



City of Portland

Remote Portland Fish Exchange Board of Directors

Thursday, August 18, 2022 at 3:00 PM Via Zoom

REMOTE ACCESS INFORMATION:

For public comment via Zoom, you will need to use the "raise your hand" feature. To raise your hand via the telephone, please hit *9. You will be unmuted by the host when it is time for public comment.

Join Zoom Meeting

<https://us02web.zoom.us/j/87353957914?pwd=c1ZGajlXMWN0Q1BLR1hjdnFxeIppZz09>

Meeting ID: 873 5395 7914

Passcode: 160332

Call in Number: 1-929-205-6099

Find your local number: <https://us02web.zoom.us/u/kB4crz3xh>

1. Call the meeting to order and declare a quorum.
2. Motion and vote on July 21, 2022, meeting Minutes.
 - a. See attached Minutes for approval.
3. Management Report
 - a. See attached Report.
4. Motion and vote to discharge Bert Jongerden as temporary General Manager.
5. Motion and vote on Dropping Springs Lease renewal.
 - a. See attached Lease.
6. Other business.
7. Adjourn.

Meeting Minutes
Board of Directors for the Portland Fish Exchange July 21, 2022
4 pm via Zoom

Board: Rob Odlin (President), Bill Needleman (Vice President), Avis Leavitt, Tom Valleau, Tim Merrill, John Arnold (Quorum of Members)

Staff: Bert Jongerden, Temporary General Manager; Mike Foster, Business Manager; Michael Goldman, City Attorney

Public: Mary Hudson, Meredith Mendelson, Alan Tracy, Linda Hunt, Evan Edmonds

1) Vice President Needleman Called the Meeting to order at 3:04 pm and declared a Quorum

2) Approval of Minutes: *Board Action: June 16, 2022, Minutes Approved: Motion by Tom, Second by Avis, Vote: 4-0-0*

3) Executive Session: *Board Action: Motion: Consistent with Executive Session Statute 1 MRS 405(6)(A)(C) & (E), the Board go into Executive Session for discussion of real estate and personnel issues. Motion made by Tom and seconded by Avis. Vote: 4-0-0. Executive Session Discussion. Motion: Leave Executive Session. Motion by Tom, Second by Avis, Vote: 6-0-0*

4) Appointment of Linda Hunt as Sellers' Representative: *Board Action: Motion: Linda hunt be appointed as Sellers' Representative: Motion by Tom, Second by Avis, Vote: 5-0-1*

5) Management Report

6) Motion and Vote Amended Fee Schedule: *Board Action: Motion: Amend Fee Schedule in accordance with the version provided by the General Manager: Motion by Rob, Seconded by Tom, Vote: 5-1-0*

7) Motion & Vote Request for Information: *Motion: To approve distribution of **The Request for Qualifications and Expression of Interest for Providing Management and Operations for the Portland Fish Exchange** in substantially the same form as the attached draft. Motion by John, Seconded by Rob Motion to amend Main motion: On page five, second sentence under Qualifications Criteria strike words "financial and." Motion by Tom, Second by Rob. Vote: 6-0-0. Amended Main Motion: Vote: 5-0-1*

8) Other Business

9) Adjourn: *Adjourned at 5:17 PM: Motion by Bill, seconded by Rob, Vote: 6-0-0*



PORTLAND FISH EXCHANGE

Management/Financial Report for August 18th, 2022

Groundfish Landings	<u>Actual</u>	<u>Budgeted</u>	<u>Variance</u>	<u>Avg Fish \$/lb.</u>
May	5K lbs.	22K lbs.	(-17K lbs.)	\$2.63
June	33K lbs.	63K lbs.	(-30K lbs.)	\$2.20
<u>July</u>	186K lbs.	75K lbs.	+111 lbs.	\$2.48
Total Landings FY YTD	206K lbs.	160M lbs.	+46K lbs.	

Off-auction landings.

May	0 lbs.	0 lbs.	0 lbs.
June	6K lbs.	30K lbs.	(-24K lbs.)
<u>July</u>	65K lbs.	41K lbs.	+24K lbs.
Total Off-auction FY YTD	71K lbs.	71K lbs.	0 lbs.

Pumping

May	0 lbs.	0 lbs.	0 lbs.
June	0 lbs.	125K lbs.	(-250K) lbs.
<u>July</u>	250K lbs.	125K lbs.	+125K lbs.
Total Pumping FY YTD	250K lbs.	250K lbs.	0 lbs.

Financial Report

	<u>Net Income</u>	<u>Budgeted</u>	<u>Variance</u>
May	\$18K	(-\$19K)	\$1K
June	(-\$24K)	(-\$16K)	(-\$8K)
<u>July</u>	\$35K	(-\$22K)	\$57K
Total Income FY YTD	\$29K	(-\$57K)	\$86K

Financial Notes:

- Receivables are \$210K – checkbook is \$62K - \$167K LOC Funds in use
- Total net cash & receivables are \$272K
- Awaiting approval to move Cares Act Funds into checking for \$26K
- Have rebated \$40K in seller fees since June 1st – on 290K lbs. of fish
- The FPA approved the request of \$80K in deficit funding at the August 8th meeting along with rent ‘forgiveness’ for 10 months & rent ‘deferment’ going forward

Operations Notes:

- At capacity for bait storage, 300 pallets
- Staffing is improving
- The ‘B’ unit of the refrigeration system has been piped & tested - hopefully a re-start this week
- 3 new composite camels have been installed
- The back-up server for the network failed last week – an updated back-up application appears to be not compatible with the Auctioneer program – working to resolve

Landings Notes:

- August landings to date are 83K on-auction and 23K off-auction
- Did have some herring pumped in July – though the quota was harvested in a couple of days fishing

