

Order 174-17/18

Motion to postpone to April 18, 2018: 9-0 on 3/19/2018

Passage: 8-1 (Strimling) on 4/18/2018

Effective 4/28/2018

ETHAN K. STRIMLING (MAYOR)  
BELINDA S. RAY (1)  
SPENCER R. THIBODEAU (2)  
BRIAN E. BATSON (3)  
JUSTIN COSTA (4)

**CITY OF PORTLAND**  
IN THE CITY COUNCIL

KIMBERLY M. COOK (5)  
JILL C. DUSON (A/L)  
PIOUS ALI (A/L)  
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING PURCHASE AND SALE AGREEMENT AND LEASE  
WITH TOM WATSON & CO., LLC FOR  
CITY PROPERTY AT 44 HANOVER STREET**

**ORDERED,** that the Purchase and Sale Agreement with Tom Watson & Co., LLC in the amount of \$1,275,000 for 44 Hanover Street, is hereby approved in substantially the form attached hereto; and

**BE IT FURTHER ORDERED,** that the Lease of 44 Hanover with Street Tom Watson & Co., LLC is hereby approved in substantially the form attached hereto; and

**BE IT FURTHER ORDERED,** that the City Manager is hereby authorized to execute the Purchase and Sale Agreement and Lease and whatever other documents are necessary to effect the intent and purpose of this order.

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT IS made this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by and between the City OF PORTLAND, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as “Seller” or “City”), and Tom Watson & Co., LLC, or assigns, a Maine limited liability company having a mailing address of 104 Grant Street, Portland, ME 04101 (hereinafter, collectively, referred to as “Buyer”).

### RECITALS

WHEREAS, the CITY is the owner of certain land and buildings located at or near 44 Hanover Street, Portland, Maine as generally depicted on the plan attached hereto as Exhibit A together with all buildings and other improvements located thereon (the “Premises”) and incorporated herein; and

WHEREAS, Buyer desires to purchase the Premises, and the City desires to convey the Premises to Buyer subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **SALE AND EFFECTIVE DATE.** City agrees to sell the Premises to Buyer, and Buyer agrees to purchase the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land and buildings located at or about 44 Hanover Street, Portland, Maine. This Agreement shall become effective after the City Council of the City approves it and after both Buyer and Seller have signed this Agreement. The date that the last of Buyer or City sign this Agreement shall be the effective date (the “Effective Date”), and the last signor shall insert that date in the first paragraph of this Agreement as the Effective Date. All deadlines and time periods set forth in this Agreement, including, without limitation, the Due Diligence Period, Financing Period and Closing Date (all as defined hereafter) shall be computed from the Effective Date.
2. **CONSIDERATION.** The purchase price for the Premises shall be One Million Two Hundred Seventy-Five Thousand Dollars (\$1,275,00.00) (the “Purchase Price”), subject to the following cost adjustments and conditions:
  - a. Buyer shall deposit the sum of Twenty-Five Thousand Dollars (\$25,000.00) (the “Deposit”) within 3 business days after the Effective Date of this Agreement that the parties agree will be held in escrow in a non-interest bearing account with CBRE | The Boulos Company; the Deposit shall be fully refundable until the later of the expiration of the Due Diligence Period or the Financing Period, as both are described herein; after the expiration of both such Periods, the Deposit shall be non-refundable except as expressly set forth herein, including, without limitation in paragraphs 3 and 10; and

- b. The parties agree that the City will continue to occupy and lease the Premises from Buyer after Closing (as defined herein) until at least March 31, 2019 by entering into a lease agreement with Buyer or Buyer's successor or assigns, as Buyer shall elect, in substantially the form attached hereto as Exhibit C (the "Lease"); provided, however, that the City shall have the right to continue to occupy the Premises until September 30, 2019. The City hereby agrees to notify Buyer in writing on or before the date that is sixty (60) days after the Effective Date if it intends to occupy the Premises beyond March 31, 2019 or the City shall be limited to a lease ending on March 31, 2019 unless Buyer and City shall otherwise agree.

At Closing, Buyer shall receive a credit against (that is, a reduction of) the Purchase Price in the amount of Twelve Thousand Five Hundred Dollars (\$12,500.00) per month for the number of months remaining between the Closing Date and the end of the term of the Lease, which shall be no earlier than March 31, 2019 (the "Rent Credit"). If the first month which the City will occupy the Premises after Closing is less than a full month, the Rent Credit for that month shall be prorated. The Rent Credit shall serve as City's nonrefundable advance payment of rent for the Lease of the Premises to the City by the Buyer or the Buyer's successor or assigns, as Buyer shall elect. At Closing, the parties shall execute a Lease in substantially the form attached hereto as Exhibit C. Regardless of the length of the term of the Lease or the date that the City vacates the Premises, in no event shall the Rent Credit be less than \$75,000.00.

- c. The Buyer shall pay the remainder of the Purchase Price to the City after the Purchase Price is reduced by the full amount of the Rent Credit. Such payment shall be made by wire transfer (or as otherwise reasonably requested by the City) at Closing.

### **3. TITLE AND DUE DILIGENCE.**

- a. Due Diligence Period. Subject to extension as set forth in Paragraph 3(b) and (d), Buyer will have from the Effective Date of this Agreement until 4:00 PM Portland, Maine time on the day that is sixty (60) days after the Effective Date of this Agreement (the "Due Diligence Period") to complete any survey, environmental review and title examinations, and to undertake such other investigations, testing or inspections as Buyer shall deem appropriate.
- b. Property Description. The property description contained in the deed will be a survey description based upon a Boundary Survey performed by a Maine Licensed Surveyor to be obtained by the City (the "Survey") which will more specifically describe the property shown on Exhibit A hereto (the "Premises Description") in form reasonably acceptable to the City and Buyer. The Premises Description will be distributed to the parties hereto at

least thirty (30) days prior to expiration of the Due Diligence Period. If the Premises Description is not received by City and Buyer at least thirty (30) days prior to the expiration of the Due Diligence Period, the Due Diligence Period shall be extended to a date thirty (30) days after it is received. The parties will agree on the final Premises Description prior to closing. If the parties cannot agree upon the final Premises Description prior to closing, then Buyer shall have the option to (1) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement) or (2) waive the approval provision and close using a description to which the City will agree.

- c. Financing Contingency. Buyer shall have from the Effective Date of this Agreement until 4:00 PM Portland, Maine time on the day that is ninety (90) days after the Effective Date of this Agreement (the “Financing Period”) to obtain a commitment for commercially reasonable financing acceptable to Buyer, provided, however, if the Due Diligence Period shall be extended, then the Financing Period shall be extended to expire on the date which is thirty (30) days after the expiration date of the Due Diligence Period. Buyer shall take timely and commercially reasonable steps to secure such financing. If Buyer does not obtain a financing commitment acceptable to Buyer within the Financing Period, Buyer may terminate this Agreement by notice in writing to City, or may elect to close under the Agreement despite the lack of such commitment. If Buyer so exercises its right to terminate this Agreement, then the City shall refund to Buyer the Deposit, if previously paid, without interest, within ten (10) days after receipt of Buyer's termination notice, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement. Any termination notice sent by Buyer with respect to this Agreement may merely state that Buyer elects to terminate this Agreement, shall have no formal requirements, and shall be immediately effective.
- d. Title, Survey and Environmental Objections. In addition to the Survey described above, the City agrees it has caused a Phase II Environmental study of the Premises to be performed. Buyer will have until the end of the Due Diligence Period to deliver to City any written objections to title, environmental, or survey matters that Buyer determines materially affect insurability of title at standard rates, or the use of the Premises, the value of the Premises, the cost of development of or the cost or feasibility of construction on the Premises. Objections not made prior to the end of the Due Diligence Period will be deemed waived; provided, however, that objections pertaining to matters of record first appearing after the end of the Due Diligence Period may be made at any time prior to the closing. If the Survey and any environmental study (including, without limitation any Phase II Environmental study) are not completed and distributed to the parties at least thirty (30) days prior to the expiration of the Due Diligence Period, the Due Diligence Period will be extended (without the need for

further action by the parties hereto) to a date thirty (30) days after the date upon which the later of the Survey or any environmental study to be completed and received are completed and are received by Buyer and City.

e. Option to Cure.

(1) In the event of a title, Survey or environmental objection by Buyer, City will have the option, but not the obligation, to cure the objection and will notify Buyer of its election within ten (10) business days after receipt of the objection. In the event that the City elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the City does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to Buyer's reasonable satisfaction, Buyer will have the option to (A) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement), (B) waive the objection and close, or (C) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so and the Closing Date shall be extended to a date ten (10) days after the expiration of such 60 day period); if Buyer determines it is not satisfied with the results of its own cure efforts, Buyer shall be entitled at any time prior to the expiration of the ten (10) day period following Buyer's sixty (60) day cure period set forth in this subsection (C) to terminate this Agreement as set forth in subsection (A) set forth above, or to waive its objection and close under this Agreement.

