Portland, Maine — Yes. Life's good here.

ECONOMIC DEVELOPMENT COMMITTEE

DATE: **April 4, 2017 (Tuesday)**
TIME: **5:30 – 7:00 p.m.**
LOCATION: **Room 209**
Portland City Hall

A G E N D A

1. **Review and accept Minutes of previous meeting held on March 29, 2017.**

2. **Review and vote to recommend to the City Council the Proposed sale of City-owned Riverside Street Property.**
   a) See enclosed memo from Greg Mitchell.
   Note: Pursuant to 1 M.R.S.A. 405(6)(C), the Committee may go into executive session to provide City staff general policy guidance regarding real estate negotiations.

3. **Review and vote to recommend to the City Council the Proposed Amendment to Lease of Ocean Gateway with Bay Ferries.**
   a) See enclosed memo from Greg Mitchell.
   Note: Pursuant to 1 M.R.S.A. 405(6)(C), the Committee may go into executive session to provide City staff general policy guidance regarding real estate negotiations.

Public Comment will be accepted on action items.

Councilor David Brenerman, Chair

Minutes
Economic Development Committee
March 29, 2017

A meeting of the Economic Development Committee (EDC) of the Portland City Council was held Wednesday, March 29, 2017 at 5:30 p.m. in Room 209, second floor of Portland City Hall. Present from the Committee was its Chair Councilor David Brenerman and members Councilors Pious Ali and Spencer Thibodeau. Present from City staff were City Manager Jon Jennings, Planning and Urban Development Director Jeff Levine, Economic Development Director Greg Mitchell, Waterfront Coordinator William Needelman, Planning Division Director Tuck O'Brien, and Senior Executive Assistant Lori Paulette.

Item #1: Review and accept Minutes of previous meeting held on March 7, 2017.

On motion made and seconded, the Committee voted unanimously (3-0) to accept the Minutes as presented.

Item #2: Review and vote to authorize the bid process to sell a small strip of unneeded City-owned Franklin Street right-of-way to an abutter.

Mr. Mitchell noted that this Committee heard a presentation at its March 7 meeting, together with public comments. The item was tabled so that Councilor Ali could have a tour of the property, which took place earlier this week.

Mr. Mitchell then described the subject property, together with its deed restrictions that it only be used for purposes of travel by vehicles and pedestrians; it is essentially a 12-foot wide driveway for access to lot 28-C-18 from Federal Street. The property does not include any of the sidewalk or green space abutting Franklin Street. Mr. Mitchell also noted future City plans call for Federal Street to have access onto Franklin Street. Staff's recommendation is for the EDC to authorize staff to issue a bid document to the two abutters to this property. Staff would then bring this back to the EDC for a recommendation of a purchase and sale agreement to the City Council.

Councilor Thibodeau asked about the future use of Franklin Street, particularly if it became narrower in this area and therefore creating less buildable parcels. Mr. Levine said that this will be re-examined to look at opportunities for buildable lots, but there is plenty of right-of-way area.

Councilor Thibodeau asked about the Luminato project, particularly if it is being built right up to Franklin Street. Tom Federle, of New Height Group representing Luminato, said that the project is being built up to property lines.

Mr. Jennings noted that he talked with Councilor Ray who would like to see a right turn from Federal Street onto Franklin Street going up towards Congress Street, and a right turn on Franklin from Federal Street on the other side going toward Commercial Street.

Mr. Federle added that should they be able to purchase that strip from the City, it is anticipated that the access driveway would be moved towards the east so as not to cause issues with opening Federal Street to Franklin Street.

Chair Brenerman asked on what basis would the bid be awarded, and Mr. Mitchell said that staff would evaluate bids received and make a recommendation to the EDC, primarily by development potential and purchase price.

Chair Brenerman asked if there was any public comment on this item.

Tim Robinson, 62 Hampshire Street, said that he owns and lives in property near the proposed development. He said that the strip of land is a driveway or road with deed restrictions, so he questioned why a sale was even contemplated. He noted that he has elderly tenants and gardens, which will lose light when development occurs.

Karen Snyder said that she has concerns about open space issues and the loss of that space.

Steven Scharf of Salem Street said that the criteria for selling is the price you will get and future tax value.

George Rowe, 28 Hanover Street, asked if an appraisal had been done. If not it, an appraisal should take into consideration its value for expanded development opportunity for an abutting property owner. He also noted that the City could lift deed restrictions to facilitate development. Mr. Rowe also said that the Council gave the City Manager license and easement authority, which could be used for this.

