) shall require an affirmative vote of two-thirds (2/3) of the constituents voting on the issue and shall require an affirmative vote of at least 20 percent (20%) of the Constituency membership, if the membership is less than 100 persons, or shall require an affirmative vote of at least ten percent (10%) of the Constituency membership, if the membership, is more than 100;

2. Concurrence by the Constituency as required in Section 2, Paragraph (6) of this Article shall require an affirmative vote of a majority of the Constituents voting, provided that the affirmative vote of the winning candidate represents at least ten percent (10%) of the Constituency membership; provided further, however, that if no candidate receives a majority affirmative vote, a run-off election between the two highest vote getters shall be held not later than one month following the first election and shall be decided as provided in this paragraph above.

ARTICLE IX

MEETINGS

Section 1. Council Meetings.

1. The Council shall meet at least, once a month.

2. Special meetings of the Council may be called as provided in the Rules and Regulations.

3. Any member of the Council, upon five (5) days' notice, may call a special meeting of the Council to consider matters appropriate to a regular meeting if twenty-five (25)

days have elapsed, since the previous Council meeting and no future meeting has been scheduled.

Section 2. Open Public Meetings.

All Council meetings, including executive, all other permanent and ad hoc committee meetings, and Constituency meetings shall be open to the public to the extent required by RCW 42.30.010 et seq. The Council and committees may hold executive sessions to consider matters enumerated in RCW 42.30.010, et seq., or privileged matters recognized by law, and shall enter the cause therefor upon its official journal. Notice of meetings shall be given in a manner consistent with RCW 42.30.010 et seq. In addition, the PDA shall routinely provide reasonable notice of meetings to any individual specifically requesting it in writing. At such meeting, any citizen shall have a reasonable opportunity to address the Council either orally or by written petition. Voting shall be in-person only.

Section 3. Parliamentary Authority.

The rules in Robert's Rules of Order (as revised) shall govern the PDA in all cases to which they are applicable, where, they are not inconsistent with the Charter or with the special rules of order of the PDA set forth in the Rules and Regulations.

Section 4. Constituency Meetings.

1. A Constituency meeting open to all constituents of the PDA shall be held at least four (4) times each year with the date, time, and place to be selected by the Council. One of such Constituency meetings shall be denominated the annual meeting. The Rules and Regulations shall provide for the time of year and general location for meetings of the Constituency, including notice therefor. The Council or a committee thereof shall report to and receive comment from the Constituency at each quarterly meeting on matters upon which the Council

has acted during the preceding quarter and on matters proposed for action during the next quarter.

2. If ninety (90) days have elapsed after the previous meeting and no meeting of the Constituency has been scheduled, any constituent or corporate official may call a special meeting to consider matters appropriate for a quarterly meeting of the Constituency. Notice of such meeting shall be given pursuant to the Rules and Regulations and the expense of such notice shall be borne by the PDA.

3. Special meetings of the Constituency may be called by the Council or by petition of the constituents as provided by the Rules and Regulations.

Section 5. Minutes.

Copies of the minutes of all regular or special meetings of the Council shall be available to any person or organization that requests them. The minutes of all Council meetings shall include a record of individual votes on all matters requiring Council concurrence.

Section 6. Location of Public Meetings.

To the extent practicable, meetings of the PDA shall be held within the general area of the Pike Place Market Historical District.

ARTICLE X

RULES AND REGULATIONS

The Council shall adopt Rules and Regulations to provide such rules for governing the PDA and its activities as are not inconsistent with this Charter. The adoption of the Rules and Regulations and any amendments thereto require a majority vote of the whole Council. The Council may provide in the Rules and Regulations for all matters related to the governance of the

PDA, including but not limited to matters referred to elsewhere in the Charter for inclusion therein, and for the following:

1. The existence of committees of the PDA and the duties of any such committee;
2. Regular and special meetings of the Council and Constituency of the PDA;
3. Suspension or removal of PDA officials and conditions which would require such suspension or removal;
4. Any matters set forth in Seattle Municipal Code 3.110.140 not inconsistent with the Charter or not provided for herein;
5. Additional classes of membership.

ARTICLE XI

AMENDMENTS TO CHARTER AND RULES AND REGULATIONS

Section 1. Proposals to Amend Charter and Rules and Regulations.

1. Proposals to amend the Charter or Rules and Regulations shall be presented in a format which strikes over material to be deleted and underlines new material.
2. Any Council member may introduce an amendment to the Charter or to the Rules and Regulations (which may consist of new Rules and Regulations) at any regular meeting or at any special meeting of which thirty (30) days' advance notice has been given.

Section 2. Council Consideration of Proposed Amendments.

If notice of a proposed amendment to the Charter or to the Rules and Regulations, and information, including the text of the proposed amendment and a statement of its purpose and effect, is provided to members of the Council fifteen (15) days prior to any regular Council meeting or any special meeting of which thirty (30) days' advance notice has been given, then the Council may vote on the proposed amendment at the same meeting as the one at which the

amendment is introduced. If such notice and information is not so provided, the Council may not vote on the proposed amendment until the next regular Council meeting or special meeting of which thirty (30) days' advance notice has been given, provided that such notice and information is provided to Council members at least fifteen (15) days prior to such meeting. Germane amendments to the proposed amendment within the scope of the original amendment will be permitted at the meeting at which the vote is taken.

Section 3. Vote Required for Amendments to Charter.

Resolutions of the Council approving amendment to the Charter require an affirmative vote representing two-thirds (2/3) of the Council members voting on the issue and a majority of the Council voting membership for adoption.

Section 4. Vote Required for Amendments to Rules and Regulations.

The minimum vote that is required for the amendment, alteration, or repeal of the Rules and Regulations of the PDA shall be an affirmative vote of a majority of the whole Council.

Section 5. Constituency Consideration of Proposed Amendment.

Notice that a vote will be taken on a proposed amendment to the Charter, or to provisions of the Rules and Regulations which require Constituency concurrence pursuant to Article VIII, Section 2, shall be provided to constituents thirty (30) days prior to the Constituency meeting at which a vote will be taken. The text of the proposed amendment and a statement of its purpose and effect shall be provided to constituents fifteen (15) days prior to such meeting. Germane amendments to the proposed amendment within the scope of the original amendment will be permitted at the meeting at which the vote is taken.

Section 6. Approval by Mayor.

After adoption of a proposed amendment to the Charter of the PDA, as set forth herein, by the Council and Constituency, the proposed amendment shall be filed in duplicate with the City of Seattle's Clerk and a copy provided to the City's public development authority coordinator. The Mayor may approve or disapprove the proposed amendment. If the Mayor approves the proposed amendment, he or she shall cause to be issued duplicate originals of the revised charter, each signed by the Mayor and bearing the City seal attested by the City Clerk. One original shall be retained by the City Clerk as a public record, and the other shall be delivered to the PDA. If the Mayor does not approve the proposed amendment, he or she will notify the PDA and will provide an explanation of the reason for nonapproval.

Section 7. Effective Date of Amendments to Charter.

Amendments to the Charter proposed by the PDA shall take effect and become part of the Charter upon the filing of the Mayor's approval with the City of Seattle Clerk.

Section 8. Effective Date of Amendments to Rules and Regulations.

Amendments to the Rules and Regulations shall not take effect until ten (10) days after filing of the same with the City of Seattle Clerk, unless such amendment(s) shall have been passed by unanimous vote of the Council and the Constituency (if affected by the amendment), and an earlier date be set.

ARTICLE XII

RECORDS AND REPORTING REQUIREMENTS

Section 1. Establishment and Maintenance of Office and Records.

The PDA shall:

1. Maintain a principal office within the limits of the City;

2. File and maintain current with the City of Seattle Clerk a listing of all officials, their position, and their business address, their business phone numbers; the address of its principal office and all other offices used by it; and a current set of its Rules and Regulations; and

3. Maintain all PDA records in a manner consistent with the Preservation and Destruction of Public Records Act, RCW Chapter 40.14.

Section 2. Public Records.

The public shall have access to records and information of the PDA to the extent required by state law and City of Seattle ordinance and this Charter.

Section 3. Annual Report.

The PDA shall:

1. Within three (3) months of the end of its fiscal year; file an annual report with the City of Seattle Clerk, the City Council, and the City's public development authority coordinator containing a certified statement of assets and liabilities, income and expenditures and changes in its financial position during the previous year; a summary of significant accomplishments; a list of depositories used; a projected operating budget for the current fiscal year, and a separate capital budget when annual capital expenditures are expected to exceed One Hundred Thousand Dollars (\$100,000); a summary of projects and activities to be undertaken during the current year; a list of corporate officials and a list of officers bonded pursuant to Seattle Municipal Code 3.110240(c); and

2. Within six (6) months of the end of its fiscal year, file an audited and Council-certified statement of assets and liabilities, income and expenditures, and changes in financial position.

ARTICLE XIII

COMMENCEMENT

The PDA shall commence its existence effective upon filing its Charter as issued and attested.

ARTICLE XIV

DISSOLUTION

Section 1. Dissolution.

Dissolution of the PDA shall be in the form and manner required by law, City ordinance, and the Rules and Regulations. Upon dissolution of the PDA and the winding up of its affairs, all of the rights, assets and property of the PDA shall pass to and be distributed according to the terms of the applicable grant agreements or covenants with the federal government, or agreements with donors, or other parties made at the time of acquisition, or to a qualified entity specified in Seattle Municipal Code 3.110.490.

Section 2. Dissolution Statement.

Upon enactment of a resolution by the City Council for dissolution of the PDA, or by the PDA for its own dissolution other than for purposes of merger or reorganization in a plan approved by the Mayor, the PDA shall file a dissolution statement signed by its chief executive officer setting forth:

1. The name and principal office of the PDA;
2. The debts, obligations, and liabilities of the PDA and the property and assets available to satisfy the same; the provisions to be made for satisfaction of outstanding liabilities and performance of executory contracts; and the estimated time for completion of its dissolution;
3. Any pending litigation or contingent liabilities;

4. The Council resolution providing for such dissolution and the date(s) and proceedings leading toward its adoption, whenever the dissolution be voluntary; and

5. A list of persons to be notified upon completion of dissolution.

ARTICLE XV

REVIEW

Section 1. PDA Actions Requiring Special Disclosure and Review.

To ensure full public disclosure and scrutiny of PDA actions that may have substantial impacts on the merchants, tenants, residents, lessees, licensees, and social service organizations in the Market Historical District, and to ensure that the traditional character of the Public Market is preserved, the PDA shall comply with the special review and disclosure provisions of this Article as described in Section 2 for each of the following proposed actions:

1. Encumbrance of any PDA interest (excluding individual tenant leases) in any property in the Market Historical District;
2. A change in the established primary use of a main arcade, building, or major section of a building other than an individual tenant space within the PDA-owned properties in the Market Historical District;
3. Demolition, substantial alteration, or construction of a major addition (excluding individual tenant improvements and like-kind building repairs or replacements) to a building within the Market Historical District;
4. The purchase or development of any rights in real property; and
5. Entering into a real property lease agreement (excluding individual Market tenant leases) for a term longer than one year.

State law provisions permitting exemptions for any particular activities or documents from mandatory public openness or disclosure shall only be available to the PDA to the extent not inconsistent with the special review and disclosure requirements imposed by Sections 1 and 2 of this Article.

Section 2. Special Public Disclosure and Review.

1. At least forty-five (45) days prior to a final vote of the PDA Council on each proposal of the type described in Section 1 of this Article, the PDA shall deliver a brief written notice of the proposed action to the City of Seattle public development authority coordinator, to each Seattle daily newspaper of general circulation, and to the most recent addresses in the PDA's files for the Chairperson and board members of the Pike Place Market Constituency, the Pike Place Merchants' Association, the Pike Place Market Historical Commission, the Market Foundation, the Daystall Tenants, Association, Market Housing, Friends of the Market, and each other Market or public interest group or newspaper, or other medium that has filed the appropriate names and addresses with the PDA within the preceding twelve (12) months.

2. At least thirty-one (31) days prior to a final vote of the PDA Council on each proposal of the type described in Section 1 of this Article:

(a) The PDA shall prepare a written analysis of the possible impacts of the proposal on the merchants, tenants, residents, licensees, lessees, and social service organizations.

(b) The PDA shall submit a written summary of its written analysis to each group entitled to notice under subsection 2(a) of this Article, to all other organized interest groups in the Market, and to each Seattle daily newspaper of general circulation; copies of the summary shall also be made readily available to members of the general public.

(c) Copies of the full written analysis shall be made readily available for inspection upon request at the PDA's principal office.

3. The written analysis required by subsection 2(b) of this Article must contain at a minimum the following:

(a) A complete description of the proposal;

(b) An explanation of the reasons for the proposal based upon the general purposes and responsibilities of the PDA as described in Article IV of this Charter, the Pike Place Historical District Ordinance 100465, as amended, and the Pike Place Market Urban Renewal Plan as amended;

(c) A review of how the proposal complies with applicable state and local laws and deed restrictions that govern uses of PDA properties in the Market Historical District;

(d) A description of the anticipated financial impacts of the proposal, including borrowing costs, interest rates, cash flow projections, repayment schedules, and the financial effect, if any, upon tenants in the Market;

(e) A discussion of all feasible alternatives and options, and of the advantages and disadvantages of the proposal;

(f) A schedule of opportunities for public response and the expected timing of the PDA decision.

4. At least five (5) days prior to a final vote of the PDA Council on each proposal of the type described in Section 1 of this Article, the PDA shall have compiled public comments received and prepared a written report responding directly to the comments made. The report shall be provided to the members of the PDA Council and the City's public development coordinator and shall be made readily available on request to all Market interest groups and to

members of the general public. The PDA Council shall demonstrate it responsibly considered all public comments in its deliberations on the proposal.

Section 3. Review Required for Less Major Actions.

To the extent practicable, any proposal of the PDA not described in Section 1 of this Article that substantially affects any farmer, resident, merchant, tenant, social service organization, licensee, or lessee within the Pike Place Market Historical District shall be submitted to the Pike Place Merchants' Association, the Pike Place Market Constituency, and the Daystall Tenants Association prior to its adoption by the PDA. To the extent practicable, any such proposal shall include a specific analysis of the likely impact of the proposal on any farmer, resident, merchant, tenant, social service organization, licensee, or lessee who will be substantially affected by the proposal and shall be submitted in a time and manner that affords a reasonable time to review and comment on the proposal prior to its adoption. Any recommendation to any such proposal shall not be binding upon the PDA but shall be responsibly considered by the PDA in its own deliberations on the proposal.

Section 4. Merchants.

In addition, the PDA will endeavor to incorporate present occupants of the Pike Place Market area into any future development plans for the area. To the extent practicable, Market merchants doing business at the time this Charter is adopted shall be given an opportunity to participate in such plans by either retaining their present locations under criteria specified by such plans or by relocating elsewhere in the Pike Place Market area. In the case of relocation, present merchants shall be given preference over comparable new businesses seeking locations appropriate for such business in the Market area.

Section 5. Additional Review.

In addition to the review described in sections 1 through 3 above, there shall be such further and additional review of proposals and decisions of the Council of the PDA as may be provided for in federal, State, and City of Seattle laws and ordinances and in the Rules and Regulations.

ARTICLE XVI

MISCELLANEOUS

Section 1. Geographic Limitation.

The PDA may conduct activities outside the City of Seattle upon a determination by the Council that each such activity will further the purposes of the PDA but only in those areas of another jurisdiction whose governing body by agreement with the City consents thereto.

Section 2. Bonding.

The Treasurer of the PDA and any other officials responsible for PDA accounts and finances, shall file with the PDA fidelity bonds in an amount determined adequate and appropriate by the Council. Such officials may hold such positions only as long as such bonds continue in effect. The PDA shall notify the Mayor in its annual report of the officials responsible for PDA funds, accounts and finances, the names of such officials and the amounts of the bonds prescribed for them, and confirm that such bonds are currently in effect.

Section 3. Safeguarding of Funds.

PDA funds shall be deposited in a depository acceptable to the Mayor and be otherwise safeguarded pursuant to such instructions as the Mayor may from time to time issue.

Section 4. Insurance.

The PDA shall maintain in full force and effect public liability insurance in an amount specified by the Mayor sufficient to cover potential claims for bodily injury, death or disability, and for property damage, which may arise from or be related to projects and activities of the PDA, naming the City as an additional insured.

Section 5. Code of Ethics.

No current corporate official or employee shall engage in conduct prohibited under Seattle Municipal Code 3.110.560. Uncompensated officials and employees and designated compensated employees shall annually by April 15 file statements of economic interest as required under Seattle Municipal Code 3.110.570. The Council shall enforce the provisions of Seattle Municipal Code 3.110.580. Additionally, all final Council determinations under Seattle Municipal Code 3.110.580 shall be provided to the Seattle Ethics and Elections Commission for its information. The Commission, in its discretion, may comment on any determination and provide its comments to the Council.

Section 6. Discrimination Prohibited.

1. As provided in Seattle Municipal Code 3.110.260, neither Council nor Constituency membership may directly or indirectly be based upon or limited by age, race, color, religion, sex, national origin, marital status, sexual orientation, political ideology, or the physical handicap of a capable person. The Council shall take steps to ensure equality of employment opportunity as provided in the Code.

2. PDA use of funds provided to it by the City after January 1, 1985, shall be subject to the requirements of Seattle Municipal Code chapter 20.46 (Women's and Minority Business Utilization).

Section 7. Nonexclusive Charter.

This Charter is nonexclusive and does not preclude the granting by the City of other charters to establish additional public corporations.

Section 8. Hierarchy of Governing Law.

Generally, in the event of a conflict, the following sources of authority shall prevail in descending order of supremacy.

Federal law and regulation

State law and regulation


The City of Seattle ordinances and regulations

This Charter

PDA Council Rules and Regulations

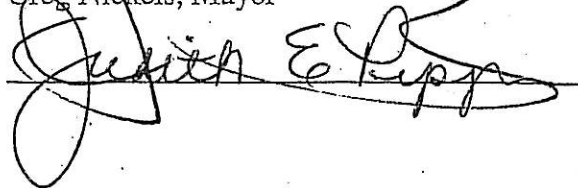
Bylaws of the Constituency.

This revised charter reflects the charter as issued June 23, 1973, and amended on March 17, 1976, September 21, 1976, March 19, 1985, October 1, 1992 and November 3, 1993; and amendments approved by me this 26 day of August, 2003.



Greg Nickels, Mayor

Attest:



Judith E. Papp

Q Eastern Market By Laws

EASTERN MARKET CORPORATION
Organizational Structure Summary

ARTICLES OF INCORPORATION

- **Name of the Corporation:** Eastern Market Corporation
- **Purposes:** This Corporation is organized for the purpose of renovating and operating the Eastern Market properties and related ventures owned by the city of Detroit in the Eastern Market District, including the formation and operation of the public market or markets for the benefit of the general public. The Corporation will generate plans and strategies for economic development of the Eastern Market District. The Corporation’s purposes are economic development/charitable within Section 501(c)3 of the Internal Revenue Code, including the promotion of social welfare by combating community deterioration, lessening the burdens of government, relief of the poor and distressed, and promotion of the revitalization of economically depressed or blighted areas in the City of Detroit.
- **Nonprofit Corporation:** Eastern Market Corporation is a Nonprofit Corporation. No wages, salaries, compensation, dividends, profits, distributions, or property shall be paid, distributed or inure to the benefit of any shareholder, officer, or member of the Board of Directors of this Corporation. Any and all “Distributable Net Profits”, which shall be derived from the operations of this corporation or any activity carried on by this Corporation, shall be paid to the City of Detroit, State of Michigan as a body public. “Distributable Net Profits” shall be the “Net Spendable” which is defined to mean that sum of money left after (1) payment of all expenses of administration, management, operation, maintenance and current repairs, (2) payment of principal, interest and premiums on all loans or other debt obligations, and (3) maintaining reasonable reserves for debt service, renewals and replacements, maintenance, promotion and related purposes.
- **Tax Status:** The Corporation will be a 501 (c)3 public charity organization

BY-LAWS

- **Board of Directors:**
 - The Board of Directors will be comprised of persons who are stakeholders in the Market, including Market area businesses, economic development funders, government and food-related enterprises.
 - Not less than 15 nor more than 21 directors
 - Initial Board appointed by the Mayor of the City of Detroit
 - After the initial Board has been appointed, vacant Board positions will be filled by Mayor of the City of Detroit based on recommendations made by

the Eastern Market Corporation Nominating Committee. If the Mayor takes no action to accept or reject the nomination within 60 days of written notice by the Nominating Committee, the Board may elect the nominee.

- Directors are appointed for three-year staggered terms.
- A Director may be removed with or without cause by two-thirds of the remaining directors then in office.
- **Officers:**
 - Board will elect a President, Secretary and Treasurer
 - Board may elect a Vice President, Assistant Secretary and Assistant Treasurer
 - Board will elect from among Board members, a Chairman and Vice Chairman.
- **Executive Committee:** Board may establish an Executive Committee consisting of three or more directors, may exercise powers of the Board between meetings of the Board subject to certain limitations specified in the Bylaws.
- **Other Committees:** Board may designate committees, other than the Nominating Committee, which will serve at the pleasure of the Board.

EMC FUNCTIONS AND ACTIVITIES

- The EMC will serve as the umbrella organization for the Eastern Market District.
- EMC will work with the city, district property-owners and other stakeholders to promote economic development within the Eastern Market district.
- Pursue district-wide economic development within the district through:
 - Attraction, retention and expansion activities, including wholesale, retail and mixed-use activities
 - Increase residential units and community amenities complementary to the food-based businesses in the district.
 - Coordinate efforts with PDD, DEGC and other City entities.
- Oversee repairs and improvements to the city-owned public market sheds and related properties.
- Operate and manage the Eastern Market public market.
- Prepare and execute all leases pursuant to which space shall be rented. Show the Market to prospective tenants, take applications and process for rentals.
- Collect rents and other receipts. All sums collected will be deposited in an account called the Eastern Market Corporation Account which is open to review at any time by the City of Detroit.

