

Order 181-17/18

Passage: 8-0 (Strimling absent) on 4/9/2018

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

Effective 4/19/2018

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

**ORDER APPROVING THE THIRD AMENDMENT TO
THE AMENDED AND RESTATED LEASE
WITH READY SEAFOOD CO.
FOR SPACE IN THE PORTLAND OCEAN TERMINAL**

ORDERED, that the attached Third Amendment to the Amended and Restated Lease between Ready Seafood Co. and the City of Portland for space in the Portland Ocean Terminal 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 document and any other related documents necessary or convenient to carry out the intent of said document.

THIRD AMENDMENT TO
AMENDED AND RESTATED LEASE AGREEMENT
PORTLAND OCEAN TERMINAL

THIS THIRD AMENDMENT is made as of the ____ day of _____, 2018, by and between the CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 (“Landlord” or “City”) and READY SEAFOOD CO., a Maine corporation with a mailing address of P.O. Box 17652, Portland, Maine 04112 (the “Tenant”).

WITNESSETH:

WHEREAS, Landlord and Tenant are parties to a certain Amended and Restated Lease Agreement dated June 19, 2015, as amended by a First Amendment to Amended and Restated Lease Agreement dated December 12, 2017, and a Second Amendment to Amended and Restated Lease Agreement dated March ____, 2018 (collectively, the “Lease”), with respect to certain space at Landlord’s property known as the Portland Ocean Terminal (“POT”), where Tenant operates a wholesale seafood business; and

WHEREAS, Landlord and Tenant wish to further amend certain aspects of the Lease, as more fully described herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Section 1(a) of the Lease is hereby deleted in its entirety and replaced with the following:
 - (i) For the period commencing January 1, 2018 through December 31, 2018, Tenant will exclusively occupy 27,500 sq. ft. of space at the POT identified as “Interior Space” on the diagram labeled Exhibit A attached hereto and incorporated herein by reference. During 2018, references to the “Premises” in the Lease shall mean the Interior Space depicted on Exhibit A.
 - (ii) For the period commencing January 1, 2019 through December 31, 2022, Tenant will exclusively occupy the 24,000 sq. ft. of space at the POT identified as “Interior Space” on the diagram labeled Exhibit B attached hereto and incorporated herein by reference. From January 1, 2019 through December 31, 2022, or the earlier termination of the Lease, references in the Lease to the “Premises” shall mean the Interior Space depicted on Exhibit B.
 - (iii) Tenant shall have no authority to modify or make any changes to the Premises without the prior written consent of Landlord.

2. Section 1(b) is hereby deleted in its entirety and replaced with the following:

In addition to its use of the Premises, Tenant shall have non-exclusive use of the “Exterior Common Areas” identified on Exhibit A and B (the “Common Areas”) for purposes of pedestrian and vehicle access to, in common with others, the existing dock and the pier area located at the end of the POT. Vehicular access to the Common Areas shall be limited to short-term use for purposes of loading and unloading vehicles for Tenant’s business and for parking as described in paragraph 7 below.

3. The reference to December 31, 2017 in Section 2(a) of the Lease is hereby deleted and replaced with December 31, 2022, meaning and intending to change the termination date of the term of the Lease to December 31, 2022.

4. The second sentence of section 2(a) of the Lease is deleted in its entirety and replaced with the following:

“The term of this Lease may be renewed for one six (6) year term through December 31, 2028 upon mutual agreement of the Parties.

5. Section 2(b) of the Lease is deleted in its entirety.

6. Section 4 of the Lease is hereby deleted in its entirety and replaced with the following:

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

<u>Lease Year</u>	<u>Annual Rent</u>	<u>Monthly Payment</u>
1/1/2018-12/31/2018	\$188,650.00	\$15,720.83
1/1/2019-12/31/2019	\$167,040.00	\$13,920.00
1/1/2020-12/31/2020	\$169,440.00	\$14,120.00
1/1/2021-12/31/2021	\$172,080.00	\$14,340.00
1/1/2022-12/31/2022	\$174,480.00	\$14,540.00

Notwithstanding anything to the contrary in the Lease, Tenant shall be entitled to a cumulative rent credit of up to \$150,000 during 2018 and 2019 (the “Rent Credit”) for documented expenses for certain future repairs to the POT (the “Pier Repair Work”) which work will be subject to the prior written approval of the Landlord’s Director of Public Buildings (the “Director”). Tenant, with Landlord’s cooperation, will engage the services of a contractor or contractors to perform the Pier Repair Work in one or more projects. Tenant shall not commence any Pier Repair Work project without the Director’s prior written approval. At any time prior to, during, or after completion of a Pier Repair Work project, Tenant, at Landlord’s request, will provide Landlord with documentation related to the Pier Repair Work in form and substance satisfactory to the Director, including, without limitation, any related estimates, proposals, contracts, plans, specifications, diagrams, invoices, proof of payment of invoices, and mechanic’s lien

waivers from Tenant's contractors and subcontractors ("Pier Repair Work Documentation"). Upon review and approval of applicable Pier Repair Work Documentation, the City will apply the Rent Credit to rent due in the months following completion of a Pier Repair Work project until the Rent Credit has been fully applied. Nothing in this paragraph is intended to be, or shall be deemed a waiver of, the Landlord's right to enforce the Tenant's obligations to maintain, repair, and replace elements of the Premises, the Common Areas, and the POT as set forth in section 10 of the Lease.

