

Order 262-17/18

Passage: 8-0 (Mavodones absent) on 6/18/2018

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 6/28/2018

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

**ORDER APPROVING GROUND LEASE WITH
DULUTH HOLDINGS, INC.**

ORDERED, that the ground lease, in substantially in the form attached hereto, with Duluth Holdings, Inc. at the Portland International Jetport for the construction of and use as a parking lot is hereby approved; 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 this order.

CITY OF PORTLAND
PORTLAND INTERNATIONAL JETPORT
GROUND LEASE AGREEMENT

THIS LEASE AGREEMENT made and entered into this ____ day of _____, 2018 (the "Commencement Date"), by and between the **CITY OF PORTLAND**, a body politic and corporate, located in the County of Cumberland, State of Maine, (hereinafter "**CITY**"), and **DULUTH HOLDINGS INC.**, a Wisconsin corporation (hereinafter "**LESSEE**").

WITNESSETH:

WHEREAS, CITY owns and operates the Portland International Jetport (hereafter "Airport"); and

WHEREAS, CITY has the right to lease premises and facilities at the **Airport** and to grant rights, licenses and privileges on and in connection therewith, and has full power and authority to enter into this Agreement; and

WHEREAS, LESSEE, or its affiliate, is the tenant of land adjacent to the Airport land and operates a retail store on said land ("Lessee's Land"); and

WHEREAS, LESSEE desires to lease land from **CITY** to build and utilize solely for a parking lot; and

NOW, THEREFORE, in consideration of the promises and the mutual covenants, agreements and conditions contained herein, it is agreed and understood by and between the **CITY** and **LESSEE**, as follows:

CITY, for and in consideration of the rent hereinafter to be paid by **LESSEE** and the covenants and agreements hereinafter contained, to be kept and performed by **LESSEE**, does hereby demise, lease and let unto **LESSEE**, for its exclusive use, a parcel of land at the Portland International Jetport, as follows:

Approximately 0.30 acres of leased land legally described in Exhibit A attached hereto and depicted in Exhibit A-1 attached hereto (hereinafter the "Leased Premises", or "Premises"), together with the right of ingress to and egress from Lessee's Land to the Leased Premises for **LESSEE**, subject to reasonable rules and regulations of the **CITY** and, except as herein otherwise provided, to have and to hold by said **LESSEE** on the terms and conditions set forth below. Said land is Airport property owned by the City of Portland but located within the municipal boundaries of the City of South Portland. Notwithstanding the foregoing, the Premises are currently subject to U.S. Federal Aviation Administration height limitations. The Premises are further taken subject to any easements of record.

LESSEE has had the full opportunity to inspect the Premises and takes them in “as is” condition. Other than **CITY** ownership thereof, **CITY** makes no representation or warranty as to the physical condition of the Premises nor as to any other matter concerning the Premises, including but not limited to the presence of any environmental hazards thereon. All **LESSEE** improvements, additions and modifications at or to the Premises will be at **LESSEE**’s sole cost and expense and **CITY** shall have no responsibility therefor. **LESSEE** shall be responsible for obtaining all necessary environmental, building and any other permits required for such additions or improvements at its expense.

SUMMARY OF BASIC LEASE PROVISIONS

1.1 BASIC DATA

Commencement Date of Lease: _____, 2018

Landlord: City of Portland
Present Mailing Address: City Manager
389 Congress Street
Portland, ME 04101

With a copy to:

Airport Director
Portland International Jetport
1001 Westbrook Street
Portland, Me. 04102

LESSEE: Duluth Holdings, Inc.
Present Address: 170 Countryside Drive
Belleville, WI 53508

Lease Term: Fifteen (15) years

Options: **LESSEE** shall have the option to extend this Lease for four (4) additional terms of five (5) years each if not in default beyond any applicable notice and cure periods at either the time the option is exercised or commencement of the extended term.

Base Rent: Upon execution of this Agreement, **LESSEE** shall pay rent according to the schedule set forth at Section 401. The rent will be adjusted as provided in Section 401.1.

Rent Commencement Date: The date upon which Lessee opens for business with the public, or 9 months after the Commencement Date, whichever is earlier.

Permitted Use: Construction and operation of a parking lot for use in connection with **LESSEE**'s adjacent retail store.

1.2 EXHIBITS

Exhibit A: Description of the Premises.

ARTICLE I DEFINITIONS

Section 101. Meanings and Construction. The terms defined in this Section for all purposes of this Agreement and of any instrument supplemental hereto, or relating hereto, shall have the following meanings, except where the context or clear implication requires otherwise:

(1) "Airport Director" means the Director of the Portland International Jetport located on Westbrook Street, Portland, Maine.

(2) "**CITY**" means the City of Portland, a body politic and corporate, located in the County of Cumberland, State of Maine.

(3) "Council" means the legislative governing body of the **CITY**, also known as the City Council;

(4) "Department" means the **CITY**'s Department of Aviation and Transportation Facilities or any successor agency thereto charged with the responsibility of the management, operation, maintenance and control of the Airport.

(5) "FAA" means the United States Federal Aviation Administration or any successor agency thereto.

(6) "Facility" means the parking lot, to be constructed by **LESSEE** on the Premises;

(7) "Fiscal Year" means the **CITY**'s fiscal year as established from time to time by the Charter and ordinances of the **CITY**, currently July 1 through June 30 of each year.

(8) "Leased Premises" means the land legally described in Exhibit A.

