

Order 160-17/18
Passage: 9-0 on 2/21/2018

Effective 3/3/2018

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

**ORDER APPROVING THE LEASE OF 94 FREE STREET AND
THE SPRING STREET GARAGE REVENUE SHARING AGREEMENT WITH
PORTLAND HOCKEY, LLC**

ORDERED, that the lease for the use of space at 94 Free Street with Portland Hockey, LLC is hereby approved, substantially in the form attached hereto; and

BE IT FURTHER ORDERED, that the Spring Street Garage Revenue Sharing Agreement with Portland Hockey, LLC is hereby approved, substantially in the form attached hereto; and

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

LEASE AGREEMENT

This Lease is made as of the ___ day of _____, 2018, by and between PORTLAND HOCKEY, LLC, a limited liability company organized and existing under the laws of the State of Delaware, having a place of business at 94 Free Street, Portland Maine (hereinafter referred to as “Tenant”), and CITY OF PORTLAND, a Maine Municipality having its principal place of business at 389 Congress St., Portland, Maine (hereinafter sometimes referred to as “Landlord” and sometimes as “City”).

WHEREAS, the Tenant owns an East Coast Hockey League team, which leases use of the Cross Insurance Arena for practices, games and other team-related activities under a Hockey Lease Agreement dated June 13, 2017 (“Hockey Lease”) between Tenant and Cross Insurance Arena (A.K.A. Cumberland County Civic Center) of Portland, Maine; and

WHEREAS, Tenant is in need of office space; and

WHEREAS, Landlord owns real property located at 94 Free Street, Portland, Maine, which is a portion of the Spring Street Building/Garage described below (said portion hereinafter referred to as “Premises”), and desires to lease said Premises to Tenant upon certain terms and conditions set forth herein; and

WHEREAS, Landlord has sufficient right, title and interest in and to the real property, together with the facilities, easements, rights, licenses, and privileges hereinafter granted, and has full power and authority to enter into this Agreement in respect thereof;

NOW, THEREFORE, in consideration of the mutual covenants and considerations herein contained, the sufficiency of which is hereby acknowledged, Landlord and Tenant agree as follows:

1. Premises.

Landlord does hereby lease, demise and let unto Tenant certain portions of the City Building/Garage at 94 Free Street in Portland, Maine, namely the 2,415+/- sq. ft. office space on the first floor of said Garage generally depicted on the diagram attached hereto as Exhibit A, incorporated herein by reference, subject to the conditions and covenants hereinafter provided. Tenant agrees to accept the Demised Premises in "as is" condition without representation or warranty by Landlord as to its condition or fitness for a particular purpose.

2. Term.

a. The term of this Lease shall commence _____, (the “Commencement Date”) and thereafter shall run concurrent with the term of the Hockey Lease such that, subject to the early termination rights set forth

herein, this Agreement shall expire upon expiration or termination of the Hockey Lease.

- b. Any holding over by Tenant at the expiration or earlier termination of this Lease or any extension thereof shall not constitute a renewal of the Lease, but at Landlord's election such holding over shall result in a tenancy-at-will from month to month at the same rent in effect at the expiration of the Lease.

3. Rent.

- a. For the first three years of the lease, the Tenant shall pay to the Landlord as Annual Rent hereunder the sum of Four Thousand Eight Hundred Thirty Dollars NNN (\$4,830).
- b. If the term of the lease is still in effect, the rent for years 4-15 shall be as set forth in the schedule below:
 - i. Years 4-7: \$12,075 annually;
 - ii. Years 8-11: \$14,490 annually;
 - iii. Years 12-15: \$19,320 annually.
- c. This annual rent shall be paid in advance on or before the 1st of each month in twelve (12) monthly installments, and prorated for the fraction of any month.

4. Parking

No parking is included in this Lease. If Tenant's employees desire to park in the Spring Street Parking Garage, or any other City parking facility, they shall be responsible for paying the applicable market rate for all such parking, subject to any other agreements reached between the parties.