- Maintain a complete set of books and records, in a form and manner approved by the City, showing all revenue collected and all expenditures made in connection with the operation of the Market Facilities along with such supporting data and documents as prescribed by the city. The City shall have the right at any time to examine the records, books, data and documents kept by the EMC. An annual audited financial statement shall be submitted to the city by December 31 each year.
- Rental revenue shall be applied to operating and management costs for Eastern Market. “Distributable Net Profits”, as defined above, shall be paid to the City of Detroit.
- Hire employees and/or enter into contracts for the services of independent contractors concerning Market Operations and District economic development activities as necessary.
- Perform material alternations to the structural components of the Market facilities only with the prior written approval of the City.
- Utilize best efforts to pursue grants and private gifts to increase the operating revenue and improve the physical condition and smooth operations of the Eastern Market.
- Take all reasonable measures to maintain, develop and maximize the business generated by the Market, focusing efforts on encouraging year-round utilization.
- Effectively communicate to the public the attractions, goods and offerings provided by the Eastern Market. Communicate with merchants, business owners and residents the activities within the Eastern Market District.
- Pursue year-round market utilization through events and promotions programming.
- EMC shall not assign any of its rights and obligations without prior written consent of the city.
- Any improvements made to Eastern Market facilities will become the property of the City, unless the City has agreed otherwise in writing.

IMPLEMENTATION PLAN

- The Eastern Market Corporation will be formed through the restructuring of the Eastern Market Advancement Coalition—a 501(c)3 corporation.
-Rename EMAC to the Eastern Market Corporation

- Adopt amended by-laws and articles to reflect the direction shown in the description above.
 - Nominate and elect a new Board of Directors, reflecting the mix described above and approved by the Mayor.
 - Elect officers, including Chairman, Secretary and Treasurer.
 - Name a CEO and retain EMAC staff, who will work with the CEO during the start-up period.
- Draft a memorandum of understanding to guide the relationship between the city and the EMC for operation of the Market and direction of the economic development effort in the District. Draft a second MOU to govern the relationship between the Greater Downtown Partnership (or its successor organization) and the EMC to undertake shed improvements. The MOUs will be endorsed by the EMC, the GDP and the Mayor's office and serve as the basis for Resolution to be presented to City Council for approval. Agreement on the MOUs is sought as soon as possible, to enable direction of design and improvement of the sheds to begin by May 1.
 - Seek City Council approval of the Resolution to establish the operating agreement with the EMC. Full transfer should be implemented by July 1, 2005.
 - Seek additional funding to support the organizational effort, business plan and farmer outreach effort for EMC. Utilize CDBG funds for EMC operations during the transition. Vendor revenues will be directed to EMC shed operations, including maintenance, security, stall leasing, vendor relations, and support activities. Anticipated future non-vendor revenues will be used to support the activities of the EMC.
 - Establish the current level of city services to maintain, secure and service the market. Affirm with the city that this level will be maintained by the city, while the EMC focuses resources on district-wide economic development and shed improvements and operations.

R Lease Agreement Between the City of Detroit and Eastern Market
Operator

EASTERN MARKET MANAGEMENT AND PROMOTION AGREEMENT

This AGREEMENT is made this _____ day of March, 2005, by and between the EASTERN MARKET CORPORATION (hereinafter "EMC"), a Michigan non-profit corporation, whose address is _____ and the CITY OF DETROIT (hereinafter the "City"), a Michigan municipal corporation, whose address is _____ (hereinafter referred to as the "Agreement").

WITNESSETH:

WHEREAS, the City owns and operates certain premises located in the Eastern Market district of the City, the boundaries of which district are shown on the map attached hereto as Exhibit A (the "District"); and

WHEREAS, EMC is a Michigan non-profit corporation organized for purposes including the management and improvement of the Market (as defined below) and the promotion of the District; and

WHEREAS, the City manages and operates a public market located within the District, the location of which is identified on the map attached hereto as Exhibit B (the "Market"); and

WHEREAS, the City has determined that it will lessen the City's governmental burden and is in the best interest of the City and its citizens to engage EMC to manage and improve the Market and to promote the District; and

WHEREAS, EMC agrees to promote the District and manage the Market in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual undertakings herein set forth, the parties do hereby agree as follows:

ARTICLE I

RECITALS

1.01 The recitals set forth above are incorporated herein by reference as if set forth again in full.

ARTICLE II

ENGAGEMENT OF EMC

2.01 The City hereby engages EMC and EMC agrees to perform the services more fully described in Article IV hereof in accordance with the terms and conditions set forth in this Agreement.

ARTICLE III

TERM OF AGREEMENT

3.01 The term of this Agreement shall commence on July 1, 2005 and shall expire on June 30, 2010, unless sooner terminated as provided for in Article XII hereof or unless extended for an additional period in accordance with Sections 3.02 and 3.03 hereof.

3.02 The term of this Agreement may be extended by Amendment of the Agreement in accordance with provisions of Article X hereof.

3.03 Extension of the term of this Agreement shall be made by delivery of written Notice by the City to EMC not later than ninety (90) days prior to the end of a term of its intention to extend this Agreement. Such extension shall be accepted or rejected by EMC at least thirty (30) days prior to the end of such term. In the event EMC fails to timely accept or reject the City's offer to extend, this Agreement shall be deemed extended for the period specified in the Notice from the City to EMC.

ARTICLE IV

MANAGEMENT AND IMPROVEMENT OF MARKET BY EMC

4.01. EMC shall be responsible for the operation and management of the Market and shall undertake the usual and ordinary duties of such management to assure the continuing operation and management of the Market to standards of equivalent first class public markets.

a. With respect to operating and managing the Market on behalf of the City, the EMC shall:

1. Lease on behalf of the City the Market's stalls, stands and booths and other facilities to tenants and operators. Rates charged to such tenants and operators shall be in accordance with a rate schedule approved by the City.
2. Prepare and execute on behalf of the City all leases and other agreements pursuant to which the Market's stalls, stands, booths and other facilities are leased or otherwise used.

3. Enforce full compliance by each tenant and/or operator with the terms of its agreement and terminate the agreement and evict any tenant and/or operator that does not comply with the terms of its agreement to use and/or lease space in the Market.
4. Show the Market to prospective tenants and operators.
5. Accept and process applications from prospective tenants and operators, and maintain a current list of prospective tenants and operators.

b. EMC shall collect all rents, charges and other amounts to be paid pursuant to all leases, agreements for concessions or services and from all other operations of the Market. All sums collected shall be deposited in an account with a bank or financial institution acceptable to the City whose deposits are insured by an agency of the United States government, which account shall be called the "Eastern Market Account." Security deposits, if required by such leases and agreements, shall be collected and maintained in accordance with the terms of such leases and agreements in accordance with applicable law.

c. Subject to the terms of this Agreement, all costs and expenses of operating and maintaining the Market shall be paid by EMC from funds provided for in the Annual Operating Budget described in Section 4.01(f) hereof and shall be the sole responsibility of EMC.

d. To the extent not provided by the City, EMC shall make such arrangements as are necessary to provide utilities and other services to the Market, including, but not limited to, water, electricity, gas, sewer, telephone, security, trash disposal, janitorial service and vermin and insect inspection and extermination. EMC shall enter into such agreements as are necessary to secure such utilities and services.

e. EMC shall engage such qualified personnel as are necessary to manage and promote the Market, including personnel for maintenance, bookkeeping, clerical services, and public relations. Such personnel may be either employees of EMC, who are hired, discharged, paid and supervised by EMC, or independent contractors of EMC.

f. EMC shall prepare an Annual Operating Budget for the Market and for improvements within the District as described in Section 4.01(g) (the "Annual Operating Budget"), which shall be submitted to and approved by the City Representative designated in accordance with Section 6.07 hereof. The Annual Operating Budget shall be presented to the City Representative sixty (60) days prior to the beginning of the City's fiscal year. The Annual Operating Budget shall require the EMC to disburse funds generated by the operation of the Market in the following order of priority, unless otherwise approved by the City: (1) operating expenses of the Market; (2) payment of debt service on loans for the improvement of the Market and/or the District that have been approved by the City; (3) alterations and/or improvements to the Market approved by the City; (4) an operating reserve account (the "Operating Reserve Account") to be maintained by EMC equal to not more than five (5%) percent of the total revenues generated by the operation of the Market

in any fiscal year; (5) a capital reserve account (the "Capital Reserve Account") to be maintained by EMC equal to not more than five (5%) percent of the total revenues generated by the operation of the Market in any fiscal year; and (6) payment to the City's General Fund. EMC shall make reasonable efforts to ensure that the actual cost of maintaining and operating the Market and improving the District does not exceed the Annual Operating Budget. All Market operating expenses and other costs must be charged to the proper account, as specified in the Annual Operating Budget, and EMC shall promptly advise the City Representative of any material increase or decrease in costs, expenses and income not reflected in the Annual Operating Budget. Funds in the Operating Reserve Account shall only be used by the EMC for the operation and maintenance of the Market or the funds in the account shall be paid to the City's General Fund. Funds in the Capital Reserve Account shall only be used by the EMC for capital improvements to the Market that have been approved by the City or the funds in the account shall be paid to the City's General Fund. EMC shall only be obligated under this Agreement to pay the expenses of performing its obligations under this Agreement from revenues generated by the operation of the Market and from funds from other sources, if any, granted or loaned to EMC for such purpose.

g. Subject to the prior written approval of the City and the availability of funding, EMC shall supervise the material alteration of structural components of the Market facilities, as well as the construction of new City owned improvements within the District. EMC shall enter into such agreements as are necessary to complete such construction and shall direct all activities relating to the temporary relocation of merchants of the Market within the Market site during the construction of such improvements.

h. EMC shall maintain books of account of all receipts and disbursements incurred in the management of the Market, and containing such other information as is reasonably requested by the City, which books shall be open to inspection by the City at all reasonable times upon reasonable notice.

i. At the end of each City fiscal year during the term of this Agreement or any renewal thereof, EMC shall arrange for a certified public accountant to prepare an annual financial report, which report shall be submitted to the City not later than ninety (90) days after the end of the City's fiscal year.

j. EMC shall develop and enforce written rules, regulations and procedures for the operation and management of the Market. Such rules, regulations and procedures shall include that all lawns, signs and other exterior and interior aspects of the Market shall be maintained to assure compatibility with the Market's appearance, concept and image.

k. EMC shall designate an EMC Representative to act on its behalf as the individual primarily responsible for communicating to the City Representative on all matters arising under this Agreement.

l. Subject to the approval of the City, the EMC may borrow funds for use in connection with the improvement of the District on terms acceptable to EMC and pledge as security for the repayment of such funds revenues generated by the operation of the Market and such other security as is approved by the City.

m. Notwithstanding anything stated herein to the contrary, EMC shall in no case pledge the City's General Fund or land or buildings comprising the Market or any other property owned by the City as collateral or security for any financing or for any other purpose without the City's prior written consent.

ARTICLE V

PROMOTION OF THE DISTRICT

5.01 In addition to its responsibility for the operation and management of the Market under the terms of this Agreement, EMC shall work with the City, District property owners and other District stakeholders to promote the economic development of the District. EMC's efforts to promote the economic development of the District shall include the following:

a. Pursue grants and private gifts in support of the operations and programs of the Market and in the District and for constructing improvements to the Market and in the District.

b. Seek to increase the number of residential units and the quality of amenities in the District to complement the food-based businesses in the District.

c. Seek to attract, retain and expand development activities in the District, including wholesale, retail and mixed-use development activities.

d. Effectively communicate to the merchants, business owners and residents of the District and to the public in general the attractions, goods and offerings provided by the Market.

e. Promote year-round utilization of the Market through events and promotions programming.

ARTICLE VI

OBLIGATIONS OF THE CITY

6.01 The City shall be responsible for providing funding for any material alteration or construction of improvements to the Market and/or the District approved by the City in excess of funds generated by the operation of the Market and funds obtained from sources other than the City by EMC for such purpose. Plans, specifications and funding for any such alterations or improvements shall be approved by both the City and EMC.

6.02 Except for the management and promotion services provided for in this Agreement, the City shall continue to provide City services to the Market at current levels, unless otherwise mutually agreed by the parties hereto. Services currently provided by the City to the Market include the following: public safety, sanitation, water and sewerage and electricity.

6.03 Upon the written request of EMC, the City hereby agrees to subordinate its interest in all revenues generated by the Market to the liens(s) securing repayment of

funds borrowed by EMC with the written approval of the City to improve the Market for the period of time such loan(s) is unpaid in full in accordance with its terms.

6.04 The City shall make available to EMC any Federal Block Grant Funds granted by the City to EMC, for the Market, if any.

6.05 Upon the date of execution of this Agreement, the City shall prorate funds received by the City for contractual rights at the Market for the period from April 1 2005 through March 31, 2006, and the City shall pay over to EMC on the date of execution such funds as were received by the City for such rights and privileges at the Market from the date of execution of the Agreement through March 31, 2006.

6.06 The City shall be permitted to enter and inspect any and all portions of the Market upon reasonable notice at reasonable times.

6.07 The City shall designate the City official primarily responsible for the Market as the City Representative with authority to act on behalf of the City for the purposes required and necessary under this Agreement and to serve as the individual with whom EMC shall communicate regarding all matters arising under this Agreement. In furtherance of the purposes of this Agreement and subject to the terms hereof, the City Representative is hereby authorized by the City to perform certain functions on behalf of the City, including execution of letters of authority pertaining to Market operations; execution of leases of existing structures and newly developed structures; and execution of service contracts, construction agreements, subordination agreements and consents, all subject to amount limitations specified by resolution of City Council.

ARTICLE VII

INSURANCE

7.01 EMC shall maintain as an operating expense hereunder insurance coverage in the following minimum amounts listing the City as an additional insured on insurance coverage other than Worker's Compensation Insurance:

- a. Workers Compensation: Amount required by law.
- b. Comprehensive General Liability:
 1. One Million and 00/100 (\$1,000,000.00) Dollars bodily injury per person;
 2. One Million and 00/100 (\$1,000,000.00) Dollars per occurrence;
 3. One Million and 00/100 (\$1,000,000.00) Dollars aggregate coverage; and
- c. Business Automotive Liability: One Million and 00/100 (\$1,000,000.00) Dollars combined single limit.

7.02 The City may maintain such property casualty insurance (including fire insurance and any other casualty insurance) as it deems appropriate.

ARTICLE VIII

RELATIONSHIP OF PARTIES

8.01 The relationship of EMC to the City in the performance of the services hereunder is that of an independent contractor and no liabilities or benefits whatsoever that arise from a contract for hire or from any employer/employee relationship shall accrue to either EMC or the City as a result of this Agreement.

ARTICLE IX

INDEMNIFICATION

9.01 EMC agrees to indemnify and save harmless the City against and from any and all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including without limitation, fees and expenses of attorneys, expert witnesses and other consultants) which may be imposed upon, incurred by or asserted against the City by reason of the occurrence of any of the following during the term of this Agreement:

(a) Any negligent or tortious acts of EMC or any of its personnel, employees, consultants or subcontractors; and

(b) Any failure of EMC or any of its personnel, employees, consultants or subcontractors to perform its obligations either express or implied under this Agreement.

9.02 In the event any action or proceeding shall be commenced against the City by reason of any claim covered under Section 9.01 hereof, EMC, upon notice from the City, will, at its sole cost and expense, resist and defend said claim, unless said claim is directly attributable to the gross negligence of the City or employees of the City acting within the scope of their employment.

ARTICLE X

AMENDMENTS

10.01 Any change, addition, deletion, extension or modification of this Agreement which is mutually agreed upon by and between the parties shall be incorporated by written amendment (herein called "Amendment" or "Amendments") to this Agreement. Such Amendment shall not invalidate this Agreement, nor relieve or release EMC or the City of any of its respective obligations under this Agreement unless so stated herein or unless so stated in the Amendment.

10.02 An Amendment to this Agreement shall not be effective and binding upon the parties hereto unless it expressly makes reference to this Agreement, is in writing and is signed and acknowledged by a duly authorized representative of both parties hereto.

10.03 All Amendments to this Agreement must be authorized by the Board of Directors of EMC and by the Detroit City Council before execution by the parties.

ARTICLE XI

WAIVER

11.01 No act by or on behalf of any party hereto shall be, or be deemed or construed to be, a waiver of any such requirement or provision, unless the same be in writing, signed by an authorized representative of the party and expressly state by its terms that it constitutes such waiver.

11.02 No failure by either party to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right, term or remedy consequent to a breach hereof, shall constitute a waiver of any such breach or such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach hereof.

ARTICLE XII

TERMINATION

12.01 Either party hereto may terminate this Agreement for cause upon the event of a material breach that is not cured within a thirty (30) day period (or if the material breach cannot be cured within thirty (30) days, failure to promptly commence to cure said breach and diligently prosecute such cure thereafter) following written notice to the non-breaching party and to any lender that has been approved by the City Representative.

12.02 If on the effective date of termination of this Agreement EMC shall have rendered services or entered into binding obligations for the purpose of rendering services hereunder and EMC shall not have been compensated for the same, the City shall pay to EMC the amounts due therefor within a reasonable time after termination of this Agreement.

ARTICLE XIII

CONFLICT OF INTEREST

13.01 EMC warrants that it presently has no interest nor shall it acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance by it of the services required under this Agreement.

13.02 EMC further covenants that in the performance of this Agreement, no person having any such interest shall be employed by EMC and EMC agrees to take such steps as are necessary to require full disclosure by all of its employees concerning any conflicts of interest with respect to matters involving services rendered under this Agreement.

13.03 EMC also warrants that it will not and has not employed any person to solicit or secure this Agreement upon any agreement or arrangement for payment of a commission, percentage, brokerage or contingent fee, either directly or indirectly, and that if this warranty is breached, the City may, at its option, terminate this Agreement without penalty, liability or obligations, or may, at its election, deduct the amount of any such payment from any amounts owed to EMC hereunder.

13.04 No member of the Board of Directors of EMC and no other officer, employee or agent of EMC who exercises any function or responsibility in connection with the carrying out of this Agreement, shall have any personal interest, direct or indirect, in this Agreement.

13.05 For purposes of this Article XIII, employment by the City shall not be construed as employment in conflict with interests to be served by this Agreement.

ARTICLE XIV

CONFIDENTIALITY

14.01 In order for EMC to effectively fulfill its covenants and obligations to the City under this Agreement, it may be necessary or desirable for the City to disclose confidential and proprietary information to EMC pertaining to the City's past, present and future activities. Since it is difficult to separate confidential and proprietary information from that which is not, EMC shall instruct its staff to regard all information gained by each such person as a result of the services to be performed hereunder, as information which is proprietary to the City and not to be disclosed to any other organization or individual without the prior written consent of the City.

14.02 EMC agrees to take appropriate action with respect to its personnel to insure that the obligations of non-use and non-disclosure of confidential information as stated in this Article XIV are enforced.

14.03 All of the reports, information and data, prepared or assembled by EMC in furtherance of this Agreement shall be confidential and EMC agrees that such reports, information and data shall not be made available to any individual or organization without the prior written consent of the City.

ARTICLE XV

FAIR EMPLOYMENT PRACTICES

15.01 In accordance with the United States Constitution and all Federal legislation and regulations governing fair employment practices and equal employment opportunity, including but not limited to the Civil Rights Act of 1964 (P.L. 88-352, 78 stat. 252) and in accordance with the Michigan Constitution and all State laws and regulations governing fair employment practices and equal employment opportunity, including but not limited to the Michigan Civil Rights Act (P.A. 1976 No. 453) and the Michigan Handicappers Civil Rights Act (P.A. 1976 No. 220), EMC agrees that it will not discriminate against any person, employee, consultant or applicant for employment with respect to his or her hire, tenure, terms, conditions or privileges of employment because of his or her religion, race, color, national origin, age, sex, height, weight, marital status or handicap that is unrelated to the individual's ability to perform the duties of a particular job or position.

15.02 EMC further agrees to take affirmative action to achieve reasonable representation of minority groups, women, Detroit based businesses and City residents in its work force. Such affirmative action shall include, but shall not be limited to, the following areas: employment, promotion, demotion or transfer, recruiting or recruitment,

advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training or education, including apprenticeships.

15.03 EMC shall not discriminate against any employee or applicant for employment, training, education or apprenticeship connected directly or indirectly with the performance of this Agreement, with respect to his or her hire, promotion, job assignment, tenure or terms, conditions or privileges of employment because of race, color, creed, national origin, age, marital status, handicap, sex or sexual orientation.

15.04 In the event EMC fails to comply with the provisions of this Article, the City may impose such contract sanctions as it may deem appropriate, including but not limited to cancellation, termination or suspension of this Agreement in whole or in part.

15.05 Breach of the terms of this Article may be regarded as a material breach of this Agreement.

ARTICLE XVI

GOVERNING LAW

16.01 This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

ARTICLE XVII

COMPLIANCE WITH APPLICABLE LAWS

17.01 EMC shall perform all of the terms of this Agreement in compliance with all applicable laws, executive orders, ordinances and regulations.

ARTICLE XVIII

NOTICES

18.01 All notices, consents, approvals, requests and other communications (herein collectively called "Notices"), required or permitted under this Agreement shall be given in writing, signed by an authorized representative of EMC or the City, mailed by first class mail and addressed as follows:

If to the City: _____

If to EMC: _____

18.02 All Notices shall be deemed given on the day of mailing. Either party to this Agreement may change its address for the receipt of Notices at any time by giving Notice thereof to the other as herein provided. Any Notice given by a party hereunder must be signed by an authorized representative of such party.

