

Order 242-13/14

Passage: 9-0 on 5/5/2014

MICHAEL F. BRENNAN, (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
CHERYL A. LEEMAN (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

Effective 5/15/2014

JOHN R. COYNE (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING AND
AUTHORIZING CITY MANAGER TO EXECUTE the LEASE
WITH PORTLAND PIRATES, LLC FOR
94 SPRING STREET SPACE AND PARKING**

ORDERED, that the attached lease with the Portland Pirates, LLC for office space and parking at 94 Spring Street is hereby approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager to execute said document in substantially the form attached hereto, 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 1st of June, 2014, by and between the Portland Pirates, LLC a Delaware limited liability company having a place of business in 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 is in need of office and retail space; and

WHEREAS, Tenant and Landlord entered into a Lease Agreement dated January 20, 2006 pursuant to which Tenant leased a portion of the Spring Street Building/Garage;

WHEREAS, Tenant and Landlord entered into a Revised and Restated Lease Agreement dated July 12, 2010 pursuant to which Tenant continued leased a portion of the Spring Street Garage;

WHEREAS, these prior Lease Agreements between Tenant and Landlord have now expired;

WHEREAS, Landlord now has agreed to again lease a portion of the Spring Street Building/Garage described below to Tenant upon certain terms and conditions (said portion hereinafter "Demised Premises") for five years, with a renewal option; 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,

WITNESSETH:

THAT 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. of office and retail space on the first floor of said Garage (previously used by the Tenant subject to the conditions and covenants hereinafter provided. For the purposes of this Lease, said demised office and retail space shall be deemed to contain Two Thousand Four Hundred Fifteen (2,415+/-) square feet on the first floor of the garage building. 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.

1. Term.

- a. The term of this Lease shall be for a period of five (5) years, commencing on June 1, 2014, ending on May 31, 2019. This lease may be renewed upon mutual agreement of the parties, for an additional, second period of five (5) years. Tenant shall provide no less than ninety (90) days' prior written notice of its desire to renew.
- b. Any holding over by Tenant at the expiration of this Lease and any renewals 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.

2. Rent.

- a. For the first year of the term, commencing on June 1, 2014 the Tenant shall pay to the Landlord as Annual Rent hereunder the sum of Twenty-Two Thousand Seven Hundred Ninety-Seven Dollars and Sixty Cents (\$22,797.60) at \$9.44 per square foot.
- b. For the second year and all subsequent years of the term, rent for the year shall equal the rent for the previous year as adjusted upward one percent (1%).

Effective June 1, 2014 \$22,797.60 per year \$1,899.80 per month
Effective June 1, 2015 \$23,025.58 per year \$1,918.80 per month
Effective June 1, 2016 \$23,255.84 per year \$1,937.97 per month
Effective June 1, 2017 \$23,571.56 per year \$1,964.30 per month
Effective June 1, 2018 \$23,807.28 per year \$1,938.94 per month

- c. This annual rent shall be paid in twelve (12) monthly installments in advance on the first day of each month, and prorated for the fraction of any month.

3. Parking.

Tenant shall have the use of up to fifteen (15) parking spaces based upon availability, at market rate, to accompany its use of the Demised Premises; solely to be used for employee parking. These parking spaces are separate from, and intentionally not included in, the "Agreement Between the City of Portland and Portland Pirates, LLC Re: Parking at Spring Street Garage", executed in 2014.

4. 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 Demised Premises are a part, reasonable wear and

tear, damage by fire and other casualty only excepted, unless such maintenance or repair is made necessary by fault or neglect of the Tenant or the employees, contractors, agents or invitees of Tenant, in which case 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, all walkways and parking areas available for use by Tenant, its employees and invitees, including snow and ice removal from the Municipal Parking Garage;

5. Obligations of Tenant.

The Tenant, at the Tenant's expense shall:

- a. HVAC Mechanical Equipment and Fit-up Improvements. Be responsible for the cost of any modifications to existing mechanical equipment to serve 94 Free Street space along with any fit-up improvements.
- b. Maintain the entire portion of the Demised Premises including windows in such repair as on the commencement of this Lease except only for reasonable wear and tear. Casualty damage to windows shall be responsibility of the Tenant;
- c. All maintenance and repairs of the Demised Premises shall be the responsibility of the Tenant, 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 Demised Premises;
- d. Properly bag and remove all trash and garbage;
- e. Provide and be responsible for all cleaning and janitorial services including the cleaning of exterior windows for the Demised Premises.
- f. Pay and be responsible for all utilities pertaining to the Premises including but not limited to all expenses relating to its use of telephone/communication services, electricity, heat, cooling, water and sewer.
- g. Maintain in full force and effect a policy of comprehensive general liability insurance covering the Demised Premises in an amount not less than Four Hundred Thousand Dollars (\$400,000.00) per occurrence and naming Landlord as an additional insured, and such fire and extended coverage or business interruption insurance for its own property or benefit as it may deem to be appropriate. Such insurance shall be carried through

responsible companies qualified to do business in the State of Maine. Tenant agrees to provide Landlord with a Certificate of Insurance evidencing such coverage (and evidencing that the Landlord is an additional insured) upon request, which shall require no less than 30 days notice to Landlord prior to cancellation thereof.

- h. Tenant shall make no improvements to Demised Premises without prior written approval of Landlord.
- i. Tenant shall replace rugs and repaint Demised Premises when it chooses, such repainting and rug replacement to be done at Tenant's expense.

6. Use of Demised Premises.

The Demised Premises may be used by Tenant and its successors in interest for office/retail purposes during the original and any extended terms of the Lease, and for no other purposes. Tenant will at all times comply with all applicable governmental laws, ordinances, codes, regulations and other requirements in its use of the Demised Premises.

7. Assignment/Subletting.

The lease is not assignable.

8. Casualty Damage.

- a. If the Demised 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 Demised 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. Anything in this Lease to the contrary notwithstanding, Landlord and Tenant each hereby releases the other and its officers, directors, shareholders, agents and employees from any and all liability or responsibility (to the other or anyone claiming through or under them by way of subrogation or otherwise) for any loss or damage to the releasor's

property caused by fire or other peril of the type generally covered by extended coverage endorsements, whether or not the releasor actually carries such insurance coverage and even if such fire or other peril shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible.

9. Return of Demised Premises; Trade Fixtures.

Tenant at the expiration of the Lease term shall peaceably yield up to Landlord the Demised 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 Demised Premises; provided, however, all damage caused by or as a result of such removal shall be repaired by Tenant.

10. Signage.

Tenant shall have the right to erect a sign on the Building. Final design 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, ordinance, codes and regulations.

11. Insurance.

The Tenant will maintain at all times during its use and occupancy of the Demised Premises adequate insurance coverage of not less than Four Hundred Thousand Dollars (\$400,000) combined single limit, for general liability insurance 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 Lease. 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 in all such 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.

12. Indemnity.

Tenant, its successors and assigns, agrees to indemnify and hold harmless Landlord, its successors and assigns, from any claim, costs, liability and expense (including reasonable attorneys' fees) arising from personal injury or property damage to the extent attributable to any negligent acts or omissions or willful

misconduct under this Lease. This agreement includes a contractual obligation by the Tenant to indemnify, defend and hold harmless Landlord and the assumption of certain obligations by the Tenant and Tenant agrees that the terms of this agreement may be enforced against it in a court of competent jurisdiction or through administrative or agency proceedings. Landlord shall give the Tenant prompt notice of any matter as to which it seeks indemnity hereunder, and shall not settle any such matter without Tenant's consent.

13. Covenants of Landlord.

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

14. Default.

Either party shall be determined to be in default hereunder if it shall fail to perform any obligations stated herein within fifteen (15) days after receipt of notice of such failure from the other party or (if the default is of such nature that it cannot be cured within such period) if it shall fail to commence to cure the default within such period and thereafter diligently prosecute the cure to completion within a reasonable time. Upon such 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. Upon any termination of this Lease, Tenant shall quit and surrender to Landlord the Demised Premises in accordance with the provisions of Article 8 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.

15. 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 Pirates
94 Free Street
Portland, ME 04101

To Landlord:

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

16. 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.

17. 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 Demised 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.

18. 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.

19. Governing Law.

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

20.. Termination For Convenience.

Either party may terminate this Lease on a one hundred eighty (180) day written notice, with no further obligations hereunder.

21. 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.

22. 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.

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 Pirates, LLC

By: _____

Name: _____

Its: _____

CITY OF PORTLAND

By: _____

Mark H. Rees
Its City Manager