5. Obligations of Landlord.

The Landlord shall provide, at Landlord's expense the following services:

- a. Maintenance and repair of the roof, exterior walls and structure of the building of which the Premises are a part, reasonable wear and tear, damage by fire and other casualty only excepted. Provided, however, that if such maintenance or repair is made necessary by fault or neglect of the Tenant or the employees, contractors, agents or invitees of Tenant, such maintenance or repair shall be at the expense of the Tenant and Tenant shall pay all costs therefor.

- b. Maintenance of any Building common areas and any exterior Building grounds and all walkways, including snow and ice removal from the Municipal Parking Garage.
- c. If, during the term of the Lease, it becomes necessary to replace the HVAC system existing in the Premises at the commencement of this Lease, Tenant may do so in its discretion, and, if Tenant decides to do so, Landlord shall contribute the lesser of (1) 50% of documented expenses for a replacement HVAC system or (2) \$5,000.00.
- d. Except as specifically set forth herein, Landlord shall have no obligation to maintain, repair, or replace any aspect of the Premises.

6. Obligations of Tenant.

The Tenant, at the Tenant's sole expense shall:

- a. Determine all zoning information and secure all necessary or required permits and approvals for its proposed use of the Premises. Landlord makes no representations or warranties as to the suitability of, or the ability to obtain regulatory approval for the Premises for Tenant use.
- b. Subject to Landlord's obligations above, provide all HVAC Mechanical Equipment and Fit-up Improvements and be responsible for the cost of any modifications to existing mechanical equipment to serve the Premises along with any fit-up improvements.
- c. Submit any and all intended modifications to the Premises to Landlord for its approval prior to commencement of work. Tenant agrees that all work shall be completed in compliance with all applicable state and municipal building codes and ordinances.
- d. Maintain and keep in good repair (normal wear and tear and damage by fire and other casualty excepted) all aspects of the Premises, including windows and doors, air conditioning/heating system, plumbing, electrical and communication lines, as well any portions of such utility systems used exclusively for the Premises and located in the Building/Garage but outside the Premises. Casualty damage to windows and doors shall be the responsibility of the Tenant.
- f. Properly bag and remove all trash and garbage.
- g. Provide and be responsible for all cleaning and janitorial services within the Premises (only), including the cleaning of exterior windows for the Premises.

- h. Pay and be responsible for all costs associated with utilities pertaining to the Premises including but not limited to all expenses relating to its use of telephone/communication services, internet, electricity, gas, heat, cooling, water and sewer and any submeters required for those utilities.
- i. Replace rugs and repaint the Premises if and when it chooses in its sole discretion.
- j. Tenant shall make no improvements to Premises without prior written approval of Landlord.

7. Use of Premises.

During the term of this Lease, the Premises may be used by Tenant for office and retail space and for no other purposes. Tenant must at all times comply with all applicable federal, state, and local laws, ordinances, codes, regulations and other requirements in its use of the Premises.

8. Assignment/Subletting.

Tenant shall not be permitted to assign this lease or sublet space without the express written consent of Landlord.

9. Casualty Damage.

- a. If the Premises or any part thereof shall be destroyed or damaged by fire or other unavoidable casualty not caused by the Tenant's use of the Premises, 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 Landlord. Provided, however, in the event that restoration is not reasonably possible within ninety (90) days after the occurrence of such damage or destruction, then 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 Lease 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 Tenant's property, equipment and/or supplies while located at the Premises, 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 arising out of or relating to any damage, loss or casualty to its property, equipment and/or supplies while at the Premises. Any casualty insurance obtained by Tenant for its property, equipment or supplies at the Premises shall include a waiver of subrogation against the Landlord.

10. Return of Premises; Trade Fixtures.

Tenant, at the expiration of the Lease term or earlier termination of this Lease, shall peaceably yield up to Landlord the Premises including any renovations or leasehold improvements installed by Tenant during the term hereof, in good repair in all respects, reasonable use and wear and damage by fire and all other unavoidable casualties excepted. Tenant shall have the right to 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.

