

**AGREEMENT
BETWEEN THE CITY OF COLUMBIA, MISSOURI,
AND
COLUMBIA FARMERS MARKET, INC.
FOR THE OPERATION OF A FARMERS MARKET AT CLARY-SHY COMMUNITY
PARK
1701 WEST ASH STREET**

THIS AGREEMENT (hereinafter "Agreement") is, made and entered into on the date of the last signatory noted below (hereinafter "Effective Date") by and between the City of Columbia, Missouri, a municipal corporation (hereinafter called "City") and Columbia Farmers Market, Inc., a nonprofit corporation organized in the State of Missouri (hereinafter called "CFM"). City and CFM are each individually referred to herein as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, City owns and operates Clary-Shy Community Park at 1701 West Ash Street, Columbia, Missouri (hereinafter "Park"); and

WHEREAS, CFM currently operates a farmers market on a portion of the Park, which is of benefit to the community, and would like to continue operation of the farmers market in the Park; and

WHEREAS, City and CFM would like to make improvements to the Park related to the development of an agricultural park and a pavilion; and

WHEREAS, the Parties have agreed to name the pavilion "MU Health Care Pavilion"; and

WHEREAS, CFM, Columbia Center for Urban Agriculture, Inc., and Sustainable Farms & Communities (collectively, "Friends of the Farm") have engaged in extensive fundraising for funding the development of the MU Health Care Pavilion and an agriculture park.

NOW, THEREFORE, in consideration of the mutual covenants set out in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows.

1. Purpose and Use of Property. Subject to the terms and conditions set forth herein, City shall allow CFM to operate a farmers market and related events on land owned by City located at Clary-Shy Community Park, 1701 West Ash Street, Columbia, Missouri. The City of Columbia's Director of Parks and Recreation (hereinafter "Director") shall designate the exact location of the farmers market, parking areas and street access. CFM shall use the property

solely for a farmers market and any related uses approved in writing by the Director. Unless the Parties otherwise agree in writing, violations of this section shall be considered a material breach of this Agreement.

2. Leased Premises. After completion of construction, the Leased Premises shall include the MU Health Care Pavilion, storage for CFM, access to restrooms, a pedestrian plaza and a parking lot at Clary-Shy Community Park, as shown in Attachment A. During construction, the leased premises may include those areas designated by the City for temporary operation of the farmers market.
3. Construction Phasing and Use of the Leased Premises. The Parties recognize that substantial construction will occur on the Leased Premises in order to build the agriculture park and the MU Health Care Pavilion. The Parties agree that during construction, CFM may not be able to use the Park for its farmers' market activities. The City may designate temporary locations for the farmers market during construction of the agriculture park at Clary-Shy Community Park or on another city property. If, during construction phasing, CFM runs its farmers market at Clary-Shy Community Park or another city property, CFM shall pay the rent set forth in Section 11. If, however, during construction phasing, CFM runs its farmers market on property not owned by the City, CFM shall not pay the rent set forth in Section 11 for those dates that CFM does not use the property during the construction phase.
4. Improvements to the Park. Contingent upon the City Council's authorization for the construction of the MU Health Care Pavilion and supporting amenities following the public improvement process set forth in the City of Columbia Ordinances and upon the appropriation of funds for the construction of the approved improvements to the Park, the City of Columbia will be responsible for the construction phase of the MU Health Care Pavilion and the approved improvements to the Park. Notwithstanding any other section of this Agreement, all items and tasks paid for by the City, shall be the property of the City.
5. Hours of Operation. CFM may operate the farmers market on Saturdays from 6:00 a.m. to 3:00 p.m., and up to twelve (12) additional hours each week, on any other day of the week and during such hours as requested by the CFM and approved, in writing, by the Director. On Saturdays, all farmers' market operations shall be completed, trash and garbage shall be properly disposed of in designated containers, and the site returned for use by the City no later than 3:00 p.m. After construction of the pavilion is complete, City shall

provide CFM a locked storage space for their use. At all other times, City may use the property or allow others to use the property.