2023 PFE Budget to Actual Summary

	May	June	July	August	September	October	November	December	January	February	March	April	ttl	Budget	%
Revenue	76,391	230,397	166,346	-	-	-	-	-	-	-	-	-	473,134	780,924	60.6%
Adjustments		(197,245)	(64,397)	-	-	-	-	-	-	-	-	-	-	-	
Net Revenue	76,391	33,152	101,949	-	-	-	-	-	-	-	-	-	211,492	780,924	
Total Direct Materials	1,848	1,454	5,677	-	-	-	-	-	-	-	-	-	8,979	55,620	16.1%
Total Direct Labor	30,827	21,542	28,199	-	-	-	-	-	-	-	-	-	80,568	408,440	19.7%
Total Operations Overhead	1,159	1,975	3,291	-	-	-	-	-	-	-	-	-	6,425	11,550	55.6%
Total Indirect Labor	5,875	10,101	8,987	-	-	-	-	-	-	-	-	-	24,963	188,603	13.2%
Total Building & Equipment Expense	11,995	18,913	11,726	-	-	-	-	-	-	-	-	-	42,634	167,832	25.4%
Total Selling, General & Administrative	349	47	47	-	-	-	-	-	-	-	-	-	443	2,000	22.2%
Total Supplies Expense	1,432	424	953	-	-	-	-	-	-	-	-	-	2,809	5,000	56.2%
Total Interest/Disposal	342	409	-	-	-	-	-	-	-	-	-	-	751	500	150.2%
Total Other Expenses	4,757	2,230	7,859	-	-	-	-	-	-	-	-	-	14,846	118,796	12.5%
Total Exp	58,584	57,095	66,739	-	-	-	-	-	-	-	-	-	182,418	958,341	19.0%
Total Net	17,807	(23,943)	35,210	-	-	-	-	-	-	-	-	-	290,716	(177,417)	-163.9%
Landings (on and off auction)	3,152	38,507	250,357	-	-	-	-	-	-	-	-	-	292,016	2,100,000	13.9%
Pumping	-	-	-	-	-	-	-	-	-	-	-	-	-	500,000	0.0%
% of actual (landings only)	1.1%	13.2%	85.7%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%		
Notes															
Cares Act Funding		117,245	64,397												
Fish Pier Authority Funding		80,000													
Waterfront Maine Funding	24,250														
Pay-Out to former GM		1951.3													

SUBLEASE AGREEMENT
BETWEEN PORTLAND FISH EXCHANGE AND
DROPPING SPRINGS BAIT CO., LLC

THIS AGREEMENT made this ____ day of _____ 2022 by and between the **PORTLAND FISH EXCHANGE**, a Maine non-profit corporation, incorporated under the provisions of the Maine Non-Profit Corporation Act, 13-B M.R.S.A. §101, et. seq., and doing business in Portland, County of Cumberland, State of Maine (hereinafter "Landlord"), and **DROPPING SPRINGS BAIT CO., LLC**, a Maine Corporation with a mailing address of, 6a Portland Fish Pier, Portland, Maine 04101 (hereinafter "Tenant").

WITNESSETH:

WHEREAS, Landlord operates the Portland Fish Exchange located on the Portland Fish Pier, pursuant to the terms of a Lease Agreement between it and the Portland Fish Pier Authority, dated September 1, 2014 and

WHEREAS, Tenant desires to sublease certain portions of the premises leased by the Landlord;

NOW, THEREFORE, in consideration of their mutual covenants, promises and agreements, and other good and valuable consideration, receipt of which is hereby acknowledged, the said parties agree as follows:

SUMMARY OF BASIC SUBLEASE PROVISIONS

SECTION 1. DEFINITIONS

1.01 Basic Data.

Date of Lease:	May 1, 2022
Landlord:	Portland Fish Exchange
Present Mailing Address:	6 Portland Fish Pier Portland, Maine 04101
Tenant:	Dropping Springs Bait Co., LLC
Present Mailing Address:	6A Portland Fish Pier Portland, Maine 04101
Premises:	The demised premises identified in Exhibit A, comprising a southwest portion of lot #7 of the Net yard, including approximately seventy two (72) lineal feet of wharf access and approximately six thousand four hundred (6,400)

square feet of paved land area; a 1500 sq. ft. cooler building and approximately 50% of the office trailer; together with all rights of way, accretions, easements, tenements, hereditaments and appurtenances, rights, privileges and immunities thereunto belonging or pertaining.

Lease Term: Six (6) years.

Renewal Term: Two (2) years, subject to section 3.02.

Base Rent: Five thousand forty dollars (\$5,040.00) per month.

Commencement Date: May 1, 2022

Permitted Use: General business use for the conduct of Tenant's operations in bait processing and associated office use.

Security Deposit: Six Thousand Dollars (\$6,000.00) as set forth in section 4.04

1.02 Table of Contents.

1. Definitions4

2. Subject of Lease...5

3. Term5

4. Payments.....5

5. Condition of Premises6

6. Improvements.....6

7. Use of Premises6

8. Laws and Requirements of Public Authorities7

9. Alterations7

10. Repairs and Maintenance8

11.	Subletting and Assignment	9
12.	Indemnification	9
13.	Insurance	9
14.	[Omitted]	
15.	Eminent Domain	11
16.	Abatement of Rent	12
17.	Award	12
18.	Prohibition on Mortgages	12
19.	Non-Compete.....	13
20.	Tenant's Default	13
21.	Landlord's Self-Help/Attorney's Fees	14
22.	Landlord's Default	14
23.	Force Majeure	15
24.	Termination by Tenant Because of Changes in or New Interpretations of Rules or Regulations	15
25.	Compliance with Environmental Laws	15
26.	Termination and Expiration	16
27.	Landlords Covenants and Warranties	16
28.	Holding Over	17
29.	Invalidity of Particular Provisions	17
30.	Recording Memorandum	17
31.	Provisions Binding	17
32.	Waivers	18

33.	Subordinate to Other Agreements.....	18
34.	Landlord's Right to Enter, Inspect and Repair	18
35.	Covenant of Quiet Enjoyment	19
36.	Notices	19
37.	Entire Agreement	19
38.	Governing Laws	20

EXHIBITS:

Exhibit A – Premises Floor Plan

Exhibit B - Fish Pier Complex

SECTION 1. DEFINITIONS

Unless the context shall otherwise require, the terms defined in this Section 1 shall, for all purposes of this Agreement and for any amendments or supplements hereto, have the meanings specified herein. Words of the singular number may include the plural; and words of the plural number may include the singular.