(2) In the event City shall elect not to cure any objection by Buyer, Buyer shall have fourteen (14) days after receipt of the City's notice of election not to cure such Buyer's objection in which to make its choice and to notify City whether it elects option A, B or C set forth in the previous subparagraph . In the event City shall elect to cure Buyer's objection, Buyer shall have fourteen (14) days following the end of the City's 60-day cure period to make its choice and to notify City whether it accepts the City's cure with respect to the particular objection or whether it elects option A, B or C set forth in the previous subparagraph.

f. Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title at standard rates, free and clear of all encroachments, liens and encumbrances except (i) easements consented to by Buyer; (ii) easements for utilities servicing the property, (iii) City ordinances, and (iv) real estate taxes not yet due and payable. Buyer further acknowledges that the deed shall contain a restriction stating that in the event that the Premises or any portion thereof shall be exempt from real and personal property taxes, by transfer, conversion, or otherwise, then the then-owner

of the exempt portion shall make annual payments to the City in lieu of taxes in the amount of the lesser of (a) the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable, or (b) such other target percentage as may be approved as part of a City PILOT policy that may be in effect at the time taxes are due on such property. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.

### **3.1 TITLE DOCUMENTATION:**

The City agrees to reasonably cooperate with Buyer's requests for documentation related to the title of the Premises or any tax taking of the Premises.

### **4. INSPECTIONS.**

- a. During the Due Diligence Period, Buyer and its employees, consultants, contractors and agents shall have the right, at Buyer's expense, to enter on the Premises at reasonable times in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments as Buyer shall deem appropriate or desirable, and (iii) do such other things as Buyer determines, in its sole discretion, to be required to determine the suitability of the Premises for Buyer's intended use (collectively, the "Inspections"). The City acknowledges that such Inspections may include the digging of test pits, which the City hereby approves.
- b. Buyer agrees to defend, indemnify and hold harmless the City against any mechanics liens that may arise from the activities of Buyer and its employees, consultants, contractors and agents on the Premises, except those arising from labor or materials furnished at the City's request.
- c. Buyer shall exercise the access and inspection rights granted hereunder at its sole risk and expense, and Buyer hereby releases the City from, and agrees to indemnify, defend, and hold the City harmless against, any and all losses, costs, claims, expenses and liabilities (including without limitation reasonable attorney fees and costs) (collectively, "Damages") suffered by the City on account of any injury to person or damage to property arising out of the exercise by Buyer of its rights hereunder, except to the extent that such Damages result from the act or omission of the City.
- d. Buyer shall cause any contractors, consultants or any other party conducting the Inspections to procure automobile insurance, if applicable, and general public liability insurance coverage in amounts of not less than Four Hundred Thousand Dollars (\$400,000.00) per occurrence for bodily

injury, death and property damage, listing the City as an additional insured thereon, and also Workers' Compensation Insurance coverage to the extent required by law; the forms of all such insurance to be subject to City's Corporation Counsel's reasonable satisfaction.

- e. In the event that Buyer does not purchase the Premises, Buyer agrees to either return the Premises as nearly as reasonably possible to its original condition after conducting the Inspections, or, at the City's option, reimburse the City for any material physical damage caused to the Premises in connection with the Inspections; provided, however, the City hereby acknowledges and agrees that the term "physical damage" does not include any disturbance of any pre-existing environmental contamination on the Premises caused by such inspections, nor any studies, tests (including test borings or pits), exams, and assessments, and that Buyer shall have no obligation to clean-up, remove or take any other action with respect to any pre-existing environmental contamination disturbed thereby.
- f. The parties hereto acknowledge and agree that it is a condition to Buyer's obligations under this Agreement that the results of the Inspections and other due diligence be acceptable to Buyer in its sole discretion. If the results of such Inspections or other due diligence are not acceptable to Buyer in its sole discretion Buyer may terminate this Agreement. If Buyer exercises its right to terminate this Agreement, then the City shall refund to Buyer the Deposit, if previously paid, without interest, within ten (10) days after receipt of Buyer's termination notice, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement. Any termination notice sent by Buyer with respect to this Agreement may merely state that Buyer elects to terminate this Agreement, shall have no formal requirements, and shall be immediately effective.

**5. REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX.** Buyer shall be liable for all real estate taxes beginning as of the start of fiscal year following the closing and continuing thereafter except as provided in this Agreement and in the Lease. Because the Premises is currently owned by the City of Portland, which is exempt from real estate taxes, no taxes were assessed or will be due for any portion of the current fiscal year, and no taxes will be prorated at the closing. In the event that the Parties agree to not execute the Lease and the City does not continue to occupy the Property after the Closing Date, any utilities for the Property shall be prorated as of the Closing Date. The Buyer's one half share of Maine real estate transfer tax shall be paid for by Buyer in accordance with 36 M.R.S.A. § 4641-A. City is exempt from paying the transfer tax pursuant to 36 M.R.S.A. § 4641-C. The recording fee for the deed of conveyance and any expenses relating to Buyer's financing or closing shall be paid for by Buyer.

**6. DEFAULT AND REMEDIES.** In the event that Buyer defaults hereunder for a reason other than the default of the City, City shall retain the deposit as liquidated

damages as its sole remedy. In the event City defaults under this Agreement, and if Buyer is not then in default hereunder, Buyer shall have the right to pursue specific performance and the City agrees it shall not invoke any sovereign immunity defense nor any defense based upon its status as a City, municipality, body politic or the like. Buyer at all times may elect in substitution for any other remedies available under this Agreement, as its sole remedy, the right to a return of its deposit.

- 7. RISK OF LOSS.** The risk of loss or damage to the Premises by fire, eminent domain, condemnation, or otherwise, until transfer of title hereunder, is assumed by the City. The Premises is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated. In the event City is not able to deliver the Premises as stated, Buyer may terminate this Agreement and receive a refund of the Deposit without interest, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement, or Buyer may elect to close hereunder and receive an assignment of any applicable insurance proceeds payable to the City relating to such loss or damage.
- 8. PROPERTY SOLD “AS IS, WHERE IS.”** Buyer acknowledges that Buyer will have an opportunity to inspect the Premises, and to hire professionals to do so, and that Premises will be sold “as is, where is” and “with all faults.” City, and its agents, make no representations or warranties with respect to the accuracy of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues (other than City’s agreement to obtain subdivision approval as set forth in Paragraph 10 of this Agreement) or the environmental, mechanical, or structural condition of the Premises. Acceptance by Buyer of the Deed at closing and payment of the purchase price shall be deemed to be full performance and discharge by the City of every agreement and obligation contained herein except as set forth in the Lease, if executed by the parties, and except as otherwise expressly set forth herein.
- 9. ENVIRONMENTAL INDEMNIFICATION.** Buyer covenants and agrees to indemnify, defend, and hold the City harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys’, consultants’, and experts’ fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against Buyer or the City and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Premises, except to the extent that such a claim results directly from the City’s release, handling or storage of hazardous wastes or hazardous materials on the Premises. This duty to indemnify, defend, and hold harmless shall be included in a covenant in the deed and shall run with the land conveyed and be binding upon Buyer’s successors, assigns, and transferees.

Notwithstanding the foregoing, during the longer of the Lease term or the period in which the City occupies the Premises, the City shall be responsible for complying with all applicable state, federal and municipal environmental obligations, laws and regulations.

**10. CONDITIONS PRECEDENT TO CLOSING.** It is a condition precedent to Closing that:

- a. The City shall obtain subdivision approval by the City of Portland Planning Board, in order to obtain approval for the creation of the parcel which constitutes the Premises, unless the City as Seller and Buyer agree in writing, such subdivision approval is not required (hereinafter the "Subdivision Approval").
- b. In the event the City is unable to obtain the Subdivision Approval prior to the Closing Date, as defined below, then the Buyer may either (1) extend the Closing Date set forth in Paragraph 11 by a time period not to exceed one hundred eighty (180) days to permit the approvals to be obtained or (2) elect to terminate this Agreement prior to the later of the scheduled Closing Date or the expiration date of any extension period based on an extension as provided above. In the event Buyer shall elect to so extend the Closing Date, the City agrees to make reasonable efforts to pursue the Subdivision Approval.
- c. If Buyer shall elect to terminate this Agreement then the City shall refund the Deposit, if previously paid, without interest, and this Agreement shall be terminated and neither party shall have any further obligations or liabilities under this Agreement, unless the parties mutually agree to extend this Agreement. Buyer acknowledges and agrees that the City is acting as Seller, and not in its regulatory capacity, in connection with this Agreement. The delivery to Buyer, and acceptance and recording by the Buyer of a deed to the Buyer of the Premises, will evidence conclusive and final consent by the Buyer to the waiver or completion of all these conditions.