11. Signage.

Tenant, at its sole expense, shall have the right to erect a sign on the Building provided it obtains all necessary permits and approvals. Final design and location of exterior signs shall be subject to Landlord's written approval, which approval shall not be unreasonably delayed or withheld, and shall be in accordance with all local and state governmental laws, ordinances, codes and regulations.

12. Insurance.

The Tenant will maintain at all times during its use and occupancy of the Premises adequate occurrence-based insurance coverage of not less than Two Million Dollars (\$2,000,000) per occurrence for commercial general liability including personal injury and property damage; workers compensation insurance in the amount required by Maine law, including a waiver of subrogation rights; and occurrence-based fire legal liability insurance in the minimum amount of Two Million Dollars (\$2,000,000). The minimum limit may be satisfied through the use of primary and excess/umbrella policies, provided that the excess/umbrella policies will not be more restrictive than the primary policies.

The Tenant shall furnish the Landlord with certificates of insurance indicating compliance with this paragraph in a form satisfactory to Landlord. The certificates shall provide that the coverage may not be cancelled without thirty (30) days advance notice of cancellation to the Landlord, and the Landlord shall be named as an additional insured on all liability policies, but only to the extent caused by, or resulting from, the negligent acts, operations, or omissions of Tenant, its officers, agents, employees, invitees and/or contractors. 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. Tenant shall be responsible for any and all deductible and self-insured retentions under its policies. Tenant's policies shall be primary and any of Landlord's insurance policies shall be noncontributory.

13. Indemnity.

- 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 pertaining to hazardous substances, except to the extent that such claims are caused by 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.

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 Premises 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. Covenants of Landlord.

Landlord covenants that it is the owner in fee of the Premises and can and will provide quiet enjoyment of the Premises during the original and any extended terms of the Lease, and that the Lease is signed by a duly authorized individual.

15. Default.

- a) The occurrence of any of the following shall be an event of default under this Lease (each, an “Event of Default”):
 - i) Failure of Tenant to pay rent, or any other amount due hereunder, within 10 days after the due date for such payment.
 - ii) Failure of a Party to perform any obligations or comply with any terms or conditions under this Lease (other than a payment default described in subsection (i) above) and such failure continues for a period of fifteen (15) days from such Party’s receipt of written notice from the other Party; provided, however, that if such failure to perform a material obligation is not capable of being cured within fifteen (15) days from receipt of written notice, then such period shall be extended, provided that the defaulting Party commences to cure such failure within thirty (30) days and thereafter diligently continues to cure such failure to completion.
 - iii) Either Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect.
- b) Upon a party’s default and failure to cure, the other party shall have the right, at its option, and in addition to any other remedies, to terminate this Lease by giving the party in default written notice thereof and upon the giving of such notice, this Lease and the term hereof shall cease.
- c) Upon any termination of this Lease, Tenant shall quit and surrender to Landlord the Premises in accordance with the provisions of hereof. If this lease is terminated due to a Tenant uncured default, Tenant shall remain liable to Landlord for all Rent accrued and unpaid up to the date of such termination, as well as all Rent for the remainder of the term as and when it shall come due. Tenant shall pay all reasonable costs, expenses, liabilities, losses, damages, fines, penalties, claims, and

demands, including reasonable attorneys' and consultants' fees, that are incurred by Landlord in enforcing the provisions of this Lease.

16. 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:

Portland Hockey, LLC
94 Free Street
Portland, ME 04101
Attn: General Manager

To Landlord:

City Manager
City of Portland
389 Congress Street
Portland, Maine 04101
cc: Parking Manager, same address
Corporation Counsel, same address.

17. 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.

18. Inspection and Entry.

The Landlord and/or its agents, may, with reasonable notice, enter to view, show and make any repairs or inspection of the Premises. The Landlord shall have the right of immediate entry without notice in the event of any emergency or if the Tenant fails to pay rent, commits waste, or otherwise fails to comply with terms and conditions hereof.

19. Entire Agreement.

This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes any and all prior agreements and commitments with respect thereto. There are no oral or written understandings, warranties, terms or conditions, and neither Party has relied upon any representation, express or implied, not contained in this Agreement.