(a) Common Areas. The words "Common Areas" shall mean those areas in the Fish Pier Complex which are available for the common use of all tenants at the Fish Pier Complex, including driveways, truckways, delivery passages, truck loading areas, roadways, walkways, sidewalks, landscapes, and planted areas, and bus stops and which are shown as shaded areas on Exhibit B of this Agreement.

(b) Fish Pier Complex. The words "Fish Pier Complex" shall mean the real property and any site improvements thereon as shown in Exhibit B of this Agreement.

(c) Master Lease. The term "Master Lease" shall mean the lease dated September 1, 2014 between the Portland Fish Pier Authority and the Portland Fish Exchange, as amended by a First Amendment dated August 20, 2019 and as may be further amended from time to time.

(d) Premises. The term "Premises" shall mean the demised premises, comprising a portion of lot #7 in the southwest corner of the Net yard, including seventy-two (72) lineal feet of wharf access and approximately six thousand four hundred (6,400) square feet of paved land area; a 1500 sq. ft. cooler building and office space located in 50% of the office trailer; together with all rights of way, accretions, easements, tenements, hereditaments and appurtenances,

rights, privileges and immunities thereunto belonging or pertaining, as further described in Exhibit A.

SECTION 2. SUBJECT OF LEASE

Landlord hereby leases to Tenant and Tenant hereby accepts from Landlord upon the terms and conditions herein the Premises, situated in the City of Portland and described in section 1 subsection (d).

SECTION 3. TERM

3.01 The period of this Agreement shall be six (6) years from and after May 1, 2022 and ending on April 30, 2028 unless sooner terminated by the Landlord or Tenant, pursuant to the terms of this Agreement.

3.02 On or before November 1, 2027 Tenant shall notify Landlord of its desire to renew the lease for an additional two (2) year term to expire on April 30, 2030. Provided Tenant is not in default under the provisions of this Lease, the parties agree to negotiate in good faith the terms of a two-year renewal period and to amend this agreement as necessary to include said renewal period. Landlord shall have the right to terminate the Agreement at any time during the renewal term upon 12 months written notice to Tenant and forgiveness of six months' rent. Said termination by Landlord shall only be exercised if Landlord has a proposed change of use for the Leases Premises that is substantially different from Tenant's use.

SECTION 4. PAYMENTS

The Tenant will pay rent and other charges, as set forth below, for its occupation and use of the Premises. Except as described otherwise in this section, Tenant shall make rental payments in equal installments on the first (1st) day of each month.

4.01 Rent

(a) Tenant covenants and agrees to pay the following monthly rental payments:

May, 2022 - April 2028 TERM

May 2022 - April 2023	\$5040.00
May 2023- April 2024	\$5292.00
May 2024 - April 2025	\$5557.00
May 2025 - April 2026	\$5835.00
May 2026 - April 2027	\$6127.00
May 2027 – April 2028	\$6433.00

(b) The monthly payment shall cover entire premises rental.

4.02 Utilities. Tenant covenants and agrees to pay for separately-metered electricity. Tenant shall reimburse Landlord for its estimated cost of water/sewer/hot water and HVAC at a reasonable rate determined by Landlord.

4.03 Late Charge. A late charge of one and one-half percent (1 1/2%) per month shall be charged and applied to any payment which is not made when it is due.

4.04 Deposit. Landlord is currently holding a security deposit in the amount of Three Thousand Three Hundred Thirty-Three Dollars (\$3,333.00) which was received May 1, 2010 and deposited at TD Bank. Upon execution of this Lease, Tenant shall pay an additional security deposit in the amount of Two Thousand Six Hundred Sixty-Seven Dollars (\$2,667.00), for a total security deposit of Six Thousand Dollars (\$6,000.00).

SECTION 5. CONDITION OF PREMISES

Tenant hereby accepts the Premises as-is, where is, and with all faults. Landlord makes no representations or warranties in regard to the physical condition of the Premises, nor any other matter concerning the Premises. Tenant has inspected the Premises and is familiar with their condition and is not relying upon any representations or warranties of the Landlord.

SECTION 6. IMPROVEMENTS

6.01 If any mechanic's lien shall be filed against the Premises or the Building by reason of any improvements made by or on behalf of Tenant, then Tenant, within thirty (30) days after the date Tenant first becomes aware of the filing of the same, at Tenant's election, shall cause said lien either to be discharged of record or to be bonded over, at its own expense, in a manner which is reasonably acceptable to Landlord. If Tenant should fail to discharge or bond over any such lien, Landlord may do so at Tenant's expense, and Tenant shall promptly reimburse Landlord its reasonable costs and expenses in so doing. All Alterations made by Tenant to the Premises shall remain therein; and, at termination of this Lease, shall be surrendered as a part thereof, except for fixtures and equipment installed at Tenant's cost, which fixtures and equipment may be removed by Tenant. Tenant shall, at its own expense, promptly repair all damage to the Premises or the building resulting from any such removal.

SECTION 7. USE OF PREMISES

7.01 The Tenant shall use and occupy the Premises throughout the term hereof for the purpose of General business use for the conduct of Tenant's operations in bait processing and associated office use. Permitted activities shall be consistent with Tenant's business plan as reasonably approved by Landlord.