**11. CLOSING.** Time is of the essence in the performance of this Agreement. The closing shall be held at the offices of Buyer's counsel or Buyer's Lender's counsel at a time agreeable to the parties on or before the day that is the later of five months after the Effective Date of this Agreement or thirty (30) days after the later of (i) the expiration of the Due Diligence Period; (ii) the deadline for the City to resolve any title, Survey or environmental objections; or (iii) the date to which Buyer elects to extend the Closing Date under Paragraph 10 (the "Closing Date"). Notwithstanding the foregoing, City agrees to close on a date earlier than that specified above upon Buyer's request at least 10 days prior to Closing. At the Closing:

- a. City shall execute, acknowledge and deliver to Buyer a municipal quitclaim deed conveying to Buyer good, insurable title to the Premises at

standard rates, free and clear of all liens and encumbrances except as otherwise set forth herein.

- b. Buyer shall deliver the balance of the Purchase Price, subject to any adjustments set forth in section 2 of this Agreement, including, without limitation, reduction by the Rent Credit, to the City by wire transfer (or as otherwise reasonably requested by the City); and
- c. Each party shall deliver to the other such other documents, certificates and the like as may be required herein or as may be necessary to carry out the obligations under this Agreement, and for the Buyer to obtain owners and lenders title insurance at standard rates in form reasonably acceptable to Buyer and to Buyer's lender.
- d. Buyer shall deliver evidence, reasonably satisfactory to City's Corporation Counsel, that the entity receiving title to the Premises is in good standing under Maine law, and that the individuals acting with respect to the Closing and executing documents on behalf of Buyer are authorized to do so.
- e. City shall deliver to Buyer a copy of all City Council Orders approving this Agreement and authorizing the City Manager or other City officials to execute this Agreement, the deed, the Lease, and any other documents necessary to effectuate the intent and purpose of this Agreement.
- f. Except as otherwise provided in section 2(b), the parties shall execute the Lease.

**12. BUYER'S POST CLOSING OBLIGATIONS; ESCROW AGREEMENT.** Buyer agrees as follows:

- a. Buyer agrees at Closing (and only upon Closing) to deposit \$50,000.00 to be held in escrow (the "Escrow Account") pursuant to an escrow agreement in form mutually acceptable to Buyer and City with a mutually acceptable escrow agent.
- b. Buyer agrees to commence development of a project at the Premises in substantially the form described in the portion of the plans depicting the Premises that are attached hereto as Exhibit B and incorporated herein by reference, and which project was presented to the City's Economic Development Committee on or about July 19, 2017 (the "Project"), within one (1) year after the later of the end of the term of the Lease or the last date of the City's occupancy of the Premises (the later of the two such dates hereinafter is referred to as the "City's End Date"). The Project shall be deemed to be "in substantially the form described in the portion of the plans depicting the Premises that are attached hereto as Exhibit B" if it proposes to include (or is constructed to include): (i) multiple separate spaces, which may have separate or shared access to the street; (ii) one

large central space of a size and for a use to be determined; and (iii) an emphasis on rental affordability. The Project may also be modified in a manner that is reasonably necessary for Buyer to obtain City Planning board, City Council or any other municipal or other necessary approval, and the Project, if otherwise "in substantially the form described in the portion of the plans depicting the Premises that are attached hereto as Exhibit B" shall, notwithstanding any such modifications, continue to be so considered. In addition, if Buyer determines that interest rates or community demand for the use of the Premises change such that Buyer wishes to make changes to the Project, or if Buyer wishes to make other changes to the Project, Buyer shall request the City's approval of such changes.

- c. Buyer's commencement of development of the Project shall be effected by Buyer or its successors, assigns, or transferees submitting a site plan review application (an "Application") for the Project within one (1) year after the City's End Date.
- d. If Buyer does not submit an Application for the Project (which Application may include modifications as described above) within one (1) year of the City's End Date, then \$10,000.00 shall be released from escrow to the City's Housing Trust Fund, and until an Application has been filed, an additional \$10,000.00 shall be released from escrow to the City's Housing Trust Fund each ninety (90) days thereafter.
- e. Within thirty (30) days after the submission of an Application for the Project, the remaining balance of the Escrow Account shall be released to Buyer. If no Closing takes place under this Agreement, the Buyer shall not be required to fund the Escrow Account nor make any payment. Notwithstanding anything to the contrary above, in the event that a Closing on the sale of the Premises to Buyer under this Agreement takes place and Buyer fails to submit any Application for the Project within the later of 5 years from the Closing Date or 4 years after the City's End Date, the entire remaining balance of the Escrow Account shall be released to the City's Housing Trust Fund.
- f. City hereby agrees that despite the references in this Agreement to Buyer as the developer with respect to the Project, that the Project will be undertaken by a different Limited Liability Company ("LLC") to be formed, or corporation to be formed, which will be an assignee of Buyer, and the City hereby consents to the same and consents to Buyer's assignment of its rights and obligations under this Agreement to any such LLC or corporation, provided that Thomas Watson will be a manager or co-manager of any such LLC and President or Vice President of any such corporation.
- g. The provisions of this section shall survive closing.

**13. ENTIRE AGREEMENT.** This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Premises hereunder. This Agreement cannot be amended except by written instrument executed by City and Buyer.

**14. NON-WAIVER.** No waiver of any breach of any one or more of the conditions of this Agreement by either party shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

**15. HEADINGS AND CAPTIONS.** The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.

**16. BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns, provided, however that this Agreement shall not be assigned by the City.

**17. TIME.** The City and Buyer each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.

**18. GOVERNING LAW.** This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

**19. NOTICE.** All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Hand delivery to the City Manager's office shall be effective as personal delivery to the City Manager on the date of delivery. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

**FOR THE City:** City of Portland  
ATTN: City Manager  
389 Congress Street  
Portland, ME 04101

With a copy to: The Office of the Corporation Counsel at the  
same address.

**FOR Buyer:** Mr. Thomas Watson  
Tom Watson & Co., LLC  
104 Grant Street  
Portland, ME 04101

With a copy to: William H. Leete, Jr., Esq.  
Leete & Lemieux, P.A.  
511 Congress Street, Suite 502  
Portland, ME 04101

**20. SIGNATURES; MULTIPLE COUNTERPARTS.** This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

**21. BROKERS.** The City shall be responsible for paying all its brokers, including CBRE | The Boulos Company, at closing. Buyer has no broker other than Joseph Porta of Porta & Co., who Buyer understands is to be compensated by CBRE | The Boulos Company. Buyer agrees to indemnify and hold harmless City from any claims made by any broker should Buyer's representation in this paragraph be false. Subject to the limitations of liability set forth in the Maine Tort Claims Act, if applicable, City agrees to indemnify and hold harmless Buyer from any claims made by any broker should City's representation in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.

**22. RECITALS INCORPORATED BY REFERENCE.** The recitals set forth above are incorporated herein by reference and made a part of this Agreement.

**23. EXTENSIONS:** Wherever this Agreement provides that a deadline will be extended, including without limitation any extension(s) which may be elected by Buyer or City as well as any extensions based upon the occurrence or non-occurrence of any event (such as, for example, the delivery of a survey or Phase II environmental report), then any such extension will be deemed to have automatically occurred, without the need for any additional action by Buyer or City.

**IN WITNESS WHEREOF**, the parties have hereunto have caused this instrument to be executed on their behalf by their duly authorized officers or representatives, as of the day and year first written above.

**CITY OF PORTLAND**

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Jon P. Jennings  
Its City Manager  
Dated: \_\_\_\_\_

**TOM WATSON & CO., LLC**

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Thomas E. Watson

Its Manager

Dated: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Corporation Counsel's Office



**82 Hanover**

- o Relocate Port Property Management headquarters to 82 Hanover from 104 Grant Street in Parkside
- o Bring in retailers/partners who will contribute to the community as well as the economy
- o Open spaces/commons available for public use
- o Leverage large rooftop for decks and greenspace to add comfortable density to neighborhood
- o Creates opportunity for construction of 23 units on Grant Street and eliminates an office/warehouse that sits in the middle of the Parkside residential neighborhood

**44 Hanover**

- o 16 separate spaces all with autonomous access to the street.
- o One Central Space of over 3,500SF for a public/communal user like pub, café, eatery
- o Glass OHD to promote openness, and allow for artists and artisans to combine retail display space to their work space. Promote marketplace environment
- o Affordable/accessible to the creative community at under \$1,000/month.