20. Severability.

Any term or provision of this Agreement that is or becomes invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining term and provisions of this Agreement or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

21. Successors Bound.

The terms, covenants and agreements herein contained shall be for the benefit of and be obligatory upon the heirs, successors and assigns of the respective parties hereto.

22. Termination For Convenience.

Either party may terminate this Lease on one hundred eighty (180) days' written notice to the other. Upon the effective date of such notice, the Lease shall be terminated with no further obligations hereunder.

23. Governing Law; jurisdiction.

This Lease shall be governed by and construed in accordance with the laws of the State of Maine. All disputes hereunder which are not mutually resolved shall be resolved by trial without a jury in the Courts of Cumberland County, State of Maine.

24. 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.

25. Counterparts.

This Agreement may be signed in any number of counterparts, which, together, shall represent a fully executed original as if signed by both Parties.

26. 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. Nothing in this Agreement constitutes a waiver of any defense, immunity or limitation of liability that may be available to the Landlord, or its officers, agents or employees under the Maine Tort Claims Act (Title 14 M.R.S.A. 8101 et. seq.), and nothing in this Agreement shall constitute a waiver of other privileges or immunities that may be available to the Landlord.

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

WITNESS:

PORTLAND HOCKEY, LLC

By: _____

Name: _____

Its: _____

CITY OF PORTLAND

By: _____

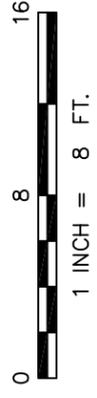
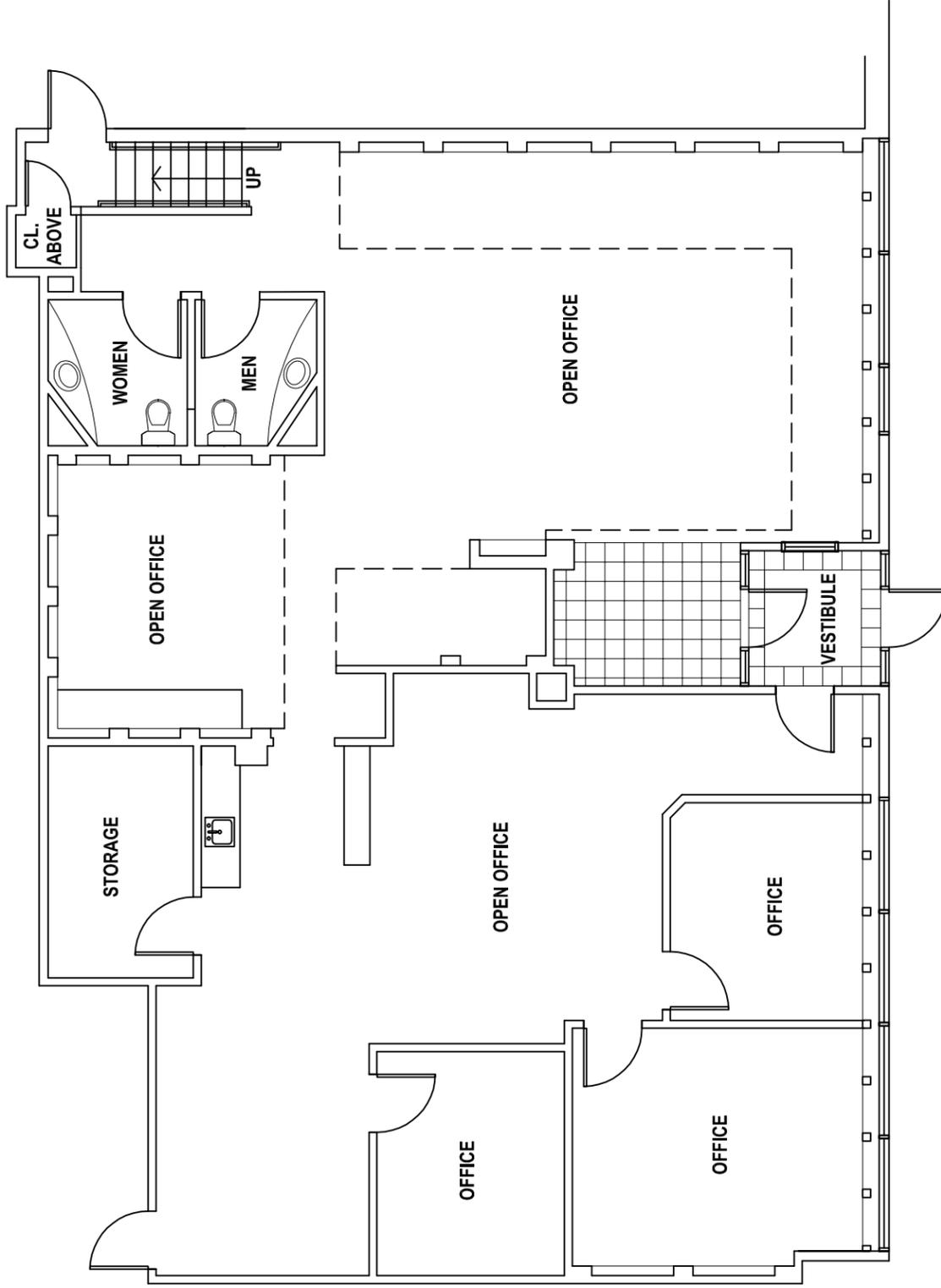
Jon P. Jennings
Its City Manager

