

Order 47-16/17
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Effective 9/17/2016

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
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CITY OF PORTLAND
IN THE CITY COUNCIL

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

**ORDER APPROVING THE LEASE TO CREATIVE PORTLAND CORPORATION
FOR OFFICE SPACE AT 84 FREE STREET**

ORDERED, that the Lease Agreement for office space for Creative Portland Corporation at 84 Free Street in the Spring Street Building/Garage is hereby approved in substantially 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.

LEASE AGREEMENT

This Lease is made as of the ___ day of _____, 2016, by and between CREATIVE PORTLAND CORPORATION, a Maine non-profit corporation having a mailing address of P.O. Box 4675, Portland, ME 04112 and a place of business at 84 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, Tenant desires to relocate its offices and has obtained a \$25,000.00 loan of near or even date herewith from the Portland Development Corporation for the purpose of renovating its new space (the “PDC Loan”); and

WHEREAS, Landlord owns real property located at 84 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 known as the Spring Street Building/Garage at 84 Free Street in Portland, Maine, namely the 1,172+/- sq. ft. of office space on the first floor and 1,772 +/- sq. ft. in the basement of said Garage. Tenant agrees to accept the 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 October 1, 2016 (the “Commencement Date”) and expire on September 30, 2023.
- b. Provided that Landlord, in its sole discretion, first determines that Tenant is not in default of any term or condition of this Lease, this Lease may be extended for up to three years at a rental amount subject to the mutual agreement of the parties. Tenant shall provide written notice to Landlord of

its desire to extend the term of the Lease under this paragraph no less than ninety (90) days before the end of the term of this Lease.

- c. Any holding over by Tenant at the expiration of this Lease and 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.

The annual rent for the premises shall be \$1,000.00, payable in advance. Tenant shall pay the City rent for the first year of the term of this Lease within thirty days after the Commencement Date. Tenant shall pay rent for each subsequent year of this lease on each anniversary of the Commencement Date.

4. Parking

No parking is provided as part of this lease.

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.

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. Provide all HVAC Mechanical Equipment and Fit-up Improvements and be responsible for the cost of any modifications to existing mechanical

equipment to serve 84 Free Street space 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 the entire portion of the Premises including windows and doors in good repair. Casualty damage to windows and doors shall be the responsibility of the Tenant.
- e. Be responsible for all maintenance and repairs of the Premises, including but not limited to air conditioning/heating system, plumbing, electrical and communication lines, as well any portions of such utility systems located in the Building/Garage but outside the Premises;
- f. Properly bag and remove all trash and garbage.
- g. Provide and be responsible for all cleaning and janitorial services 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. 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 administrative office space, meeting space for its board members, basement storage, to provide the public with access to Tenant's services, 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, 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 its 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 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, reasonably 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 insurance coverage of not less than One Million Dollars (\$1,000,000) per occurrence for general liability, workers compensation insurance in the amount required by Maine law; and fire legal liability insurance in the minimum amount of One Hundred Thousand Dollars (\$100,000).

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, which shall be stated on such certificates. Any insurance provided by the Tenant shall be primary to any coverage which the Landlord may provide. 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.

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, 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.

- b. Without limiting the foregoing, to the fullest extent permitted by law, Tenant hereby agrees to assume all risk of injury, harm or damage to any

person or property (including but not limited to all risk of injury, harm or damage to Tenant's officers, agents, employees, contractors, customers or invitees or to their property) arising out of, during, or in connection with the rental or use of the 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 a Party to perform any obligations or comply with any terms or conditions under this Lease 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.
 - ii) Failure of tenant to comply with the terms and conditions of any of the PDC Loan documents.
 - 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, 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 counsel and consultant fees, that are incurred by Landlord as a result of Tenant's default under 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:

Creative Portland Corporation
P. O. Box 4675
Portland, ME 04112

To Landlord:

Parking Manager
City of Portland
389 Congress Street
Portland, Maine 04101
cc: City Manager, 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. 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.

23. Force Majeure.

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

24. 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.

25. 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:

CREATIVE PORTLAND CORPORATION

By: _____

Name: _____

Its: _____

CITY OF PORTLAND

By: _____

Jon P. Jennings
Its City Manager

Approved as to form:

Approved as to funds:

Corporation Counsel's Office

Finance Department