**Lancaster Court (between 82 Hanover & 44 Hanover)**

- o Commons/courtyard space open to public for public use
- o Available for outdoor recreation including farmers market and small music venue for tenants and managers to promote work/events.
  - Display and value public art and communal aesthetic enhancements
  - Cobble stone street
  - Trees/landscaping
  - Fountain/water wall

**56 Parris Street**

- o 23 2 BR 2 Bath units
  - Unique product to Portland
  - Create product for families (2 bathrooms) or multiple roommates (making it affordable)
  - At 23 units, 4 stories high it is scaled to the other buildings in the neighborhood

BAYSIDE RFP  
TOM WATSON & COMPANY PROPOSAL FOR THE  
DEVELOPMENT OF  
44 HANOVER STREET, PORTLAND MAINE  
A COMMUNITY OF ARTISTS, ARTISANS &  
FABRICATORS

# BAYSIDE RFP - 44 HANOVER ST. -Rendering PORTLAND, MAINE

MAY 15, 2017

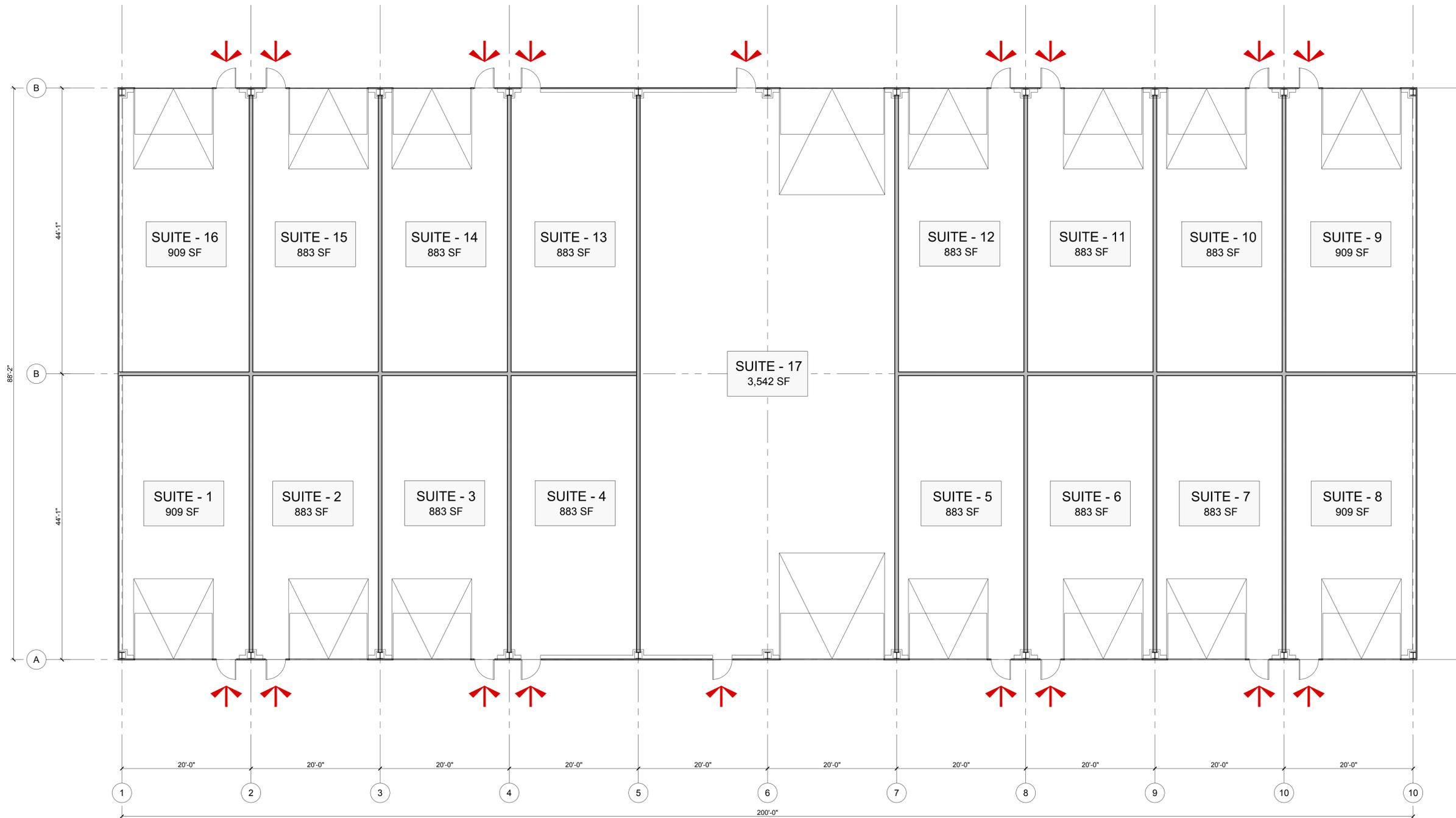


1 VIEW LOOKING SOUTH-EAST ON PARRIS STREET  
N.T.S.

# BAYSIDE RFP - 44 HANOVER ST. - Floor Plan

## PORTLAND, MAINE

MAY 15, 2017



BUILDING AREA	
FIRST FLOOR AREA	
SUITE - 1	909 SF
SUITE - 2	883 SF
SUITE - 3	883 SF
SUITE - 4	883 SF
SUITE - 5	883 SF
SUITE - 6	883 SF
SUITE - 7	883 SF
SUITE - 8	909 SF
SUITE - 9	909 SF
SUITE - 10	883 SF
SUITE - 11	883 SF
SUITE - 12	883 SF
SUITE - 13	883 SF
SUITE - 14	883 SF
SUITE - 15	883 SF
SUITE - 16	909 SF
SUITE - 17	3,542 SF
<b>BUILDING TOTAL = 17,774 SF</b>	
NOTE: ALL SQUARE FOOTAGES CALCULATED USING OUTSIDE FACE OF EXTERIOR WALLS AND CENTERLINE OF SHARED WALLS	

1 FIRST FLOOR CONCEPT PLAN  
1/8" = 1'-0"



## **LEASE AGREEMENT**

This Lease Agreement, is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between \_\_\_\_\_ with a mailing address of 104 Grant Street, Portland, Maine 04101 (hereinafter referred to as “Landlord”) and the **CITY OF PORTLAND**, a Maine municipal corporation having its principal place of business at 389 Congress Street, Portland, Maine (hereinafter referred to as “Tenant”).

**WHEREAS**, Tenant has recently conveyed to Landlord certain property located at or about 44 Hanover Portland Street in Portland, Maine and wishes to continue to occupy and use such property; and

**WHEREAS**, Landlord has sufficient right, title and interest in and to the real property and has full power and authority to enter into this Agreement in respect thereto, and is willing to have Tenant occupy and use the 44 Hanover Street property on the terms and conditions set forth herein;

**NOW, THEREFORE**, in consideration of the mutual promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Landlord and Tenant hereby mutually agree as follows:

**1. Premises.**

Tenant, as of the date of this Lease, exclusively occupies certain land and a building or buildings located at or about 44 Hanover Street, Portland, Maine (hereinafter the “Building”) (the land and Building are referred to herein as the “Premises”) as generally depicted on the plan attached hereto as Exhibit A. Landlord does hereby agree to lease, demise, and let the Premises unto Tenant, subject to the access and parking easement benefitting the owner of the property located at 55 Portland Street (the “Access Easement”), which easement is depicted on Exhibit A. Tenant shall have no authority to modify or make any substantial changes (whether cosmetic, structural or otherwise) to the Premises without the prior written consent of Landlord.

**2. Term.**

The initial term of this Lease shall commence \_\_\_\_\_, 2018 (the “Effective Date”) and terminate \_\_\_\_\_, 2019 (the “Initial Term”), unless earlier terminated as provided herein, or extended as provided herein. The Initial Term together with any Renewal Term (as defined herein) are referred to collectively hereinafter as the “Term.”

In the event Tenant shall continue in occupancy of the Premises after the expiration of the Initial Term or any Renewal Term (as defined herein), such occupancy shall not be deemed to extend or renew the terms of this Lease, but occupancy shall, at the option of the Landlord, continue as a tenancy at will from month to month upon covenants, provisions, and conditions herein contained, and at the rent in effect prior to the expiration of the Initial Term or Renewal Term (as

defined herein) whichever last occurred, increased by twenty five (25%) percent, prorated and payable month to month on the first day of each month for the period of such hold-over occupancy. This paragraph shall not be deemed or construed as giving the Tenant any right to hold over after the expiration of the Initial Term or any Renewal Term thereof.

### **2.1. Renewal.**

Upon expiration of the Initial Term, at the request of the Tenant, the Term of this Lease may be renewed for one (1) three (3) month extension (which such extension hereinafter will be referred to as the "Renewal Term") subject to and conditioned upon Landlord's written consent, and provided that the Tenant is not in default of the terms of this Lease prior to the expiration of the Initial Term and provided that Tenant gives Landlord at least three (3) months' notice in writing of its request for a Renewal Term. Landlord's consent shall not be unreasonably withheld, delayed, or conditioned.

The Renewal Term shall commence the day following the expiration of the Initial Term of the Lease. If the Tenant exercises its option to renew Tenant agrees to pay to Landlord, or its designee, rent on the terms described in Paragraph 4 below at the new rental rate for the Renewal Term as set forth in Paragraph 4.

Except as otherwise set forth ~~in Paragraph~~ \_\_\_\_\_ herein, Tenant shall be responsible for all costs and expenses relating to the Premises during the entire period in which the Tenant occupies any part of the Premises (hereinafter the "Occupancy Period") including, without limitation, for the entire Term of this Lease (and any Renewal Term if applicable), and including, without limitation, all costs and expenses with respect to utilities as set forth in this Lease Agreement.