18.03 Notwithstanding the requirement above as to the use of first class mail, termination Notices shall be sent by registered mail, postage prepaid, return receipt requested.

ARTICLE XIX

ASSIGNMENT

19.01 Except or otherwise provided herein, neither party shall assign, transfer or encumber directly or indirectly any interest whatsoever in this Agreement, without prior written approval of the other party.

ARTICLE XX

DEFAULT

20.01 In the event of any default by either party to this Agreement with regard to any provision hereof, the non-defaulting party shall notify the other party in writing. The defaulting party shall have thirty (30) days after delivery of said written Notice of default to cure said default. Failure to cure said default within the thirty (30) day period or, if the default cannot be cured within thirty (30) days, failure to promptly commence to cure said default and diligent prosecution of the cure thereafter, shall be considered a material breach of this Agreement.

ARTICLE XXI

REMEDIES

21.01 Subject to Articles XII and XX, either party to this Agreement shall have the right to protect and enforce all rights available to it by action at law, in equity or by any other appropriate proceedings, whether for specific performance of any covenant or covenants contained in this Agreement, or damages, or other relief, or proceed to take any action authorized or permitted under applicable laws or regulations.

21.02 Except as otherwise specifically provided in this Agreement, all rights and remedies of the parties under this Agreement shall be cumulative.

ARTICLE XXII

MISCELLANEOUS

22.01 Upon the request of the City, EMC shall promptly make available to the City copies of any documents in EMC's possession relating to services rendered under this Agreement.

22.02 This document contains the entire agreement between the parties relating to the subject matter hereof and all prior negotiations and agreements are merged herein. Neither the City nor EMC has made any representations except those expressly set forth herein, and no additional rights or remedies shall accrue to either party by implication or otherwise unless expressly set forth herein.

22.03 If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

22.04 The captions and headings of this Agreement are inserted for convenience only, and shall not modify or affect the intent or operative paragraphs or provisions of this Agreement, and shall be disregarded in construction or interpretation thereof.

22.05 This Agreement shall bind, and the rights, benefits and advantages shall inure to the successors of the City and EMC.

22.06 Each party to this Agreement hereby represents and warrants to the other party that it has full right, power and authority to enter into and perform this Agreement;

that the execution and delivery of this Agreement have been duly authorized by all necessary action; and that this Agreement constitutes respectively its valid, binding and enforceable obligation.

[END OF PAGE]

On: _____
Date

S Lease Agreement Between the City of Kansas City and the City
Market Operator

PROPERTY MANAGEMENT AND LEASING AGREEMENT

This Property Management and Leasing Agreement (“**Agreement**”) is made as of this first day of November, 2004, by and among THE CITY OF KANSAS CITY, MISSOURI (the “**City**”), THE PLANNED INDUSTRIAL EXPANSION AUTHORITY OF KANSAS CITY, MISSOURI (“**Authority**”) and COPAKEN, WHITE & BLITT, LLC, (“**Manager**”).

WITNESSETH:

WHEREAS, the City is the fee owner of that certain real estate known as the City Market, legally described or depicted in Exhibit “A” attached hereto (“**Property**”); and

WHEREAS, the City has heretofore leased the Property to the Authority pursuant to the Original City Market Site Lease dated as of September 1, 1989, as supplemented by the First Supplemental City Market Site Lease dated December 1, 1989, the Second Supplemental City Market Site lease dated as of April 1, 1991, and the Third Supplemental City Market Site Lease dated as of January 31, 1992, in order to facilitate the renovation and improvement of the City Market (collectively the “**Original Site Lease**”); and

WHEREAS, the Authority has issued its Taxable Lease Revenue Bonds, Series 1998 (City Market Project), to provide funding for the renovation of the City Market; and

WHEREAS, the Authority has entered into a certain Indenture of Trust and Security Agreement dated as of September 1, 1998 (the “**Indenture**”) with First Bank of Missouri, as trustee (the “**Trustee**”), in connection with the issuance of the Bonds; and

WHEREAS, in connection with the issuance of the 1998 Bonds, the City and the Authority amended and restated the Original Site Lease by executing the Amended and Restated City Market Site Lease, dated as of September 1, 1998 (the “**1998 Lease**”); and

WHEREAS, pursuant to the 1998 Lease, the Authority leases the Property from the City; and

WHEREAS, the Authority’s Board of Commissioners on October 1, 2004 pursuant to Resolution No. _____, approved the Manager as property manager of the Property and authorized the Authority to enter into a management agreement with the Manager; and

WHEREAS, the parties have agreed to certain terms for the management and leasing of the Property, as more particularly stated herein;

NOW, THEREFORE, in consideration of the mutual promises and covenants of the parties as contained herein, City, Authority and Manager agree that the foregoing recitals are true and correct, and incorporated herein by this reference, and further agree as follows:

1. **Employment Terms.** Authority hereby employs Manager as an independent contractor to operate, manage, and lease the Property, all subject to and in accordance with the terms, provisions and conditions set forth in this Agreement; and Manager hereby accepts such appointment.

2. **Term of Agreement.** The term of this Agreement with respect to Manager's services shall commence on November 1, 2004, and shall continue until October 31, 2008. Upon expiration of this term, this Agreement may be renewed by the parties upon execution of a written instrument wherein the parties agree to the renewal of this Agreement. Any modifications to the terms of this Agreement must be in writing in order to be effective for the renewal term. In the absence of a written extension, this Agreement will continue on a month-to-month basis.

3. **Termination.** This Agreement may be terminated at any time under the following conditions:

A. Manager may, at its discretion, terminate this Agreement, for cause, upon twenty (20) days notice in writing to the Authority and the City specifying in detail the nature of such default, provided such default is not cured within said twenty (20) day period. "**Cause**" shall mean that Manager has not been paid its fees or commissions earned pursuant to this Agreement or that Manager has been directed to take action it deems improper or imprudent with respect to the Property, or that, due to lack of available Property funding or other circumstances beyond Manager's reasonable control, adequate funding has not been made available for Property operations (a "**Funding Deficiency**").

B. Authority may, at its discretion, terminate this Agreement, for cause, by giving Manager sixty (60) days prior written notice specifying in detail the nature of such default, provided such default is not cured within said sixty (60) day period. "**Cause**" shall mean that Manager is not managing the property consistent with sound business practices or within the confines of generally accepted industry standard management principals, or that Manager has breached its obligations under this Agreement.

4. **Compensation.** As compensation for management of the Property, Authority shall pay Manager on a monthly basis 5% of the month's "Gross Revenues", as hereinafter defined, actually collected by Manager but not less than \$4250.00 per month. As used herein, "**Gross Revenues**" means all (i) rental income, including percentage rents, late charges, reimbursable tenant expenses, advance rents, amounts paid for breach of lease, any interest paid on sums paid by tenants to amortize leasehold improvements and parking revenues of the Property, and (ii) lease termination payments, and excludes security deposits of tenants (until applied to the tenant's lease obligations) and sales tax. In the event Manager coordinates and monitors construction by a general contractor for tenant improvements or other repairs or alterations to the Property approved by Authority or City, Manager shall be entitled to an additional fee based on \$125.00 per hour multiplied by the number of hours devoted to such construction monitoring and co-ordination by Manager's employees. It is further agreed that the Manager will be paid a seven per cent bonus from funds received from corporate sponsors of the

City Market, which does not include funds raised for capital improvements to the City Market. If Manager's services begin on a day other than the first of the month, then the monthly compensation provided for herein will be prorated for the actual number of days Manager is rendering services under this Agreement. The Manager's fee shall be paid no later than ten (10) days after the end of each calendar month based on the Gross Revenues collected for the preceding calendar month. All compensation and any claims by Manager against Authority shall be payable solely from rents, receipts and revenues from the operation of the Property and funds appropriated by the City.

If this Agreement is terminated under the provisions of Section 3 hereof, Manager shall be entitled to its monthly compensation provided for herein, which compensation shall be prorated for the actual number of days Manager rendered services under this Agreement until the date of termination, subject to the right of Authority to charge cost against such compensation as permitted in Section 6 hereof.

5. **Management Services.** Manager, through its employees and independent contractors, agrees to perform services necessary for the care, protection, maintenance and operation of the Property in an efficient and first-class manner, including the following:

A. Manager will collect all rentals, including common area charges, percentage rents, and other income from the tenants of the Property. All funds received by Manager, except tenant security deposits, shall be deposited in a local financial institution in an operating account ("**Operating Account**") maintained by Manager and approved by Authority, with Manager and Authority at all times being signatories to this account. All monies deposited from time to time in said Operating Account shall be deemed to be trust funds and shall be and remain the property of Authority with Manager's withdrawals and disbursements only in accordance with this Agreement. Manager's authority to draw against such accounts shall be terminated as of the date of termination of this Agreement, unless Authority shall, at the time of termination, specifically authorize Manager to continue to draw against such accounts. Manager's authority to draw against such accounts shall be terminated effective at the same time notice is given to Manager of termination. All tenant security deposits shall be deposited in a separate account ("**Special Account**") in the same approved financial institution, with Authority and Manager as signatories to the account, and this Special Account shall be maintained by Manager in compliance with all requirements of Missouri law pertaining to tenant security deposits. Manager is prohibited from commingling the Operating Account and Special Account with each other, or with any other funds belonging to Manager. Manager shall hold all monies in the Special Account in trust for Authority. Both the Operating Account and the Special Account shall require no fewer than two signatures of authorized representatives of the Authority or two signatures of authorized representatives of the Manager; PROVIDED, HOWEVER, for disbursements of \$10,000.00 or less, only one signature shall be required. Manager may for cost accounting concerns make withdrawals from the Operating Account to be deposited in other accounts solely for purpose of subsequent payouts. These accounts shall be trust

and escrow accounts used solely for such purposes.

B. In accordance with the approved “Budget”, as more particularly described in Paragraph I below, Manager will employ, discharge, supervise, direct and pay all servants, employees and independent contractors necessary to be employed in the management and operation of the Property. All persons employed in the operation of the Property shall be employees of Manager or a legal entity owned or controlled by Manager or shall be independent contractors. Manager agrees to use reasonable care in the selection of all such employees. Manager shall remove any servant, employee or contractor working at the Property if such removal is reasonably demanded in writing by Authority and is for cause. Manager may terminate the employment of any servant, employee or contractor of Manager at the Property at its own election with or without cause. Notwithstanding anything herein to the contrary, none of such servants, employees or contractors shall have a contractual relationship with Authority even though Manager shall utilize Authority’s funds under the approved Budget to pay the salaries, wages and other compensation due said persons. In accordance with the approved Budget, Manager shall be responsible for making all disbursements and deposits for compensation and all other amounts payable with respect to such servants and employees including, but not limited to, unemployment, insurance, payroll taxes, social security, workers’ compensation, federal, state and local taxes, and other charges that may be imposed by a governmental authority or provided for in a union agreement, if any. All payroll records shall be maintained by Manager and all payroll costs approved by City shall be deemed operating expenses which will be reimbursed to Manager from Property’s operation funds. The attached Exhibit B sets forth the percentage of each employee’s compensation to be allocated to the Property. At Authority’s or City’s request, Manager shall furnish Authority and City with a schedule of employees to be located “on-site” in the direct operation and management of the Property.

Manager shall indemnify and hold harmless Authority, its directors, officers, employees, and agents, from all liability, loss, damage, cost or expense, including without limitation attorney’s fees and costs (through trial and all appeals), arising from or related to any liability in connection with employment related claims made by any persons hired by Manager in accordance with this Agreement; however, such indemnity shall not apply to claims arising out of the failure of an employee to be paid because of a Funding Deficiency. The indemnification provisions of this section shall survive the termination of this Agreement.

C. In accordance with the approved Budget, Manager will purchase on behalf of Authority all equipment, tools, appliances, materials, supplies, furnishings, and uniforms reasonably necessary for the maintenance and operation of the Property, which shall be deemed assets of the Property titled in the name of the Authority unless otherwise directed in writing by the City.

D. (i) Service and Supply Contracts. With respect to each contract and purchase order costing more than \$1,000.00 per annum, Manager shall solicit written

bids from at least three contractors or suppliers for all contracts relating to services or supplies to be furnished to the Property (other than utility supply contracts with local public utility companies). The City shall be entitled to designate additional parties to be included on the bidder's list. Any on-going service or supply contracts must be capable of being canceled by Manager, Authority or City, without cause, upon not more than thirty (30) days prior written notice. With respect to such contracts of \$25,000.00 or less, Manager shall be entitled to enter into (as authorized agent for the Authority) any such contract (even if the contacting party is not the low bidder) without the approval of the Authority or the City, provided such contract amount is within the amount allocated to such category of expense described in the Budget. For any such contract exceeding \$25,000.00, Manager will make recommendations to Authority and City, and the City will determine which bidder shall be awarded the contract.

(ii) Construction and Design Contracts. With respect to each contract and purchase order costing more than \$1,000.00 per annum, Manager shall solicit written bids from at least three contractors or suppliers for all contracts relating to design or construction. The City shall be entitled to designate additional parties to be included on the bidder's list. With respect to such contracts of \$25,000.00 or less, Manager shall be entitled to enter into (as authorized agent for the Authority) any such contract (even if the contacting party is not the low bidder) without the approval of the Authority or the City, provided such contract amount is within the amount allocated to such category of expense described in the Budget or in an approved lease. For any such contract exceeding \$25,000.00, Manager will make recommendations to Authority and City, and the City will determine which bidder shall be awarded the contract. Notwithstanding the foregoing, if Manager determines that any of the improvements on the Property require immediate repair or replacement at a cost exceeding \$25,000.00, and are of an emergency nature which are reasonably necessary to protect and maintain the Property in the standard of care expressed herein, then Manager may make or have performed all reasonable repairs and replacements provided that Manager makes a continuous good faith effort to contact the City to obtain the City's approval both prior to and during the time of making said emergency repairs or replacements.

E. Manager will analyze all bills received for services, work and supplies in connection with the management and operation of the Property, and will pay all such bills in the ordinary course of business to the extent funds are available to make such payments, from the Operating Account or the other accounts or funds made available by the City. Unless Manager is unable to pay bills because of inadequate funds, all bills will be paid in time to obtain discounts, if any. Authority or City may from time to time request that Manager forward certain bills to Authority or City promptly after receipt, and Manager will comply with each such request. Manager shall also promptly advise Authority and City of all material matters coming to its attention pertaining to the real and personal property taxes and assessments at the Property. Authority and City will be sent copies of all such bills received at the Property and will then timely direct Manager

whether the City or Authority desires to appeal such taxes.

F. In accordance with the approved Budget, Manager will adequately and efficiently maintain books of account and other records to reflect the results of the operation, leasing, marketing and maintenance of the Property. Such books and records shall be maintained by Manager at its home office. Manager agrees to ensure control over the accounting books as may be reasonably required to protect the Property's financial assets from theft, error or fraudulent activity on the part of Manager's employees. Any losses arising from such theft, error or fraudulent activities will be borne solely by Manager; provided, however, nothing in this Agreement shall foreclose Manager, Authority or the City from seeking recovery of any loss or damages from proceeds of any available insurance policies or from the employee directly. Manager will use standard accounting practices (including a chart of accounts) as requested and approved by Authority or City, and shall prepare all books, reports, statements and other records in accordance with generally accepted accounting principles and on an accrual basis. Authority, Authority's agents, City or City's agents, including the City Auditor may, at any time, and from time to time and without notice, inspect the books of account and records. Upon request, as part of the operating expenses of the Property, Manager will promptly furnish Authority and City with copies of all such books of account and Property records. As part of the operating expenses of the Property, Manager shall provide an audit of the operation of the Property for each fiscal year established by the City to be performed by an independent certified public accountant firm acceptable to the City and the Authority to be delivered to Authority and the City within ninety (90) days of the end of the fiscal year. Manager shall be reimbursed for the costs (not to exceed \$10,000.00) Manager incurs to integrate the Property's financial and accounting records with Manager's accounting and record keeping systems.

G. Upon Authority's or City's request, Manager will supply Authority and City with market rent data and such other information necessary for City to complete its preparation of multi-year financial projections and such other statements and reports as may be reasonably requested by Authority or the City with respect to the Property.

H. By July 15 of each year, the Manager will submit to the Authority and City Market Oversight Committee for their approval an initial Operating Budget estimate for the coming fiscal year, May 1 through April 30. Said Budget estimate to include all revenues, operating expenses and non-operating expenses, and shall estimate the fiscal year Budget deficit or surplus. The Manager shall revise this estimate (but no more often than quarterly) in the event changes occur which invalidate the original estimate. Revised estimates will be forwarded to the Authority and City throughout the City's Budget adoption process. The parties agree that the approved Operating Budget shall contain a reserve of at least \$25,000.00 to cover unanticipated expenses or revenue shortfalls (the "**Reserve**"). If Manager expends the Reserve, the City shall replenish the Reserve to its former level within 60 days after notice from Manager, subject to appropriation by the City Council of Kansas City, Missouri.

I. By July 15 of each year, the Manager will submit to the Authority and

City for their approval an estimate of capital improvements needed for the coming fiscal year, May 1 through April 30. Said estimate to include improvements, capital maintenance, and the balance in any City Market capital reserve account. The Manager shall revise this estimate (but no more often than quarterly) in the event any changes occur which invalidate the original estimate. Revised estimates will be forwarded to the Authority and City throughout the City's Budget adoption process.

J. By the twentieth day of each month, Manager will deliver to Authority and the City a monthly operating statement of the Property of receipts and disbursements for the preceding month, together with a narrative report as to the past month's operations, with an explanation for any line item which deviates more than 5% from the Budget. The operating statement shall include schedules of accounts receivable and payable, a rent roll, security deposits on account, cash flow, and a schedule of all receipts and disbursements for the month. Manager also agrees to furnish Authority and City, by the twentieth day of each month, with occupancy reports, including percentage of vacancy, for the Property, and such other information as may be requested by Authority or the City. Manager shall, after deducting its compensation which is owed pursuant to this Agreement, hold or expend such sums as Authority or City may have directed herein, including such funds as may be necessary to assure adequate cash flow for the balance of the fiscal year, or in accordance with the approved Budget, and then remit the balance to Authority or to the Trustee for the account of the Authority in quarterly payments as provided in Article II of the Lease and, if no amounts are due under the Lease, any excess shall be paid to City. In the event there are not sufficient funds (other than the Reserve) to pay Manager its compensation or any approved Property operating expenses, Manager shall be entitled to apply the Reserve towards such expenses, in which case, Manager shall notify Authority and the City of the shortfall, in writing, with an explanation of the deficiency; and within sixty (60) days of receipt of the statement, Authority will deposit into the Operating Account any shortfall and shall otherwise replenish the Reserve to its former level, subject to availability of funds from either rents, revenues and receipts or other avails from the Property or appropriated funds from the City.

K. Without Authority's prior written consent, Manager shall not initiate, settle or otherwise dispose of litigation with a third party relating to the Property; provided however, that nothing in this Agreement shall limit Manager's ability to defend, settle or otherwise dispose of litigation in its individual capacity, which litigation does not affect the rights of Authority and City or their interests in the Property. Manager agrees to immediately advise Authority and City, with confirmation in writing, of the service upon Manager of any summons, notice, subpoena or other like legal document setting forth or claiming any actual or claimed potential liability of Authority or City or the Property. Notwithstanding the limitation in the first sentence of this Paragraph, Manager shall engage counsel and cause such legal proceedings to be instituted as may be necessary in the ordinary course of business to enforce payment of rent or dispossess defaulted tenants, with all such actions to be brought in Authority's name so long as the Lease remains in effect; provided, however, prior to the engagement of legal counsel, the

Authority and City shall be notified of the name of the proposed legal counsel and information concerning any potential conflicts of interest with the Authority or the City. The Authority and/or the City shall within five (5) business days of receipt of said notice advise the Manager if there is a conflict or potential conflict of interest with the proposed legal counsel. If the Manager is so advised (and the affected parties are unwilling to waive such conflict of interest), the Manager shall select and notify the Authority and the City of the name of a different Counsel and any potential conflicts of interest with the Authority and the City and shall engage any proposed counsel only if it is not advised of any conflict or potential conflict (which is not waived by the affected parties) in accordance with the provisions of this Section. Manager must keep Authority and City apprised of any such litigation on a monthly basis, and at Authority's or City's request will prepare a status report as to those tenants involved in any pending litigation. Manager further agrees to cooperate with Authority and City in all such proceedings.

L. On City's and Authority's behalf, Manager will maintain a proper management relationship with the tenants, schedule a meeting with tenants and the City's representative every other month, and furnish such other management services and reports customarily provided by property managers in Kansas City, Missouri.

M. Except as specifically stated herein to the contrary, all costs, expenses, losses or damages incurred in the operation of the Property shall be paid from time to time by Manager in accordance with the approved Budget; provided, however, and notwithstanding any contrary provision in this Agreement, in no event shall Manager be required to expend its own funds (including the compensation payable to Manager under this Agreement) to perform its duties under this Agreement, it being agreed that Manager shall only be required to expend those funds which are made available out of the Operating Account or Separate Account, or which are otherwise made available to Manager by the Authority or the City (and in any event, which are in addition to Manager's compensation).

N. Manager will notify tenants of any and all increases in rents pursuant to the leases, and will otherwise keep the tenants apprised of any changes in policies, procedures, rules and regulations affecting the Property. This notification will include any pass-through expenses and explanations of any increases which are based upon annual operating budgets affecting the Property. Copies of all rent schedules, notices and information delivered to the tenants shall be maintained at Manager's home office for review by the City and Authority, and will be provided to the City as requested.