7.02. Customer Relations. Tenant recognizes that the maintenance of good customer relations and the maintenance of good relations among the other tenants and users of the Fish Pier Complex, as well as the image of the Landlord to visitors to the Complex, are of the utmost importance to the Landlord and Tenant.

7.03 Tenant shall comply with the operating rules of the Portland Fish Pier Authority governing activities at the Fish Pier Complex with respect to common areas and common facilities.

7.04. Parking. -Tenant and Tenant's employees, customers, and others who are conducting business with Tenant or visiting the Premises shall park on the paved area of the Premises, or on six (6) unassigned parking spaces on Lot #9 or #11 of the Portland Fish Pier. Tenant may negotiate additional parking areas with Landlord if the available space on the Premises becomes inadequate for parking needs.

7.05 Hazard Analysis Critical Control Point ("HACCP") Facility. If required, Tenant shall develop and follow its own HACCP plan.

SECTION 8. LAWS AND REQUIREMENTS OF PUBLIC AUTHORITIES

8.01 During the Term, Tenant shall, at its own cost and expense, promptly observe and comply with all existing and future laws, ordinances, rules and regulations of the Federal, State, County and City Governments, and shall observe and comply with all rules of the Portland Fish Pier Authority applicable to common areas or facilities.

8.02 Tenant shall have the right, but not the obligation, to contest, without cost or expense to Landlord, the validity or application of any law, ordinance, rule, regulation, or requirement of the type referred to in the preceding subsection. If by the terms of any such provision, compliance may be legally delayed without risk of forfeiture or lien on the Premises or penalty to the Landlord, pending resolution of the legal challenge, Tenant may delay compliance therewith until final determination of such proceeding.

8.03 Landlord agrees to execute and deliver any appropriate papers or other instruments which may be reasonably necessary or proper to permit Tenant to contest the validity or application of any such provision.

SECTION 9. ALTERATIONS

9.01 Tenant may, at its own expense, place office and trade fixtures, office equipment, and the like in the Premises and make non-structural alterations, improvements, or additions ("Alterations") to the Premises, provided such work shall be performed in a good and workmanlike manner, in compliance with laws, rules, orders, and regulations of governmental entities having authority over the Premises, and provided such Alterations shall not unreasonably

interfere with the use and enjoyment of the Fish Exchange by Landlord. Landlord's approval, shall be required for any structural alterations, additions, or improvements.

9.02 The Tenant shall submit plans and specifications for any structural changes to the Landlord for its review. In the case of structural alterations, the Landlord shall submit such Plans and Specifications, together with its recommendations, to the Portland Fish Pier Authority's Board of Directors for its approval.

SECTION 10. REPAIRS AND MAINTENANCE

10.01 Tenant's Repairs and Maintenance. During the term of this Agreement and any extension thereof, Tenant will, at its sole expense, keep the Premises in as good order and repair as they are upon the completion of improvements, reasonable wear and tear excepted. Notwithstanding this provision, Tenant shall not be responsible for damages caused by reasonable wear and tear; by fire or other casualty which is not the result of acts by Tenant, its agents, contractors, employees, or business invitees; made necessary as a result of a taking by condemnation or right of eminent domain; losses covered by insurance which is required to be carried by Landlord as well as matters for which Landlord is responsible by the terms of this Lease or applicable law; or conditions caused by the acts or negligence of Landlord, its agents, contractors, employees, or business invitees. Tenant shall surrender the Premises at the end of the Lease Term in good order, condition, and repair, reasonable wear and tear excepted.

10.02 Landlord's Repairs and Maintenance.

(a) During the term of this Agreement and any extension thereof, Landlord will maintain all existing utility services to the Premises to the point where Tenant connects with them for its use.

(b) Landlord's responsibilities under this section shall include, but not be limited to, repair and maintenance of the plumbing, electrical, heating, and cooler building including refrigeration equipment systems; repairs to damage caused by Landlord, its agents, contractors, employees, or business invitees; and the repair and replacement of exterior lighting, excepting fixtures installed by Tenant.

10.03 Snow and Ice Removal. The Landlord and the Portland Fish Pier Authority shall be responsible for removal of snow and ice per the terms of the Master Lease, excepting Tenant surface area as depicted in Exhibit A, for which Tenant shall be responsible.

10.04 Custodial Services. Tenant shall maintain the Premises in a clean manner, and shall not cause nor suffer any waste generated by its operations to accumulate on either the Premises or the Common Areas.

10.05 Trash Collection. Landlord shall be responsible for providing a waste dumpster.

SECTION 11. SUBLETTING AND ASSIGNMENT

Tenant shall not assign nor encumber this Lease or any part thereof. Tenant shall not sublet the Premises without the written approval of Landlord and the Fish Pier Authority. Said Landlord approval shall not be unreasonably withheld or conditioned. In the event of any assignment or subletting, Tenant shall remain fully liable under this Lease. Such assignment, sublease, or conveyance is expressly subject to this Agreement.

SECTION 12. INDEMNIFICATION

12.01 To the fullest extent permitted by law, Tenant shall at its own expense defend, indemnify, and hold harmless Landlord, the City of Portland, and the Fish Pier Authority, their 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 property damage sustained by any one in and about the Fish Pier Complex, or as a result of activities or service at the Fish Pier Complex, resulting from any negligent or intentional act or omission of Tenant, its officers, agents employees, and contractors or anyone else for whose acts Tenant may be liable, except to the extent that such injury, death, or property damage results from any negligent or intentional act or omission of Landlord, its officers, agents, employees or servants. 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 the Fish Pier Authority or in which Landlord or the Fish Pier Authority may be impleaded with others upon any such above-mentioned matter, claim or claims, including claims of contractors, employees, laborers, materialmen, and suppliers. Landlord shall have the right to participate in such suits and no action shall be settled without prior consent of the Landlord, which consent shall not be unreasonably withheld or conditioned. If the Landlord refuses to authorize settlement, however, then Landlord shall pay all further attorney's fees or other defense costs. Such obligation of indemnity and defense shall not be construed to negate nor abridge any other right of indemnification or contribution running to the Landlord which would otherwise exist. The extent of this indemnity provision shall not be limited by any requirement of insurance contained herein. Tenant's obligations under this section shall survive the expiration or other termination of this Lease.