ARTICLE II TERM

Section 201. Condition precedent. This Lease is conditional upon approval of its terms by the FAA and if such approval is not forthcoming within ninety (90) days of the date of execution of this Agreement, either party may, within its discretion, terminate this Lease by providing written notice to the other party no later than the ninety-fifth (95th) day after execution of this Agreement, with no further liability hereunder and without damages to either party. Notwithstanding the foregoing, upon request of either party, the parties agree to engage in good faith negotiation regarding any term or terms which do not meet FAA approval as provided in Section 904.1 below, and this Lease shall be extended during any period such negotiations are diligently proceeding.

Section 202. Initial Lease Term. Commencing upon the Commencement Date and ending on the date that is fifteen (15) years after the Rent Commencement Date as defined below.

Section 203. Option to extend; Extension Term. Provided that the **LESSEE** is not in material default under this Agreement, **LESSEE** shall have the option to extend this Lease Agreement for four (4) additional terms of five (5) years each by notifying the **CITY** in writing at any time on or after the execution of this Lease Agreement by the parties but in the case of the first extension, not later than one hundred eighty (180) days prior to expiration of the initial term and in the case of the subsequent extensions, not later than one hundred eighty (180) days prior to the expiration of such subsequent extensions.

Section 204. Surrender of Possession. No notice to quit possession at the expiration date of the term of this Agreement, or any extension thereof, shall be given by the **CITY**, and **LESSEE** covenants and agrees that upon expiration of the term of this Agreement or any extension hereunder, or upon earlier termination as hereinafter provided, it will peaceably surrender possession of the Leased Premises, and **CITY** shall have the right to take possession of said Leased Premises, subject to Section 205 below.

Section 205. Removal of Improvements. Upon expiration or earlier termination of the Lease, **LESSEE** shall, within sixty (60) days of expiration or termination, (i) remove the asphalt paving along with all curbing, (ii) abandon the catch basin in place, and Tenant will provide a solid cover, (iii) abandon the retaining walls in place, and (iv) provide loam and re-seed the area with native grasses such that the area can revert to its native condition. Should **LESSEE** fail to perform such obligations within the sixty (60) days, title to the improvements shall be vested in its entirety in the **CITY** with no further action required by **LESSEE** or **CITY**. In such case, **CITY** shall have the right to remove the asphalt paving and curbing, operate, sell, or lease said improvements and shall be entitled to retain all proceeds therefrom. In the event of removal or demolition of the asphalt paving and curbing by **CITY**, **LESSEE** shall be liable to **CITY** for any amounts expended by **CITY** in such removal or demolition. **LESSEE** shall pay all such amounts

within 10 days of demand for such amounts by CITY. Notwithstanding anything to the contrary in this paragraph, if, upon expiration or earlier termination of this Lease, the CITY and another tenant have agreed to enter into a lease for the Premises without removing the pavement and other improvements installed by LESSEE, LESSEE shall not be required to perform the obligations listed in subsections (i) and (iv) above, and title to the pavement and other improvements shall be vested in its entirety in the CITY with no further action required by LESSEE or CITY.

ARTICLE III IMPROVEMENTS ON LEASED PREMISES; USE OF PREMISES

Section 301. Construction. **LESSEE** will, at its own cost and expense, design, construct, install and equip the parking lot on the land leased hereunder, or will cause the same to be designed, constructed, installed and equipped, in accordance with Plans and Specifications to be submitted to the **CITY** and subject to the approval of the **CITY's** Airport Director for compliance with airport operating requirements, which approval shall not be unreasonably withheld or delayed, said design, construction, installation and equipping of said parking lot to be hereinafter designated the "Project." **LESSEE** must file a form 7460-1 "Notice of Construction and Alteration" with the FAA and receive FAA approval prior to submission to the **CITY** and the South Portland Planning Board.

301.1. All necessary approvals from governmental agencies, including but not limited to the FAA and the City of South Portland, shall be obtained by **LESSEE** prior to constructing and equipping the Project, and such improvements shall be constructed, equipped or installed in compliance with all federal, state and local laws, ordinances and regulations applicable thereto. Upon completion of the Project, all required occupancy permits and approvals from governmental bodies authorizing occupancy, possession and use of the Leased Premises for the purposes contemplated by **LESSEE** shall also be obtained by **LESSEE**.

301.2. The **CITY** and its authorized representatives shall have full rights of inspection during the construction, equipping and installation of the Project. **LESSEE** acknowledges and agrees that such inspection shall not be deemed to impose any duty or liability upon the CITY or require the CITY to supervise any aspect of or approve the quality of the Project.

301.3. In the event **LESSEE** does not develop the Project on the Premises within Ten (10) years after the Commencement Date, then **CITY** reserves the right to cancel this Lease Agreement with no further obligation hereunder, and **LESSEE** shall remove any of its property or that of its agents or contractors from the Premises and restore the Premises to the condition they were in as of the Commencement Date.

Section 302. **LESSEE's Use of Premises.** The Leased Premises shall be used and are leased hereunder to **LESSEE** solely for the construction and operation of the Project.

**ARTICLE IV
RENT**

Section 401. Rent. Beginning on the earlier of (a) the first day that the Project is completed and Tenant is open for business with the public at the retail store to be constructed on Lessee's Land or (b) the date that is twelve months after the Commencement Date (such earlier date, the "Rent Commencement Date"), **LESSEE** shall pay the **CITY** rent equal to \$6,700 per year for the Premises, to be paid in equal monthly installments of \$558.33.

401.1 Effective five (5) years after the Rent Commencement Date, and every five (5) years thereafter during the Initial Term and the Extension Terms, rent shall increase by ten percent (10%).

Section 402. Timely Payment and Reporting; Late Penalties. **LESSEE** shall make prompt and timely payment of all rentals, fees, and other charges due hereunder as the same may from time to time come due. Such rentals, fees, and charges shall be due and payable on the first day of each month of the Lease Term. In the event that any such payment is not timely made, a penalty of one and one-half percent (1 1/2%) per month (18% per annum) shall be assessed and paid on all such amounts outstanding.

