

Order 229-14/15

Passage: 8-0 (Donoghue absent) on 4/27/2015

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

Effective 5/7/2015

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER APPROVING LEASE WITH READY SEAFOOD CO.
RE: PORTLAND OCEAN TERMINAL

ORDERED, that the amended and restated lease with Ready Seafood Co. for space at Portland Ocean Terminal is hereby approved, substantially in the form attached; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the Acting City Manager to execute said document and any other related documents necessary or convenient to carry out the intent of said document.

AMENDED AND RESTATED LEASE AGREEMENT
PORTLAND OCEAN TERMINAL

This Amended And Restated Lease Agreement, made in triplicate original as of the ____ day of _____, 2015, by and between the **CITY OF PORTLAND**, a Maine municipal corporation having its principal place of business at 389 Congress Street, Portland, Maine (hereinafter referred to as “Landlord”) and **READY SEAFOOD CO.**, a Maine corporation with a mailing address of P.O. Box 17652, Portland, Maine 04112 (hereinafter referred to as “Tenant”).

WHEREAS, Landlord and Tenant are parties to a Lease Agreement dated December 22, 2009 (the “Original Lease”) for certain space at the Portland Ocean Terminal warehouse (the “POT”) on the Maine State Pier (the “Pier”), which was amended by an Amendment To Lease Agreement dated February 27, 2012 (the “First Amendment”) and a Second Amendment To Lease Agreement dated July 30, 2013 (the “Second Amendment”) (the Original Lease as amended by the First and Second Amendments is referred to herein as the “Existing Lease”); and

WHEREAS, during the term of the Lease, Tenant has complied with the terms and conditions of the Lease as amended and has made substantial improvements to the leased premises; and

WHEREAS, in consideration of said improvements, Tenant has requested a reduction and reconfiguration of the leased premises and a reduction in rent; and

WHEREAS, after due consideration, Landlord is willing to reduce and reconfigure the leased premises and to reduce the rent; and

WHEREAS, in order to memorialize the above, Landlord and Tenant desire that the Existing Lease be substantially amended and restated to modify the Existing Lease.

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 that the Existing Lease be amended and restated as of the Effective Date (as defined in Section 2).

WITNESSETH:

1. Premises; Security.

- a. Tenant, as of the date of this Amended and Restated Lease, exclusively occupies 19,000 sq. ft. of space at the POT identified as “interior space” on the attached Exhibit A (the “Premises”), which Landlord does hereby continue to

lease, demise, and let unto Tenant. Tenant shall have no authority to modify or make any changes to the Premises without the prior consent of Landlord.

b. In addition to the Premises, Tenant shall have non-exclusive use of the common areas identified on Exhibit A as “Interior Common Area” and “Exterior Common Area” (collectively, the “Common Areas”). Tenant’s right to use the Common Areas shall include: (i) shared access to and use of both the existing loading dock and the pier area located at the end of the Pier; and (ii) the right to expand the existing loading dock or construct one additional loading dock, subject to Planning Board approval and issuance of building permits, and with prior written consent of the Landlord.

c. Security Rules: Tenant shall comply with all safety and security requirements in its operations hereunder. All Tenant employees working at the POT shall obtain a Transit Worker Identification Credential (TWIC) and shall display such TWIC cards at all times when at the POT. Tenant further agrees that its officers, employees and agents shall abide by the provisions of the Landlord’s Federal Facility Security Plan, and with any other security directives or policies that may be promulgated from time to time by the Landlord, the State of Maine or by agencies of the Federal Government during the term of this Agreement, and the Landlord agrees to provide Tenant with copies of the relevant portions of Landlord’s Plan to permit Tenant to comply with their terms. If required by the US Coast Guard, Tenant shall create its own Facility Security Plan.

Tenant shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims, and demands, including reasonable counsel fees, which may arise directly out of Tenant's (including its officers, volunteers and employees) failure to comply with the covenants of this paragraph, and such failure shall be deemed a default under this Agreement.

d. Access: Tenant shall be provided with access to the Premises and the Common Areas on a twenty-four (24) hour basis through the use of a key, and Tenant shall be responsible for ensuring that its employees understand the security requirements of POT and that only Tenant’s authorized persons are provided access on Tenant’s behalf.

