HOUSING & ECONOMIC DEVELOPMENT COMMITTEE

DATE: Tuesday, October 5, 2021
TIME: 5:30 PM
LOCATION:Via Zoom Link Below

Due to the existence of an emergency or urgent issue, the Committee will conduct this meeting by remote methods/technology at the Zoom link provided below, in accordance with the requirements of 1 M.R.S. section 403-B and the City Council's Remote Participation Policy.

1. **Zoom Public Meeting Information**

   a. Please click the link below to join the webinar:
   https://us06web.zoom.us/j/93841248203?pwd=c0ptc25mTitoNm1xMkFoaTkwOTBTUT09
   Passcode: 578990
   Or One tap mobile :
   US: +13126266799,,93841248203# or +16465588656,,93841248203#
   Or Telephone:
   Dial(for higher quality, dial a number based on your current location):
   US: +1 312 626 6799 or +1 646 558 8656 or +1 301 715 8592 or +1 346 248 7799 or +1 720 707 2699 or +1 253 215 8782
   Webinar ID: 938 4124 8203
   International numbers available: https://us06web.zoom.us/u/kb0kLFntLA

2. **Review and accept Minutes from September 21, 2021, Committee meeting.**

   a. See attached draft meeting Minutes.

3. **Public hearing and vote to recommend to the City Council proposed Homeless Service Center Ground and Building Master Leases - Jon P. Jennings**

   a. See attached Memorandum and materials.

   Pursuant to 1 M.R.S.A. 405(6)(C), the Committee may go into executive session to discuss real estate lease negotiations and provide guidance to staff.

4. **Housing policy discussion re: Missing Middle Housing - Staff presentation, Committee discussion and direction to Staff - Mary Davis and Christine Grimando**

a. See attached Memoranda.

5. Intentionally left blank.

a.

Next Meeting Date: October 19, 2021/Mayor Kate Snyder, Committee Chair

Minutes

Remote Housing and Economic Development Committee

September 21, 2021

NOTE: This meeting was held via Zoom and can be viewed at this link: http://www.portlandmaine.gov/1695/Economic-Development-Committee These Minutes provide a record of those in attendance, general discussion taking place, and motions made.

A remote meeting of the Housing and Economic Development Committee (HEDC) of the Portland City Council was held on Tuesday, September 21, 2021, at 5:30 p.m. via Zoom. Present from the Committee were members Mayor Kate Snyder, Councilors Pious Ali, Tae Chong, and Andrew Zarro. Also present from the City Council was Councilor April Fournier. Present from the City staff were Acting Housing and Economic Development Department Director Mary Davis, and Housing and Program Manager Victoria Volent.

Item #1: Zoom Meeting Information – no Committee action required.

Item #2: Review and vote on September 7, 2021, draft meeting Minutes.

On motion made by Councilor Ali, seconded by Councilor Chong, the Committee voted unanimously (4-0) to accept the Minutes as published.

Item #3: Public Hearing and Vote to Recommend to City Council the CDBG Priority Task Force Report – Mary Davis and Kelley Walsh.

Mary Davis introduced the item noting Portland is required to submit a 5-Year Consolidated Plan to HUD. The new plan will be submitted in May of 2022. In February of 2020, the CDBG Priority Setting Task Force reviewed priorities, structural changes, and administrative changes to the allocation process with a robust outreach campaign to generate community feedback. Jim Hall, co-chair of the 2020 CDBG task force, spoke next to introduce the recommendation of the committee. The four main goals and objective categories are not changing but the Committee did recommend the following structural changes; (1) reducing the maximum grant request for Development Activities from $250,000 to $200,000; (2) reducing the City funding cap from 5% in each category; (3) eliminating the 60% public infrastructure set-aside within the City funding cap in the construction/development category; (4) establishing a set-aside for new programs that have not previously received CDBG funding; (5) funding for the Community Police program be transitioned in the City's budget and set-aside to be used in the community policing program or another alternative response program managed by the Police Department. The task force also proposed revisions to scoring, and the "needs-goals-priorities" table.

Mary Davis indicated the City Manager does not support recommendations (1), (2) and (3), but does support recommendation (5) as amended and explained above. The City Manager is recommending the City Council does not support items (1), (2), and (3). Staff is requesting the Housing and Economic Development Committee vote to recommend that the City Council adopt the 2020 CDBG Priority Task Force Report and 2021 Addendum as amended by the City Manager's letter.

Mayor Kate Snyder opened the meeting to public comment. Seeing no one, the public comment period was closed.

The Committee discussed the recommendations and confirmed that after submission of the Plan to HUD, the Council may adjust the plan. The Committee thanked the Task Force for their work.

A motion was made by Councilor Chong, seconded by Councilor Ali to recommend that the City Council adopt the 2020 CDBG Priority Task Force Report and 2021 Addendum as amended by the City Manager's letter. Mayor Snyder asked for a vote on the motion and it passed unanimously (4-0).

Item #4: Committee Workshop- Housing Policy Ideas for Missing Middle Housing

Mary Davis introduced this item by restating the work previously conducted by the Housing and Economic Development Committee regarding creating housing opportunities for the missing middle. This evening's meeting is an opportunity for Committee members to provide policy ideas for missing middle housing. The next meeting of the Committee will include policy recommendations from staff and provide relevant information from the ReCode process.

Councilor Chong requested an analysis regarding a comment from the public that the Green New Deal has made it difficult for developers to create housing for the missing middle. He would like to know how many relevant projects are now being proposed outside of Portland due to changes to the zoning ordinance.

Mary Davis indicated staff can provide some information but it has not been a long enough period of time to provide an in-depth analysis regarding the impact of the referendum. Subsidized projects have not been impacted by the referendum; it is the projects typically aimed at providing housing for the missing middle that are impacted.

Councilor Zarro suggested policy proposals should distinguish between rental and homeownership housing. He asked if the permitting process is discouraging development in Portland. He would appreciate an update regarding Phase 2 of ReCode.

Councilor Ali inquired into opportunities for the legislative committee to bring housing solutions to the city from the state.

Council Chong noted funding for missing middle projects is not as readily available as funding for low-income projects. He proposed advocating a pilot program through

MaineHousing to provide a source of funding for cooperative and land-trust housing.

Mayor Snyder asked why Portland uses the Portland HUD Metro Fair Market Area Median Income noting that at even 80% of the area median income, the rent levels are still unaffordable for many households that make up the missing middle.

Councilor Ali would like to know how many housing units are removed from the long-term housing market due to short term rentals.

Mary Davis noted this information will be provided in the annual Housing Report from date collected by the Permitting and Inspections Department.

For the next Committee meeting, staff will work in conjunction with the Planning Department to response to Committee comments and questions.

A motion was made by Councilor Chong to adjourn the meeting, seconded by Councilor Zarro. Mayor Snyder asked for a vote on the motion and it passed unanimously (4-0) to adjourn the meeting at approximately 7:04 p.m.

Respectively submitted, Victoria Volent

CITY OF PORTLAND
Executive Department
Jon P. Jennings, City Manager

MEMORANDUM

TO: **Housing and Economic Development Committee**

FROM: **Jon P. Jennings, City Manager**

DATE: **September 30, 2021**

SUBJECT: **Homeless Service Center Ground and Building Master Leases**

I. ONE SENTENCE SUMMARY

Draft Ground and Building Master Leases will support construction of the Planning Board approved approximately 51,690 square foot 200-bed city of Portland Homeless Service Center located at 654 Riverside Street.

II. BACKGROUND

The Homeless Service Center (HSC) is an approximately 51,690 square foot 200-bed facility with complete wrap around services.

The City Council approved First and Second Agreements with Developers Collaborative (DC), the city selected HSC developer, for the city to cover costs to support DC finalizing the HSC design, handling a public engagement process to secure Planning Board approval, preparing construction/permit plans and proposing a financial public-private partnership for DC to construct and own the HSC under a city lease/purchase option.

The Planning Board approved the HSC on September 14, 2021.

III. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

Housing and Economic Development Committee approval, in the form of a recommendation to the City Council, of Draft Ground and Building Master Leases to support construction of the Planning Board approved approximately 51,690 square foot 200-bed Homeless Service Center.

IV. FINANCIAL IMPACT

Proposed business and financial terms for the Ground and Building Master Leases include:

Ground Lease is on city-owned property. The property will remain owned by the city for the entire Building Lease term and will be pledged at no cost to support construction of the HSC.

Building Master Lease/Purchase Option

Homeless Service Center Cost. Capped at $25 million for the facility construction. The $5 million cost increase based upon the original DC $20 million Proposal are due to the finalizing the HSC facility space and site plans to address Planning Board approval conditions; the pandemic impact upon the cost of materials; energy efficiency requirements associated with the Green New Deal and site improvement expenses. The breakdown of increased project cost increases are as follows:

- Changes in Planning Board comments and conditions = $750,000;
- Green New Deal requirements (specifically HVAC, electrical and insulation) = $800,000;
- Design Changes to the building including increase in ceiling height for improved natural light = $700,000;
- Escalated materials costs from March to October = $1.05 million and
- Increased scope and overall costs of site work, plantings, hardscaping, outdoor seating, etc. = $1.7 million.
- **TOTAL = $5 Million**

Term. Twenty-five (25) years with two ten (10) year consecutive renewal options.

City Upfront Investment. $5 million from City American Rescue Plan funds.

Annual Rent. Fixed at $2.701 million for ten years followed by a drop to $307,500 in year 11 with annual 2.5% escalators to $434,489 in year 25.

Purchase Option at end of year 25. $1.

Building capital, maintenance and operational cost responsibility. The city staff is comfortable with the city maintaining building capital responsibility because this will be a new building with equipment warranties. All facility operating and maintenance costs (i.e., utilities, insurance, janitorial services, building property taxes, etc.) will be handled by the city. The city will ultimately own the facility, so it makes sense for the city to maintain it.

V. STAFF ANALYSIS

The proposed business financial terms are reasonable when compared to the city cost of issuing debt to support the entire facility costs but additional analysis and negotiations will be necessary prior to final lease approval.

VI. RECOMMENDATION

City staff recommends approval of the Draft Ground and Building Leases in substantial conformance as attached. Approval should be in the form of HSC total cost cap of $25 million with allowing staff to negotiate equal or better lease terms based additional negotiations with the developer and possible additional State of Maine and/or Cumberland County funds to support the HSC.

VII. LIST ATTACHMENTS

- **GROUND LEASE AGREEMENT Between the CITY OF PORTLAND and DC RIVERSIDE LLC**
- **LEASE AGREEMENT, DC Riverside LLC/ CITY OF PORTLAND HOMELESS SERVICE CENTER**

389 Congress Street • Portland, Maine 04101 • 207-874-8300

info@portlandmaine.gov • www.portlandmaine.gov

GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (this "Lease") made as of the ___ day of _____, 2021, by and between the **CITY OF PORTLAND**, a Maine municipal corporation with a principal place of business and mailing address of 389 Congress Street, Portland, Maine 04101 (hereinafter referred to as "Landlord"), and **DC RIVERSIDE LLC**, a Maine limited liability company with a mailing address c/o Developers Collaborative, 631 Stevens Avenue, Suite 203, Portland, Maine 04103 (hereinafter referred to as "Tenant").

W I T N E S S E T H:

WHEREAS, Landlord is the owner of real property located at 654 Riverside Street, Portland, Maine, said real property being a portion of the premises described in a Quitclaim Deed with Covenant from Downtown Portland Corporation to the City of Portland, dated May 18, 2010 and recorded in the Cumberland County Registry of Deeds in Book 27825, Page 68, depicted as "Proposed Lot 4-2" on a plan titled "2nd Amended Riverside Subdivision, Riverside Street, Portland" prepared by Sebago Technics dated January 23, 2018, revised through January 23, 2018, approved by the City of Portland Planning Board on January 23, 2018, and recorded in the Cumberland County Registry of Deeds in Plan Book 218, Page 199, generally depicted on the City of Portland Tax Map 323, Block A, Lot 3-5, and Tax Map 322, Block A, Lot 10, and being more particularly described in Exhibit A, attached hereto (the "Property"). The exact configuration of the Property is subject to a site plan amendment approval (resulting in a Third Amended Subdivision Plan, for which the Landlord shall be responsible). The parties agree to mutually cooperate to create, modify and revise the legal description of the Property described on Exhibit A to accommodate the Third Amended Subdivision Plan, and to attach a substitute or supplementary exhibit to the Lease to reflect the revised description.; and

WHEREAS, Landlord desires to lease said Property, and appurtenant rights as more particularly described herein, to Tenant, and Tenant desires to lease such Property and appurtenant rights from Landlord, to construct an approximately 51,690 square foot homeless services center (the "Building"), which is generally depicted on the site plan attached hereto as Exhibit B; and

WHEREAS, contemporaneously herewith, Landlord and Tenant intend to enter into a master lease agreement (the "Master Lease"), whereby Landlord as the Master Lease Tenant, will lease the Building from Tenant, as Master Lease Landlord, for the operation of the City of Portland "Homeless Services Center."

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, Landlord and Tenant hereby agree as follows:

SECTION 1. Leased Premises; Title: Landlord hereby leases, demises and lets to Tenant, and Tenant hereby leases, takes and hires from Landlord, for the term and upon and subject to the terms, conditions, covenants and provisions set forth in this Lease, the Property, free and clear of all liens and encumbrances (other than those matters set forth herein or in any schedules or exhibits attached hereto, none of which shall interfere with the use and enjoyment of the Leased Premises or unreasonably interfere with the construction, use and operation of the

Building), together with any and all appurtenances, rights, privileges and easements benefiting, belonging or pertaining thereto, including any easements granted subsequent to the date hereof (the "Leased Premises"). Exhibit B shall be updated periodically by way of a substitute exhibit to this Lease as necessary to accurately reflect the approved site plan, as they may be modified by the mutual consent of Landlord and Tenant, to assure the Leased Premises meet all State and municipal code regulations and conditions of approval, and to memorialize appurtenant easements and rights to the Leased Premises granted pursuant to Section 19 or otherwise. Tenant may, but shall have no obligation to, obtain a leasehold commitment of title insurance covering the Leased Premises from a title company acceptable to Tenant. Landlord agrees that it will not take any action after the effective date of this Lease which shall adversely affect the status of Tenant's leasehold interest in the Leased Premises.

SECTION 2. Term:

(a) This Lease shall be effective on the date of the signature of the last party to execute this Lease. Notwithstanding the effective date of this Lease, the term of this Lease shall Commence on the Commencement Date, as hereinafter defined and shall continue thereafter for a period of fifty (50) years (the "Term" or "term"), unless sooner terminated in accordance with the terms and conditions hereof.

The "Commencement Date," as used herein, shall mean the Commencement Date of the Master Lease. Landlord and Tenant shall confirm the Commencement Date and Term expiration date by mutually executing a term commencement date confirmation agreement in form mutually satisfactory to the parties promptly after the date the Commencement Date is determined.

SECTION 3. Rent: Base Rent for the entirety of the Term shall be $1.00, due and payable by Tenant to Landlord upon execution of this Lease, receipt of which is hereby acknowledged.

SECTION 4. Permitted Use: The Tenant shall use the Leased Premises for the construction, development, maintenance, repair, replacement, management and operation of an approximately 51,690 square foot building to be operated as a homeless service center, and any other approved improvements created or designed to serve such purpose, including utilities and any other reasonably related improvements in connection with such use, and any other lawful uses permitted by applicable zoning (the "Permitted Use").

SECTION 5. Parking: There are no parking rights provided as part of this Lease, but the foregoing shall not prevent Tenant from constructing and using parking spaces on the Leased Premises.

SECTION 6. Taxes and Utilities:

(a) Tenant shall pay all real estate taxes, personal property taxes, and utility and maintenance expenses for the Leased Premises. It is intended that this is a net, net, net lease.

(b) Tenant, during the term of this Lease, as additional rent, shall pay and discharge punctually as and when the same shall become due and payable, all taxes (including without limitation all real estate taxes, for the Building and personal property taxes, if any), special and general assessments, water fees, sewer fees, Stormwater fees, and other governmental impositions and charges of every kind and nature whatsoever, extraordinary as well as ordinary, except as otherwise provided in this Section (hereinafter referred to as "Taxes"), and each and every installment thereof which shall or may during the term of this Lease be charged, levied, laid, assessed, imposed, become due and payable, or a lien upon, or with respect to, the Leased Premises or any part thereof, and any buildings, appurtenances, or equipment thereon or therein or any part thereof, together with all interest and penalties thereon, under or by virtue of all present or future laws, ordinances, requirements, orders, directives, rules and regulations of the federal, state, county and municipal governments and of all other governmental authorities whatsoever (all of which shall also be included in the term "Taxes" as heretofore defined); and, if not otherwise billed directly to Tenant by the providers, all sewer rents and charges for water, steam, gas, heat, hot water, electricity, light and power, and other service or services furnished to the Leased Premises during the term of this Lease (hereinafter referred to as "Utility Expenses"). Landlord agrees to promptly deliver to Tenant any tax or utility bills relating to the Leased Premises that are delivered to Landlord.

(c) Landlord and Tenant shall use their best efforts to have all Utility Expenses for services provided to the Leased Premises metered and charged directly to Tenant. In the event any of the Utility Expenses are charged to Landlord, Landlord shall have the right to pay such Utility Expenses directly to the service provider and collect such Utility Expenses for use of the Leased Premises from Tenant as additional rent, based on reasonable prorations of the entire charge.

(d) All such Taxes, which shall become payable during each of the calendar or fiscal tax years, as the case may be, in which the term of this Lease commences or terminates, shall be equitably apportioned pro rata between Landlord and Tenant in accordance with the respective portions of such year during which such term shall be in effect.

(e) In the event Tenant fails to pay Taxes on the Leased Premises within seven (7) days after receipt of written notice from Landlord, then Landlord shall have the right to pay such Taxes owed and collect such amounts from Tenant.

SECTION 7. Construction of Buildings and Improvements:

(a) Tenant, at its own cost and expense shall construct, develop, and locate the Building and other improvements on the Leased Premises in accordance with the Master Lease Tenant shall, at its expense, cause the Leased Premises to be developed, improved and maintained, in accordance with plans approved by Tenant and Landlord and all pertinent governmental authorities as provided in the Master Lease.

(b) Throughout the duration of this Lease, Tenant agrees that all installations of or in any buildings, structures, and improvements that may be erected on the Leased Premises by Tenant, including, but not limited to, all plumbing, electrical, heating, air conditioning, safety equipment, and ventilation equipment and systems, and all other equipment, will be installed, operated, and maintained in accordance with the law and with the regulations and requirements of any and all governmental authorities, agencies, or departments having jurisdiction thereof, without cost or expense to Landlord.

(c) If, at any time during the term of this Lease, any liens or claims of mechanics, laborers, or material suppliers shall be filed against the Leased Premises or fixtures of Tenant, or any part or parts thereof, for any work, labor, or materials furnished, alleged to have been furnished or to be furnished pursuant to an agreement by Tenant or any person holding thereunder, Tenant, within sixty (60) days after the date of the filing or recording of any such lien, or the filing or recording of any notice of intention to file a lien or claim of lien at Tenant's own cost and expense, shall cause the same to be discharged by payment, bond, or otherwise, or at the option of Tenant, Tenant shall deposit, in trust, with Landlord or a bank or financial institution duly licensed to do business in the State of Maine or other mutually agreed upon escrow agent, a sum of money equal to the amount of such recorded lien, plus twenty-five percent (25%) thereof, to be applied either (a) to such portion of the amount, if any, as may be determined to be due and owing to the lien or in a final judgment of a court of competent jurisdiction, when and if such final judgment is no longer subject to appeal, or (b) to the payment of the lien or of all or a portion of said sum when and if written notice shall be sent by Tenant expressly authorizing such payment. Tenant shall also promptly reimburse Landlord for all of its expenses, losses and costs, including reasonable attorney fees, attributable to any such lien claims.

(d) Notwithstanding the foregoing, Tenant shall have the right to contest or review any such claim or lien by appropriate legal proceedings and in the event of any such contest or review, Tenant shall prosecute the contest with reasonable diligence, at Tenant's sole expense, and Tenant shall at all times effectually stay or prevent any official or judicial sale of the Leased Premises and Tenant shall pay or otherwise satisfy any final judgment (unless Tenant shall appeal the same, in which event the judgment entered on last appeal shall be the determining factor) which may be entered against it and thereafter promptly procure record satisfaction of the lien. Notwithstanding the foregoing, Tenant shall promptly pay all such liens and claims if at any time the Leased Premises or any part thereof shall then be subject to imminent forfeiture without any right of redemption.

(e) Subject to the terms of clause (f) of this Section 7 and Section 23, title to any building or improvements situated or erected on the Leased Premises (other than common utility lines), including the Building, and the Building-related equipment and other items installed thereon and any alteration, change or addition thereto shall remain in Tenant; and Tenant shall be entitled to take and deduct all depreciation and other deductions and tax credits related thereto on Tenant's income tax returns for the Building or buildings, Building-related equipment and/or other items, improvements, expenditures, additions, changes or alterations.

(f) On the expiration or any earlier termination of this Lease (unless terminated by Tenant as a result of a default by Landlord or by mutual consent of Landlord and Tenant), Tenant shall quit and surrender to Landlord the Leased Premises, the Building and all improvements then thereon in good condition, subject to reasonable wear and tear, in accordance with the provisions of Section 23.

SECTION 8. Maintenance: Landlord shall have no obligation to maintain or repair the Leased Premises or any improvements thereon in its capacity as Landlord hereunder (but subject to the terms of the Master Lease). During the term of this Lease, and subject to the terms of the Master Lease, Tenant shall, at its expense, maintain in good repair and condition the Leased

Premises, reasonable wear and tear and casualty only excepted.

SECTION 9. Requirements of Public Authority: During the term of this Lease, Tenant shall, at its own cost and expense, promptly observe and comply with all present and future laws, ordinances, requirements, orders, directives, rules and regulations of the federal, state, county, town and city governments and of all other governmental authorities affecting the Leased Premises or appurtenances thereto or any part thereof whether the same are in force at the commencement of the term of this Lease or may in the future be passed, enacted or directed.

SECTION 10. Access to Premises: Landlord shall have the right, upon reasonable prior notice to Tenant, and subject to the terms of the Master Lease or any permitted subleases, to enter upon the Leased Premises at all reasonable times to examine the same provided such entry shall not unreasonably interfere with the use then being conducted on the Leased Premises or interfere with the rights of the tenant under the Master Lease or any subtenants within the Building. Further reserving, (a) for the benefit of the Landlord, the right of pedestrian and vehicular access to the currently existing communications tower located on the Leased Premises, and (b) for the benefit of the Landlord, and the general public (to the extent permitted by the Landlord), the right of pedestrian access to the Portland Trails network that currently (or in the future) connects to the Leased Premises; provided, that the exercise by Landlord (and the general public, if applicable) shall not unreasonably interfere with Tenant's rights hereunder.

SECTION 11. Assignment and Subletting: With the advance written approval of Landlord, which shall not be unreasonably withheld, conditioned or delayed, Tenant may assign or sublease, all or any portion of the Leased Premises and may permit any subtenant or subtenants to assign or sublease this Lease or any sublease of all or any part of the Leased Premises so long as such assignee, sublessee, mortgagee, etc., in Landlord's reasonable discretion, is capable of performing all financial obligations owing to Landlord under the Lease; provided, however, Tenant, without such consent, may assign this Lease in its entirety or sublease a portion of this Lease to any affiliate, subsidiary or entity that is under common control with Tenant. Upon any assignment of this Lease, Tenant shall remain obligated under this Lease unless Landlord agrees otherwise in writing and receives a written agreement whereby the assignee agrees to assume such obligations and liabilities as a direct obligation to Landlord. Notwithstanding the foregoing, Tenant or its permitted assignees or subtenants may pledge, mortgage or otherwise provide or encumber the leasehold and Lease and/or Building and improvements to any Leasehold Mortgagees or lenders without the consent of Landlord.