O. Manager will monitor and review tenant insurance coverages for their adequacy (as required by their respective leases) and expiration, and shall notify tenants in writing of any breach in their obligation to maintain their insurance in accordance with the terms of their leases, and report any default in such regard to Authority and the City; however, provided Manager is not grossly negligent in complying with the terms of this paragraph, Manager shall not be held responsible for a tenant's failure to supply and maintain adequate coverage as required under applicable leases. The parties agree that the stall tenants do not carry insurance and Manager shall have no liability for any loss

occasioned under the stall leases; provided, however, this limitation of liability shall not foreclose the Manager, Authority and/or the City from seeking recovery of any loss or damages from proceeds of any available insurance policies or from the stall tenants directly.

P. At the request of Authority or City, Manager will perform special services, in addition to those set forth above or otherwise in this Agreement, such as special accountings. In the event such services are provided, additional fees shall be payable to Manager as may be agreed upon between the parties.

Q. Manager will represent City and Authority in its relations with the merchants of the Property, including the merchant's association, if any. Manager shall also be responsible for administering any promotional activities and the expenditure of any promotional funds as may be approved by Authority or City.

R. Manager will engage persons with insurance expertise to review periodically all hazard, liability and other insurance carried by Authority in connection with the Property, as contemplated by Section 7 below, and shall cause such persons to recommend desirable changes in said coverage from time to time.

S. Manager shall prepare and maintain an inventory list of all Authority's personal property and readily removable fixtures having a fair market value in excess of \$300.00 used in connection with the ownership, operation and maintenance of the Property. This inventory shall be available to Authority and City at all times.

T. Manager shall investigate and prepare a written report on all claims against City, Authority, Manager, or any of their insurance carriers with respect to the Property.

U. Manager shall, at all times, in carrying out the obligations and exercising its right and powers (i) use due diligence and reasonable and prudent efforts to protect the Property and the interests of the Authority and City, and (ii) follow general policies of operation, management, leasing and maintenance to those policies which may be reasonably established from time to time by the City.

6. Default and Indemnification.

A. In the event that Manager defaults on any of its obligations under this Agreement and Manager fails to take remedial action within the cure period provided in Section 3 hereof, Authority or the City shall be entitled to terminate this Agreement, or may perform or cause to be performed such services (and may at the direction of the City, hire third parties as Authority may reasonably deem necessary in order to render such services as required of the Manager hereunder), and without limiting Authority's

remedies, Authority may and shall at the direction of the City charge against and deduct from Manager's compensation payable hereunder the Authority's costs of rectifying Manager's default, it being agreed, however, that Manager shall not be required to bear any expense which otherwise would have been payable from the Operating Account. For example, if Manager fails to have potholes filled in the parking lot, the cost of filling the potholes shall not be subtracted from Manager's compensation (since it is an expense payable from the Operating Account), but the cost of engaging a party to hire such work (i.e., a management activity) shall be subtracted from Manager's compensation. Nothing contained in this paragraph shall be construed as limiting either the Authority or the Manager's ability to terminate this Agreement, in accordance with the termination provisions of Section 3 of this Agreement.

B. (1) Subject to Subparagraph (3) below, Manager shall indemnify and hold harmless the City, Authority, its directors, officers, employees and agents from all liability, loss, damage, cost or expense, including without limitation reasonable attorneys' fees and costs (through trial and all appeals), arising from or related to Manager's failure to perform or to abide by the terms hereof in its performance of this Agreement. The indemnification provisions of this section shall survive the termination of this Agreement.

(2) Authority agrees to indemnify and hold harmless Manager, its directors, officers, employees, partners and agents from all liability, loss, damage, cost or expense, including without limitation reasonable attorneys' fees and costs (through trial and all appeals), arising from or related to (i) Authority's failure to abide by the terms hereof in its performance of this Agreement, or (ii) Manager's faithful performance of Manager's duties hereunder in accordance with the provisions of this Agreement, or (iii) the negligence or willful misconduct of Authority or its employees, in each case, subject solely to the availability of funds from either receipts or avails from the Property or appropriated funds from the City; provided, however, the City has no obligation to appropriate such funds. The indemnification provisions of this section shall survive the termination of this Agreement. Authority further agrees to indemnify Manager, its directors, officers, employees, partners and agents, from all liability, loss, damage, cost or expense, including without limitation reasonable attorneys' fees and costs (through trial and all appeals), arising from or related to the condition of the Property as of the date of this Agreement, including, but not limited to, previously completed construction and environmental conditions, and existing violations, if any, of the Americans with Disability Act (the "ADA"); subject solely to the availability of funds from either receipts or avails from the Property or appropriated funds from the City.

(3) Notwithstanding the provisions of Paragraph B (1) or any other provision of this Agreement to the contrary, Authority agrees that (i) prior to seeking recourse against Manager pursuant to Paragraph B (1) in connection with any damage to property, Authority will look to its insurance coverage for satisfaction thereof and Manager shall have no obligation under Paragraph B (1) except to the

extent, if any, Authority has been unable to recoup under its insurance, and (ii) Authority releases Manager from any liability which Manager would, but for the provisions of this Subparagraph (3), have had to Authority resulting from the damage which was covered by any insurance coverage carried by Authority.

7. **Insurance.**

A. Following the expiration or cancellation of the insurance policies in effect on the date of this Agreement, Manager shall, insofar as operating funds from the Property are available, throughout the life of this Agreement, keep the Property constantly insured against loss or damage by fire, lightning, flood (if the Property is located in a flood plain or flood hazard area), business interruption insurance for a period of twelve (12) months and all other risks covered by the extended coverage insurance endorsement then in use in the State of Missouri in an amount equal to the full insurable value thereof in such insurance company or companies authorized to do business in the State of Missouri as may be selected by Manager. Flood insurance shall not be required if the Manager provides to the Trustee either a certificate of an engineer or a survey indicating that the Property is not located in a flood plain. The terms “full insurable value” shall mean the full actual replacement cost as said “full insurable value” shall be determined from time to time by the approved insurance consultant at the request of the Authority or City but not more frequently than once every twelve (12) months. Nothing in this Agreement shall be construed to prevent Manager from including the Property under Manager’s blanket forms of insurance coverage, provided that each and all of the requirements of Section 814 of the Indenture be complied with under such blanket coverage, including but not limited to the requirements that the Authority, the City, the Market Area Development Corporation (“MADC”) and Trustee be named as co-insureds with respect to the property insurance on the Property, and that the Area Transportation Authority be named as co-insured on the Third and Grand Parking Lot portion of the Property, as shown in Exhibit “A,” below, and that certificates evidencing the amount and type of insurance required under Section 814 of the Indenture be delivered to the Authority, the City, MADDC, the Area Transportation Authority and the Trustee. The proceeds with respect to any loss to the Property pursuant to which the Authority shall be required to redeem Bonds in accordance with the provisions of Section 816 (4) of the Indenture shall be paid to the Trustee. Not less than thirty (30) days prior to the expiration dates of the expiring policies, originals or certificates of the policies provided for in this Agreement, each bearing notations evidencing payment of the premiums or other reasonable evidence of such payment satisfactory to the Authority, the City, MADDC and Trustee shall be delivered by Manager to the Authority, and until the Bonds and interest thereon are fully paid, to the Trustee. All policies of such insurance, and all renewals thereof, shall name the Authority, Manager, MADDC, and, until the Bonds and interest thereon are fully paid, the Trustee, as insureds as their respective interest may appear, shall contain a provision that such insurance may not be canceled by the issuer

thereof without at least ten (10) days written notice to the named insureds, and until the Bonds have been fully paid shall be payable to the Trustee and MADC. The Authority and Manager hereby agree that each will provide such endorsements and other consents as may be necessary to cause any such payment to be made to the Trustee and MADC, as long as such payment is required by the Indenture to be made to the Trustee and MADC.

The proceeds of such policies shall be used and applied in the manner set forth in Section 816 of the Indenture. The sole obligation of the Trustee shall be to make disbursements from the insurance proceeds in accordance with the provisions of Section 816 of the Indenture. In no event shall Manager be required to insure those portions of the Property or machinery and equipment ordinarily considered to constitute excludables such as excavations, brick, stone or concrete foundations of buildings which are below the under surface of the basement floor, or where there is no basement, which are below the surface of the ground inside the foundation walls of the buildings; brick, stone or concrete foundations of machinery or boilers and engines which are above the surface of the ground; underground flues, pipes, underground wiring and drains; and appurtenances. Manager shall procure and maintain in effect throughout the duration of this Agreement insurance coverage not less than the types and amounts specified in this section. Policies containing a Self-Insured Retention are unacceptable.

B. Following the expiration or cancellation of the insurance policies in effect on the date of this Agreement, Manager shall, insofar as operating funds from the Property are available, also carry and maintain during the term of this Agreement, a commercial general liability policy of insurance covering (i) personal injury or property damage in or about the Property arising by reason of the act or neglect of the City, Manager, Authority or its employees, agents or contractors; (ii) automobile liability insurance covering all of Manager's owned or rented vehicles used in connection with this Agreement; and (iii) workers' compensation insurance as required by statutes of the State of Missouri, in such amounts as set forth in this section.

1. Commercial General Liability Insurance: with limits of \$1,000,000 per occurrence and \$1,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:

Insureds

- a. Severability of Interests Coverage applying to Additional
- b. Contractual Liability
- c. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$1,000,000.
- d. No Contractual Liability Limitation Endorsement
- e. Additional Insured Endorsement, ISO form CG20 10, current edition, or its equivalent.

2. Workers' Compensation Insurance: as required by statute, including Employers Liability with limits of:

Workers' Compensation Statutory Employers
Liability \$100,000 accident with limits of:
\$500,000 disease-policy limit
\$100,000 disease-each employee

3. Commercial Automobile Liability Insurance: with a limit of \$1,000,000 per occurrence, covering owned, hired, and non-owned automobiles. Coverage provided shall be on an "any auto" basis and written on an "occurrence" basis. This insurance will be written on a Commercial Business Auto form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Agreement, by Manager.

4. If applicable, Professional Liability Insurance with limits per claim and annual aggregate of \$1,000,000.

A. The policies listed above may not be canceled until after thirty (30) days written notice of cancellation to Authority, ten (10) days in the event of nonpayment of premium. The Commercial General and Automobile Liability Insurance specified above shall provide that Authority, and City and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this Contract. Contractor shall provide to Authority at execution of this Contract a certificate of insurance showing all required endorsements and additional insureds.

B. All insurance coverage must be written by companies that have an A.M. Best's rating of "B+V" or better, and are licensed or approved by the State of Missouri to do business in Missouri.

C. Regardless of any approval by Authority, it is the responsibility of Manager to maintain the required insurance coverage in force at all times; its failure to do so will not relieve it of any contractual obligation or responsibility. In the event of Manager's failure to maintain the required insurance in effect, Authority may order Manager to immediately stop work, and upon ten (10) days notice and an opportunity to cure, may pursue its remedies for breach of this Agreement as provided for herein and by law. Each and every such liability policy (i) carried by Manager shall include Authority, City, and Trustee (and any other parties in interest from time to time designated in writing from Authority to Manager) as an additional insured; (ii) shall be for the benefit and protection of Authority, Manager, City, and Trustee, and any such other parties in interest; (iii) which shall be evidenced by a properly issued certificate of insurance delivered to all parties in interest within ten (10) days from date of this Agreement, and thereafter within thirty (30) days prior to the expiration of each policy, and as often as any such policy shall expire or terminate, with renewals or additional policies to be procured and maintained in a like manner and to a like extent; (iv) which shall contain a provision that the insurer will give to Authority and such other parties in interest at least thirty (30) days written notice in advance of any cancellation, termination or lapse in coverage, or of the effective date of any reduction in the amounts of such insurance; (v) which shall be written as a primary policy which does not contribute to and is not in excess of any coverage which any party in interest may carry; and (vi) which shall contain a certain provision that parties in interest, although named as an additional insureds, shall nevertheless be entitled to recover under said policies for any loss occasioned by it, or its servants, agents, employees, tenants or subtenants, by reason of any act or omission of the Manager's servants, employees and agents. In the event that Manager shall fail to keep in effect the insurance as required

hereunder, the Authority shall, after notice to Manager, be authorized to procure such insurance and pay expenses thereof from the Operating Account.

C. Manager shall procure at its sole expense and deliver to Authority (i) a policy with respect to errors and omissions of Manager's employees and servants, and (ii) a fidelity bond naming Authority as obligee in which the obligor is responsible for the mishandling of any funds of Authority by Manager, its servants, employees and agents. Contractor shall cause all persons handling funds disbursed under this contract to be bonded by a corporate fidelity bond in a minimum amount of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00). Said bonds shall be approved by the Director of Finance of the City, a copy of evidence of said bond shall be filed with the City Clerk. If any such bond is canceled or reduced, the Contractor shall immediately notify the Authority and City. .

8. **Surrender Upon Termination.** Upon termination of this Agreement, Manager shall:

A. Surrender and deliver to Authority or its authorized representatives all funds and bank accounts, including the Operating Account and Special Account, held by Manager in connection with the Property;

B. Deliver to Authority or its authorized representatives, as received, any monies due Authority under the Agreement (net of compensation due to Manager under this Agreement) but received by Manager after the effective date of such termination;

C. Deliver to Authority or its authorized representatives all materials, equipment, tools, supplies, keys, contracts and documents, including accounting reports, relating to the Property, remove all of Manager's signs and other personal belongings and vacate the Rental Office (as described in Section 14 hereof) and deliver all keys and equipment and property deemed assets of the Property located in the Rental Office or otherwise in the possession of the Manager; however, the Authority shall have no interest in any billing or accounting software installed by Manager to integrate the Property's systems into Manager's systems;

D. Provide written notice of the identity of vendors under existing contracts relating to the operation and maintenance of the Property, together with copies of all such contracts or, if not in writing, a written summary of the terms of such contracts, and transfer and assign to Authority all such contracts as may be requested by Authority;

E. Furnish all such information and take all such action as Authority shall reasonably require in order to effectuate an orderly systematic transition to a replacement manager of Manager's duties and activities hereunder, both prior to and for a period of sixty (60) days immediately following the termination date of this Agreement. Within ten (10) days after any such termination, Manager shall deliver to Authority any written reports and accounting records required hereunder for any period not covered by prior reports at the time of termination. All original papers and records pertaining to the

Property shall be surrendered by Manager to Authority; however, Authority agrees to make same available for reasonable inspection and reproduction by Manager in the event Manager, in good faith, requires same for use in legal or quasi-legal proceeding including, but not limited to, in connection with audits by the Missouri Real Estate Commission, taxing authorities and preparation of necessary tax filings;

F. During a period of two (2) years after the expiration or termination of this Agreement, Manager agrees not to solicit any then existing tenants of the Property for the purpose of relocating such tenants to other places of business or properties.

9. **Bankruptcy and Insolvency.** In the event a petition in bankruptcy is filed by or against any party to this Agreement, or in the event that any party to this Agreement shall make an assignment for the benefit of creditors that take advantage of any insolvency act, any party hereto may immediately terminate this Agreement by written notice delivered to the other parties. The remedies available under this Agreement shall in such event be in addition to, and shall not exclude, any other remedy available under applicable law to the parties to this Agreement under such circumstance.

10. **Compliance with Laws.** Subject to Section 22, Manager warrants and represents to Authority that it shall manage the Property and perform all such services in compliance with all rules, orders, determinations, laws and ordinances of all local, state, federal, municipal and regulatory authorities.

11. **Leasing Terms.** Manager shall be the exclusive leasing representative for the Property. The terms pertaining to the leasing of the Property shall be as follows:

A. *Leasing Commission.* Manager shall be entitled to a leasing commission as follows:

(i) Landmark Tenants. With respect to "Landmark Tenants", 6% of the Gross Revenues for the first 5 years of the term, plus 3% of Gross Revenues for the next 5 years of the term, plus 1.5% of Gross Revenues for any portion of the fixed term (which shall be deemed to include any vested options to extend which are exercised by a tenant) in excess of 10 years. If a Landmark Tenant subsequently negotiates an extension or renewal of its lease (i.e., not the exercise of a presently vested renewal right), Manager shall be entitled to a commission equal to one-half the commission otherwise payable pursuant to the preceding schedule (i.e., 3% of Gross Revenues for the initial 5 year renewal, 1.5% for the next 5 years, and .75% for the next 5 years). For purposes of the foregoing, a "**Landmark Tenant**" shall mean a tenant (i) occupying in excess of 1,000 square feet (excluding basement and mezzanine areas), and (ii) having a lease term of 3 years or more. Commissions for Landmark Tenants shall be payable one-half upon full execution, and one-half when the Landmark Tenant initially opens for business, and for renewals, shall be paid upon the execution of the renewal

agreement. If a tenant exercises a vested renewal right, the commission payable with respect to such renewal shall be payable upon the exercise of the renewal at the rate applicable to such lease as if the original term had included the renewal period as part of the original term.

(ii) Non-Landmark Tenants. For new leases for space in building CM1, CM2, CM3, CM4 and CM5 (excluding leases for “Vendor Stalls” [defined below]), the commissions shall be 8% of Gross Revenues, and if any such tenant subsequently negotiates a renewal of its lease (i.e., not the exercise of a presently vested renewal right), Manager shall be entitled to a commission of 4% of Gross Revenues payable during the renewal term. The commission for a new lease with a Non-Landmark Tenants shall be payable one-half upon full execution, and one-half when such tenant initially opens for business, and for renewals, shall be paid upon the execution of the renewal agreement. If a tenant exercises a vested renewal right, the commission payable with respect to such renewal shall be payable upon the exercise of the renewal at a rate of ____%.the rate applicable to such lease as if the original term had included the renewal period as part of the original term.

(iii) With respect to any lease not described in subparagraph (ii) above in which the rent shall be based upon percentage of revenues received by the tenant, Manager shall be entitled to six percent (6%) of the amount paid as percentage rent, which shall be calculated quarterly and paid quarterly in arrears, and Manager shall be entitled to continue to receive such commission during the entire term of each such lease, notwithstanding that this Agreement may have expired or been terminated (notwithstanding any contrary provision in this Agreement);

(iv) With respect to tenancies of less than six months, the greater of one-half (1/2) of one (1) month’s rent, \$500.00 or six percent (6%) of the gross lease value;

(v) With respect to the lease of any apartment unit an amount equal to 75% of the first month’s rent; and

(vi) With respect to the leasing of any Vendor Stall in the Property, no commission shall be paid if the lease is secured by Manager’s salaried office staff, however, Manager shall be entitled to a commission as provided under the terms set forth above if a commissioned agent or commissioned employee of Manager secures said lease. A “**Vendor Stall**” shall mean an outside area (such as a sidewalk or parking stall) leased or licensed for temporary use by a third party.

Except to the extent the City or the Authority has agreed to pay another broker with respect to a prospective tenant, Manager is solely responsible for paying the portion of the said commission due the cooperating broker, and Authority shall have no liability and Manager will hold harmless Authority for payment to any

broker with whom Authority has no direct written agreement. This indemnity will survive termination of this Agreement.

In the event of an expansion of space rented by a tenant, the leasing commission applicable to the expansion area will be calculated as if it were a new lease, and shall be payable one-half upon document execution, and one-half when the tenant opens for business in the expansion space; however, if the expansion is coupled with a renewal, the renewal rate shall apply to the square footage of the original premises.

B. *Disclosure to Authority.* The amount of real estate commission is not fixed by law. They are set by each broker individually, and may be negotiable between the Authority and the broker.

C. *Manager Warranty.* Manager warrants and represents to Authority that it is a duly licensed real estate broker under the laws, rules and regulations of the state where the Property is located, and that it is in compliance with all requirements of applicable law with respect to the maintenance of its license and its place of business. Manager further warrants and represents that it shall at all times remain in good standing under the laws of the State of its incorporation and authorized to do business in the State of Missouri, and shall comply with all laws, orders, ordinances, laws and requirements of the licensing authorities with jurisdiction over Manager and its broker activities. Manager acknowledges and agrees that if at any time it shall not be in good standing or no longer be duly licensed under laws of the State of Missouri, then Authority will be relieved of any obligations hereunder to pay any commissions earned by Manager during the period when Manager is not in good standing or duly licensed.

D. *Lease Negotiation.* Manager agrees to use good faith efforts to diligently pursue and attract tenants to the Property in accordance with a rent schedule as approved by the City, and pursuant to the terms of Authority's standard form lease approved by the City, a copy of which shall be delivered to the Manager. All leases will be submitted to City for final approval, and each lease shall be accompanied by financial statements and credit reports of the Tenant (except in the case of Vendor Stalls). The City shall respond within 5 business days to any lease submitted to the City for approval. Manager agrees to vigorously market the Property and contact local real estate publications, groups and potential tenants, subject to the "Plan" (described below) approved by the City. Every reasonable effort will be made by Manager to obtain and keep desirable tenants, and procure and investigate references of prospective tenants; however, Manager shall have no liability with respect to the accuracy of any financial information furnished by prospective tenants. Manager agrees to exercise a diligent and good faith effort to market and lease the Property as quickly as possible. Manager further agrees not to commit to any rent abatements or concessions not approved by City. In the event any questions concerning a lease are raised during lease negotiations with potential tenants, Manager shall first consult City or Authority, and if necessary, Manager shall consult with legal

counsel, which shall not have a conflict or potential conflict with the Authority or the City (unless such conflict is waived by the affected parties), with all expenses of legal counsel to be borne by Authority. Upon execution of this Agreement, and by May 1 of each year, Manager agrees to submit to Authority and City a “**Plan**” for the Property, including proposed leasing rental rates, tenant improvement allowances, tenant financial criteria, a tenant mix projection including listing of desirable tenant categories, and estimated costs and expenses of implementing such proposed Plan. Manager shall follow the direction of the accepted Management Goals approved by the City’s City Market Oversight Committee in preparation of the Plan. If the proposed Plan is disapproved by City, then City and Manager shall, in good faith, negotiate a mutually satisfactory Plan and budget for such expenses.