### **3. Permitted Uses.**

The Premises may be used by Tenant for the current use of the Premises and for any other similar, lawful purposes. Tenant shall not use or occupy or permit the Premises to be used or occupied, nor do or permit anything to be done in or on the Premises, in a manner which will in any way violate any applicable laws, ordinances or regulations of any municipal, State or other governmental authority.

### **4. Rent.**

a. Rent Paid in Advance at Closing. The rent for the lease to the Tenant for the Initial Term shall be in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00). As stated in the related Purchase and Sale Agreement dated on or about \_\_\_\_\_, 2018 between the City of Portland, Maine and Landlord (the "Purchase and Sale Agreement") with respect to the Premises, the full Rent Credit (as that term is defined in the Purchase and Sale Agreement) for the Initial Term is to be paid at the closing by the City of Portland, Maine as seller upon Landlord's purchase of the Premises (the "Closing"), granting a credit to Buyer in the full amount of said Rent Credit against and reducing the purchase price for the Premises by that amount. Landlord, by its initials here: \_\_\_\_\_ acknowledges receipt of the Rent Credit in the amount of \$\_\_\_\_\_. Tenant agrees that the agreement to pay rent in advance is a substantial inducement for Landlord to

purchase the Premises at the purchase price set forth in the Purchase and Sale Agreement, and accordingly, all of the rent paid and credited at Closing, including, without limitation, the Rent Credit, shall be non-refundable.

b. Rent During Renewal Term. If there is a Renewal Term of this Lease, the rent during the Renewal Term of this Lease shall be in the amount of the greater of Twelve Thousand Five Hundred and 00/100 Dollars (\$12,500.00) per month or the then market rate of rent for the Premises, as determined by an independent commercial real estate agent or appraiser chosen by the Landlord, from three qualified agents or appraisers with at least ten (10) years' experience in the profession proposed by the Tenant, at least two months prior to the date when this Lease would terminate if not renewed. If none of the agents or appraisers proposed by Tenant are acceptable to Landlord, Landlord may request an appraisal from Landlord's agent which shall be averaged with one from an agent or appraiser selected by Tenant from the three proposed by Tenant to determine the then market rental rate.

c. Renewal Term Rent Payments; When Due. Rent during the Renewal Term (and rent for any time period for which rent is not fully paid in advance at the Closing on the sale of the Premises) shall be payable in advance the first day of each and every calendar month during such Renewal Term (and any other applicable period during which rent is due) and rent payments shall be made to the Landlord's manager, Port Property Management, 104 Grant Street, Portland, ME 04101 or such other address as Landlord shall in writing direct. Any rent payment received by the Landlord after the 7<sup>th</sup> of the applicable month shall be subject to a 5% late fee.

d. Additional Rent. Tenant shall also pay as additional rent all expenses and costs relating to the Premises, including, without limitation, taxes, utilities and insurance, and including, without limitation, those set forth in Paragraphs 5, 6, 7, 8, 10 and 10.1 of this Lease, ~~subject only to the exceptions set forth in paragraph \_\_\_\_.~~

## **5. Taxes and Utilities.**

a. Taxes. The Tenant shall be responsible for timely payment of all taxes of any kind as well as any other fees due to the City of Portland, Maine, including, without limitation, all municipal real property taxes on or assessed against the Premises and all personal property taxes with respect to all personal property on or about the Premises. In the event the Premises are determined to be tax exempt, either wholly or partially, Tenant shall be required to pay any and all amounts due to the City of Portland, Maine in lieu of or as a replacement for real and personal property tax payments, including, without limitation, all amounts specified in Paragraph 3(f) of the Purchase and Sale Agreement.

b. Utilities. Tenant shall also be responsible for paying all the costs of all utilities servicing the Premises during the Initial Term of this Lease and any Renewal Term, including but not limited to electrical, gas, water, sewer, heat and air conditioning (together with all other HVAC expenses), internet, cable and telephone. Tenant shall also be responsible for payment of all stormwater fees and stormwater service charges due to the Portland Water District or City of Portland, as well as any other assessments or fees against the Premises by the City of Portland, Maine or the Portland Water District. Landlord is not responsible for payment of any such

assessments or fees, nor for providing heat nor any other utilities to the Premises, nor for paying the costs of any such utilities, all of which are Tenant's sole responsibility.

**6. Tenant to Plow and Remove Snow.**

Tenant, at Tenant's expense, shall be responsible for plowing and removing snow and ice from the Premises in accordance with applicable City ordinances. Landlord shall have no obligation to remove snow or ice from the Premises.

**7. Tenant to Remove Trash and Debris; Maintenance.**

Tenant, at Tenant's expense, shall maintain the entire portion of the Premises in the same condition and repair as it is in as of the Effective Date, except only for reasonable wear and tear, and shall remove from the Premises all trash and debris which it shall create, which is located upon the Premises or which is otherwise attributable to Tenant. Tenant shall not do anything to cause nor permit the Premises nor the activities therein or thereon to violate any municipal, county, state or federal law, ordinance or requirement, and shall promptly act upon direction of any officer of competent authority.

**8. Responsibility for Repairs and Maintenance; Tenant's Acceptance Of Premises In "As Is" Condition.**

a. Maintenance and Repair. Tenant is currently in possession of the Premises and does hereby accept the Premises and Common Areas in their present "AS IS" condition as of the Effective Date. During the Term of the Lease, Tenant shall, at its sole expense, maintain and make any reasonably necessary repairs to the Premises at its sole expense.

b. Capital Repairs. Tenant hereby warrants and represents that it has inspected the Premises and that it knows of no capital repairs that are presently necessary. The term "Capital Repair" is agreed to mean the repair or replacement of a major component or structural part of the Premises and shall also include the rebuilding of a major component or structural part of the Premises after the end of its useful life. Based on the information acquired in its inspection, together with its historic use of the Premises, Tenant represents that it has no actual knowledge that any Capital Repairs will be required during the Initial Term or if the Lease is renewed, during any Renewal Term. In the event any Capital Repairs to the Premises are reasonably necessary during the Term and Tenant does not wish to make such Capital Repair at Tenant's sole expense, Tenant shall so advise Landlord in writing and Landlord may, in its sole discretion, elect to make, or not to make, such Capital Repair. Notwithstanding the foregoing, Tenant agrees that whenever it determines that it is reasonably possible to make a temporary repair or patch and defer the need for a Capital Repair, it shall make such temporary patch or replacement. In the event Landlord elects not to make any Capital Repairs, Tenant shall have the right, but not the obligation to make such repairs at its own expense. Tenant acknowledges and agrees that even if Tenant determines it is unable to occupy the Premises due to the condition of the Building or the Premises, all of its rent payments shall continue to be non-refundable even if Tenant determines that it could occupy the Building or the Premises if a Capital Repair was made.

Notwithstanding the foregoing, Landlord and Tenant agree that in the event of a casualty loss or event (hereinafter "Casualty") causing material physical damage to the Premises or Building for which there is insurance coverage as determined by the insurer issuing the applicable policy of insurance, that subject to and conditioned upon any requirements or conditions imposed by Landlord's lender (including, without limitation, any restrictions or conditions on disbursement of insurance payments or proceeds), funds paid by an insurer with respect to such Casualty shall be released to fund the cost of a Capital Repair resulting from such Casualty, upon such terms as shall be reasonably acceptable to Landlord and provided that Landlord shall not be required to make any payment of any kind toward such Capital Repair.

**8.1 Improvements/Alterations.** No improvements or alterations to the Premises which materially change or alter the Premises shall be made without Landlord's written approval, which shall not be unreasonably withheld, delayed, or conditioned. Any request by Tenant for such approval shall be submitted with written specifications and drawings reasonably satisfactory to Landlord. All improvements made to the Premises by Tenant must be done in accordance with all local Building codes and ordinances and all applicable State and Federal statutes and regulations, and Tenant must obtain all necessary permits prior to commencing improvements. Tenant shall promptly pay for any and all trades furnishing services and/or alterations to the Leased Premises. With the exception of any of Tenant's removable property, including without limitation, all of its personal property and trade fixtures, any and all property left by Tenant in the Leased Premises shall become property of the Landlord at the expiration or termination of Tenant's tenancy. A list of trade fixtures which are owned and controlled exclusively by Tenant and which Tenant shall remove at the end of the Term or when Tenant vacates the Premises, whichever shall be earlier, is attached as Exhibit B.

**9. Compliance with Laws.**

Tenant shall, at its own cost and expense, promptly observe and comply with all applicable laws, ordinances, requirements, orders, directives, rules and regulations of the federal, state, and county and city government.