6. **Non Exclusive Use of the Park.** Except during scheduled market hours in locations approved by the Director, CFM does not have the right to exclusive possession of any portion of the Park. City shall at all times have free access to and use of the Park. Once the MU HealthCare Pavilion is constructed and ready for occupancy, City will provide CFM a storage space in the Pavilion for CFM's exclusive use which CFM may lock.
7. **Term.** The "Term" of this Agreement shall commence on March 1, 2018, and shall continue until December 31, 2033 (hereinafter "Initial Term"). Thereafter, the Agreement shall automatically be renewed for up to twenty (20) successive terms of one (1) year (hereinafter "Renewal Term"), unless the Agreement is terminated pursuant to the provisions of this Agreement or unless either Party provides written notice of termination at least ninety (90) days prior to the end of the then current Renewal Term. Should the City opt not to renew the Agreement for an additional Renewal Term, Director shall obtain authorization of the non-renewal by a majority vote of the City Council.
8. **Parking in Designated Areas.** City shall designate a parking area for farmers' market patrons and merchants during those dates and times when CFM is operating its market on the Leased Premises. CFM shall assist the City in directing farmers' market attendees and participants to the designated parking area.
9. **Maintenance.** City shall keep the common grassy areas mowed, and maintain and service the area as it deems necessary. CFM shall take good care of the property and keep it in good order and repair and free from filth, trash, garbage, danger of fire or explosion and any nuisance. Trash and garbage shall be properly disposed of in designated containers provided by City. City shall be responsible for removal of snow and ice from the parking lot and paved walkways. CFM shall timely communicate to City any requests for repairs, maintenance, and improvements.
10. **Concessions.** CFM shall have all concessions rights during their hours of operation as outlined in this Agreement at locations specified in writing by the Director. City shall have concession rights at all times and all locations not granted to CFM. All Parties involved with the selling of food and beverages shall adhere to all applicable City ordinances, federal and state laws, rules, and regulations. CFM and its membership will retain any and all proceeds

generated from CFM's farmers markets and CFM's special events held at the Facility. City shall retain any and all proceeds from City activities and events that are held at the Park.

11. Rent.

a. Rent during Phased construction of the Leased Premises. The Parties recognize that substantial construction will occur on the site and that as a result the areas available for use will change over the phased construction. The rent during phased construction will be pro rata based upon the rent amounts stated below and the time periods in which the different areas are available for use by CFM. Rent during Phased construction shall be paid on a monthly basis with the first month's rent being due March 1, 2018. Thereafter, during construction, rent shall be paid on the 1st day of each month. During periods where the Leased Premises is under construction, CFM shall pay to City:

- i. Two Thousand Dollars (\$2,000.00) annually for the use of the original parking lot only;
- ii. Three Thousand Dollars (\$3,000.00) per year for the use of the new concrete pad only;
- iii. Six Thousand Dollars (\$6,000.00) per year for the use of the new concrete pad, middle third of structure, storage and bathrooms.
- iv. City and CFM will equally share in the costs for portable toilets until a permanent restroom facility is constructed and available for use.

b. Rent after MU Health Care Pavilion is constructed and available for use. For the initial year after the MU Health Care Pavilion is constructed and available for use, CFM shall pay to City Twelve Thousand Dollars (\$12,000.00) in rent per year, which shall include electric, water, trash, stormwater, and sewer utilities. Rent shall be paid monthly, in advance, and shall be due on the first day of each month.

c. Rent Adjustments. The rent is subject to adjustment by the City as part of the City's annual budget process. City shall provide a written notice of a proposed rent adjustment no later than September 1st of the year. This amount will be approved by the City Council as part of the annual budget process and the approved rent amount will take effect on January 1st of the following calendar year.

d. Payment. Rent shall be paid to the City of Columbia and delivered to:
City of Columbia
Finance Department
701 East Broadway, 5th Floor
P.O. Box 6015
Columbia, Missouri 65205-6015
Attention: Accounts Receivable