SECTION 12. Landlord's Services: Except as otherwise provided herein, Landlord shall not be obligated to provide any services to Tenant.

SECTION 13. Signage: Tenant may, without cost or expense to Landlord, at any time and from time to time, place or permit to be placed signs, outdoor lighting devices and advertising matter outside of the Building constructed on the Leased Premises, and remove them or permit them to be removed, provided (i) the signs, lighting devices or advertising matter are in full compliance with all applicable laws, ordinances, and regulations pertaining thereto, including any conditions of approval as may be imposed by the City of Portland, and (ii) Tenant receives the prior approval of Landlord as to the size, number, location, and design of such sign(s), such approval not being unreasonably withheld, conditioned or delayed. Landlord hereby agrees to execute any applications and consents that are reasonably required by governmental authorities for the construction, establishment or placement of such signs, but no such applications or consents shall impose any liability on Landlord by virtue of the erection or maintenance of any of said signs and Tenant covenants and agrees to indemnify, save Landlord harmless and defend, from any liability for damages or injuries including property damage and reasonable attorney fees, that may be sustained by anyone by reason thereof.

Except as aforesaid, Tenant shall have no right to place any signs at any location outside of the Leased Premises without the prior written consent of Landlord, which consent may be withheld, in its sole discretion.

Tenant also shall not be restricted in its placement of signs inside of the Building, or on the windows of the Leased Premises, provided that in each instance it complies with all applicable laws, regulations, and ordinances.

SECTION 14. Indemnity:

(a) Subject to the provisions of this Lease, Tenant shall indemnify and save harmless Landlord from and against any and all liability, damage, penalties, claims or judgments arising from injury to person or property damage sustained by anyone in and about the Leased Premises, other than injury or damage caused by Landlord’s gross negligence or intentional acts, or acts or omissions of Landlord in its capacity as tenant under the Master Lease. Tenant shall, at its own cost and expense, defend (and pay attorney’s fees in connection with) any and all suits or actions which may be brought against Landlord or in which Landlord may be impleaded with others upon any such above mentioned matter, claim or claims.

(b) Subject to the provisions of this Lease, and except to the extent arising from its own gross negligent act(s), gross negligent omission(s) or intentional act(s), or acts or omissions of Landlord in its capacity as tenant under the Master Lease, Landlord shall not be responsible or liable for any damage or injury to any property, fixtures, buildings or other improvements, or to any person or persons, at any time on the Leased Premises, including any damage or injury to Tenant or to any of Tenant’s officers, agents, servants, employees, contractors, customers or subtenants, arising from the use or occupancy of the Leased Premises, provided, however, Landlord shall indemnify Tenant for its gross negligent acts or gross negligent omissions or intentional acts. Notwithstanding the foregoing, the indemnity provided under this Section shall not be construed as a waiver of Landlord’s right to assert any and all defenses in response to claims made against Landlord, its officers, agents, or employees pursuant to the Maine Tort Claims Act or any other privileges or immunities as may be provided by law.

(c) Tenant agrees to look solely to Landlord, including Landlord’s interest in the Property, for recovery of any judgment from Landlord; it being agreed thatany employee or beneficiary of Landlord, are not personally liable for any such judgment. The provision contained in the foregoing sentence shall not limit any right that Tenant might otherwise have to obtain injunctive relief against Landlord or Landlord’s successors in interest, or any other action not involving the personal liability of Landlord.

SECTION 15. Insurance:

(a) Tenant shall provide at its expense, and keep in force during the term of this Lease, general liability insurance with a good and solvent insurance company or companies licensed to do business in the State of Maine, selected by Tenant, in the amount of at least Three Million Dollars ($3,000,000) with respect to injury or death, and Five Million Dollars ($5,000,000) with respect to damages to property, occurring in or about the Leased Premises. Such policy or policies shall name Landlord as an additional insured. Tenant agrees to deliver certificates of such insurance to Landlord. Such insurance shall name Landlord as an additional insured and contain an agreement that such policy shall be non-cancelable without at least 10 days' written notice to Landlord.

(b) During the term of this Lease, Tenant shall keep the Building and improvements erected by Tenant on the Leased Premises at any time insured, against loss or damage by fire, and those casualties covered by the customary extended coverage endorsements, in an amount equal to at least one hundred percent (100%) of the full or sound insurable value of the Building and improvements. Subject to the prior rights of any lender to Tenant with respect to such proceeds , all proceeds payable at any time and from time to time by any insurance company under such policies shall be payable to Tenant and may be used by Tenant for the reconstruction of the damaged improvements, subject, however to the terms of the Master Lease. Landlord shall, at Tenant's cost and expense, cooperate fully with Tenant in order to obtain the largest possible recovery and shall execute any and all consents and other instruments and take all other actions reasonably necessary or desirable in order to effectuate the same and to cause such proceeds to be paid as herein before provided. Tenant shall have the right to make all adjustments of loss and execute all proofs of loss in its name.

SECTION 16. Waiver of Subrogation: All policies covering real or personal property which either party obtains affecting the Leased Premises shall include a clause or endorsement denying the insurer any rights of subrogation or recovery against the other party to the extent rights have been waived by the insured before the occurrence of injury or loss. Landlord and Tenant hereby waive any rights of subrogation or recovery against the other for damage or loss to their respective property due to hazards covered or which should be covered by policies of insurance obtained or which should be or have been obtained pursuant to this Lease, to the extent of the injury or loss covered thereby assuming that any deductible shall be deemed to be insurance coverage.

SECTION 17. Destruction: In case of any damage to or destruction of the Building or any other improvements on the Leased Premises, or any portion thereof caused by fire or other casualty, Tenant shall promptly give written notice thereof to Landlord, and Tenant shall, at Tenant's sole cost and expense, immediately take all necessary action to secure the Leased Premises against unauthorized entry and shall continue such actions until the completion of restoration and rebuilding of Building and/or improvements, or the earlier termination of this Lease. Tenant shall, at its sole cost and expense (subject to the terms of the Master Lease), and without regard to the coverage, amount or availability of proceeds of any insurance, restore, repair, replace, rebuild or alter the same as nearly as possible to its condition immediately prior to such damage or destruction, all in conformity with and subject to plans and drawings to be approved by Landlord, which approval shall not be unreasonably withheld, conditioned, or delayed. Tenant shall complete such repairs, replacement, or rebuilding within a period of time which, under all prevailing circumstances, shall be reasonable.

SECTION 18. Eminent Domain:

(a) If, after the execution of this Lease and prior to the expiration of the Term, the whole or a material part of the Leased Premises shall be taken by eminent domain by a governmental agency other than Landlord, then the term hereof shall cease as of the time when Landlord shall be divested of its title in the Leased Premises or a material portion thereof, and rent shall be apportioned as of the time of the termination. A taking of a "material part of the Leased Premises" shall mean a taking which in the reasonable opinion of Tenant is extensive enough to render the Leased Premises unsuitable for the business and operations of Tenant thereon. Upon such a taking by eminent domain and an associated termination of this Lease, the parties agree to apportion the proceeds of the eminent domain award as follows: Landlord reserves to itself, and Tenant assigns to Landlord, all rights to damages and awards accruing on account of any taking by eminent domain or by reason of any act of any public authority other than Landlord for which damages or awards are payable relating to the value of the underlying unimproved land. Tenant reserves to itself, and Landlord assigns to Tenant, all rights to damages and awards accruing on account of any taking by eminent domain or by reason of any act of any public authority other than Landlord relating to, and the Tenant reserves a right, under all circumstances, to the full amount of that portion of the proceeds of such a taking attributable to the value of the buildings, improvements to and fixtures located on the Leased Premises. Tenant and Landlord may each fully participate in any such eminent domain proceeding and each party agrees to execute such instruments of assignment as may be reasonably required in any petition for the recovery of such damages or awards and Tenant and Landlord shall diligently pursue the same. It is agreed further that Landlord does not reserve to itself, and Tenant does not assign to Landlord, in addition to any damages or awards payable by any governmental authority for the buildings, improvements made and trade fixtures installed by Tenant, or those claiming under Tenant. Tenant shall also be entitled to any damages awarded for moving expenses in any such proceeding and any award for loss of the unexpired portion of the term of this Lease. In the event any award for eminent domain does not attribute separate values to these elements of damages, the parties shall for a period of thirty (30) days following issuance of the award attempt in good faith to allocate the award proceeds as between based on the factors noted above or, if the parties cannot agree on an allocation, the matter shall be submitted to arbitration in accordance with the terms hereof.

(b) In the event of the partial taking or condemnation or purchase by a governmental agency other than Landlord which is not extensive enough to render the Leased Premises unsuitable for the business of Tenant, then, subject to the provisions of any mortgage or leasehold mortgage encumbering the Leased Premises from time to time, the proceeds shall be paid to Tenant which shall, subject to and limited by the amount of such proceeds that are actually available to Tenant, commence to restore, and thereafter complete such restoration, subject to any delays resulting from any cause not within the reasonable control of Tenant, the Leased Premises to a condition reasonably comparable to their condition at the time of such condemnation, less the portion lost in the taking or purchase, and this Lease shall continue in full force and effect, and the rent payable hereunder from and after said taking or purchase shall continue proportionally abated by the percentage reduction, if any, between the leasable area of the Leased Premises before the condemnation event and its leasable area after restoration.

(c) Landlord agrees that it shall not commence or undertake any taking or condemnation proceeding against the Leased Premises.

SECTION 19. Utilities/Easements: Landlord, if requested by Tenant, shall join in reasonable agreements affecting the Leased Premises with utility companies, and/or public authorities which provide necessary and customary utilities creating easements in favor of such companies and/or authorities as are required in order to service the Building for the Permitted Use (including but not limited to the rights to install, lay, relay, construct, maintain, repair, improve, remove, replace and use utility lines, mains, cables, conduits, pipes and poles, with all related fixtures and appurtenances). Subject to the terms of the Master Lease, Tenant shall be responsible, at its expense, for bringing all utility lines, including without limitation natural gas lines and water and sewer lines to the Leased Premises from main lines or taps or connections in lines located on or near the Property.

SECTION 20. Subordination of Lease to Fee Mortgages: Subject to the terms of Section 21, the Tenant agrees, when requested by Landlord, to subordinate this Lease and the lien thereof to the lien of any mortgage or mortgages placed on Leased Premises (exclusive of any building or improvements placed upon the Leased Premises by Tenant at its expense) and to execute such recordable instruments as may be requested for the purpose, provided the holder of the mortgage on any portion of the Leased Premises or which has or may have rights effecting Tenant's interest as tenant under this Lease enters into a written agreement in recordable form with Tenant reasonably satisfactory to Tenant and its lender providing that, if by reason of breach of any condition of the mortgage, the mortgagee will, so long as Tenant complies with all the terms of this Lease, recognize Tenant and permit Tenant to continue in possession of the Leased Premises in accordance with the provisions of this Lease, and that said possession shall not be disturbed by a sale of the land and Landlord's rights under this Lease by the mortgagee. Tenant agrees, if requested by the holder of any such mortgage, to be a party to said agreement and will agree in substance that if the mortgagee or any person claiming under the mortgagee (including a purchaser at foreclosure sale, its successors and assigns) shall succeed to the interest of Landlord in this Lease, it will recognize said mortgagee or person and its successors and assigns as its Landlord under the terms of this Lease. Tenant agrees that it will, upon the request of Landlord, execute, acknowledge and deliver any and all instruments necessary or desirable to give effect to or notice of such subordination, all in form reasonably satisfactory to Tenant, and containing the recognition provisions described in this Section. The word "mortgage" as used herein includes mortgages, deeds of trust, or other similar instruments and modifications, consolidations, extensions, renewals, replacements and substitutes thereof.

SECTION 21. Leasehold Mortgages: Notwithstanding anything to the contrary contained in this Lease, Tenant shall have the right, at any time and from time to time, without being required to obtain Landlord's consent, to mortgage, pledge as security or otherwise encumber for security purposes the leasehold interest herein demised on such terms, conditions and maturity as Tenant shall determine, and to enter into any and all extensions, modifications, amendments, replacements(s), and refinancing(s) of any such leasehold mortgage as Tenant may desire. Any such lender, secured party or pledgee and any then holder of any leasehold mortgage, security or pledge may be referred to in this Lease as "Leasehold Mortgagee." Upon Tenant's request, Landlord shall make such changes or modifications to this Lease, with the exception of those provisions of this Lease concerning the Base Rent and the length of the Term, as are reasonably requested by any Leasehold Mortgagee to facilitate the mortgaging of the leasehold estate. Landlord shall execute such instruments as may be required by each Leasehold Mortgagee in order to subordinate the rights and interest of Landlord to the lien of each mortgage; however, in no event shall Landlord be required to subordinate its fee simple title in the land to such Leasehold Mortgagee.

At the request of Tenant or any Leasehold Mortgagee, Landlord shall enter into a Landlord's Consent and Agreement containing language substantially similar to that set forth in this Section 21, or otherwise as shall be mutually satisfactory to Landlord and such Leasehold Mortgagee.

If Tenant, or Tenant's successors or assigns, shall mortgage said leasehold interest then, as long as any such leasehold mortgage shall remain unsatisfied of record, the following provisions shall apply, notwithstanding anything to the contrary contained in this Lease, and any pertinent provisions of this Lease shall be deemed to be amended and modified to the extent necessary so as to provide as follows:

(a) There shall be no cancellation, surrender, acceptance of surrender, or material modification of this Lease or attornment of any subtenant to Landlord without the Leasehold Mortgagee's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(b) If any Leasehold Mortgagee shall register with Landlord its name and address in writing, Landlord, on serving on Tenant any notice of default or any other notice pursuant to the provisions of, or with respect to, this Lease, shall at the same time serve a duplicate counterpart of such notice on such Leasehold Mortgagee by Certified Mail, Return Receipt Requested, addressed to said holder at the address registered with Landlord.

(c) Such Leasehold Mortgagee, in the event Tenant shall be in default hereunder, shall have the right, within the applicable cure period which is of the same duration as Tenant's commencing, however, upon the Leasehold Mortgagee's actual receipt of a notice of default from Landlord, to remedy or cause to be remedied such default, and Landlord shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been performed by Tenant. No default by Tenant in performing work required to be performed, acts to be done, or conditions to be remedied, shall be deemed to exist, if steps, in good faith, shall have been promptly commenced by Tenant or by said Leasehold Mortgagee or by any other party, person or entity to rectify the same and prosecuted to completion with diligence and continuity within applicable cure periods as specified herein.

(d) In the event this Lease is terminated before the natural expiration of the then current Term, whether by summary dispossession proceedings, service of notice to terminate, or otherwise, due to Tenant's default, Landlord shall, by Certified Mail, Return Receipt Requested, serve on any Leasehold Mortgagee written notice of such termination, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Landlord. Such Leasehold Mortgagee shall, upon payment of any amounts due under the Lease, thereupon have the following options, but without releasing Tenant from its obligations under the Lease:

(i) On the written request of the Leasehold Mortgagee, within thirty (30) days after service of the aforementioned notice of termination, Landlord shall enter into a new or direct lease of the Leased Premises with the Leasehold Mortgagee, or its designee, as provided in the following subparagraph (ii).

(ii) Such lease shall be entered into at the reasonable cost of Tenant thereunder, shall be effective as of the date of termination of this Lease, and shall be for the remainder of the term of this Lease and at the rent and additional rent and on all the agreements, terms, covenants, and conditions of this Lease. The new Tenant under Lease shall in all instances be subject to the use and assignment restrictions set forth in the Lease. On the execution of the Lease, the Tenant named therein shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for the termination as aforesaid and shall otherwise fully remedy or agree in writing to promptly remedy any existing defaults under this Lease. The new Tenant shall pay all reasonable expenses of Landlord, including reasonable counsel fees and court costs incurred in recovering possession of the Leased Premises as well as in the preparation, execution and delivery of such documents required to allow the new tenant to sign the Lease. Nothing contained herein shall release the Tenant named in this Lease from any of its obligations under this Lease which may not have been discharged or fully performed by any Leasehold Mortgagee, or its designees.

(iii) Notwithstanding the provisions of this Lease, if Landlord shall elect to terminate this Lease by reason of Tenant being in default of rent or other covenants of Tenant hereunder or because of:

(A) The filing of a petition by or against Tenant for adjudication as a bankrupt under the Bankruptcy Code, or for reorganization within the meaning of Chapter XI of the Code or any successor provision, or the filing of any petition by or against Tenant under any future Bankruptcy Code provision for the same or similar relief; and the adjudication of Tenant as a bankrupt, or the entry of an order for reorganization under said Chapter XI or any successor provision, or the entry of an order for similar relief under any future Bankruptcy Code;

(B) The involuntary dissolution or the involuntary commencement of any action or proceeding for the dissolution or liquidation of Tenant, or for the appointment of a permanent receiver or a permanent trustee of all or substantially all of the property of

Tenant;

(C) The taking possession of Tenant's property by any governmental office or agency other than Landlord pursuant to statutory authority for the dissolution, rehabilitation, reorganization, or liquidation of Tenant; or

(D) The making by Tenant of an assignment for the benefit of creditors and Tenant being duly removed from possession or proceedings being commenced in a court of competent jurisdiction to remove said Tenant from possession;

and provided that the proceedings under (A), (B) and (C) shall not be dismissed or vacated within sixty (60) days after the institution or appointment, such as the case may be, then the holder of any mortgage on the leasehold interest who shall be entitled to notice, shall have and be subrogated to any and all rights of Tenant with respect to the curing of any default (other than the defaults specified in said subdivisions (A), (B), (C) and (D)) and shall also have the right to postpone and extend the specified date for the termination of this Lease, fixed by Landlord in a notice given pursuant thereto, for a period of not more than nine (9) months, provided such Leasehold Mortgagee shall promptly cure, or be diligently engaged in curing, any then existing default of Tenant not requiring possession (other than the defaults heretofore enumerated in (A), (B), (C) and (D) of this subparagraph (d)) and shall forthwith take steps to acquire Tenant's interest in the Lease by foreclosure of the mortgage or otherwise. If, before the date specified for the termination of this Lease as extended by the such Leasehold Mortgagee, the Tenant in default under the provisions of said subdivisions (A), (B), (C) and (D) shall be duly removed from possession, or proceedings have been instituted and are pending for such removal, and if the Leasehold Mortgagee or its designee shall deliver to Landlord its agreement and obligation to perform and observe the covenants and conditions to be performed by Tenant in this Lease contained and executed in the manner required to entitle a deed to recordation, then, and in such event, any such default specified in said subdivisions (A), (B), (C) and (D) on the part of Tenant shall be waived. In the event the Lease is terminated following any default by Tenant thereunder, including without limitation, by reason of any rejection of the Lease pursuant to the Federal Bankruptcy Code or other applicable state or federal law relating to bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws, or otherwise, or as a result of an incurable, non-monetary breach of the Lease, Leasehold Mortgagee shall have the right to assume the Lease covering the Leased Premises or request that Landlord enter into a new lease with such Leasehold Mortgagee or its nominee or designee (the "New Lease"). The New Lease shall contain all of the same terms set forth in this Lease and shall be of the same priority as the Lease over all mortgages or other liens, charges, or other encumbrances against the Leased Premises. Tenant shall have no right, title or interest in or to such New Lease or the leasehold estate created thereby.

(e) The Leasehold Mortgagee shall be named as an insured, as its interest may appear, in all policies of insurance carried by Tenant pursuant to the provisions of this Lease. Upon written request, duplicate originals of the policies of such insurance shall be held by the Leasehold Mortgagee. If duplicate originals of such policies are not obtainable, certified copies thereof shall be delivered to Landlord. The proceeds of such insurance in case of loss shall be paid to, and deposited with, the Leasehold Mortgagee, and said Leasehold Mortgagee shall disburse, in the absence of a default of Tenant to such holder said proceeds for the purpose of rebuilding, restoring and repairing the Leased Premises, and all proceeds shall be deemed trust funds to be used by Tenant for this purpose of rebuilding, restoring and repairing.

(f) The Tenant shall give the Leasehold Mortgagee written notice of any condemnation proceedings by any governmental agency other than Landlord affecting the Leased Premises. The said holder shall have the right to intervene and be made a party to any such condemnation proceedings and the parties hereto hereby consent that the said holder may be made such party or intervenor. Tenant's interest in any award or damages for such taking is hereby set over, transferred and assigned by Tenant to the said Leasehold Mortgagee to the extent of the balance of any principal, interest or other payment due or which shall thereafter accrue or become due to the said holder, but in the event of a partial taking of the improvements on the Leased Premises or a partial taking of the land forming part of the Leased Premises which does not result in the cancellation or termination of this Lease, there shall be paid to Tenant, as trust funds, out of the Tenant's interest in any award or damages for such taking, an amount equivalent to the cost to restore the improvements then on the Leased Premises to a complete architectural unit, including, without limitation, access cuts and roadways. Whatever repairs shall be made shall be comparable in quality to the part of the improvements so taken.

(g) The Leasehold Mortgagee shall be given notice by Tenant of any legal proceeding by the parties hereto, and shall have the right to intervene and be made a party to such proceedings, and the parties consent to such intervention. In the event the said Leasehold Mortgagee shall not elect to intervene or become a party to such proceedings, the said Leasehold Mortgagee shall receive notice, and a copy, of any award or decision made in said proceedings from the Tenant.

(h) If the Leasehold Mortgagee shall be an institutional lender such as a bank, trust company, savings and loan association, insurance company, union pension or retirement fund, government agency, or other lending institution whose loans on real estate are regulated by law, and the said Leasehold Mortgagee shall desire to contest the validity of any tax, levy, special or general assessments, water and sewer rent, or other governmental impositions or charges agreed to be paid by Tenant, such right is hereby granted to said holder.

(i) No Leasehold Mortgagee shall be personally liable under this Lease unless and until such Leasehold Mortgagee shall become the owner of the leasehold estate or has taken possession of the same, and then only for as long as it remains such owner or possessor subject to the provisions of this Lease. On any assignment of this Lease by any owner of the leasehold estate whose interest shall have been acquired by, through, or under any Leasehold Mortgagee or shall have been derived immediately from any holder thereof, the assignor shall be relieved of any further liability which may first accrue hereunder from and after the date of such assignment, it being the intention of the parties that once the Leasehold Mortgagee shall succeed to Tenant's interest hereunder, any and all subsequent assignments, whether by such holder, any purchaser at foreclosure sale or other transferee, or any assignee of either shall effect a release of the assignor's liability for defaults first occurring thereafter.

(j) On the execution and delivery of any new or direct Lease as provided in this Section 21, all subleases which theretofore may have been assigned and transferred to Landlord shall thereupon be transferred and assigned by Landlord to the new tenant under the new or direct Lease.

(k) The execution of any such leasehold mortgage shall be deemed an assignment by Tenant to such mortgagee of Tenant's election to remain in possession of the Leased Premises pursuant to 11 U.S.C. Section 364(h)(1) in the event of a rejection of this Lease by a trustee in bankruptcy of Landlord.

(l) The rights of the Leasehold Mortgagee under this Section are subject to the agreement of such holder to cure all monetary defaults and to pay any rents hereunder during the period it is exercising its rights hereunder in accordance with terms hereof.

(m) Neither the voluntary or other surrender of the Lease by Tenant, the mutual cancellation thereof by Landlord and Tenant, the conveyance of Landlord's interest in the Leased Premises to Tenant nor the conveyance of Tenant's interest in the Leased Premises to Landlord, shall work a merger, if any Leasehold Mortgage is then outstanding. In the event that Tenant acquires the fee title or any other estate, title or interest in the Leased Premises, any Leasehold Mortgage shall attach to and cover and be in lien upon the fee title or such other estate so acquired.