Approved as to form:

Approved as to funds:

City Corporation Counsel's Office

City Finance Director



02.01.2018

EXISTING CONDITIONS
94 FREE STREET - PORTLAND, ME

Project Title

Scale:
1/8"=1'-0"

CSS Project No.
18001

CANAL STUDIO
 5
 207 553 8119
 canalstudio.com
 One Canal Plaza, Suite 808
 Portland, Maine 04101

**AGREEMENT BETWEEN THE
CITY OF PORTLAND
AND
PORTLAND HOCKEY, LLC
RE: PARKING AT SPRING STREET GARAGE**

This **AGREEMENT** is made this ____ day of _____, 2018, by and between the **CITY OF PORTLAND**, a body politic and corporate with an address of 389 Congress Street, Portland, Maine 03101 (hereinafter the "**CITY**"), and the **PORTLAND HOCKEY, LLC**, a limited liability company, organized and existing under the laws of the State of Delaware, having a place of business at 94 Free Street, Portland Maine (hereinafter the "**TEAM**").

WITNESSETH:

WHEREAS, the **TEAM** is an East Coast Hockey League team leasing use of the Cross Insurance Arena for practices, games and other **TEAM**-related activities under a Hockey Lease Agreement dated June 13, 2017 ("Hockey Lease") between **TEAM** and Cross Insurance Arena (A.K.A. Cumberland County Civic Center) of Portland, Maine; and

WHEREAS, the **CITY** and **TEAM** are parties to a certain Lease Agreement dated _____ (the "Lease") for certain space located at 94 Free Street, Portland, Maine, which is a portion of the City's Spring Street Garage (the "Garage"); and

WHEREAS, the City owns and operates the Garage; and

WHEREAS, the **CITY** and **TEAM** desire to enter into an agreement related to parking at the Garage and revenue from Team hockey game attendees during the term of the Lease;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