**ARTICLE V
CONSTRUCTION, USE AND MAINTENANCE**

Section 501. Construction. **LESSEE** shall construct the Project in accordance with all land use codes and regulations of the City of South Portland.

Section 502. Maintenance. **LESSEE** shall take good care of the Leased Premises; shall maintain them in good condition at all times; shall make all repairs and replacements, ordinary and extraordinary, structural or otherwise and shall plow, mow and maintain landscaping on the Premises.

Section 503. Signs and Lights. **LESSEE** agrees that no signs or advertising displays or lighting that could affect airplane operations shall either be painted on or erected in any manner upon the Leased Premises without the prior written approval of the Airport Director, and if applicable, the FAA. In the event of any conflict, the FAA's decision shall be final. Any such signs and lighting shall conform to reasonable standards established by the Airport Director with respect to wording, type, size, design, and location, and conform to Land Use Codes and other applicable regulations of the City of South Portland.

Section 504. Compliance with Law. **LESSEE** covenants and agrees to observe and obey, and to require its officers, employees agents, subcontractors and sublessees, to observe and obey, all applicable Federal, State and local laws and regulations in effect throughout the term of this Lease, including but not limited to Part 77 of the Federal Aviation Regulations and all Portland and South Portland municipal laws and regulations of general applicability; provided,

however, that such municipal laws and ordinances and Airport rules and regulations are not in conflict with the applicable rules of any Federal agency having jurisdiction.

504 .1. Compliance with Environmental Laws.

(a) **LESSEE** will comply in all respects with all applicable federal, state and local laws and regulation, including, without limitation, those relating to "hazardous materials," as defined herein.

(b) The term "hazardous materials" shall mean any substance, material, or waste which is or becomes regulated by any governmental authority, including, but not limited to (i) petroleum; ii) friable or non friable asbestos; (iii) polychlorinated biphenyls; (iv) those substances, materials or wastes designated as a "hazardous substance", pursuant to Section 311 of the Clean Water Act or listed pursuant to Section 307 of the Clean Water Act or any amendments or replacements to these statutes; (v) those substances, materials or wastes defined as a "hazardous waste", pursuant to Section 1004 of the Resource Conservation and Recovery Act or any amendments or replacements to that statute; (vi) those substances, materials or wastes defined as a "hazardous substance", pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, or any amendments or replacements to that statute or any other similar statute, rule, regulation or ordinance now or hereafter in effect; or (vii) any "hazardous waste," "hazardous substance" or "chemical substance or mixture" or similarly regulated substances or material as such phrases are defined in or regulated pursuant to any applicable state or local law, regulation or ordinance governing the generation, storage, discharge, transportation or disposal of the same.

(c) **LESSEE**, at its own cost and expense, will promptly take all actions which may be necessary to abate, remove, clean up, and otherwise cure any violation of environmental laws caused by any hazardous materials used, generated, released, discharged, stored, or disposed of in connection with its use of the Leased Premises.

(d) **LESSEE** will defend, indemnify and hold the **CITY** harmless from any cost, expense, claims or liability resulting from violations of any environmental laws hereunder by **LESSEE**, its officers, agents, employees, consultants, contractors, patrons or anyone acting in connection with its use of the Leased Premises.

Section 505. Covenant Against Liens. Beginning on the Commencement Date and continuing throughout the term of this Lease, **LESSEE** shall not cause nor permit any lien against the Leased Premises, any portion thereof or any remainder interest therein, or any improvements thereto, to arise out of or accrue from any action or use thereof by **LESSEE**. Without limiting the foregoing, **LESSEE** shall not permit the City of South Portland to place any lien on the Premises for unpaid personal or real property taxes, and shall promptly pay such taxes when due. **LESSEE** may in good faith, however, contest the validity of any alleged lien. **LESSEE** shall defend and indemnify and hold the **CITY** harmless from any cost, expense, attorney's fees or other liability arising out of or resulting from any such lien or liens, and shall

promptly discharge such lien or stay or prevent its foreclosure by bond or other appropriate legal procedure which is acceptable to the **CITY**.

Section 506. Utility Services. **LESSEE** agrees that all utility services required by it during the term of this Agreement will be obtained directly from the utility company by **LESSEE**, at its cost and expense. **CITY** will grant licenses or easements as necessary for the installation of such utilities.

**ARTICLE VI
INSURANCE AND DAMAGE TO LEASED PROPERTIES**

Section 601. Insurance During Construction. Beginning on the Commencement Date and continuing through completion of construction and receipt of a certificate of occupancy for the building **LESSEE** plans to construct on Lessee’s Land, **LESSEE** shall procure and maintain, or cause to be procured and maintained:

(a) Commercial General Liability, including Contractual Liability, and Property Damage Insurance during construction. The **LESSEE** shall procure and maintain during the Project, at its own cost, and show evidence to the **CITY** of Commercial General Liability and Property Damage Insurance, including special broad form property damage coverage, to protect the **CITY** and **LESSEE** from claims and damages which may arise from operations under this Lease, whether such operations shall be performed by the **LESSEE** 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) LESSEE'S Liability	B.I./Death P.D.	\$1,000,000.00 \$1,000,000.00
(ii) LESSEE'S Protective	B.I./Death P.D.	\$1,000,000.00 \$1,000,000.00
(iii) Vehicle Liability, including owned, hired or non-owned	B.I./Death P.D.	\$1,000,000.00 \$500,000.00
(iv) Worker's Compensation, Employer's Liability	B.I./Death	\$500,000.00/statutory rate

The **CITY** shall be named as an additional insured in all such policies under items (i) - (iii) above; and for items (i) and (ii) above, such policies shall bear a job-aggregate endorsement in the amount of Five Million Dollars (\$5,000,000.00). Item (iv) shall

include an endorsement waiving all rights of subrogation against **CITY** as provided below.