SECTION 22. Master Lease Provisions.

(a) Landlord acknowledges that the Master Lease may contain provisions that make Master Lease Tenant responsible for payment of certain items and for performance of certain actions that are the responsibility of Tenant hereunder. Provided Landlord is the tenant under the Master Lease, Landlord agrees that the terms and provisions of the Master Lease as to responsibility for payment of these items and performance of those obligations shall control.

(b) Landlord and Tenant recognize that the Master Lease will have an initial term of twenty-five years. Under the Master Lease, the Master Lease Tenant has the right to extend the base term for two renewal terms of ten (10) years each.

SECTION 23. Title. Tenant agrees that upon the expiration of the Term of this Lease or sooner termination thereof, possession of the Leased Premises will be promptly delivered to Landlord and Tenant shall transfer title, through execution of appropriate documents, to the Building and all improvements on the Leased Premises to Landlord at no cost to Landlord. Upon the termination or expiration of the initial term of this Lease, all rights of Tenant hereunder to possession of the Leased Premises under this Agreement shall immediately terminate.

SECTION 24. Defaults:

(a) In the event of (i) Tenant's failure to pay amounts due hereunder within fifteen (15) days after written notice from Landlord specifying such failure; or (ii) Tenant's failure to perform any of the non-monetary covenants, conditions and agreements herein contained on Tenant's part to be kept or performed and the continuance of such failure without the curing of same for a period of thirty (30) calendar days after receipt of notice in writing from Landlord specifying the nature of such failure, and provided Tenant shall not cure said failure as provided in paragraph (b) of this Section; or (iii) if the estate hereby created shall be taken on execution or by other process of law and such taking is not discharged within ninety (90) days, or if any assignment shall be made of the property of the Tenant for the benefit of creditors, or if a receiver, guardian, conservator, trustee in involuntary bankruptcy or other similar officer shall be appointed to take charge of all or any substantial part of the Tenant's property by a court of competent jurisdiction and such appointment is not discharged within ninety (90) days, or a petition shall be filed for the reorganization of the Tenant under any provisions of the Bankruptcy Code now or hereafter enacted, and such proceeding is not dismissed within ninety (90) days after it is begun, or if the Tenant shall file a petition for such reorganization, or for arrangements under any provisions of the Bankruptcy Code now or hereafter enacted and propose therein a plan to settle, satisfy or extend the time for the payment of debts; then, subject to the terms of Section 21, Landlord may, at its option, give to Tenant a notice of election to terminate the term of this Lease upon a date specified in such notice, which date shall be not less than thirty (30) business days (Saturdays, Sundays, and legal holidays excluded) after the date of receipt by Tenant of such notice from Landlord, and upon the date specified in said notice, the term shall cease and any and all other right, title and interest of Tenant hereunder shall likewise cease without further notice or lapse of time, as fully and with like effect as if the entire term of this Lease had elapsed. Landlord further lawfully may immediately or at any time thereafter utilize procedures authorized by Maine law, including Forcible Entry and Detainer, to repossess the Leased Premises and expel Tenant and those claiming through or under Tenant and remove their effects without prejudice to any rights or remedies which might otherwise be used for arrears of rent or previous breach of covenant, and upon such notice or entry, all rights of Tenant under this Lease shall terminate. Tenant agrees to pay to Landlord, as damages for any above-described breach, all reasonable costs of reletting the Leased Premises including real estate commissions, costs of renovating the Leased Premises to suit the new tenant, all subject to Landlord's duty to mitigate damages. Tenant also agrees to pay Landlord for all costs relating to the default, including reasonable attorney's fees and costs related thereto.

All disputes arising in connection with non-monetary defaults hereunder shall be resolved pursuant to the arbitration provisions set forth in Section 26 hereof. Tenant shall have no right to arbitrate any monetary default hereunder, and in the event of such a monetary default, Landlord shall have all rights at law and in equity to enforce the provisions of this Lease.

(b) In the event that Landlord gives notice of a non-monetary default of such a nature that it cannot be cured within such thirty (30) day period then such default shall not be deemed to continue so long as the Tenant, after receiving such notice, proceeds to commence cure of the default as soon as reasonably possible and continues to take all steps reasonably necessary to complete the same within a period of time which, under all prevailing circumstances, shall be reasonable. No default shall be deemed to continue if and so long as the Tenant shall be so proceeding to cure the same in good faith.

(c) If Tenant shall default in the performance of any non-monetary covenant, condition or obligation on its part to be performed under this Lease, Landlord may upon prior written notice thereof do so on behalf of and at the cost and expense of the Tenant, including reasonable attorneys' fees and related expenses without waiving any claim of breach or for damages or any right to terminate this Lease.

(d) Should it be finally determined by arbitration or by a court of competent jurisdiction that the expending of sums by the Landlord was made necessary by Tenant's failure to perform a covenant, condition, or any other obligation on Tenant's part to be performed under this Lease, in such event, such sums at the option of Landlord shall be deemed additional rent and paid as such on the next or any subsequent rent day at the option of Landlord. Interest at the then existing prime rate (highest rate published) from time to time by the Wall Street Journal or its successor, and reasonable attorney's fees, if any, shall be collectible by the prevailing party from the non-prevailing party. Each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord or Tenant of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

SECTION 25. Environmental:

(a) Landlord represents and warrants to Tenant that:

a. to the best of Landlord's knowledge, no Hazardous Substance (hereinafter defined) or underground tanks, vessels, or containers are present on or under the Leased Premises or on or under any adjacent property;

b. to the best of Landlord's knowledge, the Leased Premises, as of the effective date of this Lease, is in compliance in all material respects with the provisions of all local, state and federal environmental, health and safety laws, codes and ordinances and all rules and regulations promulgated thereunder; and

c. Except as set forth in the environmental reports provided to Tenant, Landlord has received no order, notice, or other communication of alleged or potential violation or failure to comply with any applicable environmental laws from any federal, state or local authorities in relation to any acts or omissions at the Leased Premises before the effective date

(b) Tenant represents, warrants and agrees that its use, maintenance and operations of the Leased Premises and the conduct of the business thereto, shall at all times be in material compliance with all applicable federal, state, county or local laws, regulations and ordinances of any governmental authorities relating to Hazardous Materials, as hereinafter defined. Tenant, its employees, customers, residents and invitees will not cause any Hazardous Materials to be deposited, discharged, emitted, placed or disposed of at or about the Leased Premises in violation of law or regulation and the Leased Premises will remain free from Hazardous Materials except for conditions that existed prior to the effective date of this Lease, gasoline and related petroleum products and other Hazardous Materials maintained or located thereon in compliance with law and regulation. Tenant will indemnify and hold Landlord, its successors and assigns, harmless from any and all costs, expense, losses, damages, claims, obligations and liabilities of every nature and type ("Losses"), including environmental clean-up liabilities and obligations and reasonable attorney's fees, arising from and relating to Tenant's unlawful or prohibited discharge or release of Hazardous Materials due to use of or actions Tenant has taken at the Leased Premises.

(c) Tenant shall, to the extent arising from breach of the foregoing warranty, (i) conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to remediate and/or clean up and remove all Hazardous Materials from the Leased Premises existing or arising from and relating to Tenant's unlawful or prohibited discharge or release of Hazardous Materials due to use of or actions Tenant has taken at the Leased Premises, in accordance with all applicable federal, state and local laws, regulations, rules, ordinances and policies and in accordance with the orders and directives of all federal, state and local governmental authorities, and (ii) defend, indemnify and hold harmless Landlord, its employees, agents, and officers, from and against any and all claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses (including, without limit, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, arising out of the breach of the foregoing warranties.

(d) As used herein, "Hazardous Materials" shall mean any flammable explosives, radioactive materials, hazardous materials, hazardous waste, hazardous or toxic substances or matter, oil or other petroleum products, underground petroleum storage tanks, asbestos, chemical pollutants or related materials, including as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§690 1, et seq.), applicable Maine Statutes (including 38 M.R.S.A. §§561, et seq.; 39 M.R.S.A. §§1361, et seq.; 38 M.R.S.A. §§1301, et seq.; and 38 M.R.S.A. §§1317, et seq.), or any similar federal, state or local law in effect from time to time, or in the regulations adopted and publications promulgated pursuant thereto or any other substances or materials constituting a hazard, peril or threat to the health of persons, animals or plant life.

SECTION 26. Arbitration:

(a) Any non-monetary dispute arising under or relating to this Lease shall be resolved by binding arbitration, which shall be conducted in accordance with the following paragraphs except as otherwise expressly provided for in this Lease.

(b) A party initiating arbitration proceedings may do so by giving written notice to that effect to the other party. The notice shall designate a disinterested person as one of the arbitrators. The party that initiates arbitration is hereinafter referred to as the "first party." The other party is hereinafter referred to as the "second party." Within ten (10) days after the initiation of the arbitration proceedings, the second party shall give notice to the first party designating another disinterested person as an arbitrator. Within the next ten (10) days, the two arbitrators shall select a third disinterested person as a third arbitrator. The three arbitrators shall judge the dispute. If the second party shall fail to appoint a second arbitrator within the ten (10) day period next following the notice initiating the arbitration, the arbitrator designated by the first party shall judge the dispute and the judgment of the first arbitrator shall be binding upon the parties.

(c) If the two arbitrators appointed by the parties shall be unable to agree upon the appointment of a third arbitrator within the ten (10) day period after the second arbitrator is designated, the two arbitrators shall give written notice of the failure to agree to each of the parties. If the parties shall fail to agree upon the selection of a third arbitrator within ten (10) days after that notice has been received, then within ten (10) days thereafter either party may apply for the appointment of a third arbitrator to any justice of the existing session of the State of Maine Superior Court.

(d) The determination of the majority of the arbitrators shall be conclusive upon the parties. The arbitrators shall be directed to interpret and apply the terms of this Lease. Judgment may be entered upon the award of the arbitrators by either party in the State of Maine Superior Court.

(e) The party not prevailing in the arbitration shall pay the costs thereof, including the legal fees of the prevailing party if so ordered by the arbitrator.

(f) Except as otherwise expressly provided herein, the Commercial Arbitration Expedited Rules of the American Arbitration Association shall control all arbitration proceedings. Such arbitration shall take place in Portland, Maine. The arbitrator(s) resolving the dispute shall be advised that time is of the essence.

(g) Notwithstanding any other provision of this Lease, Tenant shall continue making monthly rent payments to Landlord without deduction as required hereunder during the term of this Lease, including without limitation during any arbitration or dispute resolution proceedings.

SECTION 27. Waivers: Failure of a party 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 any of its rights hereunder. No waiver by a party at any time, express or implied, of any breach of any other provision of this Lease shall constitute a consent to any subsequent breach of the same or any other provision. No acceptance by Landlord of any partial payment shall constitute an accord or satisfaction but shall only be deemed a part payment on account. If any action by either party shall require the consent or approval of the other party, the grant of such consent or approval on any one occasion shall not be deemed a consent to or approval of that action on any subsequent occasion or of any other action on any subsequent occasion. Each right and remedy which either party may have under this Lease or by operation of law shall be distinct and separate from every other such right and remedy; all such rights and remedies shall be cumulative, and none of them shall be deemed inconsistent with or exclusive of any other, whether or not exercised; and any two or more of all of such rights and remedies may be exercised at the same time or successively.

SECTION 28. Notices: Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows, with notice deemed given as indicated: (a) by personal delivery, when delivered personally; or (b) by overnight courier, upon written verification of receipt. Notice shall be sent to the addresses set forth below or to such other address as either party may specify in writing.

If to Landlord: City of Portland
City Hall
389 Congress Street
Portland, Maine
Attn: City Manager

and

City of Portland
City Hall
389 Congress Street
Portland, Maine
Attn: Corporation Counsel

With a copy to: Nicholas J. Morrill, Esq.
Jensen Baird
10 Free Street
Portland, Maine 04101

If to Tenant: DC Riverside LLC
c/o Developers Collaborateive
631 Sevens Avenue, Suite 203
Portland, Maine 04103
Attn: Kevin R. Bunker

With a copy to: Drew A. Anderson, Esq.
Murray Plumb & Murray
75 Pearl Street, Suite 300
Portland, Maine 04101

SECTION 29. Certificates: Either party shall, without charge, at any time and from time to time hereafter, within ten (10) business days after written request of the other, certify by written instrument duly executed and acknowledged to any mortgagee (including a Leasehold Mortgagee), purchaser or proposed mortgagee or proposed purchaser or any other person, firm or corporation specified in such request: (a) as to whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment; (b) as to the validity and force and effect of this Lease, in accordance with its tenor as then constituted; (c) as to the existence of any default hereunder; (d) as to the existence of any offsets, counterclaims or defenses thereto on the part of such other party; (e) as to the commencement and expiration dates of the term of this Lease; (f) as to the dates that rent and any other charges hereunder have been paid, including any advance payments and (g) as to any other matters as may reasonably be so requested. Any such certificate may be relied upon by the party requesting it and any other person, firm or corporation to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing the same.

SECTION 30. Partial Invalidity: If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstance shall, at any time or 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, covenant, condition and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

SECTION 31. Memorandum of Lease: The parties will at any time, at the request of either one, promptly execute and record in the Cumberland County Registry of Deeds, a Memorandum of Lease, setting forth a description of the Leased Premises, the term of this Lease and any other portions hereof, excepting the rental provisions, in the form attached hereto as Exhibit C.

SECTION 32. Interpretation, etc.: Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. No provisions of this Lease shall be deemed to render Landlord and Tenant partners or participants in any other type of joint enterprise. The term "Landlord" whenever used herein shall mean only the then-owner of Landlord's interest herein and upon any sale, transfer or assignment of the interest of Landlord herein, its respective successors in interest and/or assigns shall, during the term of their ownership of their respective estates herein, be deemed to be Landlord and the selling or transferring party shall be entirely free and relieved of all covenants and obligations hereunder except as hereinafter provided, without further agreement between the parties or their successors in interest and it shall be deemed and construed that at any such sale, transfer or other conveyance, that such successor, purchaser or transferee has assumed and agreed to carry out any and all covenants and obligations of Landlord hereunder. This Lease shall not be construed against any party, and no consideration shall be given or presumption made, on the basis of which party drafted this Lease, or any particular provision hereof, or supplied the form of Lease.

This Lease and all rights, duties and performance hereunder or hereof shall be governed, interpreted, and construed in accordance with the laws of the State of Maine without giving effect to its conflict of laws provisions.

SECTION 33. Broker: Landlord and Tenant each warrant, covenant and agree that neither party has utilized or consulted a broker in connection with this Lease.

SECTION 34. No Merger: Notwithstanding any provisions of this Lease to the contrary, if at any time or times during the term of this Lease, Landlord and Tenant shall be the same person, party or entity, Landlord's and Tenant's interest shall remain separate and distinct, and shall not be merged into one estate so as to cancel, terminate or extinguish this Lease by law or otherwise.

SECTION 35. Parties: Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective successors, personal representatives, administrators and assigns. All covenants, promises, conditions and obligations herein contained or implied by law are covenants running with the land.

SECTION 36. Holding Over: Tenant has no right to holdover following the expiration or earlier termination of this Lease. If Tenant remains in possession after expiration or termination of this Lease, its status shall be that of trespasser in possession. Landlord shall have all rights available at law or equity to dispossess Tenant, and Tenant hereby indemnifies Landlord against all losses, expenses and costs, including reasonable attorneys' fees and court costs incurred by Landlord in connection with Tenant's unauthorized holdover.

SECTION 37. Facsimile Copies: Landlord and Tenant agree that facsimile or scanned copies of all documents required to be executed hereunder will be accepted in lieu of originals.

SECTION 38. Quiet Enjoyment: Landlord warrants that it has full right and power to execute and perform the Lease and to grant the estate demised herein and that so long as Tenant is not in default hereunder, Tenant shall have the peaceful and quiet use and possession of the Leased Premises during the term hereof, subject, however, to the terms and provisions of this Lease.

SECTION 39. Time is of the Essence: Time is of the essence with respect to the performance of each and every obligation of the parties under this Lease.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Lease under seal as of the day and year first above written.

WITNESS:

LANDLORD:

CITY OF PORTLAND

____

By: _______________________________
Name:
Its:

WITNESS:

TENANT:

DC Riverside LLC

____

By: _______________________________
Name:
Its:

EXHIBIT A

[Leased Premises]

A certain lot or parcel of land, with the building and improvements, if any, located thereon, situated in on the westerly side of Riverside Street, so-called, in the City of Portland, County of Cumberland and State of Maine, being more particularly described as follows:

Proposed Lot 4-2 as depicted on a plan titled "2nd Amended Riverside Subdivision, Riverside Street, Portland" prepared by Sebago Technics dated January 23, 2018, revised through January 23, 2018, approved by the City of Portland Planning Board on January 23, 2018, and recorded in the Cumberland County Registry of Deeds in Plan Book 218, Page 199 (the "Subdivision Plan").

SUBJECT TO and TOGETHER WITH the benefit of the matters, easements, and notes set forth or referred to on the Subdivision Plan.

EXHIBIT B

[Site Plan]

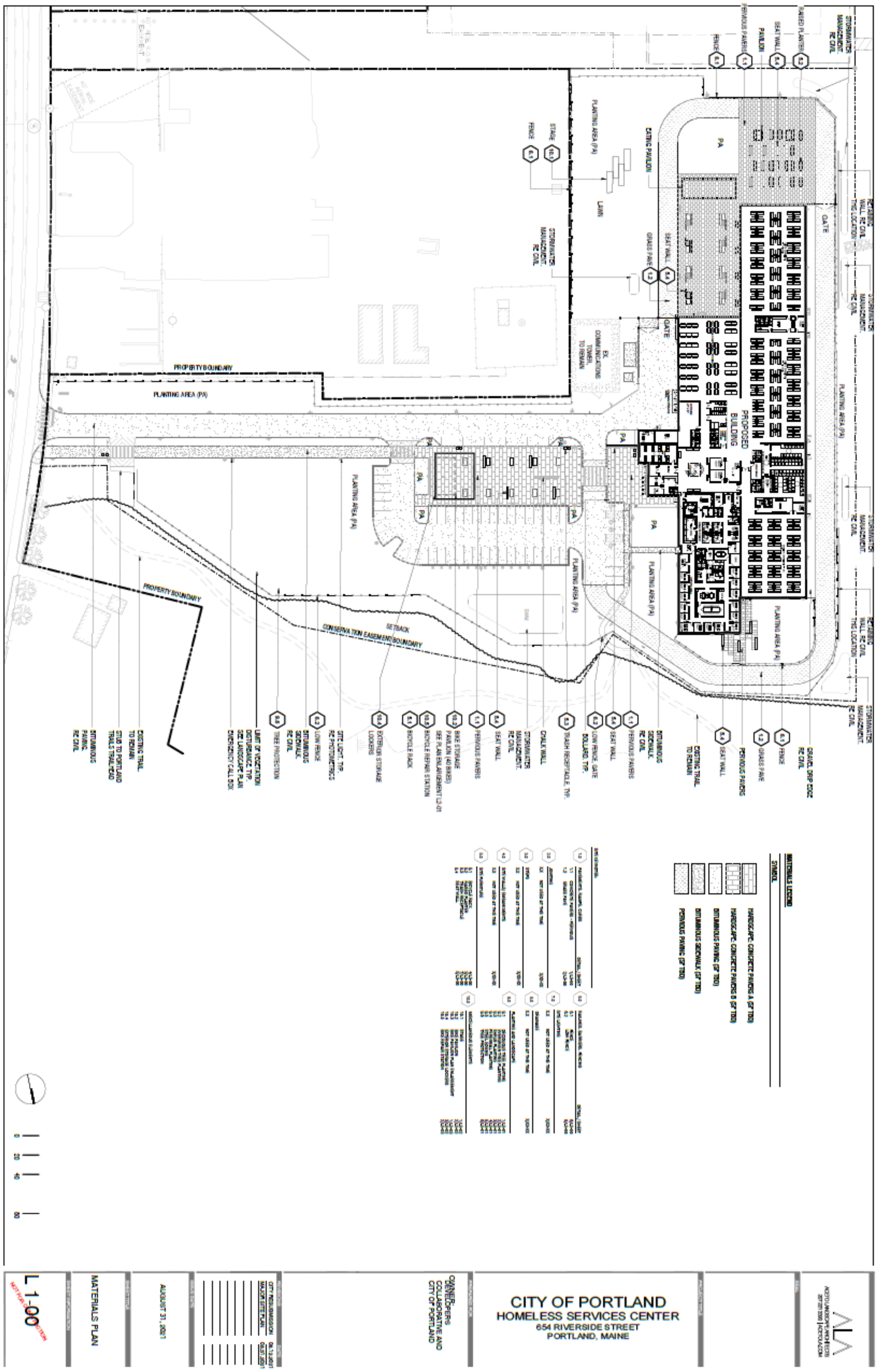


EXHIBIT C

MEMORANDUM OF LEASE

Notice is hereby given of the existence of a lease between Landlord and Tenant, as identified herein. The following information is provided in compliance with the terms of 33 M.R.S. §201, and the terms of the lease are incorporated herein by reference, whether or not specifically set forth in this Memorandum.

Landlord:	CITY OF PORTLAND 389 Congress Street Portland, Maine 04101
Tenant:	DC Riverside LLC 631 Stevens Avenue, Suite 203 Portland, Maine 04103
Leased Property:	A portion of the premises described in a Quitclaim Deed with Covenant from Downtown Portland Corporation to the City of Portland, dated May 18, 2010 and recorded in the Cumberland County Registry of Deeds in Book 27825, Page 68, and being more particularly described in Schedule A attached hereto.
Date of Lease:	[Lease Date]
Term of Lease:	50 years, commencing [commencement date] and ending [expiration date].
Renewals/Extensions:	None.
Options to Purchase:	None.
Transfer of Title:	There are no provisions under the Lease restricting the transfer of title to the property, but the Lease shall remain in effect in the event of any transfer.

This Memorandum of Lease is recorded in compliance with the provisions of 33 M.R.S. §201 to provide record notice of the lease identified herein, as the same may be amended or modified. This Memorandum does not modify or alter the terms of the Lease.

[SIGNATURE PAGE TO FOLLOW]

Executed on ____________, 202__.

CITY OF PORTLAND

By:_________________________________
Name:
Its:

DC Riverside LLC

By:_________________________________
Name:
Its:

STATE OF MAINE
COUNTY OF CUMBERLAND, ss. _____________, 202_

Then personally appeared the above named __________________, _________________ ______ of the City of Portland and acknowledged the foregoing instrument to be his/her free act and deed and the free act and deed of the City of Portland.

Before me,

____
Maine Attorney at Law/Notary Public
Name:
Commission Expiration:

SCHEDULE A

[Legal Description]

A certain lot or parcel of land, with the building and improvements, if any, located thereon, situated in on the westerly side of Riverside Street, so-called, in the City of Portland, County of Cumberland and State of Maine, being more particularly described as follows:

Proposed Lot 4-2 as depicted on a plan titled "2nd Amended Riverside Subdivision, Riverside Street, Portland" prepared by Sebago Technics dated January 23, 2018, revised through January 23, 2018, approved by the City of Portland Planning Board on January 23, 2018, and recorded in the Cumberland County Registry of Deeds in Plan Book 218, Page 199 (the "Subdivision Plan").

SUBJECT TO and TOGETHER WITH the benefit of the matters, easements, and notes set forth or referred to on the Subdivision Plan.