There being no further public comment, the public comment session was closed.

Regarding an appraisal, Mr. Mitchell said that an appraisal had not been done. The City Assessor has an opinion of value on the strip of land. With its deed restrictions, the City by itself cannot lift those deed restrictions. It is not a developable strip of land and nothing can be done other than its current use. The sale to an abutter would stimulate development while keeping a means of access to lot 28-C-18, which can be done with agreements by both abutting property owners.

Mr. Levine added that the India Street Form Based Code (ISFBC) for zoning would provide for a Level 2 site plan approval. This is where moving the driveway would be discussed.

Mr. Federle noted that if New Height owned the driveway, it has the flexibility to work with the abutter to relocate it, and they have discussed this with the abutter. He also noted that the City has no other way to provide means of access.

Chair Brenerman asked about the Luminato development.

Jeff Newell of Luminato said that this development has 24 condos, with 12 of them being one-bedroom units for more affordability. He added that 21 of the 24 condos are under contract by a majority of people who live and work in Maine.

Regarding the open space concern, Mr. Levine said that standards for development in the ISFBC will be reviewed.

Chair Brenerman said that if the abutter buys it for access, then what would New Height Group do. Mr. Federle said that there is another development that could be done with its back side to Franklin Street. It would be a good development but not as good if they had this strip which would allow it front on Franklin Street, which is desired. Again, he has already been in communication with the other abutter and there is an opportunity to work together.

Councilor Thibodeau asked why Luminato did not acquire the small strip of City land for that project (a different strip than subject property). Mr. Federle said that it was not needed; it was too small at 4' to 5' wide.

Councilor Thibodeau asked if the City would set its own purchase price in the bid document, and Mr. Mitchell answered in the affirmative.

A motion was then made and seconded to authorize staff to issue the bid document as recommended.

Councilor Thibodeau said that he will be supporting this, cautioning that the overall scope be in line for the future of Franklin Street. He also noted that there will be another opportunity to vet this when it comes to this Committee for review and recommendation to the City Council for a purchase and sale agreement.

Councilor Ali said that he would support it as well, and thanked staff for the tour.

Chair Brenerman said that he will also support this, noting that he did not think this would affect the future of Franklin Street.

Councilor Thibodeau clarified that the easement/license authority granted to the City Manager was for 5' feet overhangs.

Chair Brenerman then asked for a vote on the motion and it passed unanimously (3-0).

Item #3: Review and vote to recommend to the City Council the proposed CPB2/MDOT/City of Portland Land Exchange Agreement.

Mr. Needelman noted that this Committee heard a presentation at its March 7 meeting, together with public comments. The item was tabled so that Councilor Ali could have a tour of the property, which took place earlier this week.

Mr. Needelman said that this land exchange is a component of the Eastern Waterfront Master Plan (EWMP) for relocation of rail and trail ROWs between Portland Company, waterfront, and Amethyst Lot. He then highlighted the various slivers of land being exchanged, noting the City will be left with same amount of property. Mr. Needelman highlighted the five-foot strip along the sea wall where the Portland Company will continue to own, together submerged land; this area will have marina potential for the Portland Company. There is also a sewer ROW along water's edge which will provide for no development along that ROW.

Councilor Ali asked about land values, and Mr. Needelman said that staff considered these swaps to be of equal value and same square feet and use, so no appraisals were done.

Councilor Ali asked about the marina potential, and Mr. Needelman said that there is the potential for the Portland Company to have a private marina, but also added that there will be transient use allowed, and public uses on Amethyst lot next door.

Chair Brenerman said that this is a great benefit to the City getting it closer to the water, and Mr. Needelman agreed, noting that a future design concept for the Amethyst lot is currently underway, which could possibly include a boardwalk or pathway along the water.

Mr. Jennings said that the City is gaining waterfront frontage near Sail Maine and the Amethyst lot. Staff feels that this makes sense for the City, as well as for MDOT and CBP2.

Chair Brenerman asked if there was any public comment on this item.

John Marr of South Portland and President of the Maine Narrow Gauge Railroad (MNGR) Board of Trustees said that it is disconcerting to the Board that it was made known of this within the past few days. These ROWs and the railroad is its life blood. If the ROWs are disturbed, moved, or lost, it would be a large impediment and imposition to MNGR. MNGR is an asset to Portland with 33,000 riders in 2016.