2. Term.

(a) This Amended and Restated Lease shall be effective as of January 1, 2015 (the “Effective Date”) and shall end on December 31, 2017, unless earlier terminated as provided herein, or extended as provided herein. The term of this Amended and Restated Lease may be renewed for one additional five (5) year term through December 31, 2022 upon mutual agreement of the Parties; and thereafter, for one additional six (6) year term through December 31, 2028, again upon mutual agreement of the Parties.

(b) Tenant's right to use parking spaces set forth in section 6 below shall have a different term. With respect to Tenant's parking rights only, the current term, which is for two (2) years, commenced December 22, 2013 and terminates December 21, 2015. The term of Tenant's parking rights shall automatically renew for successive two (2) year terms beginning December 22, 2015, unless either party hereto gives notice before December 1 of any year, of non-renewal. Notwithstanding anything to the contrary in this paragraph, Tenant's parking rights shall terminate upon termination of the term set forth in sub-paragraph (a) above.

3. Permitted Uses.

- a. Tenant Uses: Tenant may use the Premises and Common Areas for wholesale, storage, packaging, shipping and processing activities associated with Ready Seafood and Catch a Piece of Maine.
- b. Tenant may, upon receipt of written consent of Landlord, make physical improvements to Premises and Common Areas to support Tenant's use.
- c. Landlord uses: Landlord reserves the right to permit other parties to use the Common Areas and the remainder of the POT warehouse (other than the Interior Space) during the term of this Amended and Restated Lease and thereafter, so long as such use does not unreasonably interfere with the use of the Premises and Common Areas by Tenant as permitted or required by this Amended and Restated Lease.
- d. Tenant agrees to work with the Landlord to coordinate Tenant's use of the Premises and Common Areas with other tenants and users of the POT, and Pier.
- e. Nothing herein is intended to create, nor shall it be deemed to be, a joint venture between the parties.

4. Rent.

The annual rent, set forth in the schedule below, is due and payable in advance in twelve (12) equal monthly payments on the first day of each month of the term of this Amended and Restated Lease. The rent set forth in this paragraph does not include utility or parking charges, which are addressed in paragraphs 5 and 6 below.

	<u>Annual Rent</u>	<u>Monthly Payment</u>
1/1/15-12/31/15	\$125,256.00	\$10,438.00
1/1/16-12/31/16	\$127,761.12	\$10,646.76
1/1/17-12/31/17	\$130,316.34	\$10,859.70

5. Utilities.

The Landlord has provided, at Tenant's expense, separate electrical and water submeters to separate Tenant's electrical and water usage from that of Landlord and other users of the POT. Tenant shall continue to pay Landlord monthly for its water and electric usage. Landlord is not responsible for providing heat to the Premises.

6. Parking.

Landlord shall provide Tenant, during the term of this Amended and Restated Lease Agreement, the use of ten (10) parking spaces in the City-owned Thames Street parking lot at the annual rate of Ten Thousand Dollars (\$10,000.00) payable in advance on the first of each month in twelve monthly installments of \$833.33. The City reserves the right to re-locate these parking spaces to a reasonably convenient alternative location if the Thames Street parking lot is no longer available for this purpose. See Section 2 for the term of Tenant's right to use parking spaces.

7. Vessel Deliveries.

At Tenant's expense and with Landlord's approval, a device, such as a derrick shall be installed at the southern end of the Pier. Tenant shall accept deliveries of lobsters by vessel at the southern end of the Pier, utilizing the derrick or similar device.

The parties recognize that the southern end of the Pier represents the edge of the federal channel. Tenant shall insure that deliveries by vessel shall be expedient, such that delivery vessels are located at the southern end of the Pier for as short a period of time as possible during deliveries.