Section 602. Insurance Upon the Date of receipt of a certificate of occupancy for the Project. The **LESSEE** shall procure and maintain, at its own cost, with no lapse in coverage, for the term of this Agreement, after the issuance of a certificate of occupancy for its Project, Commercial General Liability Insurance, including Contractual Liability, under policies no more restrictive than the standard form of Comprehensive Liability policy in the following amounts:

<u>Description</u>	<u>Limit of Liability</u>
Commercial General liability, and Vehicle Liability, including owned, hired or non-owned.	
1) Bodily Injury	\$1,000,000 each person \$5,000,000 each occurrence
2) Property Damage	\$1,000,000 each occurrence
3) Worker's Compensation, Employer's Liability Insurance	\$500,000/statutory rate

The **CITY** shall be named as an additional insured in all such policies under items (i) - (iii) above; item (iv) shall include an endorsement waiving all rights of subrogation against **CITY** as provided below.

602.1. **LESSEE** and the **CITY** understand and agree that the minimum limits of the insurance herein required may become inadequate during the term of this Agreement. **LESSEE** agrees that it will increase such minimum limits by reasonable amounts upon receipt of notice in writing from the Airport Director. Such notices to change shall, in general, be issued no more often than every second (2) year of the lease term or extension thereof. The Airport Director may take note of damage awards being granted by the Courts, however, and direct a reasonable increase in the minimum limits of the insurance requirements at any time during the term hereof. In no case shall such limits be less than the amount set forth under the Maine Tort Claims Act, as may be amended.

Section 603. Limitation as to Policies. All policies of insurance required herein shall be in 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 materially changed, altered or canceled by the insurer during its term without first giving thirty (30) days' notice in writing to the Director.

Each liability policy shall name the **CITY** as an additional insured thereunder, for coverage only in those areas where governmental immunity has been expressly waived by 14 M.R.S.A. § 8104-A, as limited by § 8104-B, and § 8111. All insurance hereunder shall be primary to any

insurance or self-insurance which **CITY** may maintain. LESSEE shall be responsible for any and all deductibles and/or self-insured retentions. Each liability policy shall be on an occurrence basis. If insurance is provided on a claims made basis, **LESSEE** shall purchase an appropriate “tail” upon expiration or termination of this Agreement to cover the obligation of indemnification hereunder for six (6) years. The minimum limit of each liability policy 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.

Section 604. Evidence of Insurance. Certificates or other evidence of insurance coverages required of **LESSEE** in this Article, in amounts no less than those stipulated herein or as may be in effect from time-to-time, and applicable additional insured endorsements, shall be delivered to the Director. At least thirty (30) days prior to the expiration of any then-current policy of insurance, **LESSEE** shall deliver to the Director evidence showing that such insurance coverage has been renewed. Within fifteen (15) days after the date of written notice from the insurer of cancellation or reduction in coverage, **LESSEE** shall deliver to the Director evidence that the required insurance has been reinstated or provided through another insurance company or companies. **CITY**'s acceptance or lack of acceptance of **LESSEE**'s Certificate of Insurance or other evidence of insurance shall not be construed as a waiver of the **LESSEE**'s obligation to obtain and maintain such insurance as required by this agreement.

Section 605. Failure to Maintain Insurance Coverage. If at any time **LESSEE** should fail either to obtain or to maintain in force the insurance required herein, the **CITY** may notify **LESSEE** of its intention to purchase such insurance for **LESSEE**'S account; and, if **LESSEE** has not delivered evidence of insurance to the Director prior to the date on which the current insurance expires, the **CITY** may effect such insurance by taking out policies in companies satisfactory to the **CITY**. Such insurance shall be in amounts no greater than those stipulated herein or as may be in effect from time-to-time. The amount of the premiums for such insurance obtained by the **CITY** shall be payable by **LESSEE** within thirty (30) days of receipt of the **CITY**'s invoice therefor; and, if not paid within that time, interest at the rate of eighteen percent (18%) per annum on the unpaid amount shall be charged to and paid by **LESSEE**. Notwithstanding the foregoing, **CITY** reserves the right to declare **LESSEE** in default for failure to maintain the required insurance coverage.

Section 606. Indemnification.

606.1. Indemnification. To the fullest extent permitted by law, **LESSEE** shall, at its own expense, defend, indemnify, and hold harmless **CITY**, its City Council, its officers, agents, and employees from and against any and all liability, claims, damages, penalties, losses, expenses, or judgments, just and unjust, arising from injury or death to any person, or property damage, sustained by anyone in and about the Leased Premises or as a result of activities or services at the Leased Premises, including, without limitation, construction and other activities on the Leased Premises, provided that such liability, claims, damages, penalties, losses, expenses, or judgments resulted in whole or in part

from any negligent act or omission or willful misconduct of **LESSEE**, its officers, agents, employees, consultants, contractors, invitees, or anyone acting in connection with **LESSEE**'s use of the Leased Premises or resulted from **LESSEE**'S performance of this Agreement. **LESSEE** shall, at its own cost and expense, defend any and all suits or actions, just or unjust, which may be brought against **CITY** or in which **CITY** may be impleaded with others upon any such above-mentioned matter, claim or claims, including, but not limited to, claims of contractors, employees, laborers, materialmen, and suppliers. In cases in which the **CITY** is a party, the **CITY** shall have the right to participate at its own discretion and its own expense and no such suit or action shall be settled without the prior written consent of the **CITY**. **LESSEE**'s obligation of defense and indemnification shall not be construed to negate nor abridge any other right of indemnification or contribution running to the **CITY** which would otherwise exist. The extent of this indemnity provision shall not be limited by any requirement of insurance contained herein.