Jim Brady, 118 Congress Street, and President of CPB2 said that CBP2 is in a lease arrangement for use of the CBP2 property by MNGR. This land exchange has been in negotiations for the past 24-36 months. He noted that the Memorandum of Understanding between CPB2 and MDOT of March 31, 2015 was provided to MNGR. Everything proposed today still provides the MNGR rights to continue with its rail operations. Mr. Brady indicated that he had met with the MNGR Executive Director numerous times, noting that MNGR would incur no cost with these land swaps/reconfigurations. Mr. Brady said that the EWMP always contemplated relocation of rail and trail closer to the waterfront. Woodard and Curran worked to make sure the turning radius for MNGR works for it, as well as for Amtrak passenger rail service in the future at 15 mph at this location.

Mary Costigan, attorney for CPB2, added that the 5' section Mr. Needelman referred to has a public easement up to that 5' section. She also noted that she can further talk with the MNGR Executive Director as the Railroad does need to provide its consent if the tracks are moved; if not moved, it would lease with CPB2 instead of with MDOT at no additional cost to MNGR.

Steven Scharf of Salem Street said that this is simply a matter of cleaning up property lines, and looked forward to no chain link fence here or anywhere on the peninsula.

Joe Brunelle, 61 Kellogg Street, noted the breakdown in communication with MNGR and all parties should be mutually agreeable to this.

Karen Snyder agreed with Mr. Brunelle, and there should be an official communication to MNGR, suggesting that this be slowed down as MNGR is important to Portland.

George Rowe, 28 Hanover Street, asked if there was an MDOT representative in attendance and if appraisals had been done, while also noting that the real sense of this is not well communicated and should be postponed. Mr. Rowe said that there is a $1.5 Million fish and wildlife grant in play which is funding the marina.

There being no further public comment, the public comment session was closed.

Mr. Needelman said that he has had several discussions with the MNGR Executive Director, and there has been a lack of communication. The MOU gave authority to the City to consent to the exchange, as well as the MNGR. The Boating Infrastructure Grant (fish and wildlife marina grant Mr. Rowe referred) is important but not a part of this transaction; it is adjacent to it.

Mr. Needelman added that this concept was first presented to the EDC in April 2016 as part of the integrated workplan for the Eastern Waterfront, and this land exchange was part of that presentation. Mr. Needelman said that he would be happy to sit and talk with George Rowe further if needed.

Chair Brenerman noted that this was on the March 7 EDC Agenda and the Land

Exchange Agreement was included at that time, as it here now. He also commented that the Planning Board has approved the Portland Company Master Plan, which involved public hearing(s), and that the Minutes reflect that costs for this land exchange shall be borne by CBP2. The Chair indicated the MNGR Executive Director has contacted him this week. The realignment discussions have taken a long time, and now all are up-to-date.

Councilor Ali asked if MNGR signed the MOU, and Mr. Needelman said that the MOU was between MDOT and CBP2; MNGR leases property from both MDOT and CPB2, so are tenants of both.

Chair Brenerman noted that Section 13 of the Land Exchange Agreement (LEA) provides for MNGR to consent to relocation. Ms. Costigan agreed, noting that that consent is needed to move forward. Mr. Needelman said that through this process, it was always planned for MNGR to remain whole.

Councilor Thibodeau said that this Committee is not an arbitrator, and the MOU does provide for consent. He said he would support this to go to the Council, noting that the parties need to get MNGR on the same page.

Mr. Mitchell further noted that in Section 13 of the LEA, all expenses would be borne by CBP2. From City's perspective, he thought all were on the same page.

Councilor Thibodeau said that we have Corporation Counsel's signoff that affects our decision, and Mr. Mitchell agreed.

Mr. Needelman said that this keeps the process moving and brings trail closer to water.

A motion was then made and seconded to forward to this City Council with a recommendation that it be approved in substantial form as presented.

Chair Brenerman said that he will support this, but it is unfortunate that Mr. Marr was not up-to-date, noting that the MNGR is important for Portland. This exchange also provides the City greater waterfront frontage and moving the trailer closer to that frontage.

Councilor Thibodeau suggested that between now and when this comes before the Council, the parties report back to the full Council in the form of public comment that they have figured this out.