When cruise ships are docked at the Pier, Tenant shall not have access to the southern end of the Pier to accept deliveries. On said cruise ship days, Tenant shall accept deliveries in the embayment located to the west of the POT. Subject to review and approval by Landlord, Tenant may install a derrick or similar device and a float to assist with deliveries in the embayment.

Tenant shall not utilize the public landing located in the embayment for deliveries.

8. Tenant to Plow and Remove Snow.

Tenant, at Tenant's expense, shall be responsible for plowing and removing snow from the Exterior Common Areas to allow for year-round access to the loading dock.

9. Tenant to Remove Trash and Debris; Maintenance.

Tenant, at Tenant's expense, shall maintain the entire portion of the Premises and Common Areas 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 all trash and debris attributable to it from the Premises and Common Areas.

10. POT Building and Pier Infrastructure Responsibility for Repairs and Maintenance; Tenant's Acceptance Of Premises In "As Is" Condition.

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 Existing Lease, Tenant has, at its sole expense, maintained and made substantial repairs to the Premises, the Common Areas, Pier, and the portion of the POT building containing the Interior Space and the Interior Common Area. Tenant shall continue to maintain and repair, at its sole expense, the Premises, the Common Areas, and all interior, exterior, and structural portions of the POT building containing the Interior Space and the Interior Common Areas, including, without limitation, the plumbing, electrical, mechanical, heating, ventilation, and air conditioning systems in the building, but not including the roof or exterior walls. The Landlord shall be responsible for the maintenance and repair of said exterior walls and roof, and Tenant shall make no alteration to them without the prior written consent of the Landlord. Tenant, at Tenant's sole expense, may conduct such inspections as are necessary to evaluate the structural integrity of the POT building and Pier to support Tenant's use and shall report the results of any such inspections to Landlord. Tenant, at its sole expense, shall be responsible for maintaining, repairing, or replacing the Pier's structural elements, including, without limitation, its pile caps, stringers, and decking, in order to support so much of Tenant's use as is beyond those uses that would cause ordinary wear and tear. Landlord shall only be responsible for maintaining the structural integrity of the Pier to the extent that the structural integrity has been jeopardized due to normal wear and tear, and not from any of Tenant's operations causing greater than normal wear and tear. Landlord may enter any portion of the POT and Pier, including the Premises, to conduct inspections, maintenance, or repairs, but will only enter the Premises upon reasonable notice to Tenant at times and in a manner that will not unreasonably interfere with Tenant's on-going business activities.

11. Traffic Control.

Tenant shall be responsible for managing truck access over the Pier to the Premises and Common Areas. In doing so, Tenant will work cooperatively with other POT tenants and the Casco Bay Lines to manage traffic and pedestrian congestion. Landlord will assist Tenant by removing illegally parked vehicles on a timely basis when requested to do so by Tenant or by any signatory to a Maine State Pier Tenant Operational Agreement. Tenant agrees to participate and work cooperatively with other POT tenants and the Casco Bay Lines to create such an operational agreement.

12 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 governments, including the City Of Portland Facilities rules as they may be amended from time to time, and of all other governmental authorities, affecting the Premises or appurtenances thereto, while such laws or regulations are in force, regardless of when enacted. Tenant shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims, and demands, including reasonable counsel fees, which may arise directly out of Tenant's failure to comply with the covenants of this Section, and such failure shall be deemed a default under this Agreement. Tenant shall be responsible for obtaining all necessary permits and licenses required for its use and occupancy of the POT at its own cost and expense.

13 Indemnification.

- a. General. To the fullest extent permitted by law, Tenant shall at its own expense defend, indemnify, and hold harmless the Landlord, its officers, agents, and employees from and against any and all liability, claims, damages, penalties, losses, expenses, or judgments, just or unjust, arising from injury or death to any person, or damage to property sustained by anyone (including but not limited to Landlord employees or property), including but not limited to claims based upon violation of any environmental law or regulation, except to the extent that such claims arise from a negligent act or omission of the Landlord, its officers, agents, servants or employees.