12. Special Events. Special events organized by CFM are anticipated to occur at the Park. CFM shall comply with the City ordinances, rules, and regulations and shall obtain any and all required permits for its special events and pay any required fees related to such special events.
13. Insurance. CFM, at its sole expense, shall obtain and keep in force liability insurance to cover operation of the farmers market and CFM's activities on City's property in an amount not less than the State of Missouri's sovereign immunity limits, adjusted annually pursuant to Section 537.610 RSMo, on a per occurrence basis for both personal injury or death and property damage, naming the City of Columbia as an additional insured. CFM shall provide City with proof of such insurance and a copy of the policy upon request.
14. Termination.
- a. Termination by Mutual Agreement. The Parties may mutually agree to terminate this Agreement.
- b. Cancellation by CFM due to Events of Default by the City. The following event shall constitute an "Event of Default by the City": If the City fails after receipt of written notice from CFM to keep, perform or observe any term, covenant or condition herein contained to be kept, performed, or observed by the City and such failure continues for thirty (30) days, or if by its nature such Event of Default by the City cannot be cured within such thirty (30) day period, and the City fails to commence to cure or remove the same as promptly as reasonably practicable. If the City has begun the process of approval of certain purchases or expenditures, such action will constitute a cure of the Event of Default by the City so long as the process is continued in a reasonable manner.
- c. Remedies for the City's Default. Upon the occurrence of an Event of Default by the City, CFM shall have the right to terminate this lease by giving the City written notice. Thirty (30) days after the City has received the written notice to terminate, the lease shall terminate unless the default is cured by the City.

- d. Cancellation by the City due to Events of Default by CFM. Each of the following events shall constitute an "Event of Default by CFM": (i) CFM fails to pay rent within twenty (20) days of the date due, and such default continues for a period of ten (10) days after receipt of written notice from City that such non-payment constitutes an event of default; (ii) CFM fails after receipt of written notice from City to keep, perform, or observe any term, covenant, or condition of this lease, and such failure continues for thirty (30) days after such receipt or, if the performance cannot be reasonably had within the thirty (30) day period, if CFM shall not diligently proceed to completion of performance; (iii) CFM shall become insolvent, shall file a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act, or shall take the benefit of any present or future insolvency statute by answer or other means, or shall make a general assignment for the benefit of creditors; (iv) If involuntary proceedings under any bankruptcy law or insolvency act shall be instituted against CFM, or if a receiver or trustee shall be appointed of all or substantially all of the property of CFM, and such proceedings shall not be dismissed or the receivership or trusteeship vacated within sixty (60) days after the institution or appointment; (v) If CFM shall vacate or abandon the Leased Premises; or (vi) If this lease or the estate of CFM hereunder shall be transferred to, assigned to, or shall pass or devolve on any other person, entity, or party, except in the manner herein permitted.
15. Destruction of Property. If the Leased Premises is destroyed or substantially damaged by fire, earthquake, tornado, storm or any cause beyond the control of the City, so that the Leased Premises cannot reasonably be occupied by CFM, this Agreement shall terminate. If the Leased Premises is damaged by any of the above causes, but not to the extent that it cannot reasonably be occupied by CFM, the Parties shall negotiate on repair of the Leased Premises. If the Parties are unable to agree on the terms of repair of the Leased Premises, either Party may terminate the lease by giving written notice to the other Party.
16. Termination. All leasehold improvements which are permanently attached to the Leased Premises will, at the end of the lease term, become the sole and separate property of the City, and CFM shall have no further claim thereon. Furthermore, CFM agrees that CFM will not mortgage, grant a security interest in, or pledge in any manner any such improvements. CFM shall, on the last day of the lease term, peaceably and quietly surrender and deliver the Leased Premises to the City, including all improvements and fixtures constructed or placed thereon by CFM, except movable personal property and trade fixtures, all in good condition and repair. Any such movable personal property and trade fixtures belonging to CFM, if not removed at the

end of the lease term, shall, if the City so elects, be deemed abandoned and become the property of the City without any payment or offset; therefore, if the City shall not so elect, the City may remove such abandoned personal property from the Leased Premises at the risk and expense of CFM. CFM shall repair and restore all damage to the Leased Premises caused by the removal of any such personal property.

17. Compliance with Special Funding Requirements. The Parties agree that grant funds, sponsorships and restricted donations may be used for the development of the Clary-Shy Park including the agriculture park features. The Parties shall comply with all conditions and requirements of the grant(s), sponsorship agreement(s), and restricted donation(s) that are used for the development and improvement of Clary-Shy Park (collectively "Special Funding Requirements"). Nothing in this Agreement replaces or supercedes the agreement between the Curators of the University of Missouri and the City of Columbia as outlined in ordinance number 023222, dated June 19, 2017.
18. Nondiscrimination. During the performance of this Agreement, CFM shall not discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, age, disability, or national origin.
19. Americans with Disabilities Act. CFM shall comply with all applicable provisions of the Americans with Disabilities Act and the regulations implementing the Act, including those regulations governing employment practices. CFM shall make the services, programs, and activities governed by this Agreement accessible to persons with disabilities as required by the Americans with Disabilities Act and its implementing regulations.
20. General Independent Contractor. This Agreement does not create an employee/employer relationship between the Parties. It is the Parties' intention that the CFM will be an independent contractor/tenant and not the City's employee for all purposes.
21. Assignments and Subletting. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Neither Party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party. CFM shall not assign its interest in this lease or sublet any portion of the Leased Premises without the prior written consent of City.
22. Notices. Any notice, demand, request, or communication required or authorized by the Agreement shall be delivered either by hand, facsimile, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to:

If to City:

City of Columbia
Parks and Recreation Department
P.O. Box 6015
Columbia, MO 65205-6015
Attention: Director Mike Griggs

If to CFM:

Columbia Farmers Market, Inc.
P.O. Box 10012
Columbia, Missouri 65205
Attention: Executive Director

With a copy to:

Columbia Farmers Market, Inc.
P.O. Box 10012
Columbia, Missouri 65205
Attention: Board of Directors

The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice. Any such notice, demand, request, or communication shall be deemed delivered on receipt if delivered by hand or facsimile and on deposit by the sending party if delivered by courier or U.S. mail.

23. No Third-Party Beneficiary. This lease is for the sole benefit of the Parties and nothing in this lease shall be construed to give any benefits or rights to any third party.
24. Authority to Execute the Lease. The persons executing this lease personally represent and warrant that they have been duly authorized to execute this lease on behalf of their respective entities.
25. Nature of City's Obligations. All obligations of the City under this Agreement, which require the expenditure of funds, are conditional upon the availability of funds budgeted and appropriated for that purpose.
26. Amendment. No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.
27. Governing Law and Venue. This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the

laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this Agreement, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.

28. General Laws. CFM shall comply with all federal, state, and local laws, rules, regulations, and ordinances.
29. HOLD HARMLESS AGREEMENT. To the fullest extent not prohibited by law, CFM shall indemnify and hold harmless the City of Columbia, its directors, officers, agents, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees) for bodily injury and/or property damage arising by reason of any act or failure to act, negligent or otherwise, of CFM, of any subcontractors (meaning anyone, including but not limited to consultants having a contract with CFM or a subcontractors for part of the services), of anyone directly or indirectly employed by CFM or by any subcontractors, or of anyone for whose acts the CFM or its subcontractors may be liable, in connection with CFM's activities on the property and the operation of the farmers' market. This provision does not, however, require CFM to indemnify, hold harmless, or defend the City of Columbia from its own negligence.
30. Accommodation. CFM understands and agrees that City owns and maintains the Clary-Shy Community Park as a public park and uses the site for other City governmental purposes as needed. CFM agrees that the lease of space on this property is done as an accommodation to CFM and is not an agreement by City to create a transferable business interest in City's property for the benefit of CFM or to subordinate Columbia's use of the property to CFM.
31. No Waiver of Immunities. In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either Party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitutions or laws.
32. Cooperation and Scheduling. The Parties recognize that a successful partnership requires cooperation. The Parties shall cooperate, communicate and coordinate scheduling events and activities with each other. During scheduled market hours, the area designated in Attachment A for the market activities will be managed primarily by CFM.

33. Contract Documents. This Agreement includes the following exhibits, which are incorporated herein by reference:

| Attachment | Description |
|------------|----------------------------|
| A | Diagram of Leased Premises |

In the event of a conflict between the terms of an attachment and the terms of this Agreement, the terms of this Agreement control.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date and year first above written.

CITY OF COLUMBIA, MISSOURI

By: _____
Mike Matthes, City Manager

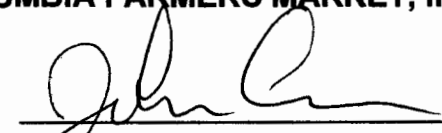
ATTEST:

By: _____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor

COLUMBIA FARMERS MARKET, INC.