Chair Brenerman agreed and asked for a vote on the motion and it passed unanimously (3-0).

Item #4: Review and vote to authorize staff to advertise a Request for Proposals for sale of a portion of City Land on Thames Street.

Mr. Mitchell displayed a map which showed the portion of Thames Street that is part of the Request for Proposals for sale, containing approximately 48,000 sq.ft. He also noted that sale of this portion of the Thames Street keeps open for the extensions of Mountfort Street to Thames Street, and then Thames Street up to Fore Street. Mr. Mitchell also noted that the City has a License Agreement with Jackrabbit, LLC, for means of accessing both 144 Fore Street, owned by Mike Marino, and the City's Thames Street gravel surface parking lot. He said that that there is a lot of interest to invest in Portland, and staff feels that this portion of Thames Street is ready for sale, with zoning and infrastructure already in place. This sale would stimulate new investment, parking structure investment, and relocate parking that is currently there. There are creative ways to hide parking by building around a development, noting that with development going up around the Ocean Gateway Garage, that Garage will soon be totally screened. There have been public hearings about future Thames Street redevelopment and sale. The RFP talks about existing zoning requirements which are extensive, as well as City goals associated with the sale. Conditions in the RFP include, among others, providing the City a specific outline of the proposed development or reuse and jobs associated with it; timeline; and parking. Mr. Mitchell said that staff will evaluate proposals received and noted the scoring points section in the RFP. The EDC would then review and vote to recommend a purchase and sale agreement to the City Council; this results in at least two occasions to receive public comment.

Mr. O'Brien said that as Mr. Needelman mentioned, this is a signature parcel, together with streets envisioned, and the zoning allows for effective design guidelines that will help to shape its future.

Mr. Needelman also noted that by Council Order in 2009, it authorized marketing this Thames Street property for sale.

Councilor Thibodeau asked about parking requirements, for a development as well as replacement parking.

Mr. O'Brien said that some parking could be on site and screened, lower level parking, agreements with other parking facilities, to name a few. He said that are a number of ways, and challenged the private sector to come up with creative designs.

Councilor Thibodeau said that he is supportive and looked forward to seeing what kind of proposals come in, and Mr. Mitchell added that there are three goals stated in the RFP, i.e., private sector investment, parking, and future streets. It notes that the majority of the property should be utilized for development. He also noted that the intention was also to retain flexibility to have the extensions of Mountford Street to Thames Street and Thames up to Fore Street remain as options.

Chair Brenerman questioned why the extension of Mountford Street was contemplated so many years ago with the built environment it would have to go through. Mr. Needelman said that a lot of thought went into this planning with the business and residential community, and this is what was deemed desirable. It was further anticipated that the property owners in this area would aggregate their property to make this happen, but there has been no deal struck to date. If these streets were constructed, it was felt that Munjoy Hill would have less impact from traffic.

Chair Brenerman asked if an appraisal had been done, and Mr. Mitchell indicated in the affirmative.

Chair Brenerman asked if there was any public comment on this item.

Jim Brady, 118 Congress Street, said that he is pleased this is moving forward after so many years as a gravel parking lot. He hoped that it would be sold and immediately developed, bringing in new tax revenue for the City.

Quincy Hentzel, Portland Chamber Board President, echoed Mr. Brady's comments. The Chamber supports the sale for its highest and best use.

Maggie Wolfe, 28 St. Lawrence Street, asked about the public benefit and where the sale proceeds would be applied. She also hoped that the development would not bring in another hotel, but rather, for example, a Martin Luther King Center for Refugees. She also suggested a mixed scale development would be better, noting that she would also like to see Mountfort Street extended.

Karen Snyder agreed with Ms. Wolfe's comments. She mentioned the Carlsbad Brewery where the City took ownership and there is now a mix of businesses. Ms. Snyder also had traffic congestion concerns and concerns for Island parking. She also displayed a book "How to Kill a City" and how it talked about gentrification and re-orienting the purposes of a City, asking the Committee if it wanted to generate capital for rich or for those who live here.

Paula Agopian of Monument Street agreed with Ms. Snyder. She is also concerned for the displaced parkers, and questioned the highest and best use – is it for people or those who will pay the highest dollar.

Joe Brunelle, 61 Kellogg Street, asked about why such a focus on parking, suggesting to rather look at ways to decrease parking requirements and create other transportation. This RFP and development would increase traffic on Franklin Street; cars are not the future.