**10. Insurance.**

Prior to the execution of this Lease and continuing during the Term of the Lease or for such longer period during which Tenant shall occupy the Premises, Tenant shall obtain, maintain and pay for all the costs of the insurance listed in the following subsections:

- a. Tenant shall maintain occurrence based General Liability Insurance, which shall include liability insurance with respect to automobiles, trucks and other motor vehicles, in the amount of \$400,000 per occurrence for causes of action pursuant to the Maine Tort Claims Act, and the policy for such insurance shall name Landlord as an additional insured. Tenant shall provide Landlord with a certificate evidencing such General Liability Insurance coverage prior to execution of this Lease. Tenant shall be responsible for covering its personal property with such property and casualty insurance as it deems reasonably necessary and shall provide Landlord with

documentation of such policies of insurance or self-insurance prior to execution of this Lease. Landlord shall not be responsible for any damage to Tenant's personal property except for damage caused by Landlord. Claims brought by Landlord against Tenant for damage to the Premises, that are not covered by an insurance policy, and are the result of Tenant's use and/or negligence, and not resulting from the Landlord, its employees, subcontractors, or others using the Access Easement to access the property at 55 Portland Street, shall be Tenant's responsibility to repair or reimburse Landlord in an amount equal to that reasonably necessary to return the Premises, to substantially the same condition in which they were at the start of this Lease. This provision shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages, available to the Tenant under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the Tenant. For the purposes of this Lease, an insurance claim will be deemed to be "not covered by an insurance policy insuring Tenant" if such claim is denied by the insurer issuing the policy against which the claim is made.

- b. Glass. Tenant shall be solely responsible for the cleaning, maintenance and replacement of plate glass and other windows located within the Leased Premises and is advised to obtain insurance coverage with respect to damage thereto. Tenant agrees to repair promptly any damage to such glass and windows at its sole expense. Tenant shall not be responsible for damage to glass or windows caused by Landlord, its employees or subcontractors, or others using the Access Easement to access 55 Portland Street. Any such cleaning, maintenance and/or repairs shall be to return all glass and windows to substantially the same condition in which they were at the start of this Lease.
- c. Workers Compensation. Tenant self-insures for workers compensation coverage and shall provide Landlord with evidence of its self-insured status.
- d. Property and Casualty Insurance. Landlord shall procure and maintain such Property and Casualty insurance as it deems reasonably necessary in regard to the Premises, and Tenant shall pay Landlord upon execution of this Lease for annual premiums in an amount up to and including ten thousand dollars (\$10,000). Such coverage shall be in form and amount to coverage as commonly written for comparable buildings. In the event that the Term of this Lease exceeds the term of Landlord's Property and Casualty insurance policy, Tenant shall pay Landlord for applicable premiums within 10 days of Landlord's request for such payment. Any deductibles and/or retentions in an amount higher than ten thousand dollars (\$10,000) shall be subject to approval by Tenant. Tenant shall be named an additional insured on such policy for coverage only in those areas where government immunity has been expressly waived by 14 M.R.S. A. § 8104-A, as limited by § 8104-B, and § 8111. This provision shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages

- available to the Tenant under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the Tenant.
- e. Pollution Liability Insurance. Tenant shall procure and maintain premises pollution liability insurance in form and content reasonably acceptable to Landlord considering Tenant's use of the Premises as a vehicle maintenance garage and fueling station in an amount not less than one million dollars (\$1,000,000) per occurrence, for the Term of this Lease, or if the Occupancy Period ends later than the end of the Term, then, for the entire Occupancy Period, naming Landlord as an additional insured thereon. The pollution liability policy shall provide at least such coverage as commonly written for comparable buildings and uses comparable to Tenant's use of the Premises. The policy shall provide liability coverage on a claims-made and reported basis which covers claims first made against an insured and reported to the Insurer, during the policy period. The policy shall also provide coverage for remediation costs which covers pollution conditions first discovered and reported to the insurer during the policy period. Tenant shall include in the pollution coverage, conditions emanating from storage tanks on the Premises. Tenant additionally agrees to purchase a so-called "tail" or extended reporting period coverage for at least a one-year term in form reasonably acceptable to Landlord that provides coverage for claims pursuant to said pollution liability insurance policy.
  - f. Self-Insurance, Large Deductibles and/or Retentions. Tenant is solely responsible for all deductibles and or retentions on any insurance policies required by this Lease, and agrees to pay all deductibles and retentions with respect to any such policies. Any coverage required by this Lease for which Tenant chooses to self-insure shall be the responsibility of the Tenant, and Tenant agrees to pay any covered claims for which it chooses to self insure.
  - g. Waiver of Subrogation. Tenant shall procure waiver of subrogation on any insurance policies required under this Lease in which it is able to do so. Tenant agrees that it shall waive subrogation with respect to any matters for which it self-insures, including, without limitation, worker's compensation insurance. Landlord acknowledges and agrees that Tenant's general liability insurance coverage shall not include a waiver of subrogation. Landlord may choose to either waive subrogation or list the Tenant as a named insured in lieu of waiving subrogation under its property and casualty insurance policy.
  - h. Notice. All of the insurance policies in which the Tenant or Landlord are an additional or named insured under the terms of this Lease shall, contain a clause that the insurer shall not cancel or reduce the coverage of the insurance without first giving Tenant, Landlord and any mortgagees of Landlord thirty (30) days' prior written notice.

## **10.1 Tenant's Responsibilities.**

- a. To the fullest extent permitted by law, Tenant hereby agrees to assume all risk of injury, harm or damage to any person or property (any such injury, harm or damage hereinafter is referred to as a "Liability Event"), including but not limited to all risk of injury, harm or damage to Tenant's officers, agents, employees, contractors, customers and invitees (all of whom hereinafter are referred to as "Tenant's Affiliates" in the plural or as a "Tenant Affiliate" in the singular) or to any of their property, arising out of, during, or in connection with Tenant's lease of the Premises from Landlord, Tenant's occupancy of the Premises or any other use by Tenant of the Premises (all such risks are hereinafter collectively referred to as the "Assumed Risks"), but only to the extent (i) any such Liability Event is a result of actions or omissions by Tenant, one of Tenant's Affiliates or any other person or entity for whom Tenant may be liable and (ii) is a negligent act or omission, an intentional act which is not a discretionary function, or an act or omission for which Tenant is liable under the Maine Tort Claims Act. Such Assumed Risks do not include injury, harm, or damage caused by (1) any act or omission of Landlord, its officers, agents, employees, contractors or anyone else for whom Landlord may be liable except Tenant or a Tenant Affiliate, or (2) any act or omission of any third party who is not a Tenant Affiliate utilizing the Access Easement. Tenant's obligations hereunder are subject to and limited by the defenses, immunities and limitations of liability available to the Tenant under the Maine Tort Claims Act, 14 M.R.S.A. § 8101 et seq, and other applicable law.
- b. Tenant and Landlord agree that, subject to Landlord's right to enforce the terms of this Lease and to terminate this Lease as provided herein, and except to the extent that the Access Easement is used by others, Tenant shall have during the Term until the later of the expiration of the Lease, the earlier termination of the Lease, or when Tenant vacates the Premises, full control over the Premises (including, without limitation, all buildings or structures located on the Premises, including, without limitation, the Building and any parking lot, or walkways or other grounds located on the Premises) and shall be solely responsible for all maintenance and repairs to the Building and Premises except as expressly set forth in this Lease.
- c. Covenant against liens: Tenant shall not cause nor permit any lien against the Landlord's property or the Premises or any improvements thereto to arise out of or accrue from any action, omission or use thereof by Tenant; provided, however, that Tenant may in good faith contest the validity of any alleged lien. In the event Tenant contests such lien, upon the request of the Landlord, Tenant shall post a bond approved by the court in which such lien claim is pending or if not yet pending, a court with jurisdiction over such lien, warranting payment of any such lien. If Tenant does not contest a lien, it shall pay off and cause the discharge of any such lien within twenty (20) days of its recording. If a court or other proceeding is commenced, Tenant shall cause such lien to be "bonded off" to Landlord's satisfaction within forty-five (45) days of commencement of such proceeding. Should Landlord be subjected to any claim(s), suit(s) or lien(s), including, without

limitation, any claim(s), suit(s) or lien(s) relating to any mechanic's lien claim for any services or materials associated with Tenant's improvements or alterations to the Leased Premises, Tenant shall indemnify and hold harmless Landlord from all damages and costs (including any attorneys' fees incurred by Landlord) arising out of or relating to any such claim(s), suit(s) or lien(s), and shall pay any and all costs (including attorneys' fees) incurred by Landlord in defense or prosecution of such actions within ten (10) days of demand by Landlord. Tenant's failure to comply with the foregoing requirements regarding liens shall constitute a default under the terms of this Lease.