1. **Scope:** This Agreement governs the use of the Garage by the **TEAM** and its hockey game attendees during the term of the Lease.
2. **Term and Option to Extend.** The term of this Agreement shall commence on _____, 2018 (the “Commencement Date”) and thereafter shall run concurrent with the term of the Hockey Lease such that this Agreement shall expire upon expiration or termination of the Hockey Lease.
3. **Fees; Revenue Share:** The parking rate for TEAM games shall be \$8.00 per car for the 2018-19 hockey season. Thereafter, such rate may be adjusted subject to the mutual agreement of the **TEAM** and the **CITY**; provided, however, that in the event that the parties do not reach such agreement, the **CITY** may increase the parking rate in its reasonable discretion after the seventh anniversary of the Commencement Date. During the first seven years of this Agreement, all parking revenue collected at the Garage from TEAM game attendees, net of security expenses and staff expenses incurred by the **CITY** in operating the Garage during such games, shall be paid to the **TEAM** in arrears on a monthly basis, together with an accounting of such fee (the “Revenue Share”). In the event that this Agreement remains in effect for more than seven years, then, beginning on the seventh anniversary of the Commencement Date of this Agreement, the Revenue Share to be paid to the **TEAM** for each game will be the lesser of (1) the average of the Revenue Share for the sixth and seventh years of this Agreement on a per game basis (which shall be calculated by dividing the total amount of the Revenue Share for the sixth and seventh years of the Agreement by the total number of home games during the sixth and seventh years of the Agreement), or (2) all parking revenue collected at the Garage from TEAM game attendees, net of security expenses and staff expenses incurred by the **CITY** in operating the Garage during such games.
4. **Garage Use:**
 - a. People attending the **TEAM**’s regular, pre-season, and playoff games may park at the Spring Street Garage during the term of this Agreement as space allows. Nothing in this Agreement guarantees that any parking spaces will be available in the Garage at any given time for **TEAM** players, coaches, staff, or the **TEAM**’s game attendees.
 - b. **TEAM** players, coaches, and staff will receive complimentary parking (hang tags) provided by the **TEAM** and approved by the **CITY**’s Parking Division for only the following hockey-related activities that the players, coaches, and staff are required to attend:
 - Training camp
 - Team Practices
 - Games

- Physical therapy
- Other team requirements

Players shall not receive complimentary parking for friends, relatives, or any non-hockey uses.

TEAM players, coaches, and staff shall park above Level A in the Garage at all times to provide turn-over parking for garage patrons, as well as customers using the Civic Center Box Office.

Notwithstanding anything to the contrary in this Agreement, except as specifically set forth herein, nothing in this Agreement provides, or is intended to provide, free parking or any parking privileges to the TEAM's employees who work in the TEAM's office space that is the subject of the Lease.

- c. **TEAM's** vehicles may be left in the Garage overnight, but will be retrievable only during the Garage's normal operating hours.
 - d. The TEAM shall create complimentary game day parking hang tags or vouchers for use by TEAM office personnel, the spouses or domestic partners of TEAM players, and others. Such hang tags or vouchers shall be good only on game days from 4 hours before the game until the end of the game. The tags or vouchers shall be subject to approval by the Parking Division. Such tags or vouchers do not guarantee availability of parking spaces, only that if space is available, parking will be complimentary.
 - e. **TEAM** management will reinforce on a regular basis with **TEAM** players and staff that all complimentary parking under this Agreement is a privilege, not a right.
 - f. ALL other parking validated by TEAM including student interns will be billed to the TEAM. The Parking Division will provide the TEAM a validation stamp for this purpose.
5. During the term of this Agreement, the **TEAM** shall provide the equivalent of four season tickets at no charge to **CITY** for promotional use.
6. **Assignment.** This Agreement and the rights hereunder may not be assigned.
7. The CITY shall be solely responsible for operating the Garage and TEAM shall have no liability for any claims, costs, lawsuits or liabilities arising out of the City's operation of the Garage.

IN WITNESS WHEREOF, the said **CITY OF PORTLAND** has caused this Agreement to be signed and sealed by Jon P. Jennings, its City Manager, thereunto duly authorized and **PORTLAND HOCKEY, LLC** has caused this Agreement to be signed and sealed by _____, its _____, thereunto duly authorized, the day and date first above written.

WITNESS:

CITY OF PORTLAND

By: _____
Jon P. Jennings
Its City Manager

WITNESS:

PORTLAND HOCKEY, LLC

By: _____

(Print or type name)

Its: _____

Approved as to form:

Approved as to funds:

City Corporation Counsel's Office

City Finance Department