12.02 Each party shall provide the other party with prompt notice of any claim filed against it as a result of or arising from activities under this Lease. This indemnity and hold harmless section includes indemnity against all reasonable expenses and liabilities incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof with counsel reasonably acceptable to the Landlord.

SECTION 13. INSURANCE

13.01 Prior to execution of this Lease, Tenant shall procure at its own expense and maintain throughout the Term of this Agreement the following insurance coverages in form and substance reasonably acceptable to the Landlord:

- a. Commercial General Liability insurance coverage (including stevedore's liability coverage and contractual liability coverage covering, without limitation, the indemnity obligations set forth in this Lease) in the amount of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, death and property damage;
- b. Automobile vehicle liability insurance in an amount of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury, death and property damage;
- c. Workers' Compensation insurance coverage in the statutory amount; and
- d. To the extent required by law or applicable, US Longshoremen & Harbor Workers insurance in the statutory amount or \$2,000,000 if none exists;
- e. Vessel Pollution coverage in the amount of One Million Dollars (\$1,000,000) with respect to any vessel owned or leased by Tenant, including but not limited to a ship, boat or barge, that uses any part of the Premises during the term of this Lease.

13.02 With respect to the Commercial General liability, Automobile liability, and as applicable, Vessel Pollution liability insurance coverages, Tenant shall name the Landlord, the Portland Fish Pier Authority, and City of Portland (the "Insured Parties") as an additional insured for coverage only in those areas where immunity has been expressly waived, including but not limited to 14 M.R.S. A. § 8104-A, as limited by § 8104-B and § 811114 (Maine Tort Claims Act), and 14 M.R.S.A. §158 (the Charitable Immunity Act). This provision shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages available to the Landlord or the City under those Acts, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the Insured Parties. Prior to execution of this Lease, Tenant shall furnish the Landlord and thereafter maintain certificates evidencing all such coverages, which certificates shall guarantee thirty (30) days' notice to the Landlord of termination of insurance from the insurance provider or agent. Tenant shall also provide a copy of any endorsement naming the Insured Parties as additional insured. A certificate that merely has a box checked under "Addl Insr," or the like, or that merely states a party 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 Insured Parties, their officers or employees. Upon Landlord's request, Tenant shall provide Landlord with a complete copy of any of the above-referenced policies. Tenant shall be responsible for any and all deductibles and/or self-insured retentions (not to exceed \$10,000 without prior written approval of the Corporation Counsel). Landlord's acceptance or lack of acceptance of Tenant's Certificate of Insurance or other evidence of insurance shall not be construed as a waiver of Tenant's obligation to obtain and maintain such insurance as required by this agreement. The minimum limits 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.

13.03 Tenant understands and agrees that the minimum limits of the insurance herein required may become inadequate during the term of this Lease and Tenant agrees that it will

increase such minimum limits by reasonable amounts within thirty (30) days of receipt of notice in writing from the Landlord to do so. In no case shall such insurance be less than the statutory limits set forth in the Maine Tort Claims Act (14 M.R.S.A. §8101 et seq.) or any successor statute thereto.

13.04 Tenant shall be responsible for covering all of its personal property with such property and casualty insurance as it deems necessary and Landlord and the City shall have no responsibility therefor. Tenant assumes all risk of damage, loss or casualty to its personal property 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, agents, employees, or servants. Tenant shall defend, indemnify and hold the Landlord, the Fish Pier Authority and the City of Portland harmless from any claim based upon any damage, loss or casualty to its personal property while at the Premises. Any casualty insurance obtained by Tenant for its personal property shall include a waiver of subrogation against the Landlord, the Fish Pier Authority and the City.

13.05 Coverage of City of Portland. All of the terms of this section shall apply to and benefit the Landlord, the Fish Pier Authority and also the City of Portland as owner of the Premises.

13.06 Other Vessel-Related Coverage. In the event that Tenant shall enter into a contract with a business or person(s) using any portion of the Premises via any vessel, including but not limited to a ship, boat or barge, not owned or leased by Tenant, Tenant shall require from the applicable vessel operator, certificates evidencing the insurance coverages set forth in sections 13.01(a), (c), (d), and (e) above, and shall provide a copy of such certificates to Landlord upon request. Notwithstanding anything to the contrary in this paragraph, Tenant shall not be required to obtain such certificates from vessels doing business solely with the Portland Fish Exchange.

SECTION 14. INTENTIONALLY OMITTED

SECTION 15. EMINENT DOMAIN

15.01 If the Premises, or a portion thereof, should be taken by condemnation or right of eminent domain (including a temporary taking), and if such taking should be such as in the ordinary course would interfere with Tenant's use of the Premises, Landlord or Tenant shall have the right to terminate this Lease by notice to the other of its intentions to do so, provided that such notice is given not later than thirty (30) days after the effective date of such taking.

15.02 Should any part of the Premises be so taken and should this Lease not be terminated in accordance with the foregoing provisions, Landlord shall with all reasonable diligence, restore the Premises to a unit which is reasonably suitable to the uses of Tenant. If Landlord shall not have completed such work to the extent necessary to enable Tenant to use the Premises for the purposes and in the manner contemplated by this Lease by the expiration of ninety (90) days after the effective date of such taking, then Tenant may terminate this Lease by

notice to Landlord with the same force and effect as if such date were the date originally established as the expiration date hereof.