Tenant shall, at its own cost and expense, defend any and all suits or actions, just or unjust, which may be brought against Landlord or in which Landlord may be impleaded with others upon any such above-mentioned matter, claim or claims, including claims of contractors, employees, laborers, materialmen, and suppliers. In cases in which Landlord is a party, Landlord shall have the right to participate at its own discretion and expense and no such suit or action shall be settled without prior written consent of Landlord. Such obligation of indemnity and defense shall not be construed to negate nor abridge any other right of indemnification or contribution running to Landlord which would otherwise exist.

- b. Without limiting the foregoing, to the fullest extent permitted by law, Tenant hereby agrees to assume all risk of injury, harm or damage to any person or property (including but not limited to all risk of injury, harm or damage to Tenant's officers, agents, employees, contractors, customers or invitees or to their property) arising out of, during, or in connection with the rental or use of the POT warehouse property or any portion thereof and the activities hereunder which injury, harm or damage is alleged to be related to the presence of mold at or in the Premises, and to defend, indemnify and hold the Landlord harmless from any such liability, claims, damages, losses or expenses.
- c. Covenant against liens: Tenant shall not cause or permit any lien against the Landlord's property or any improvements thereto to arise out of or accrue from any action or use thereof by Tenant and shall hold the Landlord harmless therefrom; provided, however, that Tenant may in good faith contest the validity

of any alleged lien. Upon request of the Landlord, Tenant shall post a bond warranting payment of any such lien in the event Tenant contests such lien.

- d. Survival. The Terms of this Section shall expressly survive the expiration or termination of this Agreement.

14. Insurance.

- a. Amounts. Without expense to the Landlord, and with no lapse in coverage, Tenant shall procure and maintain, at its own cost, and show evidence to the Landlord of the following insurance to protect the Landlord from claims and damages which may arise from Tenant's operations under this Agreement, whether such operations shall be performed by the Tenant or by anyone directly or indirectly employed by it, in the types and minimum amounts set forth below:

<u>Description</u>	<u>Coverage</u>	<u>Each Occurrence</u>
(i) Commercial General Liability	B.I./P.D.	\$1,000,000
(ii) Automobile Liability Insurance		\$ 400,000
(iii) Worker's Compensation		Maine statutory amount

- b. Landlord protected. The Landlord shall be named as an additional insured under items (i) and (ii) above. Tenant shall provide evidence of Workers Compensation coverage in the statutory amounts.
- c. Notice to Landlord. All policies of insurance required herein shall be in a form and issued by a company or companies approved to do insurance business in the State of Maine. Each such policy shall provide that such policy may not be changed, altered or canceled by the insurer during its term without first giving thirty (30) days' notice in writing to the Landlord. Each liability policy required to be obtained hereunder shall be on an occurrence basis. In the event that policies are not available on an occurrence basis, Tenant shall purchase a "tail" which provides coverage hereunder for a minimum of six (6) years after termination of this Agreement.

All policies required hereunder shall be primary to any insurance or self-insurance which Landlord may maintain for its own benefit. Liability insurance coverage shall also extend to damage, destruction, and injury to City-owned or City-leased property and City personnel, to the extent caused by, or resulting from negligent acts, operations, or omissions of Tenant, its officers, agents, employees, invitees, and/or contractors.

- d. Certificates. Certificates or other evidence of insurance coverages required of Tenant in this Section, in amounts no less than those stipulated herein or as may be in effect from time-to-time, shall be delivered to the Landlord prior to use of the Premises. Such certificate or certificates shall at all times while this Agreement is in effect provide Landlord with at least thirty (30) days prior written notice of any change or modification in insurance coverage or insurance carrier.

15. Assignment/Subletting.

Tenant shall not 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 discretion. No such assignment or subletting shall relieve Tenant of any obligations hereunder 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.