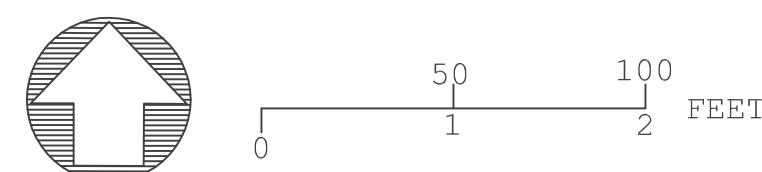
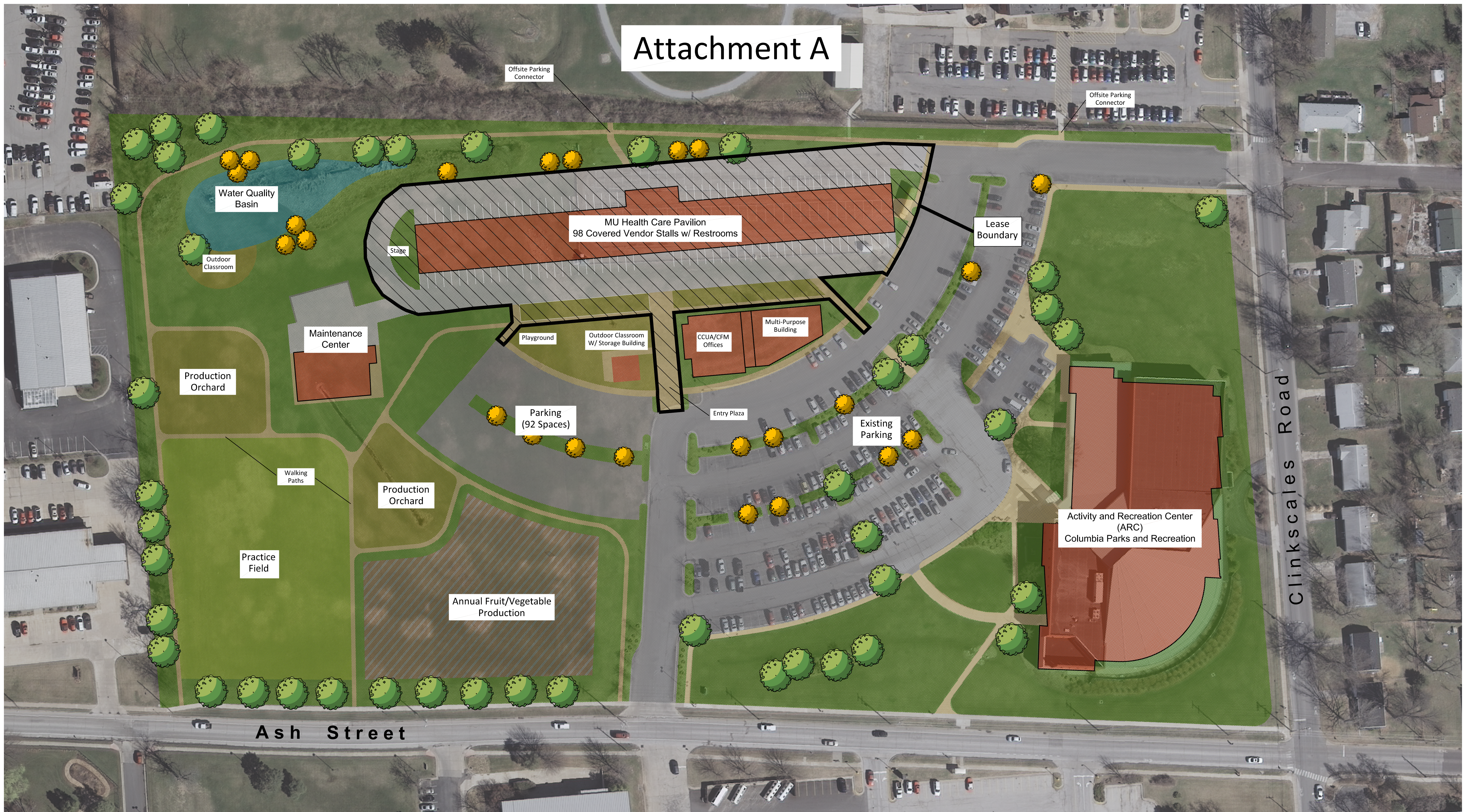
By:  _____
Name: John Coan
Title: President

ATTEST:

By: _____

Name: _____

Attachment A



CLARY-SHY COMMUNITY PARK

 COLUMBIA FARMERS MARKET LEASE BOUNDARY