Tenant understands that in any contract for any work on the POT, Tenant will include the following provisions:

Prior to the execution of this Agreement, the Contractor will procure and maintain occurrence-based Automobile Liability Insurance, Commercial General Liability Insurance (including completed operations coverage for at least 24 months after completion of the work), for bodily injury, death and property damage, and Pollution Liability Insurance coverage in amounts of not less than Two Million Dollars (\$2,000,000.00) per occurrence, naming the City as an additional insured thereon, and also Workers' Compensation Insurance coverage to the extent required by law. With respect to the Automobile and Commercial General Insurance, the Contractor shall name the City as an additional insured 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 City 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 City. Prior to execution of this Agreement, the Contractor shall furnish the City and thereafter maintain certificates evidencing all such coverages, which certificates shall guarantee thirty (30) days' notice to the City of termination of insurance from the insurance provider or agent. Contractor shall also provide a copy of any endorsement naming the City as additional insured. A certificate that merely has a box checked under "Addl Insr," or the like, or that merely states the City of Portland is named as an Additional Insured, will not be acceptable. The Workers' Compensation insurance shall include an endorsement waiving all rights of subrogation against the City of Portland, its officers or employees. Contractor shall be responsible for any and all deductibles and/or self-insured retentions. City's acceptance or lack of acceptance of Contractor's Certificate of Insurance or other evidence of insurance shall not be construed as a waiver of the Contractor's obligation to obtain and maintain such insurance as required by this agreement.

To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its officers and employees, from and against all claims, damages, losses, and expenses, just or unjust, including, but not limited to, the costs of defense and attorney's fees arising out of or resulting from the performance of this Agreement, provided that any such claims, damage, loss or

expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use therefrom, and (2) is caused in whole or in part by any act or omission of the Contractor, anyone directly or indirectly employed by it, or anyone for whose act it may be liable. Such obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the City which otherwise exists. The extent of the indemnification provision shall not be limited by the provision for insurance in this Agreement. Contractor's obligations under this paragraph shall survive termination of this Agreement.

7. Section 6 of the Lease is deleted in its entirety and replaced with the following:

Landlord shall provide Tenant, during the term of this Amended and Restated Lease Agreement, the use of five (5) angled passenger vehicle parking spaces and four (4) box truck parking spaces located on the west side of the wooden portion of the Common Areas. The five passenger vehicle parking spaces are for short-term/turnover use by Tenant, its customers, and vendors during the day and evening, and for Tenant employee parking at night. Further, Tenant agrees to cooperate with Landlord at any time to relocate any passenger vehicles and trucks to allow the Common Areas to service Compass Park activities and other City needs. The City reserves the right to re-locate all parking spaces to a reasonably convenient alternative location selected by the City at any time during the term of this Lease.

8. The following is added to the Lease as section 14(a)(iv): "Pollution Liability Insurance - \$2,000,000 per occurrence."
9. The following is added to the end of Section 14(c) of the Lease:

Contractor shall be responsible for any and all deductibles and/or self-insured retentions. City's acceptance or lack of acceptance of Contractor's Certificate of Insurance or other evidence of insurance shall not be construed as a waiver of the Contractor's obligation to obtain and maintain such insurance as required by this agreement.

10. Section 17(b) of the Lease is deleted in its entirety and replaced with the following:

In the event Landlord terminates this Agreement for its convenience prior to the Rent Credit being fully applied, the Landlord will reimburse Tenant for the outstanding balance of the Rent Credit provided that Tenant has provided documentation satisfactory to the Landlord for the Pier Repair Work.

11. Any and all terms of the Lease not herein amended shall remain in full force and effect for the duration of the Lease as amended hereby and are hereby ratified. In the event of any conflict between the terms of this Amendment and the terms of the Lease and any exhibits thereto, the terms of this Amendment shall govern and control so long as this Amendment is in effect.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Agreement to be executed by their duly authorized representatives or officers, as of the date first written above.

WITNESS:

CITY OF PORTLAND

By: _____
Jon P. Jennings
Its City Manager

WITNESS:

READY SEAFOOD CO.

By: _____
Printed Name: _____
Its: _____

Approved as to Form:
Corporation Counsel's Office

**Exhibit A
Amended and Restated
Lease Agreement 2018
Ready Seafood**

Parking

Exterior Common Areas

**Ready Seafood
+/-27,500 sq ft
Interior Space**

Parking

Exterior Common Areas

Ready Seafood
+/-24,000 sq ft
Interior Space