16. 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, the Rent hereinabove stated or a just and proportional part thereof, according to the nature and extent of injuries sustained, shall be suspended or abated, until the Premises shall have been put in proper condition for use by Tenant. Provided, however, in the event of such destruction or damage, either Landlord or Tenant shall have the right to terminate this Lease 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 date of such damage or destruction and any unearned rent shall be returned to Tenant.
- b. Tenant shall be responsible for covering the 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 POT, even if the cause of such damage is the result of the negligent act or omission of Landlord, its officers or employees. Tenant shall defend, indemnify and hold the Landlord harmless from any claim based upon any damage, loss or casualty to its property, equipment and/or supplies while at the POT. Any casualty insurance obtained by Tenant for its property, equipment or supplies at POT shall include a waiver of subrogation against the Landlord.

17. Termination for Convenience or Cause.

- a. Either party may, in its discretion and for its convenience, terminate this Agreement upon no less than Thirty (30) days prior written notice to the non-terminating party. In the event of termination during a rental period, Landlord

will reimburse to Tenant the pro-rated amount paid in rent for any time period after the effective date of the termination; provided, however, that Tenant shall remain liable to pay any Rent accrued and owed for the time period prior to the effective date of termination.

- b. In the event Landlord terminates this Agreement for its convenience prior to the expiration date, the Landlord will reimburse Tenant for documented construction expenditures made by Tenant for the purposes of build-out, improvements, additions or installations to the Premises, made in 2013-2014 as part of the then expansion, but such reimbursement shall: (1) in no event shall exceed \$375,000; and (2) such reimbursement shall be reduced over ten (10) years, on a straight-line basis, from the date of installation.
- c. Either party may terminate this Agreement upon no less than Thirty (30) calendar days' prior written notice for failure of the non-terminating party to comply with the terms and conditions of this Agreement. In such event, the non-terminating party shall have the right to cure such default within the Thirty (30) day period, or in the case of default in any payment due hereunder, within Ten (10) calendar days of receipt of notice of such default. Such notice of default shall not be required to coincide with a rental period.
- d. Upon any termination of this Lease, Tenant shall quit and surrender to Landlord the Premises in accordance with the provisions of Section 16 hereof. If this lease is terminated, Tenant shall remain liable to Landlord for all Rent accrued and unpaid up to the date of such termination. 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.

18. Return of Premises; Trade Fixtures.

Tenant at the expiration or termination of this Agreement shall peaceably yield up to Landlord the Premises in good repair in all respects, reasonable use and wear and damage by fire and all other unavoidable casualties not caused by Tenant, its officers, employees, agents, invitees or contractors excepted. Tenant shall remove all trade fixtures, equipment and other personal property installed or placed by it at its expense in, on or about the Premises; provided, however, all damage caused by or as a result of such removal shall be repaired by Tenant at its expense. Should Tenant fail to remove its fixtures, equipment or 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 dispose of such fixtures, equipment and property in any manner it sees fit, and retain all proceeds therefrom. Notwithstanding the foregoing, Tenant shall continue to be liable to Tenant for the costs of any such removal and disposal in excess of any such proceeds.

19. 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 term of this Agreement. Each party covenants that the Agreement is signed by a duly authorized individual.

20. 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.

To Tenant:

Ready Seafood
ATTN: Brendan Ready, President
P.O. Box 17652
Portland, Maine 04112

To Landlord:

Sheila Hill-Christian
Acting City Manager
389 Congress Street
Portland, Maine 04101
cc: Director of Public Buildings

The Landlord's representative for administration of this Agreement shall be the Director of Public Buildings or his/her authorized designee.

21. 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.

22. Governing Law.

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

23. 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 the party prevented from performance has given written notice thereof to the other party.

24. 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.

25. 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. 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.

26. Transition Provision.

Prior to the Effective Date, the rights and obligations of Landlord and Tenant are those described in the Existing Lease. On the Effective Date, the Existing Lease shall be deemed amended and restated so as to contain all of the terms of this Lease, and this Lease as amended and restated shall govern all future rights, obligations, duties and liabilities of the parties.

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

WITNESS:

READY SEAFOOD CO.