15.03 If the Premises, or any portion thereof, should be taken by condemnation or right of eminent domain by the City of Portland or by an entity created or controlled by the City of Portland, then, in addition to any damages Tenant may be entitled to for the taking itself, Tenant shall also be entitled to receive from Landlord the following:

1. An amount to reimburse Tenant for the improvements it made to the Premises, said amount equal to the cost of Tenant's renovations and remodeling multiplied by a fraction the numerator of which is the unexpired term of this Agreement and the five (6) year renewal period at the time of the taking and the denominator of which is ten (12);
2. Tenant's reasonable relocations costs; and
3. The amount of any increase in rent or other payments incurred by Tenant at its new location.

If the entire Premises leased to the Portland Fish Exchange under the Master Lease is taken by condemnation or right of eminent domain by the City of Portland while Landlord is still in possession of same, then this Section 15.03 shall not apply.

SECTION 16. ABATEMENT OF RENT

In the event of a taking described in Section 15, the Rent and all other charges payable hereunder, or a fair and just proportion thereof according to the nature and extent of Tenant's loss of use, shall be suspended or abated until the Premises are restored as provided in this Article.

SECTION 17. AWARD

If a taking occurs, Landlord and Tenant shall share in any award as their interests might appear, giving due regard to the losses sustained by each, the value of Tenant's Lease, and the value of the renovations and remodeling done by Tenant under Section 6. Tenant may also prosecute in any condemnation proceeding its claims for the value of Tenant's trade fixtures, the unamortized value of the improvements to the Premises made by Tenant, and relocation expenses.

SECTION 18. PROHIBITION ON MORTGAGES

The Tenant may not mortgage what interest, if any, it has in this Agreement and in the Premises, nor may it make a collateral assignment of this Agreement except with the written consent of Landlord, which consent shall not be unreasonably withheld or conditioned.

SECTION 19. NON-COMPETE

19.01 Tenant acknowledges that Landlord, as its main business activity, sorts, culls and weighs fresh seafood prior to every auction, and de-heads, steaks, reweighs and boxes seafood for auction. Tenant shall not compete with Landlord in that business by performing the same or similar activities at the Leased Premises.

19.02 Tenant shall not offload any seafood other than lobster and bait at the Premises.

SECTION 20. TENANT'S DEFAULT

20.01. The Tenant shall be deemed to be in default in the event any of the following conditions should occur:

(a) Tenant fails to pay, when due, any amount or installment of Rent, or any other payment specified herein;

(b) Tenant fails to observe or to perform any covenant, agreement, or obligation of this Agreement;

(c) There shall occur the dissolution of the Tenant or the Tenant shall file any petition or institute any proceedings under the Bankruptcy Code, either as such Code now exists or under any amendment thereof which may hereafter be enacted, or under any act or acts, state or federal, dealing with, or relation to the subject or subjects of bankruptcy or insolvency, or under any amendment of such act or acts, either as a bankrupt or as an insolvent, or as a debtor; or in any similar capacity, or any involuntary petition in bankruptcy is filed against the Tenant and the same is not stayed or discharged within thirty (30) days from such filing or any other petition or any other proceedings of the foregoing or similar kind or character filed or instituted or taken against the Tenant, or a receiver of the business or of the property or assets of the Tenant shall be appointed by any court, except a receiver appointed at the insistence or request of the City; or Tenant shall make a general or any other assignment for the benefit of the Tenant's creditors;

(d) The Tenant shall substantially abandon or vacate the Premises or fail to use the Premises for the purposes set forth in Section 7.

20.02 Remedies for Tenant's Default. If Tenant should be in default for any reason, then the Landlord shall provide reasonable notice of such default, and the Tenant shall undertake to cure such default within thirty (30) days from receipt of such notice, except as the time may be extended by Section 23, Force Majeure. If a Default hereunder continues for sixty (60) days, Landlord may, at its election, give Tenant written notice of its intention to terminate this Agreement on a date specified in said notice, which date shall not be earlier than ten (10) days after such notice is given. If such Default has not been cured on the date so specified, then with or without the entry of Landlord, this Agreement and the term hereof shall thereupon terminate and Landlord may re-enter and take possession of the Premises and the Facility and Tenant shall

forthwith surrender possession of the Premises. Tenant shall be, and shall remain, liable for all rental and other charges accrued hereunder to the date such termination becomes effective. Notwithstanding any other provision of this Agreement, Defaults in the payment of Rent must be cured within thirty (30) days of the Notice of Default of this Agreement and the Term thereof shall thereupon terminate in accordance with the provisions of Section 25. Tenant shall pay all reasonable costs, expenses, liabilities, losses, damages, fines, penalties, claims, and demands, including reasonable attorneys' and consultants' fees that are incurred by Landlord as a result of Tenant's default under this Lease.

SECTION 21. LANDLORD'S SELF-HELP/ATTORNEY'S FEES

21.01 If Tenant should default in the performance or observance of any agreement or condition in this Lease required to be performed or observed by it, other than an obligation to pay money, and should not cure such default as provided herein, Landlord may, at its option, without waiving any claim for damages for breach of this Lease, at any time thereafter, cure such default for the account of Tenant. Any amount paid or any liability incurred by Landlord in so doing, including Landlord's reasonable attorneys' fees, shall be deemed paid or incurred for the account of Tenant, and Tenant agrees either to reimburse Landlord therefor, as additional rent within ten (10) days after being invoiced by Landlord, or save Landlord harmless therefrom.