LEASE AGREEMENT
DC RIVERSIDE LLC/CITY OF PORTLAND
HOMELESS SERVICE CENTER

THIS LEASE AGREEMENT, dated this ____ day of ___________, 2021 (the "Effective Date"), is between **DC Riverside LLC,** c/o Developers Collaborative, 631 Stevens Avenue, Suite 203, Portland, Maine 04103 ("Landlord") and the **City of Portland**, a municipal corporation with a principal office located at 389 Congress Street, Portland, Maine 04101 ("Tenant"):

WHEREAS, Landlord holds a leasehold interest in the property known as 654 Riverside Street, Portland, Maine (the "Leased Land") pursuant to that certain ground lease between Landlord, as tenant, and Tenant, as Landlord, dated on or about the date hereof (the "Ground Lease"), and

WHEREAS, Landlord and Tenant wish for Landlord to construct a building and improvements on the Leased Land, and for Landlord to lease the building and improvements on the Leased Land to Tenant, all as more particularly set forth herein.

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

BASIC TERMS:

Premises: The building, land, and associated improvements to be constructed by Landlord on the Leased Land known as 654 Riverside Street, Portland, Maine, and more particularity depicted as "Proposed Lot 4-2" on a plan titled "2nd Amended Riverside Subdivision, Riverside Street, Portland" recorded in the Cumberland County Registry of Deeds at Plan Book 218, Page 199, being a portion of the premises deeded to Tenant by deed recorded in said registry of deeds at Book 27825, Page 68 (the "Premises"). The Premises is generally depicted on the City of Portland Tax Map 23, Block A, Lot 3-5, and Tax Map 322, Block A, Lot 10, and is more particularly described on Schedule A attached to and made a part of this Lease. The exact configuration of the Premises is subject to site plan amendment approval (resulting in a Third Amended Subdivision Plan, for which the Tenant shall be responsible). The building to be constructed (the "Building") shall contain approximately 51,690 square feet. The parties agree to mutually cooperate to create, modify and revise the legal description of the Premises described on Schedule A to accommodate the Third Amended Subdivision Plan, and to attach a substitute or supplementary exhibit to the Lease to reflect the revised description.

Construction: Landlord hereby agrees to construct the Premises in accordance with Tenant's specifications, as detailed in Exhibits listed below.

Building and Address: 654 Riverside Street, Portland, Maine.

Tenant's Permitted Use: Homeless Service Center, and any legal use allowed under applicable local, state and federal laws.

Lease Term/Renewal: Twenty-five (25) years beginning on the Commencement Date (the "Initial Term"). "Lease Year" as used in this Lease shall mean the period of twelve (12) calendar months. The first Lease Year shall commence on the Commencement Date and end on the last day of the calendar month that includes the anniversary of the Commencement Date. Each subsequent Lease Year shall commence on the day following the end of the preceding Lease Year.

Provided that Tenant is not then (meaning at the time the notice described below is given) in default beyond any applicable cure period, and provided Tenant gives written notice to Landlord of Tenant's intent to renew this Lease (the "Extension Notice") at least fifteen (15) months prior to the expiration of the Initial Term, Tenant shall have the option to renew the term of this Lease for two terms of ten (10) years each (each, a "Renewal Term", and collectively, the "Renewal Terms"), commencing immediately after the end of the Initial Term or the first Renewal Term, as the case may be. The Renewal Terms shall be on the same terms and conditions as this Lease, except that there shall be no further renewals of this Lease, and except for Base Rent, which shall be adjusted as set forth below.

Commencement Date: The date of Substantial Completion of the Building Improvements (as such terms are defined in **Exhibit C** attached hereto).

Base Rent: Commencing on the Commencement Date, Base Rent shall be the following amounts for the following periods of time:

Lease Years 1 – 10: Two Hundred Twenty-five Thousand Eighty-three and 33/100s ($225,083.33) Dollars per month ($2,701,000.00 annual Base Rent).

Lease Year 11: Twenty-five Thousand Six Hundred Twenty-five and no/100s ($25,625) Dollars per month ($307,500.00 annual Base Rent).

Lease Years 12 – 25: On the first day of Lease Year 12, and for each successive Lease Year during the remainder of the Initial Term, the annual Base Rent shall increase by two and one-half (2.5%) percent over the previous Lease Year.

Renewal Terms. If Tenant exercises its option(s) to renew, the Base Rent for each successive Lease Year during each of the Renewal Terms, as applicable, shall increase by two and one-half (2.5%)percent over the previous Lease Year

The Base Rent payable in Lease Years 1 – 10 is based upon Landlord's estimated total development cost of $25,000,000, and assumes Tenant has contributed the Tenant Subsidy (as defined below) in the amount of $5,000,000. If Landlord's Final Total Development Cost (as defined below) is less than $20,000,000 for any reason, including a Tenant Subsidy in excess of $5,000,000, then the Base Rent payable during Lease Years 1-10 shall be adjusted downward based upon Landlord's resulting reduced cost of its debt obligation, if applicable, as determined by Landlord in good faith,

For purposes of this Lease, "Landlord's Final Total Development Costs" shall mean all actual hard and soft costs and expenses incurred by the Landlord directly in connection with the acquisition, permitting, financing and development of the Premises and Building and shall include (but not be limited to) costs for design, permits and approvals, construction, legal services, surveys, title reports, management fees, deposits into required reserve accounts, impact fees, and any other expenditure related to the design, permitting, construction and placement in service of the Premises and Building. Landlord agrees that in no event shall

Landlord's Final Total Development Costs exceed $25,000,000 (including the Tenant Subsidy).

For purposes of this Lease, "Tenant Subsidy" shall mean any State, Federal, County or City funds that Tenant causes to be contributed toward Landlord's development costs and expenses of the Premises and Building, provided such funds are contributed as permanently deferred debt, or such other mechanism, so that such funds are not considered income to Landlord, or otherwise result in any adverse tax consequences to Landlord Tenant agrees that the Tenant Subsidy shall be at least $5,000,000, which shall be paid to Landlord to be used exclusively by Landlord toward payment of Landlord's Final Total Development Costs, or reimbursement of the same, or otherwise contributed toward development costs of the Building, prior to the commencement of construction.

Landlord and Tenant shall confirm the Commencement Date and Initial Term expiration date, and the Base Rent payable during Lease Years 1 - 10, by mutually executing the term commencement date and base rent confirmation substantially in the form attached to and made a part hereof as **<u>Exhibit A</u>,** promptly after the date the Commencement Date is determined (the "Term Commencement and Base Rent Confirmation").

Security Deposit: None

List of Exhibits:

Exhibit A Term Commencement and Base Rent Amendment
Exhibit B Premises/Site Plan, including Parking
Exhibit C Construction
Exhibit D Building Layout
Exhibit E – Plans and Specs
Exhibit F – Tenant's Work

LEASE TERMS:

1. **<u>Granting Clause</u>.** In consideration of the obligation of Tenant to pay rent and perform its other obligations as herein provided and in consideration of the other terms, covenants, and conditions hereof, Landlord leases to Tenant, and Tenant leases from

Landlord, the Premises, to have and to hold for the Lease Term, subject to the terms, covenants and conditions of this Lease.

2. **Acceptance of Premises**. Except as may otherwise be expressly provided in a Construction Exhibits attached hereto, Tenant shall accept the Premises on the Commencement Date in its "AS-IS" condition, subject to all applicable laws, ordinances, regulations, covenants and restrictions, and Landlord shall have no obligation to perform or pay for any repair or other work therein. Landlord represents and warrants that, as of the Commencement Date, the Premises shall comply with all applicable Legal Requirements (as hereinafter defined), including, but not limited to, zoning ordinances and other Legal Requirements specific to Tenant's use of the Premises; provided, however, in the event of any breach of the foregoing representation and warranty, Tenant, as its sole and exclusive remedy, may require Landlord to bring the Premises in compliance with applicable Legal Requirements (including zoning ordinances and other Legal Requirements specific to Tenant's use of the Premises).

3. **Use**. (a) Subject to Tenant's compliance with all zoning ordinances and Legal Requirements, the Premises shall be used for the purpose of conducting a homeless service center and for such other lawful purposes as may be incidental thereto, and any other lawful uses permitted by applicable zoning. Tenant will use the Premises in a careful, safe and proper manner and will not commit waste, or subject the Premises to use that would damage the Premises.

(b) Tenant shall use and occupy the Premises in compliance with all laws, including, without limitation, the Americans With Disabilities Act, orders, judgments, ordinances, regulations, codes, directives, permits, licenses, covenants and restrictions now or hereafter applicable to the Premises (collectively, "Legal Requirements"). After the Commencement Date, Tenant shall, at its expense, make any alterations or modifications, within or without the Premises, that are required by Legal Requirements related to Tenant's specific use or occupation of the Premises. Tenant will not use or permit the Premises to be used for any purpose or in any manner that would void Tenant's or Landlord's insurance, or increase the insurance risk. If any increase in the cost of any insurance on the Premises is caused by Tenant's use or occupation of the Premises, or because Tenant vacates the Premises, then Tenant shall pay the amount of such increase to Landlord. Any entrance into or occupation of the Premises by Tenant prior to the Commencement Date shall be subject to all obligations of Tenant under this Lease.

4. **Base Rent**.

Tenant shall pay Base Rent in the amount set forth in the Basic Terms of this Lease. Tenant promises to pay to Landlord in advance, without demand, deduction or set-off, monthly installments of Base Rent on or before the first day of each calendar month succeeding the Commencement Date. Payments of Base Rent for any fractional calendar month shall be prorated.

All payments required to be made by Tenant to Landlord hereunder shall be payable at such address as Landlord may specify from time to time by written notice delivered in accordance herewith. The obligation of Tenant to pay Base Rent and other sums to Landlord and the obligations of Landlord under this Lease are independent obligations. Tenant shall have no right at any time to abate, reduce, or set-off any rent due hereunder except where expressly provided in this Lease. Tenant acknowledges that late payment by Tenant to Landlord of any rent due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impractical to determine. Therefore, if Tenant is delinquent in any monthly installment of Base Rent, estimated Operating Expenses or other sums due and payable hereunder for more than five (5) business days from the date when due, Tenant shall pay to Landlord on demand a late charge equal to five (5%) percent of the amount of such late payment for every month such payment remains due and outstanding. The parties agree that such late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of such late payment by Tenant. The provision for such late charge shall be in addition to all of Landlord's other rights and remedies hereunder or at law and shall not be construed as a penalty.

5. **Operating Expense Payments**. (a) During each month of the Lease Term, on the same date that Base Rent is due, Tenant shall pay Landlord an amount equal to 1/12 of the annual cost, as estimated by Landlord from time to time, of Tenant's Proportionate Share (hereinafter defined) of Operating Expenses for the Property, to the extent not paid or provided directly by Tenant. Payments thereof for any fractional calendar month shall be prorated.

(b) The term "Operating Expenses" means certain costs and expenses incurred by Landlord with respect to the ownership, maintenance, and operation of the Property including without limitation; Taxes (as hereinafter defined); capital replacements and repairs; building systems replacement, repair and maintenance; association fees, if any; stormwater fees; landscaping and grounds maintenance, inclusive of snow and ice removal; management; water and sewer costs and charges; and utilities.

(c) If Tenant's total payments of Operating Expenses for any year are less than the actual Operating Expenses for such year, then Tenant shall pay the difference to Landlord within thirty (30) days after demand, and if more, then Landlord shall retain such excess and credit it against Tenant's next payments. Landlord shall provide Tenant with a detailed statement of such Proportionate Share of actual Operating Expenses prior to Tenant's requirement to pay such charges. For purposes of calculating Tenant's Proportionate Share of Operating Expenses, a year shall mean a calendar year except the first year, which shall begin on the Commencement Date, and the last year, which shall end on the expiration of this Lease.

(d) "Tenant's Proportionate Share" shall equal One Hundred (100%) percent.

6. **Tenant Maintenance Obligations.** Tenant is responsible for the cost of maintaining utilities inside the Building, fire sprinklers and fire protection systems, exterior lighting and mechanical and building systems serving the Building, including without limitation, causing the heating, ventilation and air conditioning system serving the Premises to be inspected, serviced, repaired and maintained on a commercially regular basis by a licensed HVAC contractor, charges or assessments of any association or any restrictive covenants to which the Premises is subject; security services, janitorial, and trash collection and removal.

7. **Utilities**. Tenant shall pay for all water, gas, electricity, heat, light, power, telephone, sewer, sprinkler services, refuse and trash collection, and other utilities and services used on the Premises, all maintenance charges for utilities, and any storm water charges or other similar charges for utilities imposed by any association, governmental entity, or utility provider, together with any taxes, penalties, surcharges or the like pertaining to Tenant's use of the Premises. Landlord shall cause all utilities to be charged directly to Tenant by the provider. Tenant shall pay all charges for utilities based upon consumption. No interruption or failure of utilities shall result in the abatement of Base Rent or termination of this Lease.

8. **Taxes**. Landlord shall pay all taxes, assessments and governmental charges (collectively referred to as "Taxes") that either (a) accrue against the Premises during the Lease term if such Taxes are payable in advance, or (b) are assessed against the Premises during the Lease term if such Taxes are payable in arrears. Taxes shall be included as part of the Operating Expenses charged to Tenant pursuant to Paragraph 5 hereof during each year of the Lease term, based upon Landlord's reasonable estimate of the amount of Taxes, and shall be subject to reconciliation and adjustment pursuant to Paragraph 5 once the actual amount of Taxes is known. Landlord may contest by appropriate legal proceedings the amount, validity, or application of any Taxes or liens thereof and any costs incurred in such contest may be included as part of Taxes. All capital levies or other taxes assessed or imposed on Landlord upon the rents payable to Landlord under this Lease and any franchise tax, any excise, transaction, sales or privilege tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents from the Premises or any portion thereof shall be paid by Tenant to Landlord monthly in estimated installments or upon demand, at the option of Landlord, as additional rent; provided, however, in no event shall Tenant be liable for any net income taxes imposed on Landlord unless such net income taxes are in substitution for any Taxes payable hereunder. If any such tax or excise is levied or assessed directly against Tenant, then Tenant shall be responsible for and shall pay the same at such times and in such manner as the taxing authority shall require. Tenant

shall be liable for all taxes levied or assessed against any personal property or fixtures placed in the Premises, whether levied or assessed against Landlord or Tenant, and if any such taxes are levied or assessed against Landlord or Landlord's property and (a) Landlord pays them or (b) the assessed value of Landlord's property is increased thereby and Landlord pays the increased taxes, then Tenant shall pay to Landlord such taxes within ten (10) days after Landlord's request therefor.

9. **Insurance**.

Landlord Insurance.

(a) Landlord shall maintain an ISO Special Causes of Loss Form (formerly "all-risk") property insurance policy covering the Premises (at its full replacement cost), but excluding Tenant's Property (defined below). Such policy shall include insurance against (i) loss or damage by fire or other casualty, with coverage for perils at least as broad as Insurance Services Office form CP 1030 (Causes of Loss-Special Form), subject only to such exclusions as are approved by Landlord; (ii) rent loss insurance sufficient to pay all rent due under this Lease for a period of no less than twelve (12) months after a casualty; (iii) loss from so-called explosion, collapse and underground hazards; (iv) if a sprinkler is in the Premises, loss from sprinkler leakage; and (v) loss or damage from such other risks or hazards of a similar or dissimilar nature which are now or may hereafter be customarily insured against with respect to improvements similar in construction, design, general location, use and occupancy to the Premises. All Landlord insurance policies shall be issued by an insurance company with a Best rating of A-:X or better and shall be licensed to do business in the state in which the Premises is located. All monies collected from the property insurance shall be applied on account of the obligation of Landlord to repair and/or rebuild the Premises pursuant to this Lease. The parties hereto agree that the policy or policies providing the property insurance which Landlord is obligated to maintain under the terms of this Section may be made payable to the holder of any mortgage on the fee interest of the Premises as its interests may appear under a standard mortgagee endorsement, provided such mortgagee(s) agrees that it will in the event of loss make the proceeds of such insurance available to Landlord during the course of reconstruction and repair upon presentation of material and labor bills for work completed and such other reasonable requirements of such mortgagee(s) so that such monies may be used by Landlord to pay for the costs of such repair and restoration work. If at any time there is no such mortgage, the insurance proceeds shall be paid to Landlord to pay for the costs of such repair and restoration work. Upon request, Landlord shall provide evidence of its insurance to Tenant.

(b) Tenant Reimbursement. Tenant shall reimburse Landlord, contemporaneously with the payment of the Base Rent, one-twelfth (1/12) of the premium cost incurred by Landlord for the insurance procured by Landlord as provided in Section 5.

Insurance to be Maintained by Tenant. Tenant shall purchase, at its own expense, and keep in force at all times during this Lease the policies of insurance set forth below (collectively, "**Tenant's Policies**"). All Tenant's Policies shall (a) be issued by an insurance company with a Best rating of A-:X or better and shall be licensed to do business in the state in which the Premises is located; and (b) endeavor to provide that said insurance shall not be canceled unless 10 days' prior written notice shall have been given to Landlord (provided, however, if Tenant's insurance policy does not provide for such notice, then in lieu of such notice from the insurer, Tenant hereby covenants to provide such notice). Certificates of Insurance evidencing said Tenant's Policies shall be delivered to Landlord by Tenant prior to the Commencement Date and renewals thereof shall be delivered within 5 days after renewal of each Tenant's Policy. The insurance provided by Tenant under this Section may be in the form of a blanket insurance policy covering other properties as well as the Premises. Tenant shall ensure that all of its vendors and contractors working or providing services to the Premises to provide similar coverages as required of Tenant under this section 9, including naming Landlord as additional insured and providing a waiver of subrogation with primary and non-contributory coverage.

General Liability and Auto Insurance. Tenant shall purchase and maintain, throughout the Term, a Tenant's Policy(ies) of (i) commercial general or excess liability insurance, including personal injury and property damage, in the amount of not less than $5,000,000.00 per occurrence, and $10,000,000.00 annual general aggregate, per location; (ii) comprehensive automobile liability insurance covering Tenant against any losses arising out of liability for personal injuries or deaths of persons and property damage occurring in or on the Premises in the amount of not less than $1,000,000, combined single limit. The Tenant's Policies required by this section shall (a) name Landlord, and any party holding an interest to which this Lease may be subordinated as additional insureds; (b) provide coverage on an occurrence basis; and (c) be primary, not contributing with, and not in excess of, coverage that Landlord may carry with respect to the Premises.

Property and Workers' Compensation Insurance. Tenant shall purchase and maintain, throughout the Term, a Tenant's Policy or Policies of (i) "all-risk" property insurance covering Tenant's Property (at its full replacement cost), and damage to other personal property resulting from any acts or operations of Tenant, and (ii) workers' compensation insurance per the applicable state statutes covering all employees and volunteers of Tenant located at the Premises. To the extent Tenant's worker's compensation insurance does not cover non-employee volunteers, Tenant shall obtain insurance coverage for such volunteers similar to that provided by worker's compensation policies.

Waiver of Subrogation. Without affecting the coverage provided by insurance required to be maintained hereunder, Landlord and Tenant each waive any right to recover against the other for damages covered by any of the insurance policies required to be maintained by either Landlord or Tenant under this Lease, including without limitation damages to personal property or damages to all or any portion of the Premises, arising by any cause whatsoever, to the extent such damages and claims are (a) insured against, or (b) required to be insured against by Landlord or Tenant under this Lease, or (c) were otherwise insurable against (whether or not actually insured). This provision is intended to waive, fully and for the benefit of each party, any rights and/or claims which might give rise to a right of subrogation by any insurance carrier. The coverage obtained by each party pursuant to this Lease shall include, without limitation, a waiver of subrogation by the carrier which conforms to the provisions of this section.

10. **Cost of Landlord's Maintenance, Repairs and Replacement**. This Lease is intended to be an absolute triple net lease. Accordingly, the cost of Landlord's maintenance, repair and replacement obligations, including the replacement of the Building's roof and roof membrane, and maintenance of the foundation piers and structural members of the exterior walls, replacement of HVAC, electrical, plumbing and mechanical systems, parking areas and other areas of the Building, including, but not limited to driveways, alleys, landscape and grounds surrounding the Premises, shall be paid by Tenant to Landlord pursuant to and in accordance with Paragraph 5 hereof.

11. **Tenant's Repairs**. (a) Tenant, at its sole expense, shall repair and maintain in good condition all portions of the Premises and all areas, improvements and systems exclusively serving the Premises including, without limitation, doors and entryways, plumbing, water, and sewer lines up to points of common connection, security systems, ceilings, windows, interior walls, and the interior side of demising walls, and heating, ventilation and air conditioning systems, and other building and mechanical systems serving the Premises. Maintenance of the heating, ventilation and air conditioning systems and other mechanical and building systems serving the Premises shall be at Tenant's expense pursuant to maintenance service contracts entered into by Tenant or, at Landlord's written election, by Landlord (but at Tenant's expense). The scope of services and contractors under such maintenance contracts shall be subject to Landlord's prior written approval. Additionally, Landlord shall pass through any and all warranties for maintenance items in the Premises to Tenant. In the event that Landlord, in its reasonable discretion, determines that Tenant maintenance and repair obligations are not being met in a timely, professional, and workmanlike manner, Landlord may elect to perform Tenant's maintenance and repair obligations on behalf of Tenant and charge the costs as Operating Expenses

(b) In the event that any repair or maintenance obligation required to be performed by Tenant hereunder may affect the structural integrity of the Building (e.g., roof, foundation, structural members of the exterior walls), or include roof or wall penetrations, prior to commencing any such repair, Tenant shall provide Landlord with written notice of the necessary repair or maintenance and a brief summary of the structural component or components of the Building that may be affected by such repair or maintenance. Within ten (10) business days after Landlord's receipt of Tenant's written notice, Landlord shall have the right, but not the obligation, to elect to cause such repair or maintenance to be performed by Landlord, or a contractor selected and engaged by Landlord, but at Tenant's sole cost and expense.

12. **Tenant-Made Alterations**. (a) Any alterations, additions, or improvements made by or on behalf of Tenant to the Premises ("Tenant-Made Alterations") shall be subject to Landlord's prior written consent, which shall not be unreasonably withheld, delayed or conditioned. Tenant shall cause, at its expense, all Tenant-Made Alterations to comply with insurance requirements and with Legal Requirements and shall construct at its expense any alteration or modification required by Legal Requirements as a result of any Tenant-Made Alterations.

(b) All Tenant-Made Alterations shall be constructed in a good and workmanlike manner by contractors reasonably acceptable to Landlord and only good grades of materials shall be used. All plans and specifications for any Tenant-Made Alterations shall be submitted to Landlord for its approval, which shall not be unreasonably withheld, delayed or conditioned. Landlord may monitor construction of the Tenant-Made Alterations. Landlord's right to review plans and specifications and to monitor construction shall be solely for its own benefit, and Landlord shall have no duty to see that such plans and specifications or construction comply with applicable laws, codes, rules and regulations.

(c) Tenant shall furnish security or make other arrangements reasonably satisfactory to Landlord to assure payment for the completion of all work free and clear of liens and shall provide certificates of insurance for worker's compensation and other coverage in amounts and from an insurance company satisfactory to Landlord protecting Landlord against liability for personal injury or property damage during construction. Upon completion of any Tenant-Made Alterations, Tenant shall deliver to Landlord sworn statements setting forth the names of all contractors and subcontractors who did work on the Tenant-Made Alterations and final lien waivers from all such contractors and subcontractors.

(d) Upon surrender of the Premises, all Tenant-Made Alterations and any leasehold improvements constructed by Landlord or Tenant shall remain on the Premises as Landlord's property, except to the extent Landlord requires removal at Tenant's expense of any such items or Landlord and Tenant have otherwise agreed in writing in connection with Landlord's consent to any Tenant-Made Alterations. Prior to the expiration or termination of this Lease, Tenant, at its sole expense, shall repair any and all material damage caused by such removal and restore the Premises to its condition existing upon the later of the Commencement Date or Substantial Completion, normal wear and tear excepted.