George Rowe, 28 Hanover Street, noted that the City is selling the Public Works Bayside property, with no conditions, to help pay for the further relocation of Public Works out of Bayside and onto the Canco Road property. He questioned why not include all of the Thames Street property for development; let the market think comprehensively. He also suggested that the City consider waiting to sell until the Portland Company property is redeveloped; there may be more return in sales dollars at that time.

Mike Marino, 144 Fore Street, said that the property should be aggregated, with the Thames Street property sold to abutters to put a whole package together for its highest and best use.

Steven Scharf, Salem Street, said that the public benefit is future tax revenue. Nearby, other property is selling for millions of dollars; three acres were just sold for $7 Million. Once sold, the City will have increase tax revenue, and will not have to maintain the property. He also questioned why the City is not selling the other pieces, which would make sense to offer them separately. He asked who parks in this lot now. Mr. Scharf had a concern about the RFP and parking, suggesting developers would need to figure out how to take care of the parking.

Seeing no further public comment, Chair Brenerman closed the public comment session.

Mr. Mitchell noted that the public benefits are outlined in the RFP.

Regarding traffic congestion, Mr. O'Brien said that there has been significant traffic analyses for this area. At full build out, the area would need to provide additional outlets for traffic to move through, including the Mountford and Thames Street extensions, shuttles, and public transit. He noted that Mr. Brady is currently doing a traffic analysis as part of his project.

Regarding who uses this surface parking lot, Mr. Needelman noted that users including the CVB, Police Dept., Sail Maine, Ripple Effect, Public Works, Ready Brothers, Bay Ferries, and daily parkers. The lot can hold 280 vehicles if all are lined up correctly.

Regarding not selling the entire lot, or both lots, Mr. Mitchell said that staff looked at this from a number of perspectives. Based on surrounding uses, a two-phase approach made the most sense. The subject parcel can be built up to 55 feet; the second up to 45 feet. There have been extensive discussions to aggregate parcels and it has not happened for a number of reasons, so staff recommends this RFP for a portion; the market is right to do this now. Regarding transit issues, Mr. Mitchell said that the City has two transit-oriented TIF District to generate funds for transit services.

Councilor Ali asked about sale proceeds use, and Mr. Jennings said that this would ultimately be up to the Council. The City would also realize new tax revenues from any development.

Councilor Ali asked about parking for the Islanders, and Mr. Jennings said that this question comes to him every Spring/Summer. The City does care about the Islander parking, and it recently activated Angelo's Acre for parking at $5/day. Also being discussed is shuttling, automated transit bus you can call with an app to go from, for example, Portland Transportation Center to Casco Bay Lines. He also noted that there a large parking lot at District Road near the Jetport. The City is contemplating free parking there, and then people would call a taxi or uber for a ride to and from the Jetport. In addition, the RFP calls for replacement parking alternatives; it would be interesting to see what the private sector proposes.

A motion was then made and seconded to authorize staff to issue an RFP for the sale of this portion of Thames Street.

Councilor Thibodeau said that development on this lot could have a domino effect. Regarding transit/transportation issues, he suggested that the Council's Sustainability and Transportation Committee take this up. Councilor Thibodeau said he looked forward to see the RFP results.

Chair Brenerman said that the City Council passed an order eight years ago to sell this property; and, the EWMP calls for development on this lot. This is the appropriate time to do this. Surface parking is not appropriate on that lot. Cruise ship passengers come off the ship and see a gravel surface parking lot. The City has a lot of demands for funding, schools for one, services, etc., which can only be funded through economic growth – noting that 25% of Portland's properties are tax exempt. This is a good opportunity for a development and new taxes and will lead to other development. This Committee and/or the Council can accept or reject any proposal.

A vote was then take on the motion and it passed unanimously (3-0).

Item #5: Review of 2017 Updated Economic Development Committee Accomplishments and Work Plan.

Mr. Mitchell said that this updated monthly and is a communication item; no discussion or vote is needed.

There being no further business, the meeting was then adjourned at approximately 8:05 p.m. Respectfully, Lori Paulette

Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

TO: **Economic Development Committee (EDC)**

FROM: **Greg Mitchell, Economic Development Director**

DATE: **March 30, 2017**

SUBJECT: **Vote to Recommend to the City Council the Sale of City-Owned Riverside Street Property**

I. SUMMARY OF ISSUE

Under the direction of the EDC, a draft Purchase and Sale Agreement has been negotiated with AIM Riverside II, LLC to sell a seven-acre City-owned property adjacent to Lucas Tree located at 636 Riverside Street.