SECTION 22. LANDLORD'S DEFAULT

22.01 The Landlord shall be deemed to be in default in the event any of the following conditions should occur:

- (a) It is determined that the Landlord does not have the power and authority to execute and deliver this Agreement and to carry out and perform all covenants to be performed by it hereunder.
- (b) The Premises are not free from encumbrances, liens, defects in title, violations of law, lease, tenancies, easement, or other restrictions, with the exception of those expressly stated in this Agreement, which substantially impair Tenant's ability to carry on its business.
- (c) The Landlord is unable to secure or provide, at the time of the commencement of the Term and at all times thereafter, free and adequate means of ingress and egress to the Premises for Tenant.
- (d) The Landlord fails to observe or perform any covenants, agreements, or obligations of this Agreement.

22.02 Remedies for Landlord's Default. If Landlord should be in default for any reason, then the Tenant shall provide reasonable notice of such default, and the Landlord shall undertake to cure such default within thirty (30) days from receipt of such notice, except as the time may be extended by Section 23, Force Majeure. If a Default hereunder continues for sixty (60) days,

Tenant may, at its election, give Landlord written notice of such Default as aforesaid and its intention to terminate this Agreement on a date specified in said notice, which date shall not be earlier than ten (10) days after the notice is given. If such Default has not been cured on the date so specified and with or without entry of Landlord, this Agreement, the Term, and Tenant's rent obligations hereunder shall thereupon terminate.

In the event of an uncured default by Landlord, Tenant shall have all remedies available at law or in equity.

SECTION 23. FORCE MAJEURE

In any case where either party hereto is required to do any act (except for the payment of money), the time for the performance thereof shall be extended by a period equal to any delay caused by or resulting from act of God, war, civil commotion, fire or other casualty, labor difficulties, shortages of energy, labor, materials or equipment, government regulations, delays caused by either party to the other, pandemic, or other causes beyond such party's reasonable control, whether such time be designated by a fixed date, a fixed time or a "reasonable time."

SECTION 24. TERMINATION BY TENANT BECAUSE OF CHANGES IN OR NEW INTERPRETATIONS OF RULES OR REGULATIONS

Tenant is entitled to terminate this Agreement if:

- (a) there is any change in governmental rules or regulations regarding the harvesting of seafood species, which rules or regulations substantially impair Tenant's ability to carry on its business; or
- (b) there is a controlling interpretation given to an existing governmental rule or regulation with respect to the seafood industry that substantially impairs Tenant's ability to conduct its business at the Premises; or there are changes in or controlling interpretations of any other rules or regulations mentioned in Section 8 that substantially impair Tenant's ability to carry on its business at the Premises.

Tenant shall give thirty (30) days' notice of its intent to terminate because of a change in or interpretation of rules or regulations as aforesaid. Upon the expiration of the notice period, Tenant shall be relieved of all duty to pay rent or to fulfill any other obligation under this Agreement.

SECTION 25. COMPLIANCE WITH ENVIRONMENTAL LAWS

25.01 The Tenant will comply in all respects with all applicable federal, state and local laws and regulations, including, without limitation, those relating to "hazardous materials," as defined herein.

25.02 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 replacement 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.

25.03 The Tenant, 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 caused by Tenant of environmental laws caused by any hazardous materials used, generated, released, discharged, stored, or disposed of on the Premises during its tenancy.

25.04 Tenant will defend, indemnify and hold the Landlord harmless from any cost, expense, claims or liability resulting from violations of any environmental laws hereunder by Tenant.

25.05 The Terms of this section shall expressly survive the expiration or earlier termination of the Lease.

SECTION 26. TERMINATION AND EXPIRATION

26.01 Upon expiration of the Term or termination pursuant to the provisions hereof, the Tenant shall yield and deliver to the Landlord possession of the Premises in good repair and condition, reasonable wear and tear excepted. If the Tenant should fail to yield the Premises in the required condition, the Landlord may undertake whatever repairs or work required to restore the Premises to good repair and condition and the Tenant shall pay the cost thereof upon presentation of the Landlord of an itemization of such costs incurred.

SECTION 27. LANDLORD'S COVENANTS AND WARRANTIES

Landlord covenants and warrants to Tenant as follows:

(a) That Landlord lawfully possesses the Premises which are the subject matter of this Agreement under the Master Lease;

(b) That Landlord has committed no breach or default of the Master Lease and will not commit any breach or default in the future;

(c) That Landlord has the legal right to sublease the Premises to Tenant under the terms and conditions of this Agreement and that Landlord has obtained all consents necessary from the City of Portland, the Portland Fish Pier Authority and any other entity or governmental body; and

(d) That so long as Tenant pays the rent and observes all other provisions of this Agreement, Tenant may peacefully hold, enjoy and occupy the Premises for the term of this Agreement and any renewal period.

SECTION 28. HOLDING OVER

Any holding over by Tenant after the expiration of the Lease Term or any renewal thereof shall be treated as a tenancy from month-to-month terminable upon sixty (60) days' notice by either Landlord or Tenant to the other and otherwise on the terms and conditions set forth in this Lease, so far as applicable.

SECTION 29. INVALIDITY OF PARTICULAR PROVISIONS

If any term or provision of this Lease, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, 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 and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

SECTION 30. RECORDING MEMORANDUM

Landlord and Tenant agree not to record this Lease, but each party agrees, at the request of the other, to execute, acknowledge, and deliver a memorandum of lease. In no event shall such document set forth the rent or other charges payable by Tenant under this Lease and any such document shall expressly state that it is executed pursuant to the provisions contained in this Lease, and is not intended to vary the terms and conditions of this Lease.

SECTION 31. PROVISIONS BINDING

Except as herein otherwise expressly provided, the terms hereof shall be binding upon and shall inure to the benefit of the successors and assigns, respectively, of Landlord and Tenant. Each term and each provision of this Lease to be performed by Tenant and Landlord shall be construed to be both a covenant and a condition.