## **10.2 Environmental Compliance.**

During the longer of the Term or the Occupancy Period, the Tenant shall be responsible for complying with all applicable state, federal and municipal environmental obligations, laws and regulations (hereinafter collectively "Environmental Laws") and taking all necessary steps to prevent any violation of any such Environmental Laws. In addition, Tenant shall be responsible for the costs and expenses relating to any violation of Environmental Law regarding any Hazardous Material, substance or waste which comes on, which comes from or affects, the Premises during the longer of the Term or the Occupancy Period, or which is hereafter placed upon or under the Premises at any time during the longer of the Term or the Occupancy Period (including, without limitation all fines, penalties or the like, as well as the costs of removal and remediation) including, any and all losses, damages, suits, penalties, costs, liability and expenses (including but not limited to reasonable investigation, laboratory fees, environmental audit and legal expenses) arising out of any claim for loss or damage to any real or personal property or to person(s) including the Premises, injuries to or death of person(s), contamination of or adverse effects on the environment or any violation of statutes, ordinances, orders, rules or regulations of any governmental entity or agency, caused by or resulting from any Hazardous Material (as defined below), substance or waste which comes on, which comes from or affects, the Premises during the longer of the Term or the Occupancy Period, or which is hereafter placed upon or under the Premises at any time during the longer of the Term or the Occupancy Period. Tenant's obligations under this paragraph do not apply to any violation of Environmental Laws or claims resulting from the actions or omission of Landlord, its employees, subcontractors, or others using the Access Easement to access the property at 55 Portland Street. This paragraph is only intended to govern Tenant's actions during the longer of the Term or the Occupancy Period of the Lease and does not apply to Tenant's ownership of the Premises.

The term "Hazardous Materials" or "Hazardous Material" as used in this Lease Agreement includes but is not limited to any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future State, Federal or municipal environmental law, regulation or ordinance including but not limited to any such law, regulation or ordinance relating to petroleum or petroleum products, asbestos or asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives.

Landlord acknowledges and agrees that nothing in section 10 of this Lease is intended to alter or does alter the rights and obligations of the parties under sections 8 and 9 of the Purchase and Sale Agreement.

**11. Assignment/Subletting.**

Tenant shall not sublet all or any portion of the Premises, nor sublease, transfer or assign this Agreement or the rights granted hereunder at any time during the Term of this Agreement without the prior written approval of Landlord, which may be granted or withheld in Landlord's sole discretion. No such assignment or subletting shall relieve Tenant of any obligations hereunder, all of which shall remain in full force and effect, including, without limitation, with respect to payment and any person accepting such assignment shall take the Agreement subject to all prior breaches and shall be liable therefore in the same manner as Tenant.

**12. Casualty Damage.**

a. If the Premises or any part thereof shall be destroyed or damaged by fire or other unavoidable casualty so that the same shall be thereby rendered unfit for use, then, and in such case: (i) if such fire or unavoidable casualty occurs during the Initial Term, then Tenant shall have the right to terminate this Lease; or (ii) if such fire or unavoidable casualty shall occur following the expiration of the Initial Term and during the Renewal Term or any other term, either Landlord or Tenant shall have the right to terminate this Lease. Such right of termination, if available, shall be exercised by giving the other party written notice of such termination within thirty (30) days after such damage or destruction, and upon the giving of such notice, the Term of this Agreement shall cease and come to an end as of the earlier of the date Tenant fully moves out of the Premises or the expiration or earlier termination of the then application term of the Lease. Upon the date Tenant fully moves out of the Premises, Tenant's obligation to pay utilities shall end, except for such charges for utilities as shall have accrued prior to the date of move-out. Notwithstanding anything else contained in this Lease Agreement, Tenant shall not receive any rent refund or credit for such early termination of the Lease or for any early move out, but Tenant shall not be obligated to continue to pay rent due if the Lease is so terminated during any Renewal Term. For avoidance of doubt, Landlord and Tenant hereby agree no rent shall be refunded to Tenant upon such termination (or under any other circumstance) and that the Rent Credit shall be permanently retained by Landlord.

b. Tenant shall be responsible for covering its equipment and supplies with such property and casualty insurance as it deems necessary and Landlord shall have no responsibility therefor. Tenant assumes all risk of damage, loss or casualty to its property, equipment and/or supplies while located at the Premises, whether it is owned or leased by Tenant.

**12.1 Condemnation.** If the Premises or any part thereof are taken or condemned by a duly constituted public authority, this Lease shall, as to the part taken, terminate and all proceeds and awards shall be paid to the Landlord. Tenant shall have no claim against Landlord with respect to any such taking or condemnation. In the event that a substantial portion of the Premises itself is taken or condemned, both Landlord and Tenant shall have the right to terminate this Lease upon giving notice in writing ten (10) days in advance of proposed termination date. Notwithstanding

any such condemnation, taking or termination, no rent shall be refunded to Tenant, and all rent shall be permanently retained by Landlord.

**13. Default; Termination.**

a. This Lease is made on the condition that if the Tenant shall fail to pay any rent or any other monetary obligation to Landlord within five (5) days of its due date, or fail to perform any other obligation to Landlord within thirty (30) days after written notice thereof, or in case of an obligation that cannot with due diligence be cured within said thirty (30) day period, fail to proceed within said thirty (30) day period to commence to cure the same and thereafter to prosecute the performance of such obligation with due diligence and within a period of time that under all prevailing circumstances shall be reasonable or if Tenant shall violate or fail to comply with any of the terms or provisions of this Lease and such failure to comply or violation of this Lease shall reoccur or continue after written notice of such violation from Landlord, or if the estate hereby created shall be taken on execution or other process of law, or if Tenant shall be declared bankrupt or insolvent according to law, or if Tenant shall file bankruptcy, or if an involuntary bankruptcy shall be filed against Tenant which shall not be dismissed within thirty (30) days, or if the Tenant shall hold over at the termination of the Lease as herein provided, then and in any of said cases, notwithstanding any license or any former breach of covenants or waiver or consent in former instances, the Landlord lawfully may, in addition to and not in derogation of any remedies for breach of covenant, immediately or at any time thereafter, without prior demand or prior notice whatsoever, (a) terminate this Lease by notice in writing which termination shall be effective immediately or at Landlord's election on a date stated in said notice; (b) with or without process of law, enter into and upon the leased Premises or any part thereof and repossess the same; and (c) expel the Tenant and those claiming through or under the Tenant and remove its effects (together with any third parties' property) without being deemed guilty of any manner of trespass and without prejudice to any remedies which might otherwise be used for arrears of rent or preventing a breach of covenant, and upon entry as aforesaid, all rights of Tenant hereunder shall terminate; and Tenant covenants that in case of such termination, Tenant will during the remainder of the then-current term or any Renewal Term pay to Landlord on the last day of each calendar month the difference, if any, between the rental, and other monetary obligations of Tenant, which would have been due for such month had there been no such termination and the sum of the amounts being received by the Landlord from occupants of the leased Premises, if any. In addition, Tenant agrees to pay the Landlord, as damages for any above-described breach, all costs of reletting the Leased Premises including, without limitation, real estate commissions, costs of advertising, costs of damage repair, cleaning, costs of renovation of the Premises to suit a new tenant, and costs of moving and storing Tenant's personal and trade fixtures.

b. Legal Fees and Expenses.

- (i) Tenant further agrees to pay and indemnify the Landlord against all reasonable legal costs and charges, including, without limitation, all reasonable attorney's fees and expenses (hereinafter collectively referred to as "Legal Expenses") incurred by Landlord if Landlord prevails in a civil action to obtain possession of the leased Premises (including, without limitation, in any forcible entry and detainer or eviction action).

- (ii) Tenant shall pay to Landlord all such Legal Expenses within ten (10) days following the entry of a final judgment and the passing of any applicable appeals period in such civil action.

c. **Surrender.** Upon any termination of this Lease, Tenant shall quit and surrender to Landlord the Premises in accordance with the provisions of this Lease. If this Lease is terminated, Tenant shall remain liable to Landlord for all Rent due under this Lease Agreement which has not yet been paid to Landlord. The Rent Credit shall remain nonrefundable and shall be permanently retained by Landlord. In no event shall either party be liable to the other for incidental, special, or consequential damages of any nature claimed as a result of the breach of any term of this Agreement or termination of this Agreement.

d. **Termination for Convenience.** Tenant may terminate this Lease for its convenience upon no less than thirty (30) calendar days' prior written notice to Landlord. If Tenant so terminates this Lease for its convenience, no rent shall be refunded to Tenant, and the Rent Credit shall be permanently retained by Landlord.

**14. Access.**

Landlord shall provide at least 24 hours advance notice of its intention to enter the Premises, except in the case of an emergency. Upon such notice, the Landlord and its representatives, agents, or employees, may enter the Premises.

**15. Signs.**

Tenant shall not erect, install or place any signage upon the interior or exterior of the Premises except with the written approval of Landlord, which approval Landlord agrees not to withhold unreasonably. Tenant shall pay any and all costs associated with any such signage approved by Landlord.

**16. Zoning.**

It is the responsibility of Tenant to determine all zoning information and secure all necessary or required permits and approvals of its proposed use of the subject Premises. Landlord makes no representations or warranties as to the suitability of, or the ability to obtain regulatory approval for, the subject Premises for Tenant's intended use.

**17. Self-Help.**

In the event of a dispute between Tenant and Landlord, Tenant shall not be permitted to withhold all or any part of the rental payment then due unless and until a forum of appropriate jurisdiction has so ruled. The acceptance of a check by the Landlord for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, to the effect that such lesser amount constitutes payment in full 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.