E. *Leasing Authority.* Manager shall not be authorized to execute any leases or purchase agreements on behalf of or account of Authority, except Manager is hereby authorized to execute as Authority’s agent leases or license agreements (consistent with the Plan) having terms of less than one year (“**Temporary Leases**”). Manager may negotiate leases on Authority’s behalf, but only pursuant to this Agreement, the approved rent schedule and Plan, the standard form lease and as otherwise approved by the Authority and the City. Manager will not use any marketing packages for the leasing or sale of the Property which have not been pre-approved by City, in writing. All leases (other than Temporary Leases) shall be forwarded to Authority for execution.

F. *Activity Reports.* Manager shall deliver leasing activity reports to Authority and City on a monthly basis, at the same time that Manager delivers to Authority the monthly operating statement described in Section 5K. above.

G. *Manager’s Authorized Activities.* Manager shall negotiate all leases, amendments, modifications and terminations for and on behalf of and in the name of Authority in accordance with the standard form lease approved by City and delivered to Manager and the leasing Plan approved by the City, with all leases, amendments and modifications to be prepared by counsel retained by Manager. Except as otherwise permitted by the express terms of an approved lease, Manager shall not be authorized to permit any assignment or sublease except with the prior written consent of Authority and City, which consent Authority and City may withhold in their sole discretion (except as otherwise provided in an approved lease). Manager shall keep originals of all executed leases on file in its business office, and shall forward copies of leases to Authority and City. Two originals of each lease or lease amendment, extension or modification shall be executed by Authority and the tenant so that Manager and the tenant may retain an original document. Upon each tenant taking occupancy of its demised premises, Manager shall have the tenant sign an estoppel statement confirming tenant’s approval of the condition of the demised premises, and confirming its lease commencement date; however, no such estoppel certificate shall be required with respect to the leases of Vendor Stalls. The form of such estoppel statement shall be approved by the City. Manager will keep the original in its file, and a copy will be delivered to the City.

12. **Communication.** Manager shall be available during normal business hours for purposes of responding to City's or Authority's questions and comments concerning the Property and to meet with City's or Authority's representatives.

13. **Rental Office.** Manager shall be provided office space at Suite 201, 20 East 5th Street, Kansas City, Missouri, consisting of approximately 1300 square feet, or such other office space as may be designated by the City on the Property (the "**Rental Office**") with substantially the same square footage at no charge during the term of this Agreement or any extensions thereof to be used solely for the management and rental of the Property. Manager may acquire, subject to the prior written approval of the City, equipment and furniture for use in the Rental Office, including telephones, cell phones, internet access, and usual and customary office supplies. Said equipment and furniture shall be deemed assets of the Property and titled in the name of the Authority unless otherwise directed by the City. Cost of the furniture, equipment and utility cost for the Rental Office shall be costs of the Property.

14. **Notice; Approvals.** Any notice required or permitted under this Agreement shall be effective upon receipt if sent by email, facsimile, United States mail, certified mail, or third-party commercial courier (i.e., Federal Express or similar service), addressed to the parties as follows:

Authority: The Planned Industrial Expansion Authority
of Kansas City, Missouri
20 East 5th Street, Suite 200
Kansas City, Missouri 64106
Facsimile No.: (816) 421-5500
Attention: Executive Director

City: Robert A. Langenkamp
Director of City Development
City of Kansas City, Missouri
414 East 12th Street, 15th Floor
Kansas City, Missouri 64106-2743
Facsimile No.: (816) 513-2838

Manager:
Copaken, White & Blitt, LLC
8900 State Line Rd., Suite 333
Leawood, Ks. 66206
Facsimile No.: 913 381 5624
Attention: Mark Thomas

Notwithstanding the foregoing, notices of default shall not be sent by email, and notices of default sent by facsimile shall be deemed effective upon receipt only if telephone confirmation is obtained upon delivering the facsimile notice, and the original of such notice is sent by

overnight, commercial courier for next-day delivery. Either party may change its address from time to time by delivering such change in writing in accordance with this notice provision.

Unless Manager is otherwise notified in writing, the Authority's authorized representative shall be Al Figuly, and the City's authorized representative shall be Claude Page (collectively, the "**Representatives**"), and Manager shall be entitled to rely on the directions and authorizations of the Representatives as being binding respectively on the Authority and the City.

15. **Attorney's Fees.** If any suit or action is instituted in connection with or arising out of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs incurred through all litigation, including all appeals; provided, however, any cost to be recovered against Authority shall be limited to the rents, revenue and receipts from the operation of the Property or funds appropriated by the City; provided, however, the City shall have no obligations to appropriate such funds.

16. **Nondiscrimination Acknowledgment.** Manager acknowledges that it is illegal for it to refuse to display, lease or sell to any person because of race, color, religion, national origin, sex, marital status or physical disability, and agree that Manager and its employees and agents will not refuse to display, lease or sell to any person because of race, color, religion, national origin, sex, marital status or physical disability. The Manager agrees to refrain from any discriminatory employment practice as presently defined by Section 26.211, Code of Ordinances of the City, and to abide by the provision of said section. Manager shall comply with the affirmative action goals of the City.

Manager shall maintain and furnish upon request during the term hereof such records and information as the City or the Authority may reasonably request concerning minority employment by Manager and the use of minority and female firms and businesses for furnishing services and supplies in connection with the management of the Property.

17. **Assignment.** All terms and conditions of this Agreement shall be binding upon the parties hereto and their respective successors and assigns. Manager may not assign this Agreement to any party. Authority may, however, assign its rights and obligations under this Agreement to any successor or assignee of Authority, including, but not limited to, the City and the Trustee.

18. **Good Standing.** Manager hereby warrants and represents that it is a corporation duly formed under the laws of the state of its incorporation and authorized to do business in the State of Missouri, and that it will at all times remain in good standing and qualified to do business under such applicable laws.

19. **Independent Contractors.** It is expressly understood and agreed between the parties that Manager will act as an independent contractor in performance of this Agreement, and that the parties do not intend to create a partnership or joint venture with respect to the management, operation or leasing of the Property.

20. **Severability.** If a term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement or the application if such term or provision to persons or circumstances other than those 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.

21. **Third Party Beneficiary and Liability to Others.** The parties agree that the City shall be delivered every notice, report or other information required to be delivered to the Authority hereunder at the time of delivery to the Authority, and that every approval or consent of the Authority or the City required by the terms and conditions of this Agreement shall require the approval or consent of both the City and the Authority to be effective; however, the parties agree that if the City provides any approval or consent, Manager may presume that the City has obtained the necessary approval or consent of the Authority. Manager, its directors, officers, employees and agents are not and never shall be liable to any creditor of Authority or to any claimant against the Authority. Further, Authority, its directors, officers, employees and agents are not and shall never be liable to any creditor of Manager or to any claim against Manager, including any persons hired or contracted with by Manager in accordance with this Agreement, except to the extent such claim is based on Manager entering into any such agreement as agent for Authority, as permitted by this Agreement.

22. **Americans with Disabilities Act.** , Manager agrees with respect to its manner of operating the Property to comply with all provisions of the ADA, as amended from time to time during the course of this Agreement; however, this shall not be construed to require Manager to effect any alterations to the Property to comply with the ADA nor to notify the City of existing violations of the ADA, it being agreed, however, that Manager shall forward to City any correspondence Manager receives relating to the Property's non-compliance (or alleged non-compliance) with the ADA. Cost to comply with the ADA with respect to the Property shall be limited to funds available in the Operating Account.

23. **Headings.** The headings of this Agreement have been inserted for convenience only and shall not be otherwise construed to affect the terms and conditions of this Agreement.

24. **Amendment.** This Agreement may not be changed orally, but only in writing signed by all parties hereto. This Agreement contains all of the agreements and understandings between the parties, whether oral or written, with respect to the subject matter hereof.

25. **Governing Law.** This Agreement is to be construed and governed in accordance with the laws of the State of Missouri.

26. **Construction of Agreement.** This Agreement is the result of full negotiation between the parties.

27. **Effective Date.** The effective date of this Agreement shall be November 1, 2004002.

IN WITNESS WHEREOF, the parties have executed this Agreement on the respective dates set forth below.

(SEAL)

AUTHORITY:

ATTEST:

**THE PLANNED INDUSTRIAL EXPANSION
AUTHORITY OF KANSAS CITY, MISSOURI**

Assistant Secretary

By: _____
Title: _____

MANAGER:

ATTEST:

COPAKEN, WHITE & BLITT, LLC

By: _____
Title: _____

(seal)

CITY OF KANSAS CITY, MISSOURI

ATTEST:

By: _____
Director, City Planning and Development Dept.

EXHIBIT A

PROPERTY MAP OF THE PROPERTY

EXHIBIT B
SCHEDULE OF PERSONNEL AND COSTS

<u>JOB TITLE</u> <u>COMPENSATION</u>	<u>PERCENTAGE OF</u> <u>ALLOCABLE TO THE PROPERTY</u>
I. <u>Full Time On-Site Personnel.</u>	
Director of Operations.	100%
Market Master.	100%
Administrative Assistant.	100%
Maintenance Personnel.	100%
II. <u>Home Office Personnel.</u>	
General Manager	(15% allocated to Property)
Marketing Director	(20% allocated to Property)
Visual Merchandising	(15% allocated to Property)
Accountant	(10% allocated to Property)

T Sample Rules and Regulations

EXHIBIT "D"

RULES AND REGULATIONS

A. The Market will be open to the public daily, except Sundays and Holidays, from 8:00 a.m. to 6:00 p.m. The Market will be open to Tenants daily, except Sundays and Holidays, as determined by Landlord, from 6:00 a.m. to 8:00 p.m. Tenants may be in the Market at other times only with specific written permission of Landlord.

B. All persons coming within the building or upon the grounds must conform strictly to all the Rules and Regulations of the Market, and any person who commits any nuisance or violates any of the Rules or Regulations governing the Market shall be removed from the building and grounds.

C. No disorderly conduct or boisterous talking by any person will be allowed in the building, nor shall idlers, loungers, peddlers or disorderly persons be permitted to remain in or about the premises.

D. The use of any spark, flame, or fire producing device is prohibited in the Market, unless specific consent to the use thereof is given by Landlord.

E. Hawking or peddling merchandise in the Market and on the adjacent sidewalks is prohibited.

F. Tenant shall, during the prescribed Market hours, only display and offer for sale at the Premises the articles and provisions specified in Exhibit "H" - Tenant Product List, and previously approved in writing by Landlord.

G. The Premises shall be used only for the display and sale of articles and provisions stated in Exhibit "H", unless permission, in writing, is granted by Landlord temporarily to display and sell other articles or provisions. Such permission shall be subject to the provisions of the agreement for the Premises and the Rules and Regulations of the Market.

H. Tenants shall keep the Premises, inside and outside and the floor underneath and in front thereof in a clean and sanitary condition at all times and dispose of all trash, garbage, rubbish, and other waste in a manner satisfactory to Landlord and the Department of Health of the City of Philadelphia.

I. No Tenant shall be allowed to occupy more space than is allotted to it or to alter or enlarge its stall or to encroach upon or obstruct passageways, unless permission, in writing, is granted by Landlord. Such permission shall be subject to the provisions of the agreement for the Premises and the Rules and Regulations of the Market.

J. Landlord shall have the sole right to specify the manner and use of the name "Reading Terminal Market," and any logos, trademarks and trade names of landlord or its subsidiaries or affiliated companies. Any advertising by Tenant which, in Landlord's opinion, impairs the name of the Market, upon notice from Landlord, shall immediately be discontinued.

K. No Tenant shall be allowed to alter their Premises, absent written permission from the Landlord.

L. The handling of freight in Reading Terminal Market shall only be done during the non-public hours. The following safety policy shall be observed by all merchants and their employees, suppliers and invites.

1. Electric pallet trucks may not be used in Reading Terminal Market from 11:00 a.m. to 2:00 p.m. Pallet moving during these busy hours must be kept to a minimum and must be done with a manual pallet truck.

2. Each merchant's basket carts must be of a uniform nesting type and must be kept clean. All nesting-baskets and flat carts must be stored in a group chained to the "hitching rail" along the east wall of the Market near the men's room. All basket carts must be loaded in a safe manner. They may not be loaded above the top. They may not be loaded with boxes; boxes must be transported on flat carts.

3. Goods being set up for sale may not be placed in aisles after 9:30 a.m.

M. Contractors may work during public hours (8:00 a.m. to 6:00 p.m.); any work performed outside these hours must be accompanied by a security guard who will be paid by the Landlord at the Tenant's expense. Tenant will be charged and payment for this service will be due with the next month's Tenant Rent.

N. Tenants will ensure that their adjacent aisleways are clear of water (regardless of its source) at all times, so the passage of pedestrians is as safe as possible.

O. No power tools may be used from 11a.m. to 2:00 p.m.

P. Market Management and security staff have the sole authority to enforce the Rules and Regulations. Failure to comply with these Rules and Regulations may result in Tenant's electric service being disconnected, or such other remedies as are necessary to address a breach of this agreement.

Q. Tenants whose cooking operations produce grease-laden vapors will follow the provisions of National Fire Protection Association Standard 96, or such other standards as Landlord may from time to time designate for the installation and operation of cooking equipment. A copy of the relevant standards will be supplied by Landlord to Tenant and its contractors upon request.

R. Smoking shall only be permitted within areas of the Market that are designated as smoking areas by the Landlord. No smoking shall be permitted within the Premises.

U Sample Landlord and Tenant Lease

LEASE SUMMARY

STALL NO. _____

LANDLORD: Pennsylvania Convention Center Authority

LANDLORD'S ADDRESS: Management Office
Reading Terminal Market
51 North 12th Street
Philadelphia, PA 19107

TENANT: _____

TENANT'S ADDRESS: _____

PRINCIPAL: _____

PRINCIPAL'S ADDRESS: _____

USE: _____

RENTAL AREA: _____

TERM: _____

BASE RENT: _____/YEAR _____/MONTH

SECURITY DEPOSIT: _____

ESTIMATED CAM CHARGES: _____/MONTH

ESTIMATED TAXES: _____/MONTH

LEASE

THIS LEASE is made this _____ day of _____ 19____, by and between the Pennsylvania Convention Center Authority, a body corporate and politic organized and existing under the laws of the Commonwealth of a Pennsylvania, located at 1101 Arch Street, Philadelphia, PA 19107 (the "Landlord"), and _____ with offices or permanent address at _____ (the "Tenant").

WITNESSETH

WHEREAS, Landlord is the owner of certain premises known as the Reading Terminal Market located between 11th and 12th Streets and Filbert and Arch Streets, Philadelphia, Pennsylvania (the "Market"); and

WHEREAS, Tenant desires to lease a portion of the Market, and Landlord is willing to lease to Tenant, subject to the strict compliance by the Tenant with the terms and conditions of this lease (the "Lease" or the "Agreement").

NOW THEREFORE, in consideration of the mutual covenants and agreements specified herein, the parties hereto pledge and intending to be legally bound, hereby agree as follows:

1. **PREMISES.** Landlord hereby demises and lets unto Tenant and Tenant hereby lets from Landlord, the portion of the Market consisting of approximately _____ rentable square feet of retail sales space as shown in outline on the plan attached hereto as Exhibit "A" and made a part hereof. (the "Premises").

2. **USE.** Tenant agrees that the Premises shall be occupied and used only for _____ and for no other purpose.

3. **TERM.** The term of this Lease shall be _____ beginning _____, 19____, hereinafter the "Beginning Date" and ending _____, 19____, hereinafter the "Ending Date".

4. **BASE RENT.** Tenant agrees to pay to Landlord as minimum Base Rent the sum of _____ Dollars (\$) _____) per annum, lawful money of the United States of America without any prior demand and without any deduction or set off what so ever, in advance, in equal monthly installments of _____ Dollars (\$ _____) on the first day of each and every month during the Term.

5. SECURITY DEPOSIT. Tenant agrees to deposit with Landlord upon signing of this Lease _____ Dollars (\$_____) as the Security Deposit to: (a) secure the performance by Tenant of the terms, conditions and covenants of this Lease; and (b) as protection to Landlord against wear and tear to the Premises, loss or damage to the Premises or other property of Landlord caused by Tenant, Tenant's employees, servants, agents, visitors, licensees or guests; and the cost of cleaning and/or restoring and/or repairing the Premises to the extent that Landlord shall determine that it is necessary to restore the Premises (except for reasonable wear and tear) to the same condition in which the Premises was delivered by Landlord to Tenant on the Beginning Date. Any costs and damages deducted from the Security Deposit shall be deducted as Additional Rent.

Landlord acknowledges receipt from Tenant of the Security Deposit, which shall be held as security for the performance by Tenant of all obligations imposed on Tenant under this Lease. The Security Deposit shall at all times be held without interest to Tenant, and may be commingled with Tenant escrow funds in any other bank accounts held by Landlord. If at any time during the Term the Base Rent increases, the Security Deposit held by Landlord shall be increased so that at all times the Security Deposit held by Landlord is equal to the Base Rent for two months. Tenant may not apply the Security Deposit toward any payment of Tenant Rent, as hereinafter defined. If at any time Tenant has failed to pay any Tenant Rent, Landlord may apply the Security Deposit against any such unpaid charges and shall notify Tenant of such action. Upon notice, Tenant shall immediately replenish such Security Deposit and Tenant shall additionally pay to Landlord a service fee of Fifty Dollars (\$50.00) which shall be deemed Additional Rent.

After the expiration or termination of this Lease, Tenant shall give Landlord its new address in writing; and Landlord, within thirty (30) days of receipt of such notice, shall provide Tenant with a written list of any deductions for damages or unpaid Tenant Rent, and shall return the balance of the Security Deposit to Tenant.

6. TENANT'S TRADE NAME. Tenant agrees to operate its business on the Premises using only the name _____ as its trade name throughout the Term of this Lease.

ARTICLE I **DEFINITIONS AND ATTACHMENTS**

1.1 DEFINITIONS: For all purposes of this Lease, unless otherwise expressly provided, all terms used herein which are defined in Exhibit "F" hereto, (including all terms defined by reference therein to Sections and other subdivisions of this

Agreement) shall have the respective meanings stated or referred to in Exhibit "F".

1.2 ATTACHMENTS: The following documents are attached hereto; and such documents, as well as drawings and documents prepared pursuant thereto, shall be deemed a part hereof:

Exhibit "A"- Drawing showing the Premises
Exhibit "B"- Landlord's Improvements
Exhibit "C"- Tenant Design Criteria
Exhibit "D"- Rules and Regulations
Exhibit "E"- Common Area Maintenance Costs
Exhibit "F"- Definitions
Exhibit "G"- Construction Drawings
Exhibit "H"- Tenant Product List

ARTICLE II PREMISES

2.1 DEMISE: Landlord hereby leases to Tenant, and Tenant hereby lets from Landlord, the Premises for the Term, at the Tenant Rent and upon the terms, covenants and conditions herein set forth. Landlord warrants that it and no other person or corporation has the right to lease the Premises, and that so long as Tenant is not in default hereunder, Tenant shall have peaceful and quiet use and possession of the Premises, subject to all matters of record and other agreements to which this Lease is or may hereafter be subordinated.

2.2 CONDITION: The Premises are leased in their present condition. Landlord makes no warranties, express or implied, as to the condition of the Premises. Tenant has inspected the Premises and accepts same in their present condition, subject only to Landlord's agreement to make the repairs, replacements or installations (the "Landlord's Improvements" which are set forth on Exhibit "B" hereto), if any. Tenant hereby agrees to replace, repair and maintain any and all of the Landlord's Improvements at Tenant's sole cost and expense.

2.3 TENANT IMPROVEMENTS: Tenant shall be obligated, at its own expense, to do all work which may be required to make the Premises tenantable. Such work shall include, without limitation, the purchase of all materials, labor costs, professional fees and expenses, and government fees and expenses incurred in the construction and finishing of floor plans, floor, ceiling, walls, wall coverings, electrical service, mechanical installations, counter and trade fixtures, plumbing, light fixtures, gas connections, telephone service and signs for the Premises (all of which are hereinafter referred to collectively as "Tenant Improvements"). All Tenant Improvements shall be made strictly in accordance with the provisions of Article XI below, the "Tenant

Design Criteria" set forth on Exhibit "C" attached hereto, and the Construction Drawings attached hereto, as Exhibit "G". Prior to commencing construction of the Tenant Improvements, Tenant shall submit the Construction Drawings to the Landlord for Landlord's review and approval. Within fourteen (14) working days of Landlord's receipt of the Construction Drawings, Landlord shall notify Tenant in writing of Landlord's approval or disapproval of said drawings.

2.4 READY FOR OCCUPANCY: Tenant shall not open for business until the Premises are "Ready for Occupancy." The Premises shall be "Ready for Occupancy" as of the date on which construction of Tenant Improvements is completed and approved by Landlord and the requisite governmental certificates or approvals have been obtained by Tenant.