By: _____

Name: _____

Its: _____

WITNESS

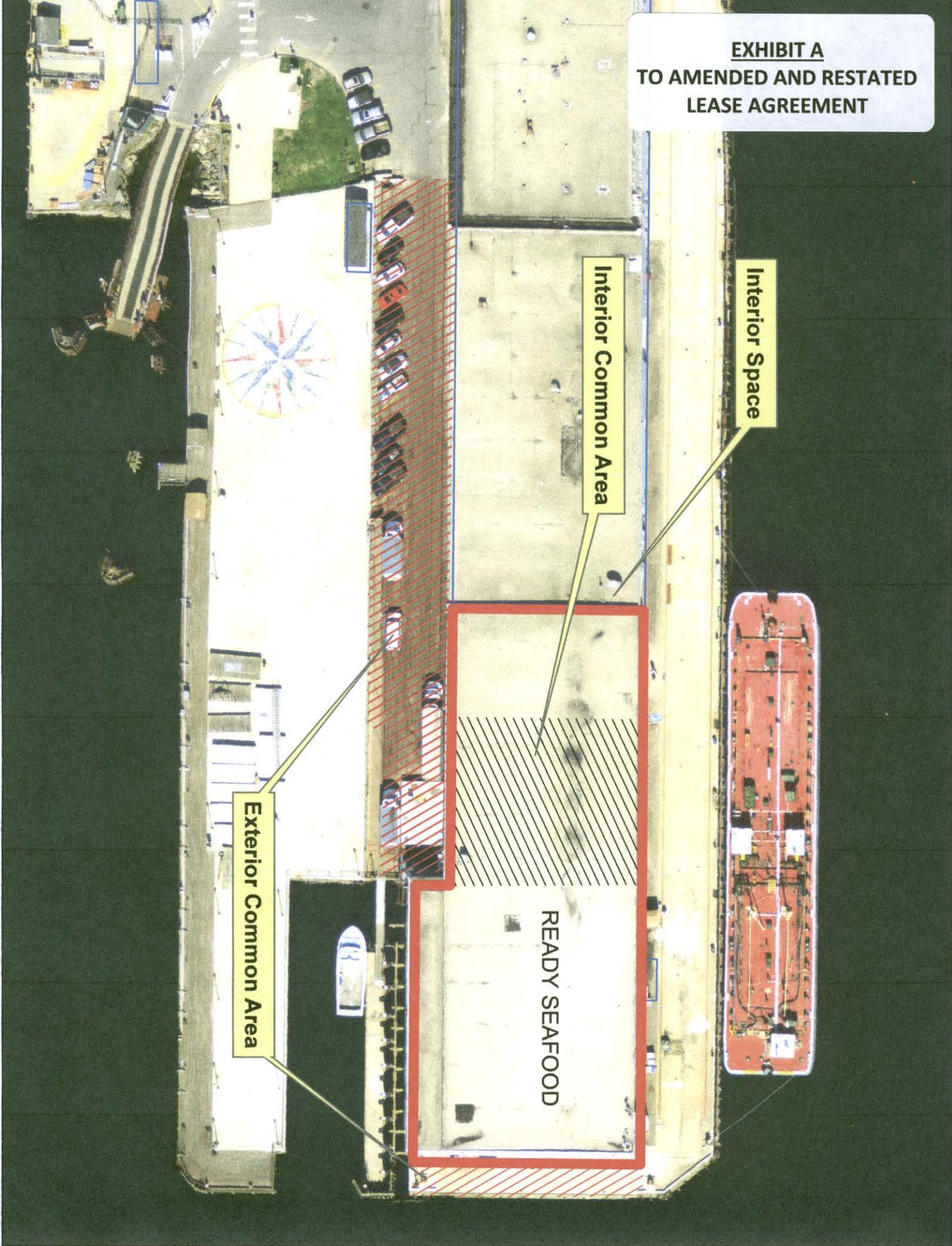
CITY OF PORTLAND

By: _____

Sheila Hill-Christian

Its Acting City Manager

**EXHIBIT A
TO AMENDED AND RESTATED
LEASE AGREEMENT**



Interior Space

Interior Common Area

READY SEAFOOD

Exterior Common Area