**18. Miscellaneous Provisions.**

Subject to the foregoing, the covenants and agreements of the Landlord and Tenant shall run with the land and be binding upon and inure to the benefit of them and their respective successors and assigns, but no covenant or agreement of Landlord, expressed or implied, shall be binding individually upon any LLC manager or member nor any fiduciary nor any trustee or beneficiary under any trust.

**19. Subordination.**

Tenant shall, from time to time, upon request of the Landlord, subordinate this Lease to any mortgage deed, and/or other security indenture hereafter placed upon the leased Premises, and to any renewal, modification, replacement or extension of such mortgage or security indenture, if, and only if, any mortgagee of Landlord and Landlord (if required by lender) execute (either before or after) such subordination agreement or subordination, non-disturbance and attornment agreement ("SNDA"). Landlord agrees to make reasonable efforts to negotiate with its lender with respect to the terms of any such SNDA, and shall advise such lender of any Tenant objections to such SNDA. Tenant hereby agrees it shall execute and deliver to Landlord within five (5) days of Landlord's request such subordination agreement or SNDA submitted to Tenant by Landlord or Landlord's lender.

**20. Estoppel Certificates.**

Tenant shall, within five (5) days after each and every request by Landlord execute, acknowledge and deliver to Landlord a statement in writing including any or all of the following as determined by Landlord: (a) certifying that the Lease is unmodified and in full force or effect (or if there have been modifications, that the same is in full force and effect as modified, and stating the modifications), (b) specifying dates to which the annual rent has been paid, (c) stating whether or not Landlord is in default in performance or observance of its obligations under the Lease, and, if so, specifying each such default, (d) stating whether or not to the best of the knowledge of the Tenant, any event has occurred which, with giving of notice or passage of time, or both, would constitute a default by Landlord under Lease, and, if so, specifying each such event, and (e) certifying that Tenant, as of the date of the statement, has no charge, lien or claim of offset under the Lease, or otherwise, against rents or other charges due or to become due thereunder. Any such statement delivered pursuant to this Article may be relied upon by any prospective assignee, transferee or mortgagee of the Leased Premises or any interest therein.

**21. Return of Premises; Trade Fixtures.**

Tenant at the expiration or termination of this Lease Agreement shall peaceably yield up to Landlord the Premises in broom clean condition, in good repair in all respects, reasonable use and wear and damage by fire and all other unavoidable casualties not caused by the acts or omissions of Tenant, its officers, employees, agents, invitees or contractors excepted. At such time, Tenant shall also remove all trade fixtures, equipment and other personal property installed or placed by it at its expense in, on or about the Premises, including, without limitation, those listed on Exhibit B. Should Tenant fail to remove its trade fixtures, equipment or other personal

property within Thirty (30) days of a notice to do so from Landlord, ownership of such fixtures, equipment and property shall automatically be vested in Landlord and Landlord have the right to dispose of such fixtures, equipment and property in any manner it sees fit, and retain all proceeds therefrom.

**22. Covenants.**

Landlord covenants that it is the owner in fee of the Premises and can and will provide quiet enjoyment of the Premises during the Initial Term of this Agreement, or if applicable, any Renewal Term. Each party covenants that the Agreement is signed by a duly authorized individual.

**23. Notices.**

Any notice required to be given under this Lease shall be in writing and shall be hand-delivered or sent by U.S. certified mail, return receipt requested, postage prepaid, addressed to the parties as stated below or such other address as either party may designate in writing to which its future notices shall be sent. Notices shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Hand delivery at the addresses below shall be effective as personal delivery to the party specified on the date of delivery. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

To Tenant:                   City of Portland  
                                  ATTN: City MANAGER  
                                  389 Congress Street  
                                  Portland, ME 04101

With a copy to:           The Office of the Corporation Counsel  
                                  at the same address

To Landlord:               Mr. Thomas Watson  
  
                                  \_\_\_\_\_  
                                  104 Grant Street  
                                  Portland, ME 04101

With a copy to:           William H. Leete, Jr., Esq.  
                                  Leete & Lemieux, P.A.  
                                  511 Congress Street, Suite 502  
                                  Portland, ME 04101

**24. Amendment.**

Both parties hereto acknowledge and agree that they have not relied upon any statements, representations, agreements or warranties except such as are expressed herein. The terms of this Lease may be modified or amended by the mutual assent of the parties hereto; provided, however, that no such modification or amendment to this Lease shall be binding until in writing and signed by both parties.

**25. Governing Law.**

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

**26. Force Majeure.**

Neither Tenant nor Landlord shall be deemed in violation of this Lease if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, acts of God, war, acts of superior governmental authority or other reason over which it has no control; provided, however, that the suspension of performance shall be no longer than that required by the force majeure and a suspension of performance shall only be permitted if the party prevented from performance has given written notice thereof to the other party.

**27. Non-Waiver.**

No waiver of any breach of any one or more of the conditions of this Lease by the Landlord or Tenant shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

**28. Limitations of Liability.** Tenant agrees to look solely to the Landlord's interest in 44 Hanover Street, for recovery of any judgment from Landlord, it being agreed that Landlord is not personally liable for any such judgment beyond its interest in 44 Hanover Street (except to the extent that insurance proceeds may be available to satisfy any such judgment).

**29. Brokers.**

Landlord and Tenant each represent and warrant to the other that it has not dealt with any agents, brokers or finders in connection with this Agreement, other than the related purchase transaction for the Premises between Landlord and Tenant, and Tenant hereby warrants and represents that its broker [CBRE | The Boulos Company] has been paid in full for its services rendered in connection with that transaction and is not entitled to any compensation with respect to this Lease. Each party agrees to hold and indemnify the other harmless from and against any losses, damages, costs or expenses (including attorneys' fees) that either party may suffer as a result of claims made or suits brought by any broker in connection with this transaction, the obligated party hereunder to be the party whose conduct gives rise to such claim or whose statement contained in this Paragraph 29 shall be untrue.

**30.** Tenant agrees that its obligations to Landlord under this Lease Agreement are contractual and are not subject to any defenses available under the Maine Tort Claims Act and Tenant further agrees not to seek to invoke any such defenses.

**31. Memorandum of Lease.**

Landlord and Tenant agree that this Lease shall not be recorded but each party hereto agrees, on request of the other, to execute a Memorandum of Lease in recordable form and mutually satisfactory to the parties.

**IN WITNESS WHEREOF**, the parties hereto have caused this Lease to be duly executed the day and year first above written.

**WITNESS:**

**LANDLORD**

\_\_\_\_\_

By: \_\_\_\_\_  
Thomas E. Watson  
Its Manager

**WITNESS**

**CITY OF PORTLAND**

\_\_\_\_\_

By: \_\_\_\_\_  
Jon P. Jennings  
Its City Manager

Approved as to Form:

\_\_\_\_\_  
Corporation Counsel's Office

**EXHIBIT A**  
**(Insert Copy of Plan of Premises)**

**EXHIBIT B**  
**Tenant's Property To Be Removed At End Of Term**

Lifts –

- 2 Post Forward model DP15SN000M, 15,000 lb, 230 volt – Pickup Bay
- 2 Post Forward model DP10A2, 10,000 lb, 230 volt – Police Bay 2
- 2 Post Forward model 110N000M, 10,000 lb, 230 volt – Police Bay 1
- 4 post Rotary model SM18N000, 18,000 lb, 230 volt – Medcu Bay
- (4) sets of 4 Stertil Koni mobile column lifts, 18,000 lb each post, 230 volt, 3 phase

Tire Machines –

- Atlas tire changer – 110 volt
- Accuturn tire balancer – 110 volt
- Brunick tire spreader – 110 volt
- Old tire changer

Crane

- Demag 10 ton.

Air Compressor – Replace with new

- Champion 3 phase, 230 volt compressor, circa 1992, with air drier 110 volt

Misc Shop Equipment 110 volt

- 2 ac machines, 110 volt
- 1 transmission service machine – 110 volt
- 110 welders for mechanics (2)
- Diesel transfer tank 110 volt
- Multiple waste oil transfer tanks 110 volt

Machine Shop

- Shop press, 110 volt
- Fume extraction – 110 – 220 volt depending on size.
- Millermatic 252 mig welder, 220 volt (work bay)
- Older mig welder, 220 volt (work bay)
- Tig welder – 220 volt (work bay)
- Plasma cutter, 220 volt (work bay)
- Jet bandsaw – 110 volt (in machine shop)
- Vertical bandsaw, 220 volt, 3 phase (machine shop)
- Ironworker, Scotchman, 110 volt (machine shop)
- Lathe, 220 volt, 3 phase (machine shop)
- Milling machine, 220 volt, 3 phase (machine shop)
- Large drill press, 220 volt, 3 phase (machine shop)
- Small drill press, 110 volt (machine shop)

#### Other/Misc Equipment

- (2) Generators (Admin and Fleet)
- Misc hose / cord / wiring reels
- Tire bay water tank
- Spring compressor – wall mounted in Fire bay
- Bulk fluid tanks
- Paint mix room
- Newer floor body shop lights
- 2 new Fleet building dumpsters
- Misc shelving