13. **Signs**. All signage visible from outside the Premises shall conform to local rules and requirements. Tenant shall be solely responsible for all costs of signage manufacturing, installation and maintenance. Upon surrender or vacation of the Premises, Tenant shall have removed all signs and repair, paint, and/or replace the building facia surface to which its signs are attached. Tenant shall obtain all applicable governmental permits and approvals for sign and exterior treatments.

14. **Parking**. Tenant shall be entitled to parking per **Exhibit B**. Tenant, at Tenant's sole cost, shall have the right to post signage or mark parking for use by Tenant's customers and guests.

15. **Restoration**. (a) If at any time during the Lease Term the Premises are damaged by a fire or other casualty, Landlord shall notify Tenant within thirty (30) days after such damage as to the amount of time Landlord reasonably estimates it will take to restore the Premises. If the restoration time is estimated to exceed 180 days from the date Landlord receives all permits, approvals, and licenses required to begin reconstruction, the parties may mutually agree to terminate this Lease. If the parties do not mutually agree to terminate this Lease, or if Landlord estimates that restoration will take 180 days or less, then, subject to receipt of sufficient insurance proceeds, Landlord shall promptly restore the Premises excluding the improvements installed by Tenant or by Landlord and paid by Tenant, subject to delays arising from the collection of insurance proceeds or from Force Majeure events. Tenant at Tenant's expense shall promptly perform, subject to delays arising from the collection of insurance proceeds, or from Force Majeure events, all repairs or restoration not required to be done by Landlord and shall promptly re-enter the Premises and commence doing business in accordance with this Lease. Landlord's obligation to restore is limited to the amount of insurance proceeds it receives as provided in Section 9 above.

(b) Intentionally deleted.

(c) If such damage or destruction is caused by the act(s) or omission(s) of Tenant, Tenant shall pay to Landlord with respect to any damage to the Premises and/or Property the amount of cost of restoration that exceeds the amount of insurance proceeds paid to Landlord within thirty (30) days after presentment of Landlord's invoice.

(d) Base Rent shall be abated for the period of repair and restoration in the proportion which the area of the Premises, if any, which is not usable by Tenant bears to the total area of the Premises; provided, however Tenant shall not be entitled to any abatement of rent in the event such damage or destruction resulted from the negligence or willful misconduct of Tenant. Such abatement, if any, shall be the sole remedy of Tenant, and except as provided herein, Tenant waives any right to terminate the Lease by reason of damage or casualty loss.

16. **<u>Reserved</u>**.

17. **<u>Assignment and Subletting</u>**. (a) Tenant shall have no right to assign this Lease. (b) Tenant may, with Landlord's prior written consent, which shall not be unreasonably withheld, delayed or conditioned, sublease the Premises or any part thereof or mortgage, pledge, or hypothecate its leasehold interest or grant any concession or license within the Premises (each being a "<u>Transfer</u>"). Notwithstanding the above, Tenant may sublet the Premises, or any part thereof, to any entity controlling, controlled by or under common control with the original Tenant named herein (a "<u>Tenant Affiliate</u>"), without the prior written consent of Landlord; provided, however, Tenant shall provide at least ten (10) days written notice prior to entering into any sublease with any Tenant Affiliate. Upon Landlord's receipt of Tenant's written notice of a desire to sublet the Premises, or any part thereof (other than a sublease to a Tenant Affiliate), Landlord may, by giving written notice to Tenant within thirty (30) days after receipt of Tenant's notice, terminate this Lease with respect to the space described in Tenant's notice, as of the date specified in Tenant's notice for the commencement of the proposed sublease. Without limiting the foregoing, Landlord may withhold its consent to any such subletting of the Premises to any party if the subletting is reasonably likely, in Landlord's discretion, to cause any amount to be received by Landlord as a result of such Transfer to fail to qualify as "rents from real property" for purposes of Section 512(b)(3) or 856(d) of the Internal Revenue Code of 1986, as amended ("<u>IRS</u>").

(b) Notwithstanding any Transfer, Tenant shall at all times remain fully responsible and liable for the payment of the rent and for compliance with all of Tenant's other obligations under this Lease (regardless of whether Landlord's approval has been obtained for any such Transfer). In the event that the rent due and payable by a sublessee (or a combination of the rental payable under such sublease plus any bonus or other consideration therefor or incident thereto) exceeds the rental payable under this Lease (which rental shall be calculated on a square foot basis if less than the entire Premises is subleased), then Tenant shall be bound and obligated to pay Landlord as additional rent hereunder all such excess rental and other excess consideration within ten (10) days following receipt thereof by Tenant. In connection with any Transfer to which the provisions of this paragraph apply, Tenant shall provide written notice to Landlord prior to the effective date of any such Transfer as whether any amount may be payable by Tenant under this paragraph and shall provide such information as Landlord may reasonably request in order for Landlord to determine whether the payment of any such amount is reasonably likely to cause Landlord to receive or accrue any amounts in respect thereof that may not qualify as "rents from real property under IRS Sections 512(b)(3) or 856(d).

(c) If the Premises is subleased (whether in whole or in part) or in the event of the mortgage, pledge, or hypothecation of Tenant's leasehold interest or grant of any concession or license within the Premises or if the Premises be occupied in whole or in part by anyone other than Tenant, then upon a default by Tenant hereunder Landlord may collect rent from the sublessee, mortgagee, pledgee, party to whom the leasehold interest was hypothecated, concessionee or licensee or other occupant and, except to the extent set forth in the preceding subparagraph, apply the amount collected to the next rent payable hereunder; and all such rentals collected by Tenant shall be held in trust for Landlord and immediately forwarded to Landlord. No such transaction or collection of rent or application thereof by Landlord, however, shall be deemed a waiver of these provisions or a release of Tenant from the further performance by Tenant of its covenants, duties, or obligations hereunder. Any approved sublease shall be expressly subject to the terms and conditions of this Lease. Landlord's consent to any Transfer shall not waive Landlord's rights as to any subsequent Transfers.

18. Indemnity.

Tenant Indemnification. Tenant hereby indemnifies, defends, and holds Landlord and its respective owners, members, managers, partners, directors, officers, agents and employees (collectively, "**Landlord Indemnified Parties**") harmless from and against any and all Losses (defined below) actually suffered and to the extent arising from any occurrence in, upon or at the Premises during the Term; or resulting from or arising out of any lawsuit, executive order, referendum, or other action taken by municipal officials or bodies or citizen groups, that are intended to delay, stop or interfere with the construction of the Building and development of the project, or change, revise, amend, or terminate any term, provision or condition of this Lease, except to the extent any of the foregoing arises out of (a) the Landlord's breach of this Lease, (b) the negligence or misconduct of Landlord or its respective employees, agents, contractors, managers, members, representatives, partners, directors, or officers, or (c) any work by Landlord or any of its employees, agents, contractors, managers, members, representatives, partners, directors, or officers at the Premises or Property, or (d) any breach by Landlord of any of its warranties and representations under this Lease. The term "**Losses**" shall mean all claims, demands, expenses, actions, judgments, damages (actual, but not consequential), penalties, fines, liabilities, actual losses of every kind and nature, reasonable sums paid in settlement of claims (which settlement is approved by Tenant), suits, administrative proceedings, costs and fees, including, without limitation, attorneys' and consultants' reasonable fees and expenses, that are in any way related to any matter covered by the foregoing indemnity. Notwithstanding the foregoing, the indemnity provided under this Section shall not be construed as a waiver of Tenant's right to assert any and all defenses in response to claims made against Tenant, its officers, agents, or employees pursuant to the Maine Tort Claims Act or any other privileges or immunities as may be provided by law. The provisions of this Section shall survive the expiration or termination of this Lease.

Landlord Indemnification. Landlord shall indemnify and defend Tenant (and its affiliates, owners, shareholders, members, managers, partners, directors, officers, agents and employees) against and hold Tenant and such other parties harmless from any and all Losses to the extent arising from (a) the Landlord's breach of this Lease, (b) the negligence or misconduct of Landlord or its respective employees, agents, contractors, managers, members, representatives, partners, directors, or officers, or (c) any work by Landlord or any of its employees, agents, contractors, managers, members, representatives, partners, directors, or officers at the Premises or Property, or (d) any breach by Landlord of any of its warranties and representations under this Lease. The provisions of this section shall survive the expiration or termination of this Lease.

Tenant Environmental Indemnity. Tenant hereby agrees to defend, indemnify and save harmless Landlord and its affiliates, subsidiaries, parent organization or their respective officers, directors, members, managers, partners, shareholders, employees and agents from all claims, costs, damages, demands, expenses, fines, judgments, corrective actions, remediation, liabilities and losses (including reasonable attorneys' fees, paralegal fees, expert witness fees, consultant fees, and other costs of defense) which arise during the Term from or in connection with (a) breach of the Tenant's representations or obligations, (b) the presence of Hazardous Materials at, on, under or migrating to or from the Premises or Property unless arising as a result of Landlord's actions during the Term, and (c) the presence of Hazardous Materials in the soil, surface water, groundwater, air, soil vapor and any building materials at or migrating to or from the Premises or Property unless arising as a result of Landlord's actions during the Term. In connection with the foregoing, Tenant shall have the sole responsibility for the investigation and remediation of all environmental conditions associated with the Premises unless arising as a result of Landlord's actions during the Term. Notwithstanding the foregoing, the indemnity provided under this Section shall not be construed as a waiver of Tenant's right to assert any and all defenses in response to claims made against Tenant, its officers, agents, or employees pursuant to the Maine Tort Claims Act or any other privileges or immunities as may be provided by law. The terms of this Section shall survive the expiration or termination of this Lease.

Any indemnification obligations set forth in this Lease shall be subject to the following conditions: (i) the indemnified party shall notify the indemnifying party in writing promptly upon learning of any claim or suit for which indemnification is sought; (ii) the indemnified party shall have control of the defense or settlement, provided that the indemnifying party shall also participate in such defense or settlement with counsel at its selection and at its sole expense.

19. **Inspection and Access**. Upon twenty-four (24) hours prior verbal or written notice to Tenant (except in the event of an emergency, in which no notice shall be required), Landlord and its agents, representatives, and contractors may enter the Premises at any reasonable time to inspect the Premises and to make such repairs as may be required or permitted pursuant to this Lease and for any other business purpose. Landlord and

Landlord's representatives may enter the Premises during business hours for the purpose of showing the Premises to prospective purchasers or, in the event that Tenant has not exercised its option(s) to renew this Lease, or options to purchase rights set forth in Section 38, during the last year of the Lease Term, to prospective tenants. Landlord may erect a suitable sign on the Premises stating the Premises are available to let or that the Property is available for sale.

20. **Quiet Enjoyment**. If Tenant shall perform all of the covenants and agreements herein required to be performed by Tenant, Tenant shall, subject to the terms of this Lease, at all times during the Lease Term, have peaceful and quiet enjoyment of the Premises against any person claiming by, through or under Landlord, but not otherwise.

21. **Surrender**. No act by Landlord shall be an acceptance of a surrender of the Premises, and no agreement to accept a surrender of the Premises shall be valid unless it is in writing and signed by Landlord. Upon termination of the Lease Term or earlier termination of Tenant's right of possession, Tenant shall surrender the Premises to Landlord in the same condition as received, broom clean, ordinary wear and tear and casualty loss and condemnation covered by Paragraphs 15 and 16 excepted. Tenant shall give written notice to Landlord at least thirty (30) days prior to vacating the Premises and shall meet with Landlord for a joint inspection of the Premises at the time of vacating. In the event of Tenant's failure to give such notice or to participate in such joint inspection, Landlord's inspection shall be deemed conclusive for purposes of determining Tenant's responsibility for repairs and restoration. No such performance by Landlord shall create any liability on the part of Landlord whatsoever. Any Tenant-Made Alterations and property not so removed by Tenant as permitted or required herein shall be deemed abandoned and may be stored, removed, and disposed of by Landlord at Tenant's expense, and Tenant waives all claims against Landlord for any damages resulting from Landlord's retention and disposition of such property. All obligations of Tenant hereunder not fully performed as of the termination of the Lease Term shall survive the termination of the Lease Term, including without limitation, indemnity obligations, payment obligations with respect to Operating Expenses and all obligations concerning the condition and repair of the Premises. If Tenant has not fulfilled its obligations with respect to repairs and cleanup of the Premises or any other Tenant obligations as set forth in this Lease, Landlord shall have the right to perform any such obligations as it deems necessary at Tenant's sole cost and expense, and any time required by Landlord to complete such obligations shall be considered a period of holding over and the terms of Paragraph 22 shall apply.

22. **Holding Over**. If Tenant fails to vacate the Premises after the termination of the Lease Term, Tenant will be bound by the terms and provisions of this Lease except that no tenancy or interest in the Premises will result. Such holding over shall be an unlawful detainer and Tenant will be subject to immediate eviction. During such holdover period Tenant shall pay, in addition to any other rent or other sums then due Landlord, a daily base rental equal to 150% of the Base Rent in effect on the expiration or termination date,

unless Landlord consents to such holdover otherwise (which consent shall be effective only if in writing). Tenant shall also be liable for all Operating Expenses incurred during such holdover period. No holding over by Tenant, whether with or without consent of Landlord, shall operate to extend this Lease except as otherwise expressly provided, and this Paragraph 22 shall not be construed as consent for Tenant to retain possession of the Premises.

23. **Events of Default**. Each of the following events shall be an event of default ("Event of Default") by Tenant under this Lease:

(a) Tenant shall fail to pay any installment of Base Rent or any other payment required herein within five (5) business days of the date when due.

(b) Tenant shall (A) make a general assignment for the benefit of creditors; (B) commence any case, proceeding or other action seeking to have an order for relief entered on its behalf as a debtor or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or of any substantial part of its property (collectively a "Proceeding for Relief"); (C) become the subject of any Proceeding for Relief which is not dismissed within sixty (60) days of its filing or entry; or (D) be dissolved or otherwise fail to maintain its legal existence.

(c) Any insurance required to be maintained by Tenant pursuant to this Lease shall be cancelled or terminated or shall expire or shall be reduced or materially changed, except, in each case, as permitted in this Lease.

(d) Intentionally deleted.

(e) Tenant shall attempt or there shall occur any assignment, subleasing or other transfer of Tenant's interest in or with respect to this Lease except as otherwise permitted in this Lease.

(f) Tenant shall fail to discharge or bond over any lien placed upon the Premises in violation of this Lease within sixty (60) days after any such lien or encumbrance is filed against the Premises.

(g) Tenant shall fail to execute any instrument of subordination or attornment or any estoppel certificate within the time periods set forth in Paragraphs 27 and 29 respectively following Landlord's request for the same.

(h) Tenant shall breach any of the requirements of Paragraph 30 and such failure shall continue for a period of thirty (30) days or more after notice from Landlord to Tenant without Tenant beginning remediation of the failure.

(i) Tenant shall fail to comply with any provision of this Lease other than those specifically referred to in this Paragraph 23, and except as otherwise expressly provided herein, such default shall continue for more than thirty (30) days after Landlord shall have given Tenant written notice of such default.

24. **Landlord's Remedies**. (a) Upon each occurrence of an Event of Default and so long as such Event of Default shall be continuing, Landlord may at any time thereafter at its election: terminate this Lease including without limitation, Tenant's options to purchase rights set forth in Section 38, or Tenant's right of possession, (but Tenant shall remain liable as hereinafter provided) and/or pursue any other remedies at law or in equity. Upon the termination of this Lease or termination of Tenant's right of possession, it shall be lawful for Landlord, without formal demand or notice of any kind, to re-enter the Premises by summary dispossession proceedings or any other action or proceeding authorized by law and to remove Tenant and all persons and property therefrom. If Landlord re-enters the Premises, Landlord shall have the right to keep in place and use all the furniture, fixtures and equipment at the Premises. In addition to the foregoing and not in lieu of any of Landlord's rights and remedies hereunder or at law or in equity, if a petition is filed by Tenant for relief under Chapter 11 of Title 11 of the United States Code, or for reorganization or arrangement under any provision of the Bankruptcy Code as then in force and effect, or any involuntary petition under any provision of the Bankruptcy Code is filed against Tenant and is not dismissed within sixty (60) days thereafter, then in either of such cases this Lease shall at the option of Landlord terminate upon notice of termination to Tenant.

(b) If Landlord terminates this Lease, Landlord may recover from Tenant the sum of: all Base Rent and all other amounts accrued hereunder to the date of such termination; the cost of reletting the whole or any part of the Premises, including without limitation brokerage fees and/or leasing commissions incurred by Landlord, and costs of removing and storing Tenant's or any other occupant's property, repairing, altering, remodeling, or otherwise putting the Premises into condition acceptable to a new tenant or tenants, and all reasonable expenses incurred by Landlord in pursuing its remedies, including reasonable attorneys' fees and court costs; and the amount by which all amounts due under this Lease for the remainder of the Term as if this Lease had not terminated (including both Base Rent and all forms of Operating Expenses) and any other balances due under this Lease for such period exceeds the net rent and additional rent received during such period from new leases of the Premises entered into pursuant to Landlord's "duty to mitigate" as described in Section 6010-A of Title 14, Maine Revised Statutes Annotated, as the same may be revised, replaced or amended from time to time, and to the extent the same is applicable to Landlord's recovery of damages from Tenant. In determining the net rent from such new leases there shall be deducted from each monthly rental payment the monthly amortization amount of the reasonable costs of reletting the Premises including real estate commissions, advertising and reasonable costs of renovating the Premises to suit any new tenant or tenants, such amortization to be on a straight line basis over the term of the applicable new lease.

(c) In addition to any other remedy Landlord may have in this Lease or at law or in equity, if Tenant fails to perform its obligations hereunder within thirty (30) days after written notice thereof from Landlord to Tenant, Landlord shall have the right, but not the obligation, to perform Tenant's obligations.

(d) Exercise by Landlord of any one or more remedies hereunder granted or otherwise available shall not be deemed to be an acceptance of surrender of the Premises and/or a termination of this Lease by Landlord, whether by agreement or by operation of law. Any law, usage, or custom to the contrary notwithstanding, Landlord shall have the right at all times to enforce the provisions of this Lease in strict accordance with the terms hereof; and the failure of Landlord at any time to enforce its rights under this Lease strictly in accordance with same shall not be construed as having created a custom in any way or manner contrary to the specific terms, provisions, and covenants of this Lease or as having modified the same. Tenant and Landlord further agree that forbearance or waiver by Landlord to enforce its rights pursuant to this Lease or at law or in equity, shall not be a waiver of Landlord's right to enforce one or more of its rights in connection with any subsequent default. A receipt by Landlord of rent or other payment with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by Landlord. To the greatest extent permitted by law, Tenant waives the service of notice of Landlord's intention to re-enter as provided for in any statute, or to institute legal proceedings to that end, and also waives all right of redemption in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge. The terms "enter," "re-enter," "entry" or "re-entry," as used in this Lease, are not restricted to their technical legal meanings. Any reletting of the Premises shall be on such terms and conditions as Landlord may determine (including without limitation a term different than the remaining Lease Term, rental concessions, alterations and repair of the Premises, lease of less than the entire Premises to any tenant and leasing any or all other portions of the Property before reletting the Premises). Landlord shall not be liable, nor shall Tenant's obligations hereunder be diminished because of, Landlord's failure to relet the Premises or collect rent due in respect of such reletting, provided, that, Landlord has made commercially reasonable efforts to relet the Premises, and/or collect rent due in respect of such reletting.

25. **<u>Tenant's Remedies/Limitation of Liability</u>**. Landlord shall not be in default hereunder unless Landlord fails to perform any of its obligations hereunder within thirty (30) days after written notice from Tenant specifying such failure (unless such

performance will, due to the nature of the obligation, require a period of time in excess of thirty (30) days, then after such period of time as is reasonably necessary). All obligations of Landlord hereunder shall be construed as covenants, not conditions; and Tenant may not terminate this Lease for breach of Landlord's obligations hereunder. All obligations of Landlord under this Lease will be binding upon Landlord only during the period of its ownership of the Property and not thereafter. The term "Landlord" in this Lease shall mean only the owner, for the time being of the Building, and in the event of the transfer by such owner of its interest in the Building, such owner shall thereupon be released and discharged from all obligations of Landlord thereafter accruing, but such obligations shall be binding during the Lease Term upon each new owner for the duration of such owner's ownership. Any liability of Landlord under this Lease or arising out of the relationship between Landlord and Tenant shall be limited solely to Landlord's interest in the Building, and in no event shall any personal liability be asserted against Landlord in connection with this Lease nor shall any recourse be had to any other property or assets of Landlord.

26. **Waiver of Jury Trial**. TENANT AND LANDLORD WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN LANDLORD AND TENANT ARISING OUT OF THIS LEASE OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS RELATED HERETO.

27. **Subordination**. (a) This Lease and Tenant's interest and rights hereunder are and shall be subject and subordinate at all times to the Ground Lease, to the lien of any first mortgage, now existing or hereafter created on or against the Building or the Premises, and all amendments, restatements, renewals, modifications, consolidations, refinancing, assignments and extensions thereof, and to any easements (including those granting access to the City of Portland communication tower and the Portland Trails network), restrictions, covenants or other matters of record without the necessity of any further instrument or act on the part of Tenant. Tenant agrees, at the election of the holder of any such mortgage, to attorn to any such holder. The provisions of this Paragraph 27 shall be self-operative and no further instrument shall be required to effect such subordination or attornment; however, Tenant agrees to execute, acknowledge and deliver such instruments, confirming such subordination and such instruments of attornment as shall be requested by any such holder within ten (10) days of such request. Tenant's obligation to furnish each such instrument requested hereunder in the time period provided is a material inducement for Landlord's execution of this Lease.

(b) Notwithstanding the foregoing, any such holder may at any time subordinate its mortgage to this Lease, without Tenant's consent, by notice in writing to Tenant, and thereupon this Lease shall be deemed prior to such mortgage without regard to their respective dates of execution, delivery or recording and in that event such holder shall have the same rights with respect to this Lease as though this Lease had been executed prior to the execution, delivery and recording of such mortgage and had been assigned to such holder. The term "mortgage" whenever used in this Lease shall be deemed to include deeds of trust, security assignments and any other encumbrances, and any reference to the "holder" of a mortgage shall be deemed to include the beneficiary under a deed of trust.

(c) Tenant shall not seek to enforce any remedy it may have for any default on the part of Landlord without first giving written notice by certified mail, return receipt requested, or reputable overnight courier service, specifying the default in reasonable detail to any mortgage holder whose address has been given to Tenant, and affording such mortgage holder a reasonable opportunity to perform Landlord's obligations hereunder. Notwithstanding any such attornment or subordination of a mortgage to this Lease, the holder of any mortgage shall not be liable for any acts of any previous landlord, shall not be obligated to install any tenant improvements, and shall not be bound by any amendment to which it did not consent in writing nor any payment of rent made more than one month in advance, unless required under the Lease.

28. **Mechanic's Liens**. Tenant has no express or implied authority to create or place any lien or encumbrance of any kind upon, or in any manner to bind the interest of Landlord or Tenant in, the Premises or to charge the rentals payable hereunder for any claim in favor of any person dealing with Tenant, including those who may furnish materials or perform labor for any construction or repairs. Tenant covenants and agrees that it will pay or cause to be paid all sums legally due and payable by it on account of any labor performed or materials furnished in connection with any work performed on the Premises and that it will save and hold Landlord harmless from all loss, cost or expense based on or arising out of asserted claims or liens against the leasehold estate or against the interest of Landlord in the Premises or under this Lease. Tenant shall give Landlord immediate written notice of the placing of any lien or encumbrance against the Premises and cause such lien or encumbrance to be discharged within thirty (30) days of the filing or recording thereof; provided, however, Tenant may contest such liens or encumbrances as long as such contest prevents foreclosure of the lien or encumbrance and Tenant causes such lien or encumbrance to be bonded or insured over in a manner satisfactory to Landlord within such thirty (30) day period.