606.2 Cooperation. To the extent that either party receives notice with respect to a claim or liability subject to indemnity under this section 606 (a "claim") or has the right to participate in an administrative or judicial proceeding relating to a claim, such party shall: (1) give notice of such claim or liability to the other party within a reasonable period of time following the receipt of said notice; (2) provide the other party with information relevant and material to such claim in any proceedings relating thereto; (3) consider in good faith the views of the party and its counsel in connection with the other party's exercise of rights with respect to such claim and the proceedings related thereto; (4) cooperate in all respects with the other party in good faith in order to contest such claim effectively; and (5) to the extent reasonable and practicable, upon written request from the other, implead any party which the other party believes may be ultimately responsible with respect to such claim and assert any cross-claims the other party deems appropriate where it is not possible to assert such rights itself.

Section 607. Survival. The provisions of this Article VI shall survive termination or expiration of this Agreement.

Section 608. Nothing in this Article VI shall 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.

Section 609. **LESSEE**'s contractors and/or subcontractors shall be subject to the requirements of Article VI.

ARTICLE VII

ASSIGNMENT AND SUBLETTING

Section 701. Assignment.

LESSEE agrees not to assign nor sublet this Agreement nor any part thereof in any manner whatsoever, nor assign any of the privileges recited herein without the prior written consent of the **CITY** Manager of the **CITY** of Portland, whose consent shall not be unreasonably withheld or delayed. All terms of this Lease Agreement shall apply to such assignment or sublease.

ARTICLE VIII TERMINATION OF LEASE

Section 801. **CITY's Right to Terminate for Default by LESSEE**. The **CITY**, in addition to any other rights given to it herein or to which it may be entitled by law, acting by and through its City Manager, may declare this Lease Agreement terminated in its entirety, subject to and in the manner provided herein, upon or after the happening of any one or more of the following events, and may exercise all rights of entry and re-entry upon the Premises:

- (a) To the extent permitted by law, the filing by **LESSEE** of a voluntary petition in bankruptcy or any assignment for benefit of creditors of all or any part of **LESSEE's** assets;
- (b) To the extent permitted by law, the entry of an order for relief against the **LESSEE**, by a court of applicable jurisdiction, pursuant to any involuntary bankruptcy petition filed against the **LESSEE**;
- (c) To the extent permitted by law, the taking of jurisdiction by a court of competent jurisdiction of **LESSEE** or its assets, pursuant to proceedings brought under the provisions of any Federal reorganization act;
- (d) To the extent permitted by law, the appointment of a receiver or trustee of **LESSEE'S** assets by a court of competent jurisdiction or a voluntary agreement with **LESSEE's** creditors;
- (e) The voluntary abandonment by **LESSEE** of the Leased Premises for a period in excess of thirty (30) days;
- (f) The failure by **LESSEE** to pay any taxes, fees or charges to any applicable governmental authority when due, including but not limited to City of South Portland real or personal property taxes, and not cured as provided below, provided however, **LESSEE** shall have the right to contest such charges as provided by law; or
- (g) The material breach by **LESSEE** of any of the covenants or agreements herein contained and not cured as provided below.

A material breach shall include, but not be limited to, the failure of **LESSEE** to pay any rental, fee, or charge required to be paid by the terms of this Lease Agreement when the same is due and payable; provided **LESSEE** shall be entitled to one (1) written notice

of late payment from CITY per calendar year during the term of the Lease, and it shall not be a material breach of this Lease if LESSEE makes such late payment within ten (10) days after receipt of such notice.

Section 802. LESSEE's Right to Terminate. LESSEE, in addition to any other right given to it herein or to which it may be entitled by law, may terminate this Agreement in its entirety, subject to and in the manner provided herein, upon or after the happening of any one of the following events:

- (a) The issuance by any court of competent jurisdiction of an injunction which materially prevents or restrains the use of the Airport or the Leased Premises for the purposes permitted under this Lease Agreement and such injunction remaining in force for a period of at least ninety (90) days after the date of receipt of written notice of such injunction by CITY;
- (b) The inability of LESSEE to use said Leased Premises due to war, earthquake or other casualty for a longer period than ninety (90) days after the date of receipt of written notice of such inability from LESSEE;
- (c) The taking, through the process of eminent domain, of all or a substantial part of the Premises leased by LESSEE;
- (d) The material breach by CITY of any of the covenants or agreements herein contained and not cured as provided below; or
- (e) If LESSEE is unable to obtain all necessary federal, state and local permits and approvals for LESSEE's permitted use of the Premises from all governmental authorities having jurisdiction as required under this Lease or applicable laws, regulations and codes within one (1) year after the Commencement Date.

Section 803. Default by CITY. In the event of any default by CITY of any of its obligations under this Lease Agreement, LESSEE may declare the CITY in default by delivering by hand during regular business hours or sending by certified mail, return receipt requested, of written notice to CITY, addressed and copied as provided in Section 905 below, specifying both the date upon which termination will take effect and also the cause for which this Lease Agreement is being terminated. No termination shall be effective until not less than thirty (30) days have elapsed after the date of delivery of notice by LESSEE to CITY, and such default shall not have been cured during such thirty (30) day period by the CITY. If such default by its nature cannot be cured within such thirty (30) day period, no termination shall be effective if the CITY commences to correct such default within said thirty (30) days from the date of delivery of the notice of default, and continues with due diligence to correct the same as promptly as reasonably practicable.