2.5 POSSESSION: If for any reason Landlord is unable to give Tenant actual possession of the Premises on the Beginning Date, Tenant shall have the option of either: (a) rescinding this Lease by written notice to Landlord within ten (10) working days of Landlord's failure to give actual possession, in which case the Landlord shall promptly return to Tenant all Tenant Rent, the Security Deposit or other consideration paid in advance to Landlord, all without interest; or (b) Tenant may delay acceptance of possession, from month to month but not more than six (6) months, at Tenant's discretion; until Landlord is able to give actual possession in which case Landlord shall abate the Tenant Rent until Landlord is able to give actual possession. After receipt of notice from the Landlord of any change in the Beginning Date, Tenant shall have five (5) days to respond to the notice, and Landlord shall not be liable for damages for any failure to deliver possession.

ARTICLE III **TERM**

3.1 TERM: The Term shall commence on the actual Beginning Date. The Term shall end on the Ending Date. Landlord and Tenant agree to execute a Confirmation of the Commencement Date of the Lease which certifies the Beginning Date and Ending Date when such dates have been ascertained.

3.2 HOLDING OVER: If Tenant shall be in possession of the Premises at the end of the Term with the consent of Landlord, then the tenancy under this Lease shall become month to month with all terms and conditions in this Lease remaining the same, except for the Ending Date. Such tenancy shall be terminable by either party on thirty (30) days' written notice to the other party.

3.3 TRESPASS: If Tenant shall remain in possession of the Premises at the end of the Term without the consent of the Landlord, Tenant shall be considered a trespasser with no right to

be or remain on the Premises, nor store any property on the Premises or in the Market. Such action shall be an Event of Default, as defined in Article XV hereof, and Landlord shall be entitled to all remedies granted to Landlord in said Article XV. All remedies granted in Article XV shall survive any termination of this Lease due to an Event of Default.

ARTICLE IV **USE**

4.1 PERMITTED USE: Tenant shall occupy the Premises for the Permitted Use and for no other purpose whatsoever. Tenant shall conduct its business subject to the Rules and Regulations set forth on Exhibit "D" hereto, which Rules and Regulations may be amended from time to time by the Landlord; provided, that Landlord shall give Tenant ten (10) days prior written notice of the content and effective date of any amendments to said Rules and Regulations.

ARTICLE V **RENTAL**

5.1 BASE RENT: Base Rent shall be payable in equal monthly installments in advance on the first day of each full calendar month during the Term. The Tenant shall pay the first monthly installment of Base Rent at the time of execution of this Lease. In the event that the date of execution of this Lease is a day other than the first day of a calendar month, Tenant's first monthly installment of Base Rent shall be prorated for the fractional month between the date of execution and the first day of the first full calendar month in the Term hereof, on a per diem basis (calculated on a thirty (30) day month).

5.2 TENANT RENT: Tenant covenants and agrees to pay to Landlord, the Base Rent and the following sums:

- (a) Taxes, in accordance with Article VI below; plus
- (b) Utility Costs, in accordance with Article VII below; plus
- (c) Tenant's Share of Common Area Maintenance Costs, in accordance with Exhibit "E" hereto; plus
- (d) All additional sums, charges and amounts of whatever nature to be paid by Tenant to Landlord in accordance with the provisions of this Lease, (collectively referred to as "Additional Rent") whether or not such sums, charges or amounts are specifically referred to as Additional Rent.

5.3 TERMS OF PAYMENT: Tenant shall pay all Tenant Rent when due and payable, without any set-offs, deductions or prior demand thereof. Tenant shall not pay any Tenant Rent earlier than one (1) month in advance. In addition, for any Tenant Rent which is not

paid within five (5) days after the same is due, Tenant shall pay interest at the "Default Rate" (as hereinafter defined) on the arrearage from the first day due until paid. Tenant Rent shall be paid in person or mailed as follows:

Management Office
Reading Terminal Market
51 North 12th Street
Philadelphia, PA 19107

Such addresses may be changed from time to time upon written notice thereof to Tenant.

Any payment by Tenant or acceptance by Landlord of a lesser amount than shall be due from Tenant to Landlord shall be treated as a payment on account. The acceptance by Landlord of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full or payment for any particular Tenant Rent, shall be given no effect, and Landlord may accept such check without prejudice to any other rights or remedies which Landlord may have against Tenant. Landlord may apply such payments against the earliest outstanding Lease charges, or in any other manner which it may choose to account for such payments.

5.4 CONSUMER PRICE ADJUSTMENT. Tenant agrees that commencing on the first day of each one year anniversary of the Term, the Base Rent as stated herein shall be adjusted upward (but not downward) for that particular succeeding one year period. The adjustment shall be calculated by multiplying the then current Base Rent by a fraction. This fraction shall be calculated as follows: (a) the numerator shall be the Consumer Price Index for Urban Wage Earners and Clerical Workers (1984=100) (hereinafter called the "Index") last published by the Bureau of Labor Statistics of the United States Department of Labor, for the Philadelphia, Pennsylvania area, on the closest date of the publication thereof for the month prior to the current anniversary date; and (b) the denominator shall be the Index on the closest date of the publication thereof for the first month of the previous year of the Term. The resulting fraction shall be used in the calculation of "Adjusted Base Rent". If the Index is discontinued or ceases to be published, Landlord will substitute a comparable index reflecting changes in the cost of living or purchasing power of the consumer dollar published by any other government agency, bank or financial institution, or any recognized authority.

ARTICLE VI

TAXES

6.1 TAXES. Tenant shall pay in each Lease Year during the Term, as Additional Rent, a proportionate share of (i) all real

estate taxes, ad valorem taxes and assessments, general and special use and occupancy taxes, and any other tax imposed upon or levied against real estate, or upon owners of real estate including taxes imposed on Tenant Improvements which are assessed against Landlord, payable with respect to or allocable to the Premises, or (ii) any payments, in lieu of any real estate taxes, levies or charges, ad valorem taxes and assessments, general and special, or, made or required to be made by Landlord to the Commonwealth of Pennsylvania or any political subdivision thereof or other taxing authority, together with the reasonable costs (including fees of attorneys, consultants and appraisers) of any negotiation, contest or appeal pursued by Landlord in an effort to reduce such tax, assessment, charge, or payment in lieu thereof, and all of Landlord's reasonable administrative costs in relation to the foregoing, all of the above being collectively referred to herein as "Taxes". TENANT HEREBY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO PROTEST TAXES. Tenant's proportionate share of the Taxes shall be computed by multiplying the total amount of such Taxes by a fraction, the numerator of which shall be the Rental Area and the denominator of which shall be the total rented area of the Market. For the Tax Year in which the Term commences or terminates, the provisions of this Section shall apply, but Tenant's liability for its proportionate share of any Taxes for such year shall be subject to a pro rata adjustment based upon the number of days of such Tax Year falling within the Term.

6.2 PAYMENT OF TAXES: Tenant shall pay to Landlord, monthly on the first day of each month, an amount equal to one-twelfth (1/12) of Tenant's proportionate share of Taxes. As soon as practicable after the end of the calendar year, Landlord shall submit to Tenant a statement setting forth the exact amount of Taxes, if any, for the ensuing year and Tenant's proportionate share of the Taxes for the next Rental Year. To the extent that Tenant's proportionate share of the Taxes is less than the amount paid by Tenant for same, Landlord shall credit the difference against the Tenant's payment of such Taxes for the next Rental Year.

6.3 OTHER TAXES: In addition to Tenant's proportionate share of Taxes, Tenant shall pay to the appropriate agency any sales, excise and other tax levied, imposed or assessed, by the Commonwealth of Pennsylvania or any political subdivision thereof, directly upon Tenant. Tenant shall also pay, prior to the time the same shall become delinquent or payable with penalty, all taxes imposed on its inventory, receipts, furniture, trade fixtures, apparatus, equipment, leasehold improvements installed by Tenant or by Landlord on behalf of Tenant (except to the extent such leasehold improvements shall be covered by Taxes referred to in Section 6.1 hereof), and any other property of Tenant, if any.

ARTICLE VII
UTILITIES

7.1 ELECTRIC: Landlord shall make available stub end electrical feed to the Premises. Tenant, at its own expense, shall construct and install such wiring, meters and fixtures as may be necessary to provide electric service and lighting to the Premises. Electrical energy consumed on the Premises shall be measured by separate meter; and the cost of the same as computed by Landlord under PECO Energy's prevailing General Service rate, shall be billed to Tenant. Tenant shall pay all such charges as Additional Rent to Landlord on a monthly basis within five (5) days after Landlord has billed such charges to Tenant. In the event such charges are not paid by Tenant within the five (5) day period, Landlord shall not be obligated to continue to furnish electrical service to the Premises; and may, after five (5) days prior written notice to Tenant, in Landlord's sole discretion, terminate all electric service provided to the Premises.

7.2 WATER AND SEWER: Landlord shall make available stub end plumbing to the Premises, for the delivery of water and disposal of water and sewage. Tenant, at its own cost and expense, shall construct and install such plumbing, meters, pipes and fixtures as may be necessary to provide water and sanitary sewer service to the Premises. Charges for such services, as computed by Landlord, shall be billed to Tenant monthly at the prevailing City of Philadelphia charges. Tenant shall pay all such charges as Additional Rent to Landlord within five (5) days after Landlord has billed such charges to Tenant. In the event such charges are not paid by Tenant within the five (5) day period, Landlord shall not be obligated to continue to furnish water and sewer service to the Premises, and may, after five (5) days notice in writing to Tenant, in Landlord's sole discretion, terminate all water and sewer service provided to the Premises.

7.3 NATURAL GAS: If Tenant desires to use natural gas, Landlord shall make available the connections necessary for the provisions of natural gas. Tenant shall be required to provide at its own expense all connections, meters and fixtures which may be necessary for the use of natural gas at the prevailing rate. Natural gas will be separately metered and billed to Tenant by Landlord monthly. Tenant shall pay all such charges as Additional Rent to Landlord on monthly basis within five (5) days after Landlord has billed such charges to Tenant. In the event such charges are not paid by the Tenant within the five (5) day period, Landlord shall not be obligated to continue to furnish natural gas service to the Premises, and may after five (5) days notice in writing the Tenant, in Landlord's sole discretion, terminate all natural gas service provided to the Premises.

7.4 TELEPHONE: The Premises shall be delivered to Tenant without any connections for telephone service. If Tenant desires telephone service, Tenant shall be required to provide, at its own cost and expense, all connections and fixtures which may be necessary for telephone service. Tenant shall arrange to be billed directly for its use of telephone service.

7.5 MAINTENANCE AND REPAIR: Tenant shall at its own cost and expense maintain, repair and replace (as necessary) all of the connections, equipment, and fixtures which service the Premises with any utilities described in this Article VII. All work performed on the Premises, whether initial installation or maintenance and repair, shall be performed in a workmanlike fashion, in compliance with all federal, state and local laws and regulations; all professional standards governing such work; and the requirements of the Tenant Design Criteria.

7.6 RIGHTS OF LANDLORD: Landlord, its employees and agents, shall be permitted access to the Premises at all reasonable times, in order to inspect utility connections, equipment and fixtures and to read the meters on the Premises; and in the case where utilities connections may be shared by other parts of the Market from a central location at the Premises, access shall be granted for the installation, maintenance and repair of any shared utility connection.

Landlord shall not be liable to Tenant for any damages which may occur as the result of: (a) the unavailability of any utility from any public utility company, public authority or any other person or entity (including Landlord) supplying or distributing such utility; or (b) any interruption in any utility service (including, without limitation, any heating, ventilation or air-conditioning) caused by the making of any necessary repairs or improvements or by any cause beyond Landlord's reasonable control, and the same shall not constitute a termination of this Lease or an eviction of Tenant.

All improvements made to the Premises including improvements for the provision of electric, water, sanitation sewer, gas, telephone, and HVAC Service to the Premises, shall be deemed fixtures attached to the Premises, and shall remain on the Premises after termination or expiration of this Lease.

Any and all costs paid or incurred by Landlord in the provision, maintenance, repair or service of and to any utility services on the Premises shall be Additional Rent, due and payable to Landlord within five (5) days of billing for such charges.

ARTICLE VIII
OPERATIONS

8.1 CLEANING: Tenant shall, at its own expense, (a) keep and maintain the Premises (including windows and doors) in a clean, orderly and sanitary condition, free of insects, rodents, vermin and other pests; (b) sweep the aisles adjoining the Premises at the beginning of each day and as needed thereafter, and properly dispose of all rubbish and dirt; and (c) provide adequate containers for the disposal of Tenant's refuse and garbage, and properly dispose of same. The degree and sufficiency of Tenant's compliance with this Section shall be determined at the sole discretion of the Landlord or the Landlord's agent (hereinafter the Landlord's agent shall sometimes be referred to as the "Manager").

8.2 APPLICABLE LAWS: Tenant shall comply with all laws, ordinances, rules and regulations of all governmental authorities relating to the Premises and Tenant's activities at the Premises including any licenses required by any governmental authorities in the regulation of work done on the Premises and for the operation of Tenant's business on the Premises. A copy of all such licenses shall be provided to Landlord upon request.

8.3 OBJECTIONABLE ACTIVITIES: Landlord shall have the right to regulate, limit, or prohibit, in its sole discretion, the following activities in and about the Premises: (a) the emission of sounds and noises which are in any manner audible outside of the Premises; (b) the emanation from the Premises of any offensive odor; (c) the advertisement, display or sale of any merchandise or service which is illegal, unsafe, unwholesome or does not promote basic family values, or is of a type which is not generally considered appropriate for a first-class urban retail center conducted in accordance with good and generally accepted standards of operations; and (d) the posting of any signs in or about the Premises, except in accordance with Tenant Design Criteria.

8.4 QUALITY CONTROL: For the purpose of maintaining the quality of the goods and services provided in conjunction with the use of the words "Reading Terminal Market," the Reading Terminal logo and any other trademarks or trade names of Landlord and in order to maintain a uniform and consistent quality of merchandise and merchandising and further, to ensure the mutual protection of all tenants in the Market, Tenant agrees that:

(a) Landlord shall have the right to establish and from time to time modify standards of merchandise and standards of merchandising applicable to all tenants in the Market, and Tenant shall at all times comply with and meet such standards then in effect;

(b) Tenant will remove from the Market any food or other

merchandise, which, in the judgment of Landlord, does not meet the established standards, when and as directed by the Landlord or the Manager;

(c) Tenant shall comply with the oral directions of the Landlord or the Manager with respect to any of the matters mentioned in clauses (a) and (b) above within three (3) days after such directions are given, and if the matter shall not be corrected to the satisfaction of the Landlord within such period, it shall be deemed an Event of Default and Landlord may in his sole discretion terminate this Lease effective as of the last day of the calendar month during which said three-day period shall have expired.

8.5 DELIVERIES: Tenant shall arrange for the pick-up and delivery of all goods and services to the Premises so as to minimize the disruption of all pedestrian and vehicular traffic to and through the Market. Pick ups and deliveries may only be made at designated loading areas at times designated by the Landlord.

8.6 ACCESS: Tenant shall give access to the Premises at reasonable hours to the Manager, the Landlord and Landlord's employees and agents, prospective tenants, and any other business invites of Landlord, for any reasonable purpose, including the posting and maintaining by Landlord at the Premises of "Rent" or other signs that inform the public that the Premises are available, and direct the public to the Landlord.

ARTICLE IX REPAIRS and ALTERATIONS

9.1 LANDLORD'S REPAIR: Landlord, at its own expense, will make or cause to be made structural repairs to exterior walls, structural columns, roof penetrations and structural floor which collectively enclose the Market; provided, however, that Tenant shall give Landlord notice of such necessity and provided that the necessity therefor shall not arise from nor have been caused by the negligence or willful acts of Tenant, its employees, agents, licensees, invitees or contractors.

9.2 TENANT'S REPAIRS: All repairs to the Premises or any installations, equipment or facilities therein, other than those repairs required to be made by Landlord pursuant to Section 9.1 above, shall be made by Tenant at its expense. Without limiting the scope of the foregoing, Tenant will keep the interior of the Premises, together with all electrical, plumbing and other mechanical installations therein in good order and repair and will make all replacements from time to time required thereto at its expense. Tenant will surrender the Premises at the expiration of the Term or at such other time as it may be required to vacate the Premises in as good condition as when received, excepting ordinary wear and tear, damage by casualty which is not caused by the negligence of Tenant, its agents, concessionaires, officers,

employees, contractors, licensees or invitees (and which is wholly covered by insurance); unavoidable accidents; or acts of God. Tenant will not overload the electrical wiring serving the Premises or within the Premises, and will install at its expense, subject to the provisions of Section 9.4 below, any additional electrical wiring which may be required in connection with Tenant's equipment. Any damage or injury sustained by any person because of mechanical, electrical, plumbing or any other equipment or installations, whose maintenance and repair are the responsibility of Tenant shall be paid for by Tenant. TENANT HEREBY AGREES TO INDEMNIFY AND HOLD LANDLORD, ITS OFFICERS, EMPLOYEES AND AGENTS HARMLESS, FROM AND AGAINST ALL CLAIMS, ACTIONS, DAMAGES AND LIABILITY IN CONNECTION THEREWITH, INCLUDING BUT NOT LIMITED TO ATTORNEYS' AND OTHER PROFESSIONAL FEES AND ANY OTHER COST WHICH LANDLORD MIGHT REASONABLY INCUR.

9.3 DAMAGE TO PREMISES: Tenant will repair promptly at its expense any damage to the Premises and upon demand, shall reimburse Landlord (as Additional Rent) for the cost of the repair of any damage elsewhere in the Market, caused by or arising from the installation or removal of Tenant's property in or from the Premises, regardless of fault or by whom such damage shall be caused (unless caused by Landlord, its agents, employees or contractors). If Tenant shall fail to commence such repairs within five (5) days after notice to do so, Landlord may make such repairs or cause the same to be made and Tenant agrees to pay to Landlord promptly upon Landlord's demand, as Additional Rent, the cost thereof with interest thereon at the Default Rate until paid.

9.4 ALTERATIONS BY TENANT: Tenant will not make any alterations, renovations, improvements or other installations in, on or to any part of the Premises (including, without limitation, any alterations of the storefront, signs, structural alterations, or any cutting or drilling into any part of the Premises or any securing of any fixture, apparatus, or equipment of any kind to any part of the Premises) unless and until Tenant shall have caused plans and specifications therefor to have been prepared, at Tenant's expense, by an architect or other duly qualified person and shall have obtained Landlord's written approval thereof. If such approval is granted, Tenant will cause the work described in such plans and specifications to be performed, at its expense, promptly, efficiently, competently and in a good and workmanlike manner by duly qualified or licensed persons or entities, without interference with or disruption to the operations of other tenants or occupants of the Market. All such work shall comply with the Tenant Design Criteria, as well as all applicable codes, rules regulations and ordinances.

9.5 MECHANIC'S LIENS: No work performed by Tenant pursuant to this Lease, whether in the nature of erection, construction, alteration or repair, shall be deemed to be for the immediate use and benefit of Landlord so that no mechanic's or other lien shall

be allowed against the estate of Landlord by reason of any consent given by Landlord to Tenant to improve the Premises. Prior to the commencement of any work on the Premises, Tenant shall require its contractors to execute and file with Landlord a waiver of mechanics liens in recordable form. Tenant shall pay promptly all persons furnishing labor or materials with respect to any work performed by Tenant or its contractor on or about the Premises. If any mechanic's or other lien shall at any time be filed against the Premises by reason of work, labor, services or materials performed or furnished, or alleged to have been performed or furnished, to Tenant or to anyone holding the Premises through or under Tenant, Tenant shall forthwith cause the same to be discharged of record or bonded to the satisfaction of Landlord. If Tenant shall fail to cause such lien forthwith to be so discharged or bonded after being notified of the filing thereof, then, in addition to any other right or remedy of Landlord, Landlord may bond or discharge the same by paying the amount claimed to be due, and the amount so paid by Landlord, including reasonable attorneys' fees incurred by Landlord either in defending against such lien or in procuring the bonding or discharge of such lien, together with interest thereon at Default Rate, shall be due and payable by Tenant to Landlord as Additional Rent.

ARTICLE X
TRADE FIXTURES; SIGNS AND TRADE NAMES

10.1 TRADE FIXTURES: Tenant has the right at all times to erect or install shelves, bins, machinery, equipment, or other trade fixtures in, on, or about the Premises, provided that Tenant complies with all applicable governmental laws, ordinances, and regulations regarding such fixtures including the Tenant Design Criteria. Tenant has the right to remove all trade fixtures installed by Tenant at the termination of this Lease, provided Tenant is not in default under the Lease and that the fixtures will be removed without damage to the Premises. All fixtures, cases, cabinets, refrigeration or other similar items installed by Landlord shall remain on the Premises and Tenant acknowledges and agrees that all such items are the property of the Landlord. Tenant must repair any damage to the Premises caused by removal of trade fixtures, and all such repairs must be completed prior to the termination of the Lease. Any trade fixtures that have not been removed by Tenant at the termination of this Lease shall be deemed abandoned by the Tenant and shall automatically become the property of Landlord.

10.2 SIGNS: Tenant shall have the right to erect signs on the Premises, subject to the Landlord's prior written approval and in accordance with the Tenant Design Criteria and applicable statutes, ordinances, and zoning restrictions. Tenant shall remove all signs at the termination of this Lease and shall repair any damage, including, but not limited to, closing any holes caused by such removal.

10.3 TRADE NAMES: Any use by Tenant of the words "Reading Terminal Market", the Reading Terminal Market logo, or any other trademarks or trade names of Landlord must be submitted to the Landlord in writing. Landlord may grant Tenant permission to use trademarks or tradenames of Landlord solely at the discretion of the Landlord and such use must be specifically approved in writing by the Landlord in advance of Tenant's use. However any use by Tenant of the words "Reading Terminal Market", the Reading Terminal market logo or any other trademarks or trade names of Landlord shall inure to the benefit of Landlord and Tenant shall not acquire any rights thereto or to the good will of the business symbolized by those words, logos, marks and names.