29. **Estoppel Certificates; Financing Documents**. Tenant agrees, from time to time, within ten (10) business days after request of Landlord, to execute and deliver to Landlord, or Landlord's designee, any (i) estoppel certificate requested by Landlord, stating that this Lease is in full force and effect, the date to which rent has been paid, that Landlord is not in default hereunder (or specifying in detail the nature of Landlord's default), the termination date of this Lease and such other matters pertaining to this Lease as may be requested by Landlord; and (ii) other document or documents any lender to Landlord may reasonably require in connection with any financing transaction Landlord enters into with respect to the Premises, provided such document(s) is in a commercially

reasonable form. Tenant's obligation to furnish each estoppel certificate or such financing document in a timely fashion is a material inducement for Landlord's execution of this Lease. Further, if Tenant fails to execute and deliver the estoppel certificate within ten (10) business days after Landlord's written request thereof, then Tenant shall be deemed to conclusively agree with the information contained in such estoppel certificate.

30. **Environmental**. For purposes of this Lease, the term "Hazardous Materials" shall mean and include any and all hazardous, special, medical, toxic or dangerous waste substance or material defined in, or regulated by, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC Section 9601, et. seq.), the Hazardous Materials Transportation Act (49 USC Section 1802, et. seq.) and the Resource Conservation and Recovery Act (42 USC Section 6901, et. seq.) or any other federal, state or local statute, law, ordinance, code, rule, regulation, guideline, order or decree regulating, relating to or imposing liability or standards of conduct concerning the environment or any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect (collectively, "Environmental Laws").

(a) Tenant agrees, at its sole expense, to comply with all Environmental Laws affecting the Premises to the extent such compliance is required as a result of (i) the use or occupancy of the Premises by Tenant, its employees, agents, contractors and invitees, or (ii) the acts or negligence of Tenant or Tenant's employees, agents, contractors or invitees, and Tenant shall promptly provide Landlord with any notices received from any governmental authority with respect to the same.

(b) Tenant shall not install any surface storage tanks on the Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned. Tenant shall not install any underground storage tanks on the Premises. Without the prior written consent of the Landlord Tenant shall not discharge, release, store, create, use, move onto or remove from the Premises any Hazardous Materials, except that Tenant may use small quantities of cleaning fluids and other lawful amounts of Hazardous Materials necessary for the operation of Tenant's business (including, without limitation, the operation of any UPS system) provided the same are used, stored and disposed of in strict compliance with all applicable Environmental Laws. Upon request of Landlord, Tenant shall provide Landlord with a material safety data sheet with respect to each Hazardous Material which Tenant utilizes on the Premises. If Landlord, in its sole judgment, reasonably believes, in good faith, that Tenant has caused the Premises or the surrounding environment to become contaminated with Hazardous Materials or that Tenant has violated any Environmental Laws, Landlord may, in addition to its other rights under this Lease, enter upon the Premises upon reasonable prior notice and obtain samples from the Premises, including the soil and groundwater under the Building, to determine whether and to what extent the Premises or the surrounding environment have become contaminated; Landlord agrees to take commercially reasonable measures to minimize any interference to Tenant's operations at the Premises. Such testing shall be performed at Tenant's expense and Tenant shall pay the cost of such testing within thirty (30) days after Tenant's receipt of a reasonably detailed statement of such cost from Landlord. In the event that it is found that Tenant contaminated the Premises or the environment with Hazardous Materials, Tenant shall take all necessary steps, in consultation with Landlord, and at all times in accordance with best practices to fully remove such Hazardous Material from the Premises, any adjacent property and the environment including, but not limited to, the cost of any required or necessary repair, cleanup or detoxification and preparation of any closure or other remediation plans in connection therewith, all to the reasonable satisfaction of Landlord and in accordance with the standards for commercial office buildings and/or parks and all applicable federal, state and local laws and regulations. Tenant covenants and agrees that, with respect to any "Hazardous Materials" which Tenant, its agent or employees, may use, handle store or generate in the conduct of its business at the Premises it will: (i) comply with all applicable laws, ordinances and regulations which relate to the treatment, storage, transportation and handling of the Hazardous Materials; (ii) in no event permit or cause any disposal of Hazardous Materials in, on or about the Premises or the Land and in particular will not deposit any Hazardous Materials in, on or about the floor or in any drainage system or in the trash containers which are customarily used for the disposal of solid waste; (iii) with respect to any off-site disposal, shipment, storage, recycling or transportation of any Hazardous Materials, it shall properly package the Hazardous Materials and shall cause to be executed and duly filed and retain all records required by federal, state or local law; (iv) at all reasonable times, upon reasonable prior notice, permit Landlord or its agent or employees to enter the Leased Premises to inspect the same for compliance with the terms of this Paragraph and will further provide upon ten (10) business days' notice from Landlord copies of all records which Tenant may be obligated to obtain and keep in accordance with the terms of this Section 30; (v) upon termination of this Lease, at Tenant's expense, remove all Hazardous Materials from the Premises and, if applicable, comply with Maine and federal law as the same may be amended from time to time, including without limitation Chapter 851 of the Regulations for the Maine Department of Environmental Protection, Section 11 relating to "Closure"; and (vi) further agree to deliver the Premises to Landlord at the termination of this Lease free of all pollutants, contaminants, special wastes, underground storage tanks, asbestos, waste oil petroleum and any other hazardous, pathological, radioactive, dangerous or toxic substances, materials or wastes. The terms used in this Section 30 shall include, without limitation, all substances, materials, etc., designated by such terms under any laws, ordinances or regulations, whether federal, state or local.

31. **Intentionally deleted**.

32. **Security Service**. Tenant acknowledges and agrees that Landlord is not providing any security services with respect to the Premises and that Landlord shall not be liable to Tenant for, and Tenant waives any claim against Landlord with respect to, any loss by theft or any other damage suffered or incurred by Tenant in connection with any

unauthorized entry into the Premises or any other breach of security with respect to the Premises.

33. **Force Majeure**. Landlord shall not be held responsible for delays in the performance of its obligations hereunder when caused by strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, government declared pandemics that prohibit Landlords obligations under this Lease, delay in issuance of permits, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of Landlord ("Force Majeure").

34. **Entire Agreement; Amendment**. This Lease constitutes the complete and entire agreement of Landlord and Tenant with respect to the subject matter hereof. No representations, inducements, promises or agreements, oral or written, have been made by Landlord or Tenant, or anyone acting on behalf of Landlord or Tenant, which are not contained herein, and any prior agreements, promises, negotiations, or representations are superseded by this Lease. This Lease may not be amended except by an instrument in writing signed by both parties hereto.

35. **Severability**. If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby. It is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

36. **Brokers**. Tenant represents and warrants that it has dealt with no broker, agent or other person in connection with this transaction.

37. **Miscellaneous**.

(a) Any payments or charges due from Tenant to Landlord hereunder shall be considered rent for all purposes of this Lease.

(b) If and when included within the term "Tenant," as used in this instrument, there is more than one person, firm or corporation, each shall be jointly and severally liable for the obligations of Tenant.

(c) All notices required or permitted to be given under this Lease shall be in writing and shall be sent by registered or certified mail, return receipt requested, or by a reputable national overnight courier service, postage prepaid, or by hand delivery and, if to Tenant, addressed to Tenant at, 389 Congress Street, Portland, Maine 04101, and Attn:

City Manager, 389 Congress Street, Portland, Maine 04101, Attn: Corporation, Counsel, with a copy to Nicholas J. Morrill, Esq., Jensen Baird, P.O. Box 4510, Portland, Maine 04112-4510, and if to Landlord, addressed to Landlord at 631 Stevens Avenue, Suite 203, Portland, Maine 04103. Either party may by notice given aforesaid change its address for all subsequent notices. Except where otherwise expressly provided to the contrary, notice shall be deemed given upon the earlier of delivery or refusal.

(d) Except as otherwise expressly provided in this Lease or as otherwise required by law, Landlord retains the absolute right to withhold any consent or approval.

(e) This Lease shall not be filed by or on behalf of Tenant in any public record. Upon the request of either party, the parties will execute a memorandum of lease in recordable form.

(f) Each party acknowledges that it has had the opportunity to consult counsel with respect to this Lease, and therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or any exhibits or amendments hereto.

(g) The submission by Landlord to Tenant of this Lease shall have no binding force or effect, shall not constitute an option for the leasing of the Premises, nor confer any right or impose any obligations upon either party until execution of this Lease by both parties.

(h) Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The captions inserted in this Lease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Lease, or any provision hereof, or in any way affect the interpretation of this Lease.

(i) Any amount not paid by Tenant within five (5) business days after its due date in accordance with the terms of this Lease shall, in addition to other charges or fees provided in this Lease, bear interest from such due date until paid in full at the lesser of the highest rate permitted by applicable law or fifteen percent (15%) per year. It is expressly the intent of Landlord and Tenant at all times to comply with applicable law governing the maximum rate or amount of any interest payable on or in connection with this Lease. If applicable law is ever judicially interpreted so as to render usurious any interest called for under this Lease, or contracted for, charged, taken, reserved, or received with respect to this Lease, then it is Landlord's and Tenant's express intent that all excess amounts theretofore collected by Landlord be credited on the applicable obligation (or, if the obligation has been or would thereby be paid in full, refunded to Tenant), and the provisions of this Lease immediately shall be deemed reformed and the amounts thereafter collectible hereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder.

(j) Construction and interpretation of this Lease shall be governed by the laws of the state in which the Property is located, excluding any principles of conflicts of laws.

(k) Time is of the essence as to the performance of Tenant's obligations under this Lease.

(l) All exhibits and addenda attached hereto are hereby incorporated into this Lease and made a part hereof. In the event of any conflict between such exhibits or addenda (other than the rules and regulations) and the terms of this Lease, such exhibits or addenda shall control. In the event of a conflict between the rules and regulations attached hereto and the terms of this Lease, the terms of this Lease shall control.

(m) If either party should prevail in any litigation instituted by or against the other related to this Lease, the prevailing party, as determined by the court, shall receive from the non-prevailing party all costs and reasonable attorneys' fees (payable at standard hourly rates) incurred in such litigation, including costs on appeal, as determined by the court.

(n) If this Lease requires any act to be done or action to be taken (other than the payment of Rent) on a date which is not a Business Day, that act or action will be deemed to have been validly done or taken if done or taken on the next succeeding Business Day. As used herein, a "Business Day" is a day other than a Saturday, Sunday or day on which banking institutions in the city in which the Property is located are authorized or required by law or executive order to be closed.

(o) In any legal proceeding that is brought by Landlord to enforce this Lease, Landlord shall have the right to file suit in, or, if such suit has been filed or proceeding has been instituted by any person or entity other than Landlord, to transfer such suit or proceeding to any court of competent jurisdiction in the State in which the Premises is located. Tenant hereby irrevocably accepts and consents to jurisdiction of any such court, and each irrevocably, knowingly, and voluntarily waives its right to object to jurisdiction of any such court, and irrevocably agrees to be bound by any final, non-appealable judgment rendered by any such court in connection herewith. Tenant hereby agrees that venue shall be proper in the state in which the Property is located, and each irrevocably waives its right to challenge the propriety of appropriateness, or to assert the inconvenience, of venue in such state.

38. **Options to Purchase Premises**. Provided that this Lease has not been terminated as a result of a default by Tenant under the terms of this Lease, Tenant shall

have the option to purchase the Premises during the term of this Lease, as it may be extended, as follows:

(a) Tenant shall have the option to purchase the Premises for the One Dollar ($1.00) (the "Option Price") at the end of the Initial Term (provided Tenant has not exercised its right to renew this Lease), by providing at least eighteen (18) months prior written notice to Landlord of its intent to exercise the option to Landlord

(b) If the option to purchase rights set forth in (a) above are not exercised, and provided Tenant has exercised its right to renew this Lease for a Renewal Term or Renewal Terms, Tenant shall have the right to purchase the Premises for the Option Price at the end of the thirtieth (30^{th}) Lease Year, the thirty-fifth (35^{th}) Lease Year, the fortieth (40^{th}) Lease Year, and the forty-fifth (45^{th}) Lease Year, by providing at least eighteen (18) months prior written notice to Landlord.

(c) Time is of the essence with respect to such options to purchase and the giving of the option notices, such that the closing on the option to purchase must occur no later than the last day of the Initial Term with respect to the option set forth in (a) above, and no later than the end of the thirtieth (30^{th}) Lease Year, the thirty-fifth (35^{th}) Lease Year, the fortieth (40^{th}) Lease Year, or the forty-fifty (45^{th}) Lease Year , as applicable, with respect to the options set forth in (b) above.

(d) Upon Tenant's exercise of the option granted in this Section, the following provisions shall apply:

(i) Title. Landlord shall convey its leasehold interest (tenant's interest) in the Premises, and fee interest in the Building, to Tenant at the closing subject to covenants, easements, agreements, restrictions and like matters of record that do not adversely affect the use and enjoyment of its leasehold interest in the Premises and for which affirmative leasehold title insurance coverage can be obtained at no additional premium. In the event that Landlord is unable to convey title as aforesaid, Landlord shall, within a reasonable period of time, not to exceed thirty (30) days, after receipt of notice of any such defects from Tenant, use its best efforts to remedy any title defects. In the event that said defects cannot be corrected or remedied within said time period, Tenant shall have the option to either terminate this Agreement or to close notwithstanding such defects as may exist. A portion of the Option Price may be applied to remove any title defects or encumbrances that may be removed by the payment of money.

(ii) Closing. The closing shall take place at the offices of Landlord's counsel, or at such other time and place as Landlord and Tenant shall mutually agree upon in writing. At the closing, Landlord shall execute and deliver to Tenant, against payment of the Option Price, a Warranty Bill of Sale and other documents and instruments customary in similar transactions or as reasonably requested by Tenant.

(iii) Adjustments, Prorations and Closing Costs. If necessary, real estate taxes and assessments shall be prorated as of the closing on the basis of the latest available tax bill. The Maine real estate transfer tax shall be paid by Landlord and Tenant in accordance with 36 M.R.S.A. 4641-A, to the extent applicable. Landlord shall refund to Tenant any unearned Base Rent for the remaining portion of the month following the closing date.

(iv) Possession. Landlord shall deliver possession of the Premises to Tenant at the closing, free of all leases, tenancies or occupancies by any person other than subtenants of Tenant.

(v) Risk of Loss, Damage, Destruction and Insurance. All risk of loss to the Premises prior to the closing shall be on Landlord, and Landlord shall keep the same insured against fire and other extended coverage risks as provided under this Lease until the closing. In the event that, after the exercise of the option granted herein but prior to the closing, any improvements which are part of the Premises are destroyed or substantially damaged, Tenant may either terminate the option granted herein or accept the insurance proceeds payable by reason of such damage or destruction and close notwithstanding the same. If such casualty occurs less than two months prior to the scheduled closing date, Tenant may elect to delay its choice and postpone the closing date until one month after the amount of insurance proceeds has been determined.

(vi) Tenant Default. If Tenant shall deliver the Tenant Notice but then shall default in its obligation to close on the purchase of the Premises for any reason other than Landlord default, title defects, condemnation or casualty, Tenant shall pay to Landlord liquidated damages in the amount of $50,000 as Landlord's sole remedy for such default.

(vii) Landlord Default. If Landlord shall permit the existence of an encumbrance or title defect that shall make it impossible for Landlord to convey clear title to the Premises, or if Landlord shall default in its obligation to close on the purchase of the Premises for any reason, Tenant may (i) seek specific performance of this option to purchase in a court of competent jurisdiction, or (ii) terminate this option to purchase and remain as a tenant under this Lease.

39. **Limitation of Liability of Landlord's Partners, and Others**. Tenant agrees that any obligation or liability whatsoever of Landlord which may arise at any time under this Lease, or any obligation or liability which may be incurred by Landlord pursuant to any other instrument, transaction, or undertaking contemplated hereby, shall

not be personally binding upon, nor shall resort for the enforcement thereof be had to the property of the constituent partners of Landlord, or any of their respective directors, officers, managers, members, representatives, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort, or otherwise.

40. **OFAC**. Tenant represents and warrants to Landlord that Tenant is currently in compliance with and shall at all times during the Term (including any extension thereof) remain in compliance with the regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action relating thereto.

41. **Ground Lease**. The terms, covenants and conditions of the Ground Lease are hereby incorporated by reference herein and made a part hereof with the same force and effect as if such terms, covenants and conditions were completely set forth in this Lease. From and after the date hereof, Tenant agrees and undertakes to perform and observe all the terms, covenants and conditions under the Ground Lease. Tenant shall not do or permit to be done any act or thing which may constitute a breach or violation of any term, covenant or condition of the Ground Lease. Landlord shall not be required to furnish, supply, make any payment or perform any obligations under any provision of the Ground Lease as incorporated by reference herein, and Landlord shall have no liability to Tenant for any matter whatsoever, except for Landlord's obligation to use reasonable efforts, upon the request of Tenant, to cause the landlord under the Ground Lease to observe and perform its obligations under the Ground Lease, but Landlord shall not be obligated to commence any litigation to enforce the obligations of the landlord under the Ground Lease. Tenant shall not in any event have any rights with respect to the Premises greater than Landlord's rights under the Ground Lease.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

TENANT:

CITY OF PORTLAND

By: ______________________

____

Its: ________________________

LANDLORD:

DC RIVERSIDE LLC

By: ____________________

____

Its: ____________________

Schedule A
Description of Premises

A certain lot or parcel of land, with the building and improvements, if any, located thereon, situated in on the westerly side of Riverside Street, so-called, in the City of Portland, County of Cumberland and State of Maine, being more particularly described as follows:

Proposed Lot 4-2 as depicted on a plan titled "2nd Amended Riverside Subdivision, Riverside Street, Portland" prepared by Sebago Technics dated January 23, 2018, revised through January 23, 2018, approved by the City of Portland Planning Board on January 23, 2018, and recorded in the Cumberland County Registry of Deeds in Plan Book 218, Page 199 (the "Subdivision Plan").

SUBJECT TO and TOGETHER WITH the benefit of the matters, easements, and notes set forth or referred to on the Subdivision Plan.

Exhibit A

TERM COMMENCEMENT AND BASE RENT CONFIRMATION

THIS TERM COMMENCEMENT AND BASE RENT CONFIRMATION is made as of this _______ day of _______________, 202___, by and between **DC Riverside LLC,** a Maine limited liability company with a mailing address of c/o Developers Collaborative, 631 Stevens Avenue, Suite 203, Portland, Maine 04103 ("Landlord") and the **City of Portland**, a municipal corporation with a mailing address of 389 Congress Street, Portland, Maine 04101 ("Tenant"), with respect to that certain Lease dated _____________, 2021 (the "Lease"), pursuant to which Tenant has leased from Landlord the building located at 654 Riverside Street, Portland, Maine (the "Premises").

In consideration of the mutual covenants and agreements set forth in the Lease, Landlord and Tenant hereby acknowledge and stipulate as follows:

1. All initially capitalized terms used herein shall have the meanings set forth for such terms in the Lease.
2. The Substantial Completion Date of the Building Improvements occurred on __________, 202___.
3. The Commencement Date occurred on ______________, 202___.
4. Lease Year 1 shall end on ___________, 202___.
5. The Initial Term shall expire on _________, 20_____.
6. If exercised, the first Renewal Term shall commence on __________________, 20___. The Extension Notice for the first Renewal Term must be given no later than _______________, 20___.
7. If exercised, the second Renewal Term shall commence on __________________, 20___. The Extension Notice for the second Renewal Term must be given no later than _______________, 20___.
8. The Landlord's Final Total Development Cost was $______________________.
9. Pursuant to the Monthly Base Rent Section of the Lease, the Base Rent during Lease Years 1- 10 shall be $____________________.

IN WITNESS WHEREOF, Landlord and Tenant have executed this document as of the date first above written.

DC RIVERSIDE LLC

____________________________________	By:________________________________
Witness	_________________ , Manager

CITY OF PORTLAND

____________________________________	By:________________________________
Witness	_____________, its: ______________

Exhibit B

Premises/Site Plan, including Parking

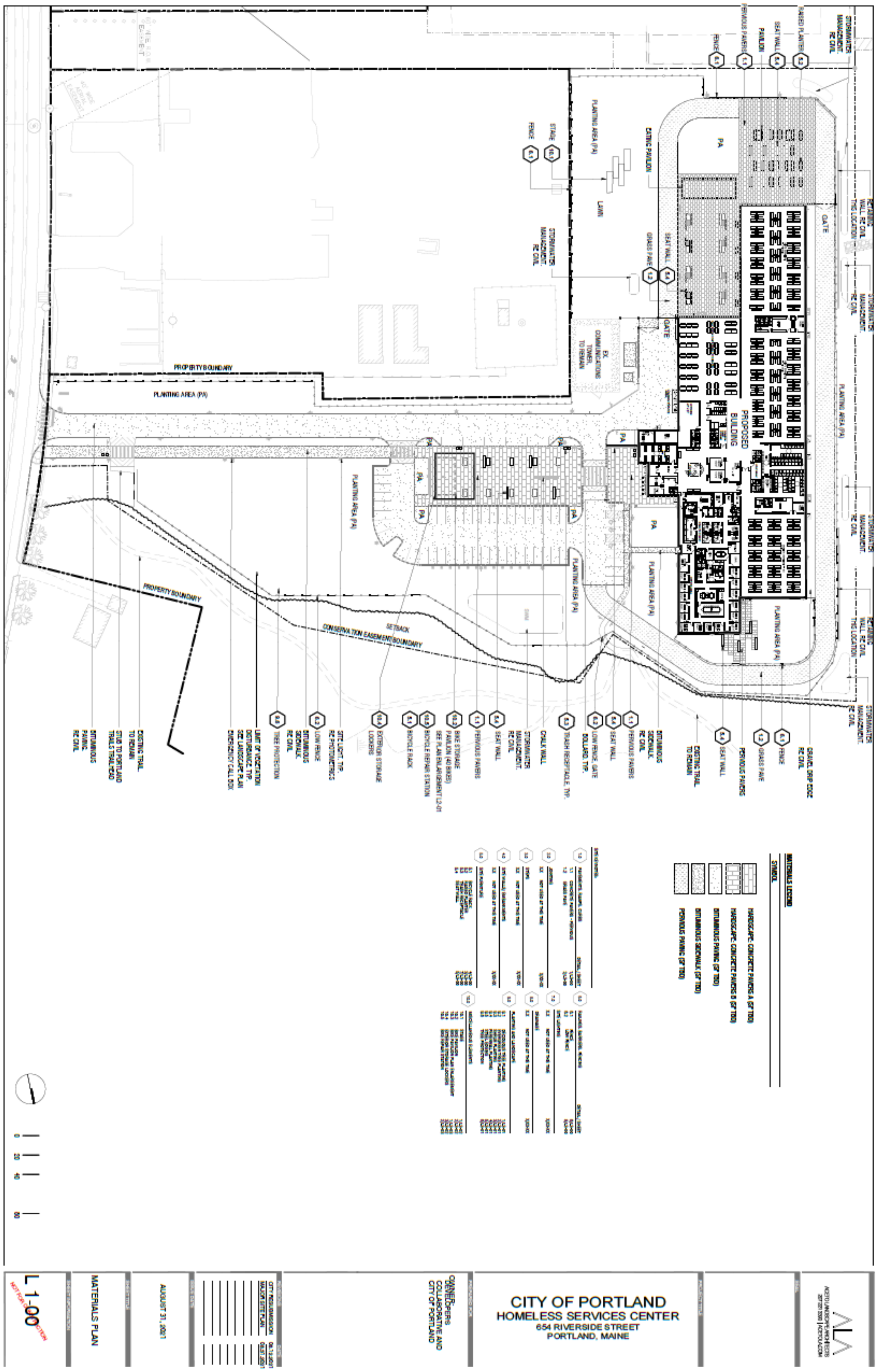


EXHIBIT C

CONSTRUCTION

(a) Landlord agrees to obtain all required governmental permits, licenses and approvals, including site plan amendment approval (collectively, the "Permits and Approvals") necessary to construct the project as provided in this Lease, including the Exhibits. Landlord agrees to furnish or perform or cause to be performed those items of construction and the Building improvements ("Building Improvements") pursuant to the mutually agreed upon layout and tenant specifications herein.