Section 804. Default by LESSEE. In the event of any default by LESSEE of any of its obligations under this Lease Agreement, CITY may declare the LESSEE in default by delivering by

hand during regular business hours or sending by certified mail, return receipt requested, of written notice to **LESSEE** addressed as provided in Section 905 below, specifying both the date upon which termination will take effect and also the cause for which this Lease Agreement is being terminated. Except as provided otherwise in this Lease Agreement whereby no opportunity to cure is required, no termination shall be effective until not less than thirty (30) days have elapsed after the date of delivery of notice by **CITY** to **LESSEE**, and such default shall not have been cured during such thirty (30) day period by the **LESSEE**. If such default by its nature cannot be cured within such thirty (30) day period, no termination shall be effective if the **LESSEE** commences to correct such default within said thirty (30) days from the date of delivery of the notice of default, and continues with due diligence to correct the same as promptly as reasonably practicable. **LESSEE** shall pay all reasonable costs, expenses, liabilities, losses, damages, fines, penalties, claims, and demands, including reasonable counsel and consultant fees, incurred by the **CITY** on account of Tenant's default or failure to comply with any of the terms of this Lease.

Section 805. **LESSEE's** Right to Terminate for Convenience. In addition to any right to terminate for default hereunder, beginning on the Rent Commencement Date, **LESSEE** may terminate this Lease for its convenience upon no less than Twelve Months' prior written notice of its intention to do so, said termination to be effective twelve (12) months after such notice. Notwithstanding **LESSEE'S** termination of the Lease hereunder, **LESSEE** shall remain liable to **CITY** for any breach of the Lease occurring either before or after such notice of termination for convenience and for all payments which are due and payable hereunder through the date on which this Lease terminates; provided Tenant shall not be responsible for rent attributable to the period after such date of termination.

Section 806. Upon termination or cancellation of this Agreement, **LESSEE** shall surrender possession as provided in Section 204 above and restore the Premises as provided in section 205.

Section 807. In the event of termination of this Agreement for default, the defaulting party shall not be liable for any, incidental, consequential or special damages for such default and termination, and damages shall be limited to the fair market value of the lease itself, subject to the non-defaulting parties' obligation to mitigate its damages.

ARTICLE IX MISCELLANEOUS PROVISIONS

Section 901. Quiet Enjoyment; Avigation Easement. The **CITY** agrees that on payment of the rent, as herein required, and subject to performance and compliance by **LESSEE** of the covenants, conditions and agreement on its part to be performed and complied with herein, **LESSEE** shall peaceably have and enjoy the rights, uses and privileges of the Leased Premises, its appurtenances and facilities as granted herein.

901.1. Avigation Easement. The rights hereby granted in the Leased Premises are subject to the continuing right in the **CITY** to cause in all airspace above the surface of the Premises such noise, vibrations, fumes, dust, fuel particles, and all other effects that may be caused by the operation of aircraft landing at, or taking off from, or operating at or on said Portland International Jetport; and **LESSEE** does hereby fully waive, remise and release any right or cause of action which they may now have or which they may have in the future against **CITY**, due to such noise, vibrations, fumes, dust, fuel particles, and all other effects that may be caused or may have been caused by the operation of aircraft landing at, or taking off from, or operating at or on said Portland International Jetport; and

The rights in the Leased Premises hereby granted includes the continuing right in the **CITY** to prevent the erection or growth upon the Premises of any building, structure, tree or other object, extending into the air space above the imaginary surfaces (as defined below), and to remove trees or top trees to ten (10) feet below the imaginary surfaces with the right of ingress to and egress from, and passage over **LESSEE'S** Premises for the above purposes, said removal or topping to be done by **CITY** at the **LESSEE'S** expense; **LESSEE** shall promptly reimburse **CITY** any reasonable expense incurred by in such removal or in enforcement of this provision; and

The **LESSEE** does hereby agree that for and during the life of this Lease, it will not hereafter erect, permit the erection or growth of, or permit or suffer to remain upon the Premises any building, structure, tree or other object extending into the prohibited airspace, and that it shall not hereafter use or permit or suffer the use of the Premises in such a manner as to create electrical interference with radio communication between any installation upon said Portland International Jetport and/or aircraft, or as to make it difficult for flyers of aircraft to distinguish between airport lights and others, or as to impair visibility in the vicinity of the Portland International Jetport or as otherwise to endanger the landing, taking off or maneuvering of aircraft.

"Airspace" shall mean and include airspace above the Premises to an infinite height above the approach and transitional surfaces (the imaginary surfaces) of said Premises, as defined in Title 14 CFR, Federal Aviation Regulation, Part 77, as it may be further amended, or any applicable successor regulation. The Premises being leased to the **LESSEE** are considered to be wholly encompassed within the boundaries of these approach and transitional surfaces.

Section 902. No Personal liability. No Councilor, director, partner, officer, manager, member, agent or employee of either party shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement, or because of any breach thereof, or because of its or their execution or attempted execution.

Section 903. Agreements with the Federal Government. This Agreement is subject and subordinate to the provisions of any agreements heretofore made between the **CITY** and the United States of America relative to the operation or maintenance of the Airport, the execution of which was required as a condition precedent to the transfer of Federal rights of property to the **CITY** for Airport purposes, or to the expenditure of Federal funds for the extension, expansion, or development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time. **CITY** covenants that it has no existing agreements with the United States which are in conflict with the express provisions of this Lease.

Section 904. Governing Law; Federal Aviation Administration Approval. This Agreement shall be deemed to have been made in, and be construed in accordance with, the laws of the State of Maine, subject to any applicable federal laws and regulations, including but not limited to those of the Federal Aviation Administration (FAA).