ARTICLE XI
INDEMNITY AND INSURANCE

11.1 INDEMNITY BY TENANT: TENANT SHALL AND DOES HEREBY AGREE TO INDEMNIFY AND HOLD HARMLESS LANDLORD, ITS EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS, ACTIONS, DAMAGES, LIABILITIES AND EXPENSES, INCLUDING ATTORNEYS' AND OTHER PROFESSIONAL FEES, IN CONNECTION WITH LOSS OF LIFE, PERSONAL INJURY AND/OR DAMAGE TO PROPERTY ARISING FROM OR OUT OF THE OCCUPANCY OR USE BY TENANT OF THE PREMISES OR ANY PART THEREOF OR ANY OTHER PART OF THE MARKET, OCCASIONED WHOLLY OR IN PART BY ANY ACT OR OMISSION OF TENANT, ITS OFFICERS, AGENTS, CONTRACTORS, EMPLOYEES OR INVITEES.

11.2 LANDLORD NOT RESPONSIBLE FOR ACTS OF OTHERS: Landlord shall not be responsible or liable to Tenant, or to those claiming by, through, or under Tenant, for any loss or damage which may be occasioned by or through the acts or omissions of persons occupying any part of the Premises or any space adjoining or adjacent to the Premises or connecting with the Premises or any other part of the Market, or otherwise, or for any loss or damage resulting to property of Tenant, or those claiming by, through or under Tenant, from theft or the breaking, bursting, stoppage or leaking of electrical cable and wires, or water, gas, sewer or steam pipes. Tenant agrees to use and occupy the Premises, and to use such other portions of the Market as Tenant is herein given the right to use, at Tenant's own risk.

11.3 TENANT'S INSURANCE. Tenant, at Tenant's sole expense, shall obtain and maintain in full force and effect during the Term of this Lease: (a) fire and extended coverage insurance covering all Tenant Improvements and all of Tenant's fixtures, furniture furnishings and all other improvements and decorations placed by Tenant in or upon the Premises, to the extent of their replacement cost; (b) comprehensive general public liability insurance on an occurrence basis covering the Premises, with minimum limits of liability in an amount of not less than \$500,000.00 for bodily, personal injury or death to any one person, not less than \$1,000,000.00 for bodily, personal injury or death to more than one person and not less than \$250,000.00 with respect to damage to

property; and (c) of and to the extent required by law, worker's compensation or similar insurance in form and amounts required by law.

11.4 TENANT'S CONTRACTOR'S INSURANCE: Tenant shall require any contractor of Tenant performing work on the Premises to carry and maintain, at no expense to Landlord: (a) comprehensive general liability insurance, including contractor's liability damage endorsement and contractor's protective liability coverage, to afford protection, with limits for each occurrence, of not less than One Million Dollars (\$1,000,000), with respect to personal injury or death and One Million Dollars (\$1,000,000) with respect to property damage; and (b) worker's compensation or similar insurance in form and amounts required by law.

11.5 POLICY REQUIREMENTS: All policies of insurance shall be non-assessable and shall be issued by responsible insurance companies, qualified to do business in Pennsylvania and qualified to assume risks covered by all policies and acceptable to the Landlord. All policies shall in every applicable case contain standard mortgagee clauses. The general liability and casualty policies shall name as additional insureds Landlord and its designees as requested by the Landlord. The policies shall contain a provision by which the insurers agree that each such policy shall not be canceled or modified except after thirty (30) days written notice to Landlord and its designees. No loss deductible clause shall be permitted, except with the prior written approval of Landlord. Policies, or certificates thereof, shall be provided to the Landlord prior to the date that Tenant takes possession of the Premises and from time to time thereafter as required by Landlord evidencing that the aforesaid insurance is in full force and effect. If Tenant shall fail to obtain or maintain the insurance required by this Article XI, Landlord may obtain such insurance or coverage, pay the premiums thereon, and take such steps as may be necessary to meet the requirements of this Article XI, and the cost thereof shall be payable by Tenant as Additional Rent upon demand of Landlord.

11.6 INCREASE IN INSURANCE PREMIUM: Tenant will not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Premises which will violate Landlord's insurance policies. If anything done, omitted to be done or suffered by Tenant to be kept in, upon or about the Premises shall cause the rate of fire or other insurance on the Market or other property of Landlord or of others within the Market to be increased beyond the minimum rate from time to time applicable to the Market or to any other property of the Landlord, Tenant will pay, as Additional Rent, the amount of any such increase upon Landlord's demand.

11.7 WAIVER OF RIGHT OF RECOVERY: Notwithstanding anything to the contrary contained elsewhere in the Lease, neither Landlord nor Tenant shall be liable to the other or to any insurance company (by

way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure or other property, or any resulting loss of income, or losses under worker's compensation laws and benefits, even though such loss or damage might have been occasioned by the negligence of such party, its agents or employees, if, and to the extent that, any such loss or damage is covered by insurance benefiting the party suffering such loss or damage; or was required to be covered by insurance benefiting the party suffering such loss or damage; or was required to be covered by insurance pursuant to this Article XI.

ARTICLE XII

DAMAGE AND DESTRUCTION

12.1 RIGHTS UPON CASUALTY: If the Premises or the Property shall be damaged or destroyed by fire, elements, accident or other casualty not caused in whole or in part by Tenant, its employees, agents, contractors or invitees (any such causes being referred to herein as a "Casualty"), then the following terms shall apply: (a) If the Premises remain tenantable (all determinations of "tenantable" herein to be made in the sole judgment of Landlord such judgment to be reasonably exercised), then Landlord shall cause such damage to be repaired, and there shall be no abatement of Tenant's Rent; (b) If the Premises are rendered partially untenable, then, subject to the provisions of this Article XII, Landlord shall cause such damage to be repaired, and Base Rent shall be abated proportionately by reducing the Rental Area to reflect the portion of the Premises rendered untenable. As damaged areas are restored to tenantable condition, Rental Area and Base Rent shall be increased proportionately up to the preexisting Base Rent and Rental Area; (c) If the Premises are rendered completely untenable, then all Tenant Rent shall abate from the last day of the month in which the Casualty occurs, until either the Lease terminates or the Premises are restored to tenantable condition as further provided herein. Landlord shall, within ninety (90) days of the date of Casualty, make a determination whether to rebuild, repair and reconstruct the Premises, and shall provide Tenant with written notice of such determination. If Landlord determines not to rebuild, repair and reconstruct the Premises, then the Lease shall be deemed to have terminated as of the month in which the Casualty occurred. If Landlord determines to rebuild, repair and reconstruct the Premises, then Landlord shall give Tenant written notice of such determination, as well as the anticipated date on which the Premises will be placed in tenantable condition. Within ten (10) days of receipt of such notice, Tenant shall have the option (exercisable in writing) of either terminating the Lease, in which case the Lease will be deemed to be terminated as of the first day of the month in which the Casualty occurred; or the Tenant may choose to continue the Lease in full force and effect. If Tenant chooses the second

option, the Rent shall be abated from the date of the Casualty until the Premises are restored to tenantable condition. The Term of the Lease, and all other applicable provisions of the Lease, shall remain in effect.

12.2 LANDLORD HELD HARMLESS: Landlord shall not be liable for interruption to Tenant's business, or for damage to or replacement of or repair of Tenant's property on the Premises, caused by or resulting from any Casualty.

ARTICLE XIII **CONDEMNATION**

13.1 EFFECT OF TAKING: If the whole or any part of the Premises shall be taken under the power of eminent domain, this Lease shall terminate as to the part so taken on the date that Tenant is required to yield possession thereof to the condemning authority. Landlord shall make such repairs and alterations as may be necessary in order to restore the part not taken to tenantable condition. The Rental Area shall be reduced to the remaining area of the Premises, with a consequential prorated reduction in Base Rent. If the aforementioned taking renders the remainder of the Premises unsuitable for the Permitted Use, then the Lease shall terminate as of the date when Tenant is required to yield possession. If the Lease terminates pursuant to this Section, this Lease and the rights and obligations of the parties hereunder shall cease as of the date of such termination, and Tenant Rent (other than any Additional Rent due Landlord by reason of Tenant's failure to perform any of its obligation hereunder) shall be adjusted as of the date of such termination.

13.2 CONDEMNATION AWARDS: All compensation awarded for any taking of the Premises or the Market or any interest in either shall belong to and be the property of Landlord, Tenant hereby assigning to Landlord all rights with respect thereto; provided, however, nothing contained herein shall prevent Tenant from applying for reimbursement from the condemning authority (if permitted by law) for moving expenses, or the expense of removal of Tenant's trade fixtures, or loss of Tenant's business good will, but only if such action shall not reduce the amount of the award or other compensation otherwise recoverable from the condemning authority by Landlord or the owner of the fee simple estate in the Market.

ARTICLE XIV **ASSIGNMENT AND SUBLETTING**

14.1 LANDLORD'S CONSENT REQUIRED: Tenant shall not assign its interest in this Lease, in whole or in part, or sublet the Premises or any portion thereof, or in any manner admit any other person or entity into possession thereof, without the prior written consent

of the Landlord evidenced by the Landlord's endorsement on this Lease. Such consent shall be granted or withheld in the sole discretion of Landlord and may be granted subject to any terms which Landlord may impose. If Tenant assigns its interest without said consent, such assignment shall constitute an Event of Default, as defined in Article XV. Every transfer by levy or sale on execution, or other legal process; or by operation of law, merger, consolidation, or transfer of a controlling interest in the shares of any corporate Tenant; and any transfer in bankruptcy or insolvency, or under any other compulsory procedure or order of court shall be deemed to be an assignment within the meaning of this Lease. Any assignment made without the prior written consent of the Landlord shall render this Lease void. In the event of such assignment, it shall be within Landlord's sole discretion to terminate this Lease or to authorize the assignment on any terms the Landlord deems appropriate.

14.2 NO WAIVER: Consent by Landlord to any assignment or subletting in one instance shall not constitute a waiver of consent to any subsequent transfer. The acceptance by Landlord of the payment of Tenant Rent from any person following any attempted transfer prohibited by this Article, shall not be deemed consent by Landlord to any such transfer, nor shall such acceptance be deemed to be a waiver of any of the rights or remedies of Landlord provided for herein.

ARTICLE XV DEFAULT

15.1 "EVENT OF DEFAULT" DEFINED: The occurrence of any one or more of the following events shall constitute an "Event of Default" hereunder:

(a) The sale, assignment or other transfer of Tenant's interest in the Premises without the prior written consent of the Landlord; or

(b) If Tenant shall make a general assignment for the benefit of creditors, or shall admit in writing Tenant's inability to pay debts as they become due, or shall file a petition under any federal or state bankruptcy code or act, or be adjudicated insolvent, or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under present or future statute, law or regulation relating to bankruptcy or insolvency, or shall file an answer admitting or not contesting the material allegations of a petition against Tenant in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or if any material part of Tenant's property shall be seized by any governmental agency or authority having jurisdiction over Tenant; or

(c) The failure of Tenant to pay any Tenant Rent or other sum of money within ten (10) days after the same is due hereunder; or

(d) The failure by Tenant to perform or observe any covenant or condition of this Lease which failure is not cured within ten (10) days after the receipt of notice thereof by Landlord, unless such default is of such a nature that it cannot be cured within the ten (10) day period, in which case no Event of Default shall occur so long as Tenant shall have informed Landlord in writing and shall have commenced with due diligence and dispatch the curing of such default; or

(e) The failure of Tenant to keep the Premises open for business in accordance with the terms of this Lease; or

(f) The vacating or abandonment of the Premises by Tenant at any time during the Term of this Lease; or

(g) The occurrence of any other event described as constituting an "Event of Default" elsewhere in this Lease.

15.2 REMEDIES: Upon the occurrence and continuance of an Event of Default, Landlord, without notice to Tenant in any instance (except as expressly provided for herein) and at the Landlord's option may do any one or more of the following :

(a) Declare the entire Base Rent and all Additional Rent hereunder for the balance of the Term, reduced by the fair market rental value of the Premises for the duration of the then current Term, immediately due and payable as if the terms of this Lease were payable in advance, and the Landlord may immediately proceed to distraint, collect or bring an action for such rent and other sums, as being in arrears, or may file a proof of claim in any bankruptcy or insolvency proceedings for such rent and other sums, or the Landlord may institute any other proceedings to enforce payment thereof; or

(b) Terminate this Lease and the tenancy created hereby, by giving written notice of such election to Tenant (and Tenant hereby waives any statutory notice which may otherwise be required), and re-enter the Premises, by summary proceedings or otherwise, and remove Tenant and all other persons and property from the Premises, and store such property in a public warehouse or elsewhere at the cost of and for the account of Tenant without resort to legal process and without Landlord being deemed guilty of trespass or becoming liable for any loss or damage occasioned thereby. Upon such termination, Tenant shall immediately surrender possession of the Premises to Landlord; or

(c) Re-enter the Premises or take possession pursuant to legal proceeding or pursuant to any notice provided by law, and in such event shall use reasonable efforts to relet the Premises or any

part thereof for such term or terms (which may be for a term extending beyond the Term of this Lease) and at such rental or rentals and upon such other terms and conditions as the Landlord in its sole discretion may deem advisable, making such alterations and repairs as the Landlord deems necessary in order to relet the Premises, and upon such reletting all rental received by Landlord from such reletting shall be applied, first, to the payment of any costs and expenses of such reletting, including brokerage fees, attorneys' fees and costs of such alterations and repairs; second, to the payment of any and all Tenant Rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future Base Rent as the same may become due and payable hereunder. If the rents received from such reletting during any month are less than that to be paid during that month by Tenant hereunder, Tenant shall be liable for and pay any such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous Event of Default; or

(d) Sell at public or private sale all or any part of the goods, chattels, fixtures and other personal property belonging to Tenant which are or may be put into the Premises during the Term, whether exempt or not from sale under execution or attachment (it being agreed that said property shall at all times be bound with a lien in favor of Landlord and shall be chargeable for all Rent owed by Tenant to Landlord and for the fulfillment of the other covenants and agreements herein contained) and apply the proceeds of such sale, first, to the payment of all costs and expenses of conducting the sale or caring for or storing said property (including all attorneys' fees); second, toward the payment of any Tenant Rent due and unpaid hereunder; and third, to pay Tenant, on demand in writing, any surplus remaining after all indebtedness of Tenant to Landlord has been fully paid; or

(e) Perform, on behalf and at the expense of Tenant, any obligation of Tenant under this Lease which Tenant has failed to perform and of which Landlord shall have given Tenant notice, the cost of which performance by Landlord, together with interest thereon at the Default Rate from the date of such expenditure, shall be deemed Additional Rent and shall be payable by Tenant to Landlord upon demand; and notwithstanding the provisions of this clause and above and regardless of whether an Event of Default shall have occurred, Landlord may exercise the remedy described herein without any notice to Tenant if Landlord, in its good faith judgment, believes it would be materially injured by failure to take rapid action or if the unperformed obligation of Tenant constitutes an emergency; or

(g) Cease providing utilities to the Premises; or

(f) Exercise any other legal or equitable right or remedy which Landlord may have.

15.3 CONFESSION OF JUDGMENT/ACTION IN EJECTMENT : THE TENANT HEREBY KNOWINGLY INTENTIONALLY AND VOLUNTARILY, AND, ON THE ADVICE OF SEPARATE COUNSEL OF THE TENANT, UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS THE TENANT HAS OR MAY HAVE TO PRIOR NOTICE AND AN OPPORTUNITY FOR HEARING UNDER THE RESPECTIVE CONSTITUTIONS AND LAWS OF THE UNITED STATES AND THE COMMONWEALTH OF PENNSYLVANIA.

TENANT HEREBY EMPOWERS ANY PROTHONOTARY OR ATTORNEY OF ANY COURT OF RECORD TO APPEAR FOR TENANT AND TO SIGN FOR TENANT AN AGREEMENT FOR ENTRY IN AN ACTION IN ANY COMPETENT COURT, ALLOWING LANDLORD TO RECOVER ANY UNPAID TENANT RENT AND OTHER SUMS DUE HEREUNDER, DUE AND PAYABLE PURSUANT TO THIS LEASE, AND TO CONFESS JUDGMENT AGAINST TENANT FOR ALL OR ANY PART OF THE TENANT RENT AND/OR OTHER SUMS INCLUDING, AT LANDLORD'S OPTION, THE TENANT RENT FOR THE ENTIRE UNEXPIRED BALANCE OF THE TERM OF THIS LEASE COMPUTED IN ACCORDANCE WITH SECTION 15.2, TOGETHER WITH AN ATTORNEY'S COMMISSION OF FIVE PERCENT (5%) OF SUCH TENANT RENT AND OTHER SUMS. IN ADDITION, IN THE EVENT THAT THIS LEASE IS TERMINATED PURSUANT TO SECTION 15.2, OR IF THE TERM HEREBY CREATED, OR ANY EXTENSION THEREOF SHALL HAVE EXPIRED, IT SHALL BE LAWFUL FOR ANY ATTORNEY AS ATTORNEY FOR TENANT TO SIGN AN AGREEMENT FOR ENTRY IN AN ACTION IN ANY COMPETENT COURT ALLOWING LANDLORD A JUDGMENT OF EJECTMENT WITHOUT ANY LIABILITY ON THE PART OF SAID ATTORNEY, FOR WHICH THIS LEASE SHALL BE A SUFFICIENT WARRANT; WHEREUPON, IF LANDLORD SO DESIRES, A WRIT OF POSSESSION WITH CLAUSES FOR COSTS MAY ISSUE FORTHWITH WITHOUT ANY PRIOR WRIT OR PROCEEDINGS WHATSOEVER. THE ABOVE AUTHORITIES SHALL NOT BE EXHAUSTED BY ONE EXERCISE THEREOF BUT JUDGMENT MAY BE CONFESSED AND/OR JUDGMENT IN EJECTMENT EXECUTED AS AFORESAID FROM TIME TO TIME AS OFTEN AS DEFAULTS ALLOWING SUCH REMEDIES HEREUNDER SHALL OCCUR (INCLUDING, WITHOUT LIMITATION, AFTER THE EXPIRATION OF THE ORIGINAL TERM OR DURING ANY EXTENSION OR RENEWAL OF THIS LEASE, OR AFTER TERMINATION OF THE LEASE).

IN ANY ACTION FOR TENANT RENT IN ARREARS, OR OTHER SUMS, OR FOR EJECTMENT, LANDLORD SHALL FIRST CAUSE TO BE FILED IN ANY SUCH ACTION AN AFFIDAVIT MADE BY IT OR SOMEONE ACTING FOR IT SETTING FORTH THE FACTS NECESSARY TO AUTHORIZE THE ENTRY OF JUDGMENT, OF WHICH FACTS SUCH AFFIDAVIT SHALL BE CONCLUSIVE EVIDENCE, AND IF A TRUE COPY OF THIS LEASE IS FILED IN SUCH ACTION, IT SHALL NOT BE NECESSARY TO FILE THE ORIGINAL AS A WARRANT OF ATTORNEY, ANY RULE, CUSTOM OR PRACTICE TO THE CONTRARY NOTWITHSTANDING. IF PROCEEDINGS COMMENCED BY LANDLORD TO RECOVER POSSESSION UNDER THE ACTS OF ASSEMBLY AND RULES OF CIVIL PROCEDURE, EITHER AT THE END OF THE TERM OR EARLIER TERMINATION OF THIS LEASE, OR FOR NONPAYMENT OF TENANT RENT OR ANY OTHER REASON, TENANT SPECIFICALLY WAIVES THE RIGHT TO THE THREE (3) MONTHS' NOTICE REQUIRED BY THE LANDLORD AND TENANT ACT OF 1951, AND AGREES THAT FIVE (5) DAYS' NOTICE SHALL BE

SUFFICIENT IN EITHER OR ANY SUCH CASE.

TENANT HEREBY EXPRESSLY WAIVES THE BENEFIT TO ANY AND ALL STAYS OF EXECUTION AND EXEMPTIONS FROM LEGAL PROCESS UNDER ANY LAWS OF THE UNITED STATES OR THE COMMONWEALTH OF PENNSYLVANIA, OR UNDER ANY LOCAL OR MUNICIPAL LAW OR ORDINANCE, NOW IN FORCE OR WHICH MAY BE SUBSEQUENTLY ENACTED; THIS WAIVER TO EXTEND TO AND BE APPLICABLE IN ANY AND ALL PROCEEDINGS OR ACTIONS FOR THE RECOVERY OF POSSESSION, FOR DAMAGES, FOR TENANT RENT, AND FOR OTHER CHARGES PAYABLE HEREUNDER BY TENANT.

Any costs and expenses incurred by Landlord (including, without limitation, reasonable attorneys' fees) in enforcing any of its rights or remedies under this Lease shall be deemed to be Additional Rent shall bear interest at the Default Rate from the date incurred, and shall be payable to Landlord by Tenant upon demand.

ARTICLE XVI SUBORDINATION AND ATTORNMENT

16.1 SUBORDINATION: Tenant's rights under this Lease are and shall remain subject and subordinate to the operation and effect of any fee or leasehold mortgage, deed of trust or other security interest now or hereafter constituting a lien on the Premises or the Market. The subordination in this Section is self-operative, and no further instrument of subordination shall be required; however, Tenant shall execute such further assurances thereof as may be requested by Landlord.

16.2 ATTORNMENT: If any person shall succeed to all or part of Landlord's interest in the Premises, whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, termination of lease or otherwise, and if so requested or required by such successor in interest, Tenant shall attorn to such successor in interest and shall execute such agreements in confirmation of such attornment as such successor in interest shall reasonably request.