(b) Landlord shall be responsible for the construction of the core and shell building, and the Building Improvements. Tenant shall be responsible for those improvements set forth on Exhibit F attached to and made a part of this Lease, and all other improvements necessary for Tenant to conduct business in the Building not included in the Plans and Specs (as hereinafter defined) ("Tenant's Work"). Tenant agrees that Tenant's Work shall specifically include providing all furniture, fixtures and equipment except as specifically included in the Building Improvements, and all off-site improvements, including sidewalks, pedestrian improvements, crosswalks, wayfinding signage and systems, and the like, to the extent not included in the Plans and Specs (as hereinafter defined).

(c) Landlord and Tenant have agreed upon the plans and specifications (the "Plans and Specs") for the Building Improvements, and such Plans and Specs are attached to and made a part of this Lease as Exhibit E. If Tenant shall desire any changes to the approved Plans and Specs prior to the date Landlord has obtained the Permits and Approvals (and Tenant may not request any changes to the Plans and Specs after the date the Permits and Approvals have been obtained), Tenant shall so advise Landlord in writing and Landlord shall determine whether such changes can be made in a reasonable and feasible manner. If Landlord agrees to make such reasonable changes, Landlord shall revise the Plans and Specs and resubmit the same to Tenant for its reasonable approval. If Tenant does not advise Landlord in writing of its disapproval of the revised Plans and Specs, and a detailed explanation of the reasons therefor, within () business days after Landlord's delivery of the revised Plans and Specs, the same shall be deemed approved by Tenant in all respects. Any and all costs of reviewing any requested changes, and any and all costs of making any changes to the Building Improvements which Tenant may request and which Landlord may agree to shall be at Tenant's sole cost and expense and if Landlord so requests, shall be paid to Landlord upon demand and before execution of the change order. In addition, if Tenant requests any changes to the approved Plans and Specs, then the timeframe within which the Landlord must obtain the Permits and Approvals as set forth in subparagraph (a) of this Exhibit C shall be extended by thirty (30) days.

(d) Landlord shall cause its general contractor to competitively bid the construction of the Building Improvements in accordance with the Plans and Specs (collectively, the "Base Bids"). At Tenant's request, Landlord shall provide Tenant with a copy of the Base Bids, together with a detailed summary of the estimated cost of the Building Improvements.

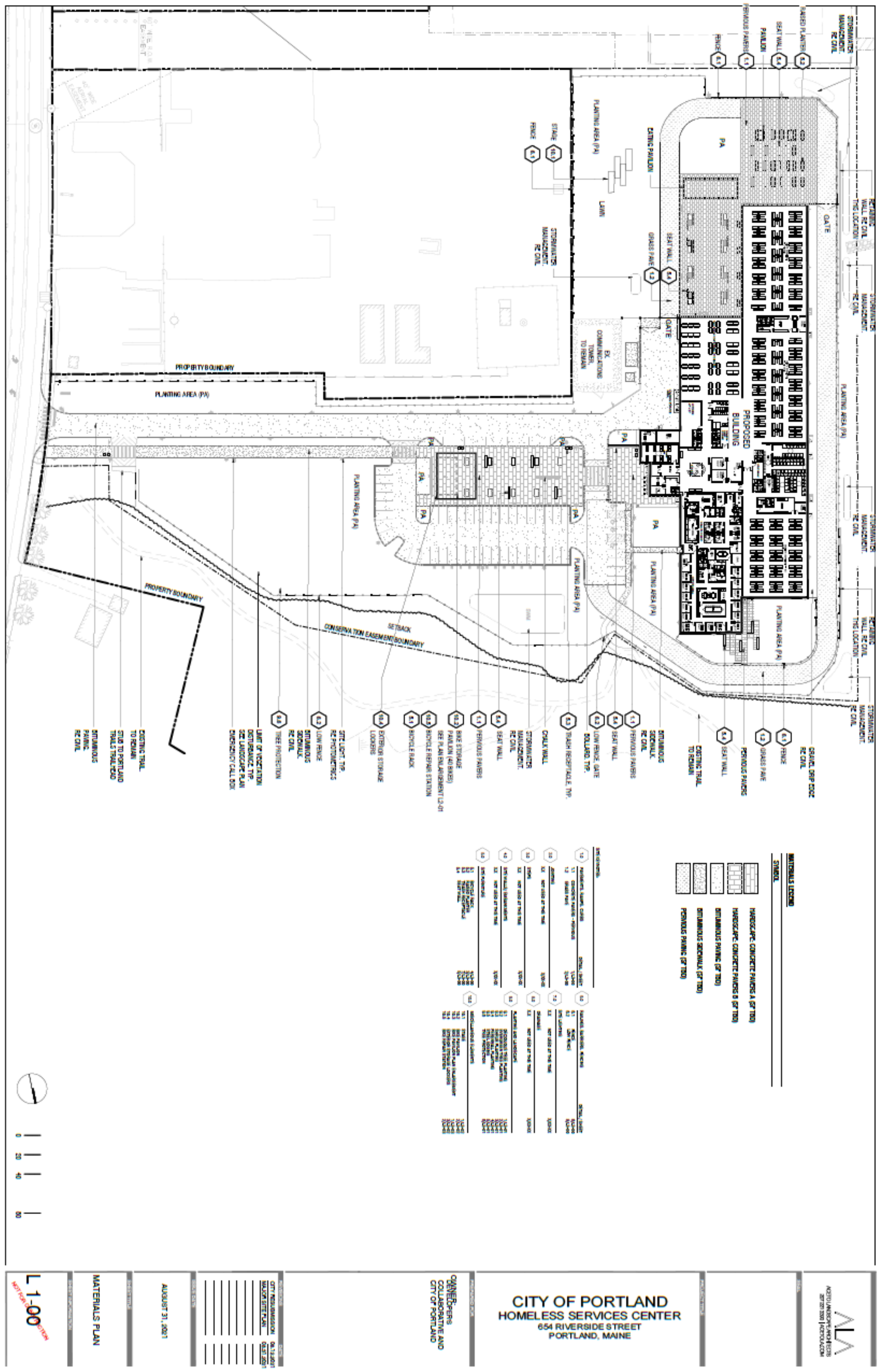
(e) Upon receipt of the Permits and Approvals Landlord shall proceed with and complete the construction of the Building Improvements. During construction of the Building Improvements, Landlord shall have the right, in its sole but reasonable discretion, to make adjustments to or amend the Plans and Specs as reasonably necessary to complete construction as described in the Plans and Specs, and in order to keep the Final Total Development Costs below $25,000,000, provided such adjustments and modifications are in basic harmony with the development as set forth in the Plans and Specs, and the design, function, and aesthetics of the Building Improvements. As soon as such improvements have been substantially completed, Landlord shall notify Tenant in writing of the date that the Building Improvements were Substantially Completed. "Substantial Completion" or "Substantially Completed" means that in the reasonable opinion of Landlord's design professional, the improvements to the Premises required to be made by Landlord pursuant to this Exhibit have been completed substantially in accordance with the Plans and Specs and are in good and satisfactory condition, subject only to punchlist items that do not prevent Tenant from using the Premises for its intended use. The date of Substantial Completion, unless an earlier date is otherwise agreed to in writing between Landlord and Tenant, shall be the "Commencement Date," unless the completion of such improvements was delayed due to Tenant's acts or omissions, including, without limitation, delays resulting from Tenant's failure to timely respond to construction documents, failure to timely respond to governmental requirements in the permitting process, changes to the Plans and Specs or such improvements required by Tenant after the space plan or Plans and Specs have been agreed upon (each being a "Tenant Delay"), in which case the Commencement Date shall be the date such improvements would have been completed but for the Tenant Delay. After the Commencement Date, Tenant shall, upon demand, execute and deliver to Landlord a letter of acceptance of delivery of the Premises.

(f) The failure of Tenant to take possession of or to occupy the Premises shall not serve to relieve Tenant of obligations arising on the Commencement Date or delay the payment of rent by Tenant. Subject to applicable ordinances and building codes governing Tenant's right to occupy or perform work in the Premises and Landlord's prior written approval, Landlord may allow Tenant to install its machinery, equipment, fixtures, or other personal property on the Premises during the final stages of completion of construction provided that Tenant does not thereby interfere with the completion of construction or cause any labor dispute as a result of such installations. In the event of Tenant's entry and/or work in or about the Premises during the final stages of completion of construction, Tenant does hereby agree to assume all risk of loss or damage to its machinery, equipment, fixtures, and other personal property and to indemnify, defend, and hold Landlord harmless from any loss or damage to such property, and all liability, loss, or damage arising from any injury to the Property or the property of Landlord, its contractors, subcontractors, or materialmen, and any death or personal injury to any person or persons arising out of Tenant's installations, whether or not any such loss, damage, liability, death, or personal injury was caused by Landlord's negligence. Delay in putting Tenant in possession of the Premises shall not serve to extend the term of this Lease or to make Landlord liable for any damages arising therefrom.

(g) Except for incomplete punch list items, upon the Commencement Date, Tenant shall have and hold the Premises as the same shall then be without any liability or obligation on the part of Landlord for making any further alterations or improvements of any kind in or about the Premises.

(h) Construction Related Disputes. In the event a dispute arises between Landlord and Tenant regarding the provisions of this Exhibit C, or any other construction related provision of this Lease, then either party shall have the right to notify the other party of its intention to refer the dispute to arbitration; said notice shall specifically set forth the issue or issues in dispute. If Landlord and Tenant are unable, in good faith, to resolve the dispute within ten (10) business days after the giving of notice to arbitrate, then either party may elect, at its option, to submit said dispute to arbitration at any time after the expiration of said ten (10) business day period. The parties agree further that if they disagree over whether the dispute in question is subject to arbitration, such issue shall also be submitted as part of the arbitration proceeding. Any arbitration under this Section shall be conducted under the Expedited Procedures provisions of the Commercial Arbitration Rules of the American Arbitration Association (or any successor thereto). The decision of the arbitrators shall be final and nonappealable and may be enforced in accordance with the laws of the State of Maine. Landlord and Tenant shall each pay for the services of its respective, appointed arbitrator, attorneys, and witnesses, plus one-half (1/2) of all other costs relating to the arbitration. The fees and disbursements of attorneys and witnesses may be assessed against either Landlord or Tenant if they are found by the arbitrators to have acted in bad faith in connection with said dispute. Notwithstanding anything to the contrary in this Lease, in connection with any arbitration proceeding, the arbitrators shall determine whether said proceeding resulted in any delay in the date that the Building Improvements were Substantially Completed, and, if yes, Commencement Date shall be extended by the period determined by the arbitrators.

EXHIBIT D
Building Layout



<u>Exhibit E</u>
Plans and Specs

Available upon request, and subject to modification based upon value-engineering

<u>Exhibit F</u>
Tenant's Work

Tenant shall be responsible for all improvements necessary for Tenant to conduct business in the Building not included in the Plans and Specs, and shall specifically include providing all furniture, fixtures and equipment except as specifically included in the Building Improvements, and all off-site improvements, including sidewalks, pedestrian improvements, crosswalks, wayfinding signage and systems, and the like, to the extent not included in the Plans and Specs.

---------- Forwarded message ---------
From: **Jim Hall** <mtjimhall@gmail.com>
Date: Tue, Oct 5, 2021 at 1:12 PM
Subject: Re: Thanks to HED Committee
To: Pious Ali <pali@portlandmaine.gov>, Tae Chong <tchong@portlandmaine.gov>, Andrew Zarro <azarro@portlandmaine.gov>, Kate Snyder <ksnyder@portlandmaine.gov>
Cc: April Fournier <afournier@portlandmaine.gov>, Belinda Ray <bsr@portlandmaine.gov>, Nick Mavodones <nmm@portlandmaine.gov>, Mark Dion <mdion@portlandmaine.gov>, Jon Jennings <jpj@portlandmaine.gov>, City Clerk <cityclerk@portlandmaine.gov>, Danielle West-Chuhta <dwchuhta@portlandmaine.gov>

Dear HED Committee Members,
(CC full council, manager + soon to be manager pro tem)

I won't be able to attend tonight's meeting on the **proposed Homeless Service Center Ground and Building Master Leases**.

My only comment would be that the domain of your decision should be **whether this lease proposal meets the approved use**, given the realities of the current development landscape (i.e. costs created by planning board conditions, citizen initiative, or market scarcity).

I wouldn't normally raise the issue of perceived legitimacy — I generally trust my representatives to make realistic and collaborative decisions. Unfortunately the reality of our current political zeitgeist in Portland seems to be moving in the wrong direction. A planning board member recently proposed an ideologically motivated procedural trick to block a timely decision on this site plan. In a separate matter, one councilor has chosen to act as defendant in a lawsuit she instigated as plaintiff. Troubling times… But I remain sincerely hopeful that when I review your proceedings on this issue, I will find a standard lease review, and not another item to add to the list of *"ends justify the means"* power plays.

Thanks,
Jim Hall
Cedar St

On Wed, May 19, 2021 at 2:33 PM Jim Hall <mtjimhall@gmail.com> wrote:
Dear Councilors,

Just a quick note to THANK the members of the Housing & Economic Development Committee for taking the next baby step in this *years*-long process to build adequate infrastructure for the vulnerable people we try our best to care for in Portland.

Instructing staff to move forward and start discussing contracts with the highest-scoring applicant is exciting… it's starting to feel like a real possibility that the people I currently see being forced to wander the streets to connect basic needs may *finally* get the kind of coordinated help they deserve (…in a couple of additional years).

It's also great to see validation from the Maine Statewide Homeless Council's strategic planning that they have modeled their approach on that Portland spearheaded – calling for 8 continuum-of-care service hubs focused on diversion, wrap-around services, and rapid resourcing exactly as this regional service center was designed ahead of their analysis. Well done on being on the vanguard of nationally recognized best practices! I would have been there last night to speak wholeheartedly in favor had I not been acting as time-keeper for the at-large charter candidates forum.

Thanks for the type of governmental continuity that (eventually) gets the right things done!
Jim Hall
Cedar Street

CITY OF PORTLAND
Planning & Urban Development
Christine Grimando, AICP, Acting Director

To:	Housing & Economic Development Committee
From:	Christine Grimando, Director, Planning & Urban Development Nell Donaldson, Director of Special Projects, Planning & Urban Development
Date:	October 1, 2021
RE:	Housing policy & ReCode Portland

I. INTRODUCTION
Over the past several months, the Housing & Economic Development Committee has focused on the issue of "missing middle" housing. The Committee's work has led to conversations that range from the definition of "missing middle" housing to the regulatory and funding barriers that inhibit its production. In support of further discussion, Planning staff has prepared this memo to provide background on policy that relates to "missing middle" housing, particularly from a land use perspective. The memo describes the foundation for housing policy in the city's comprehensive plan, the city's existing land use-related housing policy that furthers this vision, and some initial considerations around future housing policy that have arisen through ReCode Portland and dovetail with the Committee's work.

II. "MISSING MIDDLE" THROUGH A PLANNING LENS
To date, the Committee's work on "missing middle" housing has generally focused on terms of income and affordability. Through this lens, "missing middle" is housing for populations that fall between 1) the target market for what is deed restricted or otherwise legally binding affordable housing, assisted by state, federal, and sometimes local funding, and 2) market rate housing. Though the former is critically important to ensuring that a portion of the city's housing is guaranteed as affordable, it comprises a relatively small share of the city's overall housing stock. What comprises market rate housing is every other unit of housing, regardless of price or scale, that is not legally bound to remain affordable.

Notably, as used in most planning literature and practice, "missing middle" more commonly refers to a housing typology, rather than an income range; from this perspective, "missing middle" is a form of low-rise multi-unit or small lot housing that is generally compatible with lower-density neighborhoods *(Figure 1)*. This type of housing, including rowhouses, duplexes, triplexes, and four-plexes, was once more common in cities across the country, and is still of value as a means of diversifying the housing stock and, importantly, supporting affordability. "Missing middle" forms can serve as a means of increasing a city's housing supply across different neighborhoods, which has benefits for the overall housing supply and diversity of housing choices. In terms of affordability, income- and form-based definitions of "missing middle" can overlap, as "missing middle" forms can

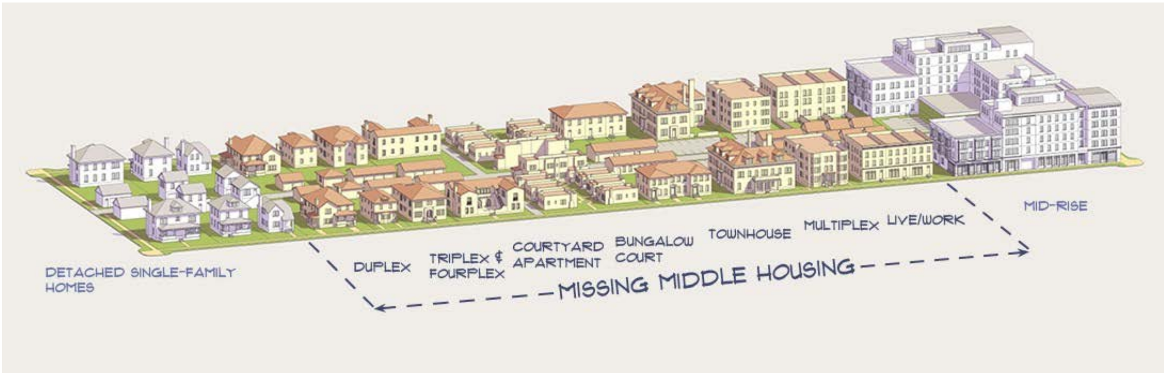


Figure 1: Missing middle housing through a planning lens. (Source: Opticos Design)

provide what is sometimes referred to as "naturally-occurring" affordable housing, or housing at a price point that is attainable to middle-income households.

While the city's existing land use code includes affordable housing policies targeted directly at housing for populations with incomes up to 100% of AMI (as described below), the land use code has historically served as a tool used largely to regulate use, density, and form, and continues to be a powerful way of shaping the outcomes of the majority of the housing built in Portland. For this reason, in addition to considering ways to support more affordable housing as defined within the code, this memo includes a discussion of opportunities to encourage additional housing more broadly, across typologies and environments, as a means of increasing supply to all households, including those of "missing middle" incomes. It also considers opportunities to create "missing middle" housing *forms* as a means of producing "missing middle" *income* housing.

III. HOUSING POLICY FOUNDATION

Portland's Plan 2030, the City of Portland's comprehensive plan and the foundation for land use and other policy goals in the city, squarely foregrounds housing as one of the city's most pressing issues, and one connected to all facets of the city's vision - equity, sustainability, and security among them. Recognizing that increasing housing supply is fundamental to issues of affordability, the plan sets a housing production target and prioritizes the creation of policies and programs to encourage housing that meets the needs, preferences, and financial capabilities of all Portland households. The plan supports an incremental increase in housing supply across all neighborhoods, encourages more significant increases in housing within major transportation nodes and corridors *(Figure 2)*, and emphasizes the need for additional dedicated affordable housing.

IV. EXISTING HOUSING-RELATED LAND USE POLICY

The City of Portland's existing land use code includes a number of provisions that align with the recommendations from *Portland's Plan.* These provisions encompass policy meant to support an increase in the supply of housing for a full range of housing types and sizes, and policy meant to encourage or require the creation of what is legally binding affordable and workforce housing, targeted specifically for residents of low or moderate incomes. Land use regulations that allow a range of housing types and sizes and encourage housing creation may not result in each unit of new housing being affordable to all, but the aggregate impact of increasing the available supply creates

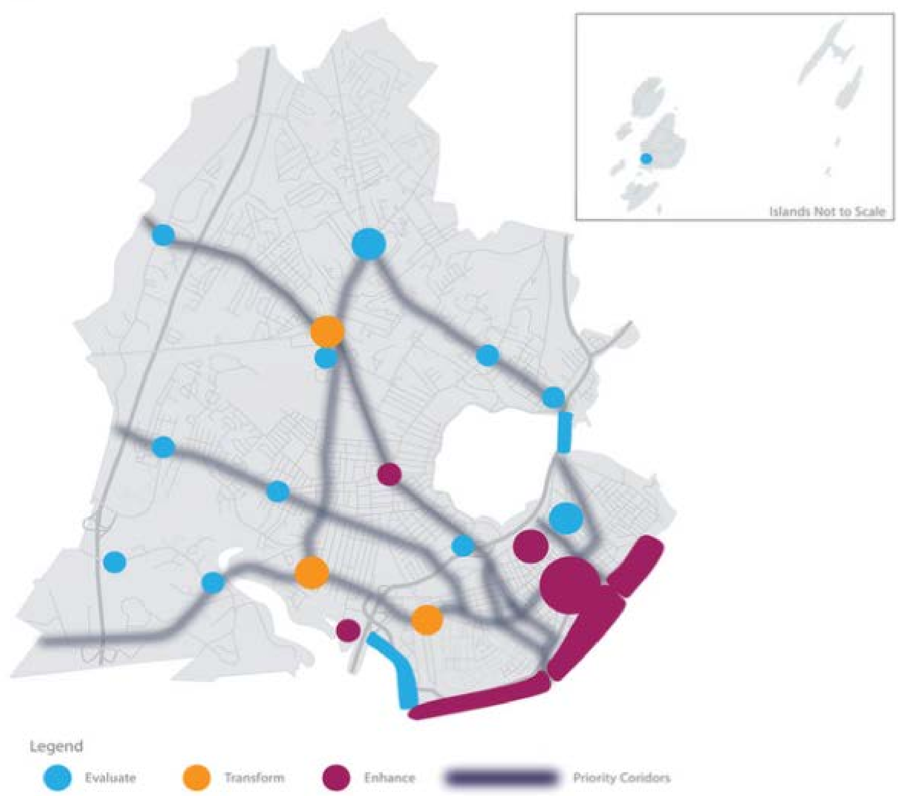


Figure 2: Priority nodes and corridors from Portland's Plan.

new housing opportunities for all, including more 'naturally occurring affordable' market rate housing.

A. Policies to encourage housing supply and 'naturally-occurring' affordable housing

1. *Housing replacement ordinance.* The city's land use code has included provisions since the early 2000s that require that any development proposals that would remove existing housing replace those units, either within the same geographic area or by contributing to the city's Housing Trust Fund. These provisions help to counter any potential net losses in housing supply associated with private development.
2. *Base zoning adjustments to encourage housing creation.* In the past decade, the city has adjusted base zoning in several districts, including the B-1, B-2, and R-6, to support greater housing creation, modifying dimensional standards to allow for higher densities and smaller lots. These provisions have generally been targeted towards higher density residential zones and mixed-use zones well-served by transit, on the grounds that they create opportunities for housing development in areas of the city that are particularly well-prepared for them.
3. *Accessory Dwelling Units (ADUs).* As of December 2020, the land use code includes revised Accessory Dwelling Unit (ADU) standards. The 2020 revisions eliminated restrictive dimensional and parking requirements and removed procedural hurdles to ADUs, making it significantly easier to build an ADU within the city. Further, the 2020 amendments permit significantly more ADUs - in total number that can be built per lot, and in total number that might be built city-wide - than the prior regulations, paving the way for smaller, naturally affordable units across the city.