SECTION 32. WAIVERS

Failure of the Landlord or Tenant to complain of any act or omission on the part of the other party no matter how long the same may continue, shall not be deemed to be a waiver by said party of its rights hereunder. No waiver by the Landlord or Tenant at any time, expressed or implied, of any breach of any provision of this Agreement shall be deemed a waiver or a breach of any other provision of this Agreement or a consent to any subsequent breach of the same or any other provision.

SECTION 33. SUBORDINATE TO OTHER AGREEMENTS

33.01 All terms and obligations under this Agreement shall be subordinate to the provisions of the master lease and all other existing agreements between the Landlord and the Fish Pier Authority, the City of Portland and the Fish Pier Authority, and the City of Portland and the State of Maine and United States Government, and any future agreements between the same, relative to the operation, funding and construction of the Fish Pier Complex. Tenant agrees to execute any amendment to this Agreement whenever requested by the City of Portland which is required to bring the City into compliance with any law or regulation relating to the development and operation of the Fish Pier Complex project.

33.02 No Discrimination It is understood and agreed that funds for the construction of the Complex by City and its assignees have been provided in part by grant money from the United States Economic Development Administration, and that it is essential that use by the fishing industry of Common Areas be preserved and protected and that service to vessels be provided according to reasonable and lawful rules and regulation and without discrimination and without preference.

SECTION 34. LANDLORD'S RIGHT TO ENTER, INSPECT AND REPAIR

The Landlord, by its authorized officers, employees, agents, contractors, sub-contractors and other representatives, after the Landlord has given Tenant reasonable notice, shall have the right at such times as may be reasonable under the circumstances and with as little interruption of Tenant's operations as is reasonably practicable, to enter upon the Premises without charge for the purposes of Inspection and Maintenance as set forth below. Landlord and its authorized officers, employees, agents, contractors, sub-contractors and other representatives, however, shall comply with the protocols of Tenant existing at the time of entry, including, but without limitation, Tenant's food safety protocol for visitors and contractors, and Tenant's requirements of notice, sign-in and completion and signature of health questionnaires. Tenant may deny access or entry to any person who fails to comply with Tenant's protocols.

(a) Inspection. To inspect the Premises to determine whether tenant has complied and is complying with the terms and conditions of this Agreement.

(b) Maintenance. To perform maintenance and make repairs in any case where it has an obligation to do so or where Tenant has failed to carry out its obligation to do so, but only after the Landlord has given Tenant reasonable notice to perform its maintenance obligation. In that event, Tenant shall promptly, upon demand, reimburse the Landlord for the reasonable cost of the Landlord performing Tenant's maintenance or repair obligation as Additional Rental.

SECTION 35. COVENANT OF QUIET ENJOYMENT

Subject to the terms and provisions of this Lease and on payment of the Rent and compliance with all of the terms and provisions of this Lease, Tenant shall lawfully, peaceably, and quietly have, hold, occupy, and enjoy the Premises during the Lease Term.

SECTION 36. NOTICES

Whenever, by the terms of this Lease, a notice shall or may be given either to Landlord or to Tenant, such notice shall be in writing and shall be delivered by hand, or sent by Federal Express or a similar reputable express delivery service, or by registered or certified mail, return receipt requested, postage prepaid. If intended for Landlord, addressed to Landlord, at the address set forth below; and if intended for Tenant, addressed to Tenant at the Premises.

All such notices shall be effective upon receipt.

Notices to Landlord shall be sent to:

Portland Fish Exchange
6 Portland Fish Pier
Portland, Maine 04101

Portland Fish Pier Authority
389 Congress Street
Portland, Maine 04101

Notices to Tenant shall be sent to:

Dropping Springs Bait Co., LLC
6A Portland Fish Pier
Portland, Maine 04101

SECTION 37. ENTIRE AGREEMENT

This Agreement (including exhibits hereto) expresses the entire understanding and all agreements of the Landlord and the Tenant with each other, and neither the Landlord nor the Tenant has made or shall be bound by any agreement with or any representation to the other

which is not expressly set forth in this Agreement (including the exhibits hereto). This Agreement and its Exhibits may be modified only by a written amendment approved by the governing bodies of both parties and signed by the Landlord and the Tenant.

SECTION 38. GOVERNING LAWS

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, **PORTLAND FISH EXCHANGE** has caused this AGREEMENT to be signed in its corporate name by Robert M. Odlin, its President, thereunto duly authorized, and **DROPPING SPRINGS BAIT CO., LLC** has caused this AGREEMENT to be signed in its corporate name by _____, its _____, thereunto duly authorized, as of the day and date first stated above.

WITNESS:

PORTLAND FISH EXCHANGE

By: _____
Robert M. Odlin
Its President

WITNESS:

DROPPING SPRINGS BAIT CO., LLC

By: _____
Printed Name: _____
Its: _____

Approved as to Form:

Corporation Counsel's Office

**CONSENT OF THE PORTLAND FISH PIER AUTHORITY AND AGREEMENT TO
STAND-IN AS LANDLORD**

The Portland Fish Pier Authority hereby consents to the Sublease of the Premises to the Tenant under the terms and conditions of the foregoing Agreement.

The Portland Fish Pier Authority also agrees that if there is a breach or default in the Master Lease by The Portland Fish Exchange, Tenant may continue to occupy the Premises under the foregoing Agreement so long as the breach or default is not due to Tenant's actions and so long as Tenant continues to pay its rent and honor its other obligations specified in said Agreement.

Finally, in the event the Portland Fish Exchange ceases to be the Landlord under the foregoing Agreement, then the Portland Fish Pier Authority shall become the Landlord, and it shall be bound by all the terms and conditions of the foregoing Agreement, and it shall succeed to all the rights and obligations of the Landlord under the foregoing Agreement.

Dated: _____

Portland Fish Pier Authority

By: _____

Print Name: Meredith Mendelson

Title: President