In the event Tenant fails to execute and deliver the aforesaid agreements within ten (10) days of a written request from Landlord, Tenant does hereby make, constitute and appoint Landlord as Tenant's attorney-in-fact and in its name, place and stead to do so, or Landlord may treat such failure as an Event of Default hereunder. The aforesaid power of attorney is given as security coupled with an interest and is irrevocable.

ARTICLE XVII NOTICES

17.1 NOTICES: Any notice, request, demand, approval or consent given or required to be given under this Lease shall be in

writing and shall be deemed to have been given when hand delivered or on the third day following the day on which the same shall have been mailed by United States certified mail, return receipt requested, with all postage charges prepaid and addressed as follows:

As to Tenant: _____

As to Landlord:

Management Office
Reading Terminal Market
51 North 12th Street
Philadelphia, PA 19107

with a copy to:

Robert Williams
Director of Administration
Pennsylvania Convention Center Authority
1101 Arch Street
Philadelphia, PA 19107

ARTICLE XVIII
ENVIRONMENTAL MATTERS

18.1 COMPLIANCE WITH LAW. Tenant agrees that it shall, at its sole cost and expense, promptly fulfill and comply with all laws, ordinances, regulations and requirements of the municipal, county, state and federal governments and any and all departments thereof having jurisdiction over the Market, and of the National Board of Fire Underwriters or any other similar body now or hereafter constituted, affecting the Tenant's use or occupancy of the Premises or the business conducted therein. Tenant shall not use the Premises, the Market or the real property surrounding the Market or any part thereof, for the purpose of treating, producing, handling, transferring, processing, transporting, disposing, using or storing a Toxic Substance, as hereinafter defined. Tenant and its agents, employees, contractors, licensees and invitees shall not cause or permit to exist, as the result of an action or omission by one or more of them, an Environmental Release, as hereinafter defined. The occurrence of an Environmental Release, or a violation of any covenant, representation or warranty of this Section 18.1, shall be deemed an Event of Default under the Lease. Tenant shall comply with all applicable laws, ordinances and regulations of all governmental authorities, as now or hereafter enacted, including, without limitation, all laws, ordinances and regulations governing a Toxic Substance. The covenants, representations and warranties provided in this Section 18.1 shall survive the expiration or earlier termination of the Lease. Tenant

shall pay, defend, indemnify, and hold harmless Landlord, its officers, employees, contractors and agents, from and against any and all claims, losses, costs, damages, liabilities and fines arising from or relating to Environmental Releases, or the failure of Tenant, or its agents, employees, contractors, licensees or invitees to comply with the provisions of this section.

18.2 DEFINITIONS. For purposes of this Article VIII, the following definitions shall apply:

(a) "Environmental Release": The term Environmental Release shall mean any intentional or unintentional releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, abandoning, discarding or dumping of any Toxic Substance, from, on, into or about the land, water or air of the Premises, the Market or the real property surrounding the Market.

(b) "Toxic Substance": The term Toxic Substance shall mean a hazardous substance, hazardous waste, pollutant or contaminant, as such terms are now or hereafter defined in all applicable federal, state, and local laws, ordinances or regulations now or hereafter enacted or amended, and any and all other terms which are or may be used in any or all applicable laws now or hereafter enacted to define prohibited or regulated substances.

ARTICLE XIX MISCELLANEOUS

19.1 REMEDIES CUMULATIVE: No reference to any specific right shall preclude Landlord from exercising any other right or from having any other remedy or from maintaining any action to which it may otherwise be entitled by this Lease, at law or in equity. No failure by Landlord to insist upon the strict performance of any agreement, term, covenant or condition hereof, or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Tenant Rent during the continuance of any such breach, shall constitute a waiver of any such breach, agreement, term, covenant or condition. No waiver by Landlord of any breach by Tenant under this Lease, or of any breach by any other tenant under any other lease of any portion of the Market shall affect or alter this Lease in any way whatsoever.

19.2 SUCCESSORS AND ASSIGNS: This Lease and the covenants and conditions herein contained shall inure to the benefit of and be binding upon Landlord, its successors and assigns, and shall be binding upon Tenant, its successors and assigns and shall inure to the benefit of Tenant and only such assigns of Tenant to whom the assignment of this Lease by Tenant has been consented to in writing

by Landlord. Upon any sale or other transfer by Landlord of its interest in the Premises, and assumption of possession of the Premises by the assignee, only the assignee shall be responsible for all obligations under this Lease occurring thereafter.

19.3 COMPLIANCE WITH LAWS AND REGULATIONS: Tenant, at its sole cost and expense, shall comply, and shall cause the Premises to comply with: (a) all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances affecting any part of the Premises, or the use thereof, including, but not limited to, those which require the making of any structural, unforeseen or extraordinary changes, whether or not any such statutes, laws, rules, orders, regulations, or ordinances which may be hereafter enacted involve a change of policy on the part of the governmental body enacting the same; and (b) all rules, orders and regulations of the National Board of Fire Underwriters, Landlords's casualty insurer(s) and other applicable insurance rating organizations or other bodies exercising similar functions in connection with the prevention of fire or the correction of hazardous conditions which apply to the Premises.

19.4 CAPTIONS AND HEADINGS: The table of contents and the Article and Section captions and headings are for convenience of reference only and in no way shall be used to construe or modify the provisions set forth in this Lease.

19.5 JOINT AND SEVERAL LIABILITY: If two or more individuals, corporations, partnerships, or other business associations (or any combination of two or more thereof) shall sign this Lease as Tenant and/or guarantor, the liability of each such individual, corporation, partnership or other business association to pay rent and perform all other obligations hereunder shall be deemed to be joint and several and all notices, payments and agreements given or made by, with, or to any of such individuals, corporations, partnerships or other business associations shall be deemed to have been given or made by, with or to all of them. In like manner, If Tenant shall be a partnership or other business association, the members of which are, by virtue of statute or federal law, subject to personal liability, the liability of each such member shall be joint and several.

19.6 NO DISCRIMINATION: It is intended that the Market shall be developed so that all prospective tenants thereof, and all customers, employees, licensees and invitees of all tenants shall have the opportunity to obtain all the goods, services, accommodations, advantages, facilities and privileges of the Market, without discrimination because of race, creed, color, sex, sexual orientation, age, national origin or ancestry. To that end, Tenant will not discriminate in the conduct and operation of its business in the Premises against any person or group of persons because of the race, creed, color, sex, age, national origin or ancestry of such person or group of persons.

19.7 NO OPTION: The submission of this Lease to Tenant for examination or execution does not constitute a reservation of or option for the Premises, and this Lease shall become effective only upon execution and delivery thereof by both parties.

19.8 NO MODIFICATION: No course of prior dealings between the parties or their officers, employees, agents or affiliates shall be relevant or admissible to supplement, explain, or vary any of the terms of this Lease. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement between the parties or their affiliates, shall not be relevant or admissible to determine the meaning of any of the terms of this Lease. No representations, understandings, or agreements have been made or relied upon in the making of this Lease other than those specifically set forth herein. This Lease can be modified only by a writing signed by the party against whom the modification is sought to be enforced.

19.9 SEVERABILITY: If any portion of any term or provision of this Lease, or the application thereof to any person or circumstances, shall, to any extent, be held 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 each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

19.10 THIRD PARTY BENEFICIARY: Nothing contained in this Lease shall be construed so as to confer upon any other party the rights of a third party beneficiary except rights contained herein for the benefit of a mortgagee.

19.11 CORPORATE TENANTS: If Tenant is a corporation, the persons executing this Lease on behalf of Tenant hereby covenant and warrant that they are duly authorized by the board of directors of such corporation to execute and deliver this Lease on behalf of the corporation. Tenant shall provide written evidence of such authority prior to the execution of this Lease. Likewise if Tenant is a partnership, whether general or limited, Tenant shall provide evidence of authority to sign this Lease. Corporate Tenants shall notify Landlord of any material changes in ownership. Landlord shall deem any change in ownership in excess of twenty (20%) to be material. In the event there is material change in ownership, Tenant must obtain prior written approval of the Landlord for the transfer or assignment of the Lease. Landlord shall not unreasonably withhold such approval.

19.12 APPLICABLE LAWS: This Lease and the rights and obligations of the parties hereunder shall be construed in accordance with the laws of the Commonwealth of Pennsylvania.

19.13 WAIVER OF JURY TRIAL: Landlord and Tenant hereby

mutually waive any rights which either may have to request a jury trial in any proceeding at law or in equity in any court of competent jurisdiction concerning any dispute arising from the terms of this Lease or Tenant's occupancy of the Premises.

19.14 INTEGRATION: This Lease represents the final and complete agreement between Landlord and Tenant. Any oral or written promise or representation made by either party prior to the signing of this Lease and not included in this Lease is not enforceable, and shall have no effect on this Lease.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this lease as of the date first written above.

TENANT:

[Attest/Witness]

By: _____

By: _____

[seal]

**Pennsylvania Convention
Center Authority**

By: _____

V Sample Manager/Director Job Description

Boston Public Market Manager/Director

Sample Job Description

The Director of the Boston Public Market will have the initial responsibility of ‘opening’ the market and the ongoing responsibility of ‘operating’ the market. These are two extremely demanding undertakings that will require an individual adept at handling multiple tasks and dealing with a wide range of people and competing interests.

Fundamental skills in property management, retail, politics, accounting, promotions and reporting are essential – but the fulfillment of the ‘mission’ of the market is in essence the most important outcome by which the job will be measured. Knowledge and enthusiasm of the burgeoning local, MA food industry is an important characteristic, along with an understanding of the expectations of a very diverse and changing customer base.

Markets are viewed by all participants (customers, vendors, politicians, funders, etc.) as ‘their market’ and it is the Director who must orchestrate all of these needs and desires into a functioning, sustainable whole that has a fresh, daily appeal for the market community.

The Director will have the counsel and guidance of a Market Advisory Committee to assist in the ‘opening’ of the market through the planning, development and construction phase. He or she will also hire a staff to help with the opening and then the operating of the market on a day to day basis. It is also likely that the Director will be an employee of a not-for-profit corporation with its own Board of Directors.

The Director will have to be a strong people person, interacting with many groups and individuals throughout their tenure. They must be firm, fair, efficient and always courteous.

Specific job responsibilities include the following:

- Property Management
- Tenant Management
- Financial Management
- Promotions and Communications Management
- Staff Management
- Board Management and Reporting
- Managing the Mission
- Managing Merchandise Mix

W List of State and Local Foundations

State and Local Foundations

The following are the top giving foundations from Massachusetts in the past year:

Foundation Name	Total Annual Giving
Genzyme Charitable Foundation, Inc.	\$82,315,884
The Boston Foundation, Inc.	\$74,727,659
Barr Foundation	\$45,055,701
Edward C. Johnson Fund	\$37,728,809
Yawkey Foundation II	\$27,497,000
Fidelity Foundation	\$22,502,303
John Merck Fund	\$14,729,640
Paul and Phyllis Fireman Charitable Foundation	\$13,787,555
Flatley Foundation	\$12,508,787
Richard and Susan Smith Family Foundation	\$10,849,091
Nellie Mae Education Foundation, Inc.	\$10,809,814
Amelia Peabody Foundation	\$9,101,700
Community Foundation of Western Massachusetts	\$9,099,214
Jane's Trust	\$8,585,781
Fred M. Roddy Foundation, Inc.	\$8,107,710
Highland Street Connection	\$7,889,036
The Argosy Foundation	\$7,810,093
The George I. Alden Trust	\$7,753,000
Massachusetts Service Alliance	\$7,741,497
Berkshire Taconic Community Foundation	\$7,703,657
Boston Scientific Foundation, Inc.	\$7,144,000
The Liberty Mutual Foundation	\$6,479,750
New Balance Foundation	\$6,408,860
Massachusetts Bar Foundation	\$6,200,094

China Medical Board of New York, Inc.	\$5,963,675
Amelia Peabody Charitable Fund Trust	\$5,664,182
The TJX Foundation, Inc.	\$5,532,952
The Hyams Foundation, Inc.	\$5,167,350
Harvard Pilgrim Health Care Foundation	\$4,950,682
Greater Worcester Community Foundation, Inc.	\$4,666,672
The Ellison Foundation	\$4,512,834
Blue Cross Blue Shield of Massachusetts Foundation	\$4,249,850
Irene E. and George A. Davis Foundation	\$4,240,541
The Red Sox Foundation	\$4,185,262
Lloyd G. Balfour Foundation	\$4,136,174
Community Foundation of North Central Massachusetts	\$4,013,520
Cedar Tree Foundation	\$4,003,433
Stoddard Charitable Trust	\$3,920,630
Staples Foundation for Learning	\$3,472,833
The Iacocca Foundation	\$3,395,549

X Funding Sources from Sample Public Markets

Funding Sources from Sample Public Markets

Eastern Market, Detroit, MI

www.detroiteasternmarket.com

Owner: City of Detroit

Operator: Eastern Market Corporation (501c3) since 2006. (The market was previously operated by the City of Detroit.)

Market Size: Five sheds (two enclosed, three open) located in the middle of an 80-acre historic market district

Type of Construction: Renovation

Operation, programming and upkeep of the market are the primary responsibility of the Eastern Market Corporation.

Since the new Corporation assumed management for the market in 2006, Eastern Market has been undergoing a major renovation and upgrade of its historic sheds. Two sheds have been renovated and a third shed is scheduled for renovation in late 2011.

Total capital fundraising is approaching \$13 million.

To date, fundraising has been overseen by the Eastern Market Corporation staff with assistance from the Board of Directors. In 2011, the Corporation embarked on a \$20,000 contract with an outside fundraising company (Rickner and Rickner).

Summary of \$12.4 million capital campaign

Shed 2 Renovations - \$1.2 million (completed)

Sources:

Kresge Foundation

Kellogg Foundation

Michigan Economic Development Corporation

US Department of Housing and Urban Development

Cool Cities Grant (State of Michigan)

DTE Energy Foundation

Hudson-Webber Foundation

Friends of Eastern Market

Shed 3 Renovations - \$6.2 million (completed)

Sources:

Kresge Foundation

Kellogg Foundation

City of Detroit – CDBG funding

Bank of America Foundation

Hudson- Webber Foundation
General Motors Foundation
DTE Energy Foundation

Shed 5 Renovations - \$5 million (in process)

Sources:

Ford Foundation - \$400,000
Kresge Foundation - \$237,000
Kellogg Foundation - \$800,000

Pending Sources:

City of Detroit (CDBG) - \$1,000,000
Bank of America - \$400,000
Michigan Economic Development Corporation - \$1,000,000
Erb Foundation - \$200,000
DTE Energy Foundation - \$250,000

Milwaukee Public Market

www.milwaukeepublicmarket.org

Developer: Historic Third Ward Corporation (501c3)
Operator and Owner: Milwaukee Business Improvement District 02
Size: 28,000 square feet
Type of Construction: New
Total Project Cost: \$10.5 million
Opened: 2005

The Milwaukee Public Market became operationally self-sufficient in its fourth year, 2009. The market's annual operating expenses (projected 2011) are \$420,000.

Funding Sources

Federal:

Grant secured by Senator Herb Kohl - \$300,000
US Department of Commerce, Economic Development Administration - \$2.5 million (Secured by Congressman Paul Ryan)

State:

Grant - \$1.25 million (Included a \$750,000 brown field's grant)

Foundations and Individual Support:

Local Foundations - \$5.45 million
Individual Donors - \$1 million (over 300 people made tax-deductible donations through the Historic Third Ward Corporation)

Reading Terminal Market, Philadelphia, PA

www.readingterminalmarket.org

Owner: Pennsylvania Convention Center Authority (PCCA)

Operator: Reading Terminal Market Corporation (501c3)

Size: 73,000 square feet, with full basement

Type of Construction: Renovation

Purchase and Renovation (1991-1993)

Cost: \$24 million, including approximately \$8 million for the purchase of the market

Funding Source: PCCA

In the early 1990's, the market and all tenant spaces were completely renovated. The market remained open during the renovation, which took place in phases, with complex tenant relocations to maintain continuous operations with a separate fund established to pay for tenant sales losses directly attributable to reconstruction.

Renovations were overseen by the PCCA and PCCA managed the market during renovations. The market was turned over the 501c3 Reading Terminal Market once renovations were complete.

Renovation (2011)

Cost: \$2.75 million

The market is operationally self-sustaining and is currently responsible for raising or financing its own capital improvement needs. Renovations are being paid through conventional financing, low-interest loans and, to a limited extent, donations.

Y Sample Common Area Maintenance Costs

EXHIBIT "E"

Common Area Maintenance Costs

A. Landlord shall make available within the Market "Common Areas" as and to the extent Landlord shall alone from time to time deem appropriate. Common Areas shall be defined as including but not limited to any driveways, service areas, aisles, seating areas, sidewalks, fire corridors, meeting areas and public restrooms. Landlord shall operate, manage, equip, light, repair, and maintain said Common Areas for the intended purposes in such a manner as Landlord shall in its sole discretion from time to time determine and may from time to time, change the size, location, nature, and/or use of any Common Areas and make installations, structures, booths, therein or thereon and move or remove the same and shall have the right to retain revenue from income producing events whether or not conducted for promotional purposes.

B. Tenant, its officers, employees, customers and invitees shall have the non-exclusive right in common with Landlord and all others to whom Landlord has or may hereafter grant rights, to use said Common Areas as designated by Landlord, subject to such rules and regulations as Landlord may impose. Landlord may at any time close any portion or all of Common Area to make repairs or changes or to prevent the acquisition of public rights in such area.

C. Tenant shall, pay to Landlord its proportionate share of the costs and expenses to Landlord of operating, maintaining and repairing said Common Areas (hereinafter sometimes referred to as "Common Area Maintenance Costs"). For these purposes, the term "Common Area Maintenance Costs" shall mean all sums incurred in a manner deemed by Landlord to be reasonable and appropriate for the best interest of the Market in connection with the operation, maintenance and repair of the Common Areas, and shall include, but not be limited to, the costs of and expenses of (the following paragraphs are for definition only and are not to be construed so as to impose any obligations on Landlord):

(1) snow, ice, garbage, and trash removal; maintenance, repair and replacement of service areas and courts, including cleaning, sweeping, painting, striping and repainting; maintenance, repair and replacement of Market identification signs, and traffic markers and signs;

(2) maintenance, repair and replacement of the storm and sanitary drainage systems; electrical, gas, water and telephone systems; lighting systems (including lamps, fixtures and supports); emergency water and sprinkler systems; heating, ventilating, and air conditioning systems for the entire Market; and security

systems, including any utility charges in connection with any of the foregoing systems and further including the installation, maintenance and operation of any computerized system for any of the foregoing;

(3) maintenance, repair and replacement of all portions of the Market, both interior or exterior, (excluding the Premises and premises leased to other tenants, including but not limited to floors, floor coverings and finishes, ceilings, walls, roofs, and roof flashings, canopies, skylights, signs, planters, benches, elevators, and stairs, fire exits, doors and hardware, windows, glass, and glazing;

(4) premiums or contributions for insurance including without limitation, liability insurance for personal injury, death, and property damage; insurance against liability for defamation and claims of false arrest occurring in and about the Common Areas; workers's compensation; broad form peril insurance covering the Common Areas in the Market which may include flood insurance, earthquake insurance, boiler insurance and/or rent insurance (for the purpose of this provision subsection (4) only, Common Areas shall be deemed to include the Premises and the premises leased to other tenants); all personal property taxes and other charges incurred in connection with such security devices, machinery and equipment;

(5) personnel, including, without limitation, the Market Manager and staff, security and maintenance personnel of the Market (including, without limitation, the payroll taxes and employee benefits of such personnel);

(6) costs of promotion and advertising for the Market.

D. Notwithstanding the foregoing provisions, Common Area Maintenance Costs shall not include:

(1) depreciation;

(2) costs of repairing and replacing to the extent that insurance or condemnation awards are received thereof.

E. Tenant's proportionate share of the Common Area Maintenance Costs ("CAM Charge") shall be computed by multiplying the total amount of the Common Area Maintenance Costs each year by a fraction, the numerator of which shall be the Rental Area of the Premises and the denominator of which shall be the total rented area of the Market.

F. Tenant's CAM Charge shall be paid in monthly installments on the first day of each month, in advance, in an amount estimated in full by Landlord from time to time. Subsequent to the end of

each "Fiscal Year" or partial "Fiscal Year", Landlord shall notify Tenant of Tenant's CAM Charge for such subsequent full Fiscal Year or partial Fiscal Year. For purposes of CAM Charges, the Fiscal Year shall be July 1 to June 30th. Landlord shall include in such notice a statement in reasonable detail setting forth the Common Area Maintenance Costs. Tenant's failure to object to any statement, invoice or billing rendered by Landlord within a period of fifteen (15) days after receipt thereof shall constitute Tenant's acquiescence with respect thereto and shall render such statement, invoice or billing an account stated between Landlord and Tenant. If the CAM Charge paid by Tenant for any full or partial Fiscal Year shall be less than the actual amount due from Tenant for such year as shown on such notice, Tenant shall pay to Landlord the difference between the amount paid by Tenant and the actual amount due, within ten (10) days after receipt of such notice. If the total amount paid by Tenant for any full or partial Fiscal Year shall exceed the actual amount due from Tenant for such full or partial Fiscal Year, such excess, at the Landlord's option, shall be credited against the next CAM Charge due from Tenant to Landlord or against any other Tenant Rent then due and unpaid. If the Beginning Date is a day other than the last day of the Fiscal Year, or if the Term of this Lease shall end on a day other than the last day of the Fiscal Year, then Tenant's CAM Charge shall be billed and adjusted on the basis of such fraction of a Fiscal Year.