904.1 FAA Approval. This Lease Agreement is specifically conditional upon and subject to the approval of the FAA. In the event the FAA determines at any time that any provision of this Lease violates any provision of their law or regulations, said provision shall be null and void, and the parties agree to meet and negotiate in good faith to revise or amend the Lease to conform to applicable FAA law or regulations.

Section 905. Notices. Except as herein otherwise expressly provided, all notices required to be given to the **CITY** hereunder shall be in writing and shall be sent by United States Certified Mail, addressed to:

City Manager
City of Portland
Portland City Hall 389 Congress Street
Portland, Maine 04101

All notices demands and requests by the **CITY** to **LESSEE** shall be hand delivered, or sent by United States Certified Mail, addressed to:

Duluth Holdings, Inc.
170 Countryside Drive
Belleville, WI 53508

The parties, or either of them, may designate in writing from time to time any changes in addresses of the persons identified above or any addresses of substitute or supplementary persons in connection with said notices. The effective date of service of any such notice shall be the date such notice is received by **LESSEE** or by the **CITY**. Any provisions herein that one party

shall notify the other of some matter is to be construed as a requirement that notice is to be given in accordance with the provisions of this Section.

905.1 Whenever **CITY** is referred to in this Lease and requires an action to be taken by **CITY**, such action shall be taken by the City Manager, unless otherwise specified herein.

Notwithstanding the foregoing, the City Manager reserves the right, in his or her discretion, to require Council approval of any such action.

Section 906. Entire Agreement. This Agreement, together with Exhibit A attached hereto, constitutes the entire agreement between the parties and all other representations or statements heretofore made, verbal or written, are merged herein, and this Agreement may be amended only in writing and executed by duly authorized representatives of the parties hereto.

Section 907. Waiver. No waiver or default by either party of any of the terms, covenants, and conditions hereof to be performed kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained, to be performed, kept, and observed by the other party.

Section 908. Title to Site. Subject to condemnation by higher governmental authority, the Leased Premises from the date hereof until the termination of this Agreement, shall be owned in fee- simple by the **CITY** as Airport property, or in such lesser estate as in the opinion of the **CITY's** Corporation Counsel is sufficient to permit the letting and licensing thereof by the **CITY**, as herein provided for the full term provided herein. **CITY** represents that it has the right to lease said property designated herein as Airport property and the Leased Premises, together with all facilities, rights, licenses and privileges herein granted, and has full power and authority to enter into this Agreement in respect thereof, subject, however, to the South Portland right of way and the FAA height limitations previously referenced.

Section 909. LESSEE's Certification of Authority to Execute Lease. **LESSEE** hereby makes the following representations as the basis for its undertakings herein contained:

- A. **LESSEE** is a corporation duly organized under the laws of the State of Wisconsin; it is in good standing under the laws of said State; has the power to enter into this Agreement; by proper action has duly authorized the execution and delivery of this Agreement; and is in full compliance with all applicable Maine laws relating to the conduct of its business in Maine; and
- B. **LESSEE** will occupy and possess the Leased Premises subject to and in accordance with the terms hereof.

Section 910. Non-Discrimination. The **LESSEE**, for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the Premises that:

- (A) no person on the grounds of race, color, sex, disability, religion, national origin or sexual orientation shall be excluded from participation in, denied the benefits of, or be otherwise subject to, discrimination in the use of said facilities;
- (B) that in the construction of any improvements on, over, or under such Premises and the furnishing of services thereon, no person on the grounds of race, color, sex, disability, religion, national origin, or sexual orientation shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and
- (C) that the **LESSEE** shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

Section 911. Force Majeure. Neither the **CITY** nor **LESSEE** shall be deemed in violation of this Agreement if either should be prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not within its control. The party claiming Force Majeure shall give prompt written notice to the other party of such event or events, and shall resume performance promptly upon the conclusion of the event or events preventing its performance.

Section 912. Partial Invalidity. If any term, covenant, condition, or provision of this Agreement or the application thereof to any person or circumstance shall at any time or to any extent, be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition, and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 913. Headings. The headings of the several Articles and Sections of this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provisions of this Agreement, and shall not be construed to effect in any manner either the terms and provisions hereof or the interpretation or construction thereof.

Section 914. Withholding Required Approvals. Whenever the approval or consent of the **CITY** (including the Airport Director or the **CITY** Manager) or of **LESSEE** is required herein, no such approval or consent shall be unreasonably conditioned, delayed or withheld.

Section 915. Memorandum of Lease. Either party at the request of the other, shall execute, acknowledge and deliver for recording, a memorandum or short form lease prepared by the requesting party; provided, however, that the relations between **CITY** and **LESSEE** shall be governed solely by the provisions of this Agreement and not by any such memorandum or short form lease which may be executed, delivered and recorded.

Section 916. Successors and Assigns. All of the terms, provisions, covenants, stipulations, conditions and considerations in this Agreement shall extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.

Section 917. Choice of Law; Venue. 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.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be executed by their respective officials thereunto duly authorized, as of the day and year first above written.

CITY

LESSEE

City of Portland

Duluth Holdings, Inc.