4. *Parking exemptions.* Off-street parking requirements are often cited as a barrier to housing production, forcing developers to devote valuable land area and/or building envelope to vehicles, rather than housing units. The city's land use code has long included a great deal of flexibility to developers when it comes to parking, including exemptions in certain zones, shared parking provisions, and off-site parking allowances. As of December 2020, the city's land use code offers an off-street parking exemption to any use within a ¼ mile of a transit, essentially freeing much of the city from parking requirements. Additional parking flexibility and lowering/standardizing residential parking requirements was also implemented in December 2020.

B. Policies to support affordable housing

1. *Affordable housing bonuses.* As of the mid-2000s and as refined in the late 2010s, the city's land use code has included dimensional bonuses for affordable and workforce housing in many of the city's mixed-use zones and for PRUDs in residential zones, scaled to the level of affordability provided. These bonuses allow increased height, increased density, and reduced setbacks for affordable housing projects.
2. *Expedited permitting for affordable housing.* In addition, affordable housing applications have been eligible for a reduction in fees and priority review since the mid-2000s. With the passage of the impact fee ordinance, the affordable housing fee reductions were extended to include these fees.
3. *Inclusionary zoning.* As of 2015, the city adopted inclusionary zoning, which requires that projects of 10 or more dwelling units provide a share of workforce housing either on-site or as a contribution to the City's Housing Trust Fund. A second inclusionary zoning policy was adopted in 2019 for hotels. These policies are intended to ensure that affordable housing is constructed in tandem with market rate housing, and to support the creation of this housing in a mixed-income setting. The inclusionary zoning policy was modified by referendum in 2020 to increase the affordable housing share and to target lower median incomes.

V. HOUSING TRENDS TODAY

While the city's land use code includes a number of progressive provisions designed to support housing production, and affordable housing production in particular, it is also clear that these provisions have not sufficiently counter-balanced trends, shared by many cities across the country and many communities across the state, towards rising housing costs and continued affordability gaps. Recent building permit data *(Figures 3 and 4)* shows that while the city is on track to produce the number of dwelling units called for in *Portland's Plan*, just over 27% of those new multi-family units developed in the last five years are categorically affordable units, with rents or purchase prices limited to households earning below 120% of the area median income. Additionally, in regard to new multi-family developments, there are disproportionate numbers of smaller studio and one-bedroom units, which constitute more than 70% of all new multi-family units created in the past five years. New housing is more common in on-peninsula neighborhoods, and affordable housing is not equitably distributed across the city, with certain neighborhoods seeing significant levels of new affordable housing development and other neighborhoods virtually none at all.

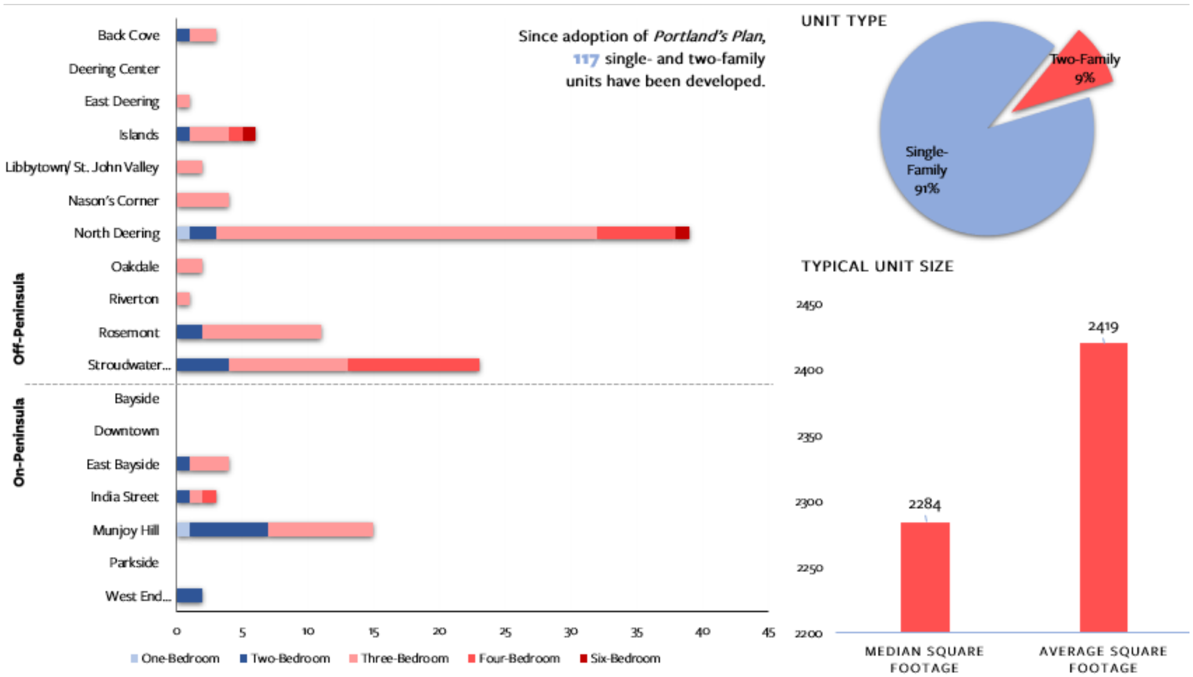


Figure 3: Single and two-family housing trends (2017-2021) (Source: City of Portland permit data)

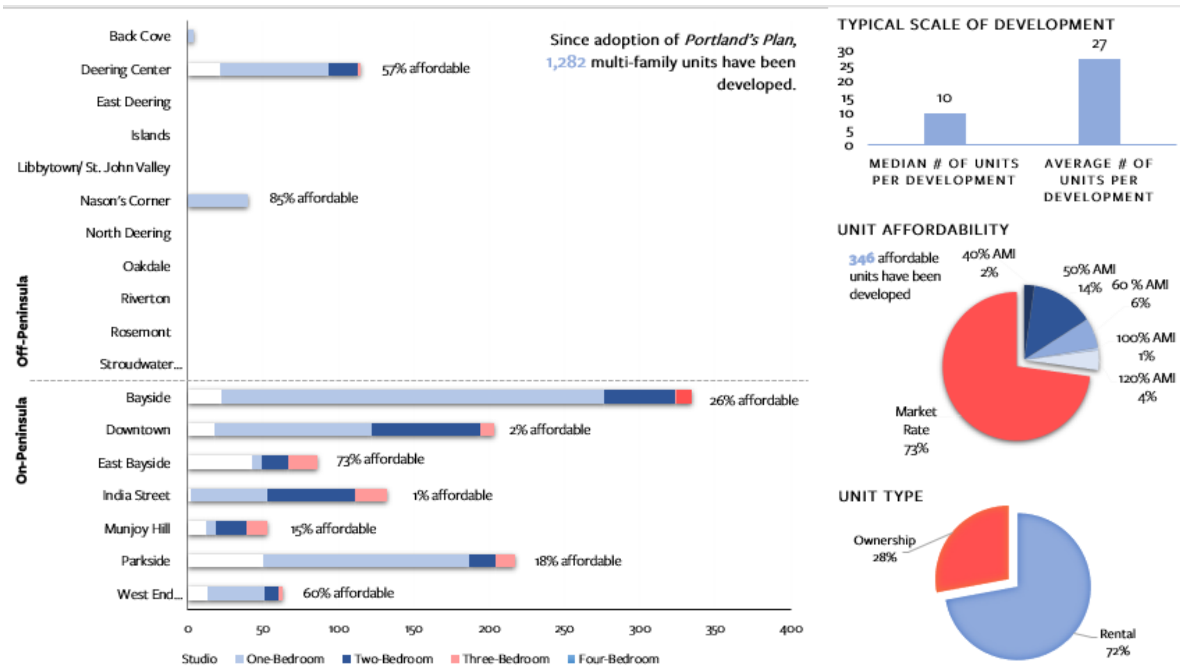


Figure 4: Multi-family housing trends (2017-2021) (Source: City of Portland permit data)

VI. RECODE PHASE II

Given these trends, we know that there is additional work that must be done around housing creation, diversity and affordability city-wide. As part of ReCode, the city's multi-year initiative to rewrite its land use code, staff has been working with a consultant, Camiros, to evaluate the existing code for ways to more effectively address the goals of *Portland's Plan.* An early step of the second phase of ReCode is analyzing the current land use code for consistency with the comprehensive pan. This evaluation, which is still being finalized, includes a broad focus on housing. Central to the evaluation are the concepts of:

- Encouraging housing creation and diversity of housing types as an essential means of ensuring the overall health and accessibility of our housing supply.
- Proposing new housing policy that reflects the city's wide variety of neighborhoods, scales, and infrastructure contexts, while allowing for all neighborhoods in the city to provide opportunities for new housing creation.
- Crafting a housing strategy that builds opportunities where it can have the greatest effect on efforts to meet Portland's equity and climate goals.
- Recognizing that affordable housing development is not keeping pace with demand, is geographically uneven, and additional tools may be necessary to enable housing creation to be more equitably distributed across the city.
- Recognizing that mixing both requirements and incentives is central to a balanced housing strategy.

Initial policy concepts from the evaluation include:

A. Potential strategies to encourage housing supply and 'naturally-occurring' affordable housing

1. *Modifying minimum lot sizes (and corresponding densities) in residential zones to more accurately reflect the existing parcel pattern and open opportunities for additional housing creation.* Initial analysis shows that, in several of the city's residential zones, minimum lot size regulations result in a significant number of non-conforming lots (meaning lots that are undersized given existing regulations). While the existing code provides fairly generous allowances for legally non-conforming lots, revising minimum lot area standards, particularly where there are opportunities for lot divisions, could create new opportunities for housing.
2. *Creating new categories of housing types, particularly in the "missing middle" mid-density range (e.g. three- and four-units), and permitting these housing types as of right in appropriate residential zones, with corresponding changes to density requirements.* The existing land use code includes a fairly narrow range of traditional housing types, permitting single-family dwellings, two-family dwellings, and multi-family dwellings (defined as three or more units). The existing zoning is permissive about where single-family occurs, but is much more restrictive when it comes to multi-family dwellings *(Figure 5)*. Broadening the range of housing types to differentiate between small, mid-density housing (e.g. three-family and four-family) and larger-scaled housing could provide opportunities to allow more of these middle-sized housing types across the residential zoning spectrum.

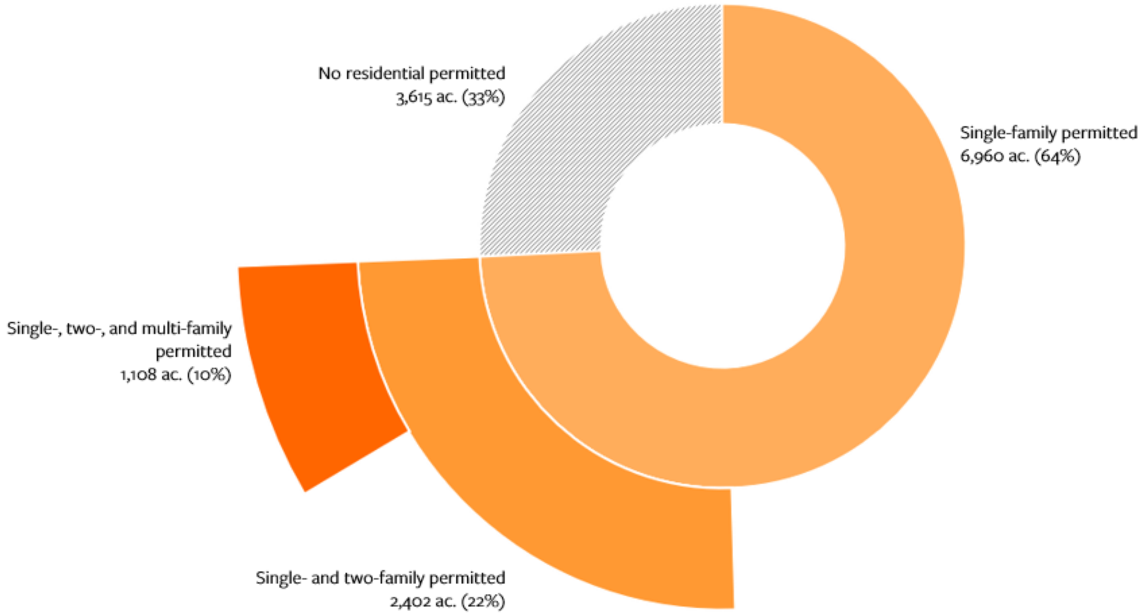


Figure 5: City land area by type of housing allowed as permitted use (Source: City of Portland Assessor parcel data) (Note: Represents permitted uses only. Does not reflect areas where multi-family may be permitted as a conditional use.)

3. *Modifying setback requirements in residential zones to more accurately reflect the existing built form and support more opportunities for ADU creation, as well as to add flexibility for additions and redevelopment.* There is evidence to suggest that space and bulk regulations, including setbacks, diverge from the existing built form in some of the city's most successful walkable neighborhoods. Modifying setbacks to reflect the existing building pattern could help to open up opportunities for additional square footage on residential lots in a way that encourages contextual development. Furthermore, reviewing setbacks for accessory structures, particularly accessory dwelling units, could pave the way for more ADU creation.
4. *Exploring creative opportunities to allow relatively higher residential density off-peninsula.* Zoning for off-peninsula neighborhoods contains certain tools to allow for variations from single-family housing, but currently they are limited. There is an opportunity in many neighborhoods of the city to introduce new tools or standards to bridge the medium-to-higher residential zone densities of the peninsula and the considerably lower densities of residential neighborhoods off-peninsula in ways that are sensitive to Portland's distinct neighborhoods.
5. *Expanding more 'productive' residential zoning where the existing form supports it.* Data from the last five years shows that particular zones of the city have supported more housing production than others *(Figure 6)*. Not surprisingly, these zones tend to be higher density residential or mixed-use. Given this data, there is an opportunity to expand more 'productive' zones geographically to potentially stimulate additional housing production. Any consideration of this strategy would have to take into account existing built pattern and form as well as the city's long-term goals. For instance, there are off-peninsula areas of the city that were developed prior to zoning according to similar conventions around height,

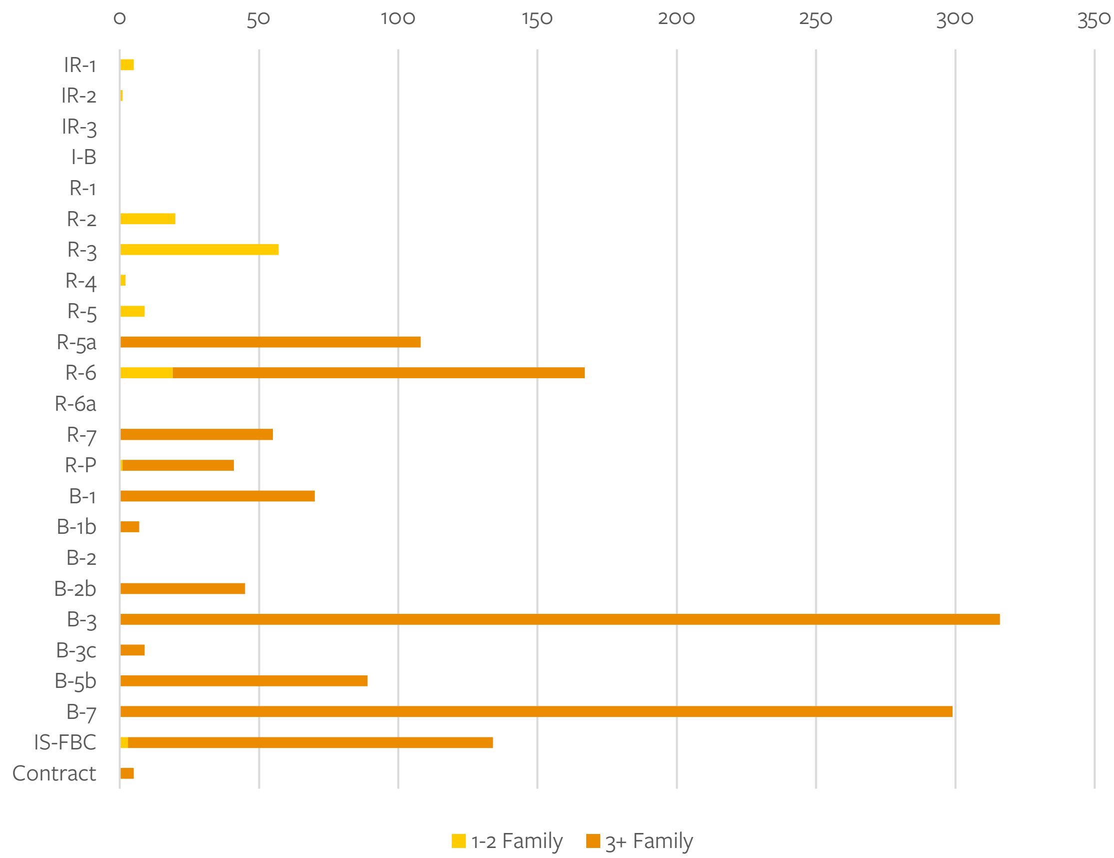


Figure 6: Housing production by zone (in units) (2017-2021) (Source: City of Portland permit data)

scale, and building placement, but are currently zoned inconsistently; there may be opportunities to rezone some of these areas to more closely align the zoning with the existing built form. This could take the form of changes to existing zone boundaries, modification to existing zone standards, or consolidation of zones.

6. *Modifying densities and height in zones along transit corridors and in transit nodes to support additional housing opportunities.* Portland has recently adopted one of the basic elements of a transit-oriented development approach through a categorical exception that exempts uses within ¼ mile of a fixed-route transit service from parking requirements. To further develop this approach, the City could consider adjusting allowed densities within the existing zoning along transit corridors and in transit nodes. This change, coupled with changes in height regulations, could help the city advance both housing and transportation goals with more transit-supportive zoning.
7. *Adjusting mixed-use zoning around nodes where appropriate.* While most of the city's transit corridors include at least some transit-supportive zoning, such as the B-3 or the B-2, there are areas where a map amendment to expand the use of this zoning (potentially as modified above) could help to create new opportunities for transit-supportive housing across the city.
8. *Permitting housing in mixed-use zones across the board.* Last, all but one of the city's existing mixed-use zones include housing as a permitted use. This zone, the B-4, which is clustered predominantly along Warren Avenue and Riverside Street, has a decidedly more

industrial, large-lot character than many of the city's other mixed-use zones. However, the zone is also proximate to public school and park facilities, one of the city's higher education institutions, and major development sites in Westbrook. Allowing housing as a permitted use would unlock a significant opportunity for housing development.

B. Affordable housing

1. *Expanding dimensional bonuses for affordable housing bonuses to additional zones.* As described above, the City's existing land use code includes provisions designed to give affordable housing projects advantages in the form of density, height, and setback bonuses. This increase in affordable housing potential in the land use code is contextual in that these bonuses are restricted to certain, mostly mixed-use zones, and largely consistent with the nodes and corridors identified as suitable for more intensive growth in *Portland's Plan 2030*. In order to further incentivize affordable housing, these bonuses could be expanded, for instance to all zones in which multi-family is permitted. Any consideration of this policy change would need to take a graduated approach to the intensity and scale of residential neighborhoods; there may be areas where a density bonus is appropriate, for example, but not height increases or setback reductions.

It should be noted that these concepts are still very much in draft form; pursuing any or all of these changes would require additional analysis, drafting, and public review and comment. Following the release of the full code evaluation (which will also address a variety of other issues that are central to *Portland's Plan),* the work plan for ReCode will involve significant public engagement to test concepts, gather feedback, and establish priorities for potential amendments moving forward.

Finally, the Planning & Urban Development Department and the Housing & Economic Development Department are exploring ways to strengthen the alignment between the City's Housing Trust investment strategy with the City's priority growth areas, with particular attention to those areas that have been identified as suitable for growth but have yet to see significant housing investments.

VII. CONCLUSION

Securing and expanding Portland's legally-binding affordable housing supply is a central part of Portland's housing strategy, and the City's land use tools correspondingly reflect this importance. The land use code also defines the parameters of where, how much, and in what form all housing occurs in the city, including market rate housing, which is and will continue to be the majority of the community's housing stock. The code does not determine all aspects of housing affordability or development outcomes, but it provides a powerful framework that enables a resilient mixture of housing to be created. Though Portland's land use code currently reflects housing creation as a priority, the Committee's work, and the work of ReCode, provide valuable opportunities to evaluate the code for additional tools and changes to provide for a more equitable and accessible housing landscape city-wide.

CITY OF PORTLAND
Housing and Economic Development Department
Housing and Community Development Division

TO:	Mayor Kate Snyder
	Members of the Housing and Economic Development Committee
FROM:	Mary P. Davis, Interim Director
	Victoria Volent, Housing Program Manager
	Housing and Community Development Division
DATE:	October 1, 2021
SUBJECT:	Programs for the "Missing Middle"

Introduction

As noted by staff in the September 7 meeting, during discussions with peer communities it is evident Portland is ahead of the curve having already implemented many nationally recognized "best practices" to increase housing opportunities. Many of those "best practices" are noted in the October 1 Committee memo prepared by staff from the Planning and Urban Development Department, Christine Grimando, Director and Nelle Donaldson, Director of Special Projects.

In this memo Housing and Economic Development staff outline existing and potential housing programs and policies for Committee review.

a. The Sale of City-Owned Property for Strategic Development

Selling City-owned land provides the City with unique control over the timing, location, and affordability of housing development. It also has the added benefit of turning land with no tax liability into an income-generating property for the City's tax rolls. Through the Request for Proposals (RFP) process, the City retains control over the type and nature of development. Three properties are currently under Purchase and Sale Agreements and negotiations continue for a Purchase and Sale Agreement on a fourth parcel. Staff continue to review additional properties and will bring additional properties forward for committee consideration in 2022.

b. Investment of Financial Resources

Annually the city issues an application to provide financial assistance through the HOME, Housing Trust Fund and Affordable Housing Tax Increment Financing Program. The application is designed to facilitate the development of affordable housing in the City of Portland, ensure public funds are utilized for maximum public benefit, and accomplish specific city objectives. Under the guidance of the City Council, the current Affordable Housing Development and Tax Increment Financing Application prioritizes these funds to support public/private partnerships that create workforce housing units that are affordable to households earning less than 100% of the area median income.

In addition to the annual application, each year, the City Council adopts a Housing Trust Fund Annual Plan. The plan establishes the priorities in which the current balance of the Housing Trust Fund will be allocated. Typically, the plan is adopted each year in late winter or early spring.

As mentioned in the memo from the Planning Department, staff is exploring ways to better align the priority use of these financial resources with the City's priority growth areas. Another focus of the investment strategy will be the creation of housing for the "missing middle".

c. Homeownership Assistance

A first-time home program was one of the first programs implemented when the City began receiving HUD HOME program funding in 1992. The program, HomePort, provided down payment, closing costs and repair assistance for households earning at or below 80% of the area median income. The HomePort Program focused on affordability for the homebuyer. It did not include requirements for long-term affordability of the property. In FY2015, the program was discontinued due to the reduction of HOME funding over time, rising home costs throughout Portland and Cumberland County, and HOME Program regulations on allowable purchase prices made it difficult for applicants to find housing that fit the program parameters. Financial assistance was redirected to an expanded Tenant-Based Rental Assistance program and the construction of new affordable housing.

As work on the 2022-2026 HUD 5-Year Consolidated Plan continues, staff is evaluating the inclusion of a new homeownership assistance program. The HOME and Housing Trust Fund Program would be considered as potential financing resources.

<u>Conclusion</u>

The City of Portland has made the development of affordable housing a priority, as identified in the current Consolidated Plan, City Council Common Goals, and the Comprehensive Plan. Staff will continue to review with the Committee strategies to address housing policies aimed at providing housing for the "missing middle".