By: Jon P. Jennings
Its: City Manager

By: _____
Its: _____

EXHIBIT A

LEGAL DESCRIPTION OF LEASED PREMISES

That certain real property located on the northwesterly side of Maine Mall Road, but not adjoining thereto, and the westerly side of Western Avenue, but not adjoining thereto, in the City of South Portland, County of Cumberland, State of Maine bounded and described as follows:

Beginning at a point on the southeasterly side of land now or formerly of the Maine Turnpike Authority, being Interstate 95, at the northwesterly corner of land now or formerly the estate of Mary-Rose Starr as described in a deed recorded at the Cumberland County Registry of Deeds in Book 16875, Page 252, this point bearing N 85°27'47" W, a distance of 0.05 feet from a 1 ½ inch iron pipe 2 inches above grade;

Thence N 18°36'17" E, along land now or formerly of the Maine Turnpike Authority a distance of 76.11 feet to a point;

Thence S 85°27'47" E, through land now or formerly of the City of South Portland a distance of 147.41 feet to a point;

Thence N 86°54'46" E, through land now or formerly of the City of South Portland a distance of 15.49 feet to a point;

Thence S 03°05'14" E, through land now or formerly of the City of South Portland a distance of 76.56 feet to land now or formerly of the estate of Mary-Rose Starr;

Thence N 85°27'47" W, along land now or formerly of the estate of Mary-Rose Starr a distance of 191.42 feet to the point of beginning.

Containing 13,100 square feet, more or less.

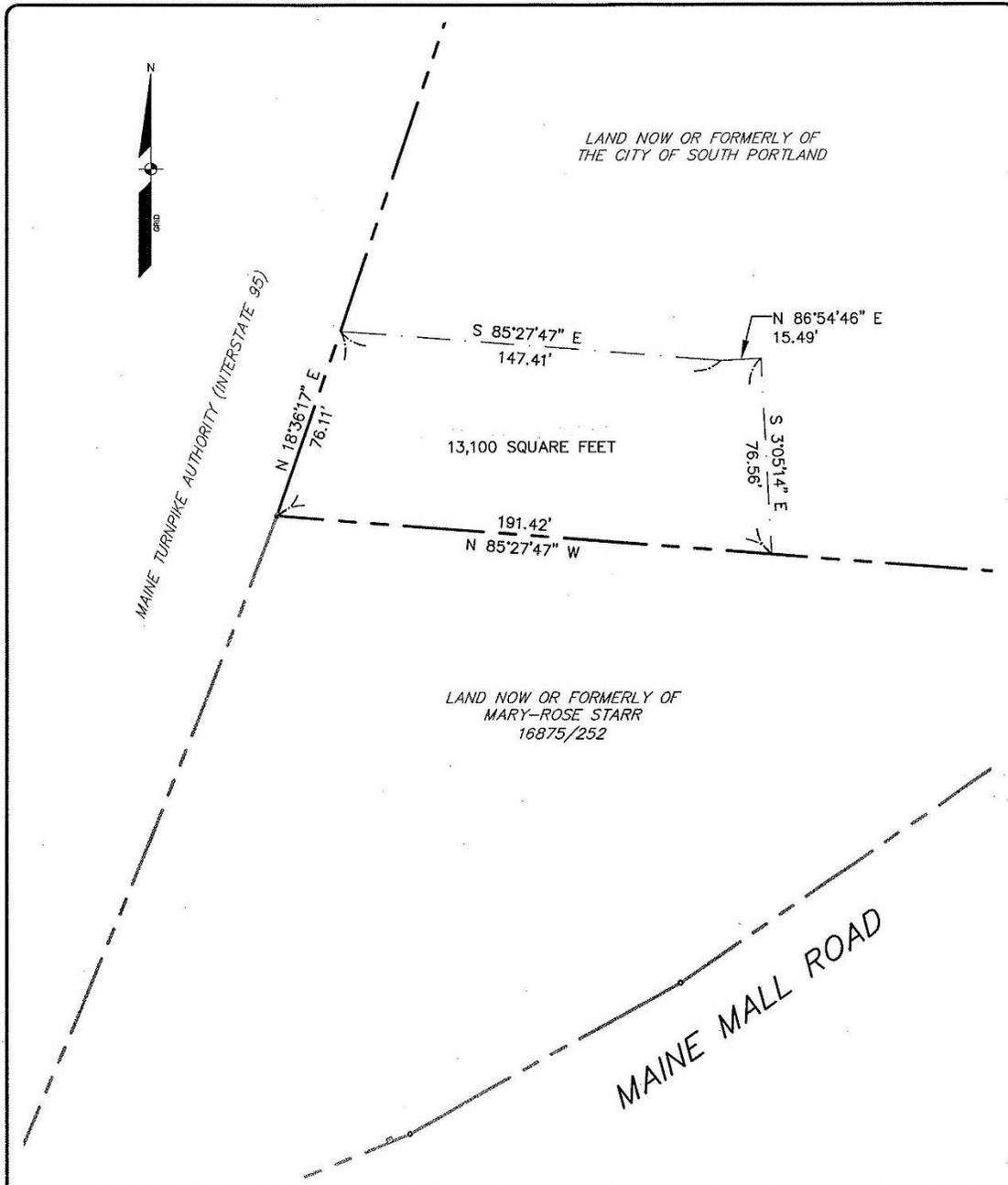
Bearings herein are based upon Grid North, Maine State Plane Coordinate System, West Zone NAD 83/2011.

This description was prepared based off a plan entitled **"ALTA/NSPS Land Title Survey For Greenberg Farrow Land of The City of South Portland"** dated September 2017 by Ducet Survey Inc.

The subject property is depicted on Exhibit A-1 attached hereto.

EXHIBIT A-1

DEPICTION OF LEASED PREMISES



SEBAGO
TECHNICS
WWW.SEBAGOTECHNICS.COM
 75 John Roberts Rd.
 Suite 4A
 South Portland, ME 04106
 Tel. 207-200-2100

EXHIBIT A-1

LOCATION:
 55 MAINE MALL ROAD
 SOUTH PORTLAND, MAINE

FOR:
 OPPIDAN
 55 MAINE MALL ROAD

SCALE: 1" = 50'
 DATE: 03-29-18
 SHEET:
 1 OF 1