II. REASON FOR SUBMISSION

Sale of City property requires a vote from the EDC, in the form of a recommendation, to the City Council.

III. INTENDED RESULT

EDC vote to recommend to the City Council approval of the Purchase and Sale Agreement.

IV. COUNCIL GOAL ADDRESSED

Sale of City properties to stimulate development, job creation, and increase the commercial tax revenue base.

V. FINANCIAL IMPACT

Highlights of the business terms related to this transaction include:

Property Sale Price: $90,000 per acre, including 6.72 acres (excluding acreage associated with the cell tower easement, steep slopes/wetlands, and future conservation easement), at a sale price of $604,800.

Sale Price Off-set to reimburse the Buyer for the documented costs to relocate electric and communication service to the City cell tower up to $6,500.

Broker Fee: City payment of one-half the broker fee in the amount of two (2) percent of the property sale price payable at closing.

Environmental Indemnifications: Buyer to provide environmental indemnifications to the City.

Subdivision Amendment: City agrees to apply for and secure City approvals to subdivide this property to create this parcel. The property survey is done. City Economic Development staff will file for the Subdivision Amendment at time of Project Site Plan Approval.

City Right to Repurchase the Property: If AIM Riverside II, LLC, its successors, assigns, or transferees, fails to commence construction of the project on the property within 12 months after the closing and construct 50,000 square feet of building within seven (7) years after closing, the City shall have the right, but not the obligation, to repurchase the premises at the purchase price. This provision will survive closing, and the City's deed to AIM Riverside shall include a reference to the City's option to repurchase the premises.

VI. STAFF ANALYSIS

Staff has been marketing the availability of this City-owned industrial property, for several years, through the local commercial broker network. A number of interested parties have looked at this property for various types of development projects. Staff's position is that the proposed development plan which includes multi-industrial tenant type development, with over 75,000 square feet, optimizes the site in terms of the amount of square footage, and provides much needed industrial tenant flexible space options to generate the highest overall development value and associated job creation to the City. See attached Draft Purchase and Sale Agreement Exhibit A for the proposed site development plan. The Buyer is Don St. Jean who is a longstanding Portland developer, property owner, and manager of other industrial properties in Portland.

The site proposed for sale has limited street frontage which creates challenges for truck access to the site, combined with an adjacent conservation easement. The site sale price of $90,000 per acre is in line with market value for vacant industrial property. Additionally, the Buyer has agreed, and is required in the Purchase and Sale Agreement, to work with the City to establish an easement to allow placement of a new City public safety communications tower, including vehicle access to the cell tower for annual maintenance. Also, the City has a right to repurchase this property in the case of non-performance. Lastly, the Buyer is willing to work with Portland Trails to establish public access to the trails managed by Portland Trails.

VII. RECOMMENDATION

Staff recommends the EDC vote to recommend approval to the City Council of the attached Draft Purchase and Sale Agreement in substantial form as presented.

VIII. LIST ATTACHMENTS

Draft Purchase and Sale Agreement between the City of Portland and AIM Riverside II, LLC.

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PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT IS made this ______ day of _____________, 2017 by and between the City OF PORTLAND, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as "Seller" or "City"), and AIM Riverside II, LLC, a Maine limited liability company having a mailing address of c/o Thomas Jewell, 477 Congress Street, Portland, ME 04101 (hereinafter referred to as "Buyer" or "AIM Riverside").

RECITALS

WHEREAS, the CITY is the owner of approximately 7.02 acres of land at 650 Riverside Street, Portland, Maine as generally depicted on the plan attached hereto as Exhibit A (the "Site Plan") and incorporated herein, and more particularly described in Exhibit B attached hereto and incorporated herein (the "Premises"); and

WHEREAS, AIM Riverside desires to purchase the Premises, and the City desires to convey the Premises to AIM Riverside, subject to an easement to the CITY for access to and maintenance of a City-owned communications tower (the "Tower") on the Premises (the "Tower Easement"); a public access easement to the City or Portland Trails to access, utilities for, adjacent City-owned property (the "Access Easement") that is subject to a March 26, 2010 Conservation Easement to Portland Trails, recorded in the Cumberland County Registry of Deeds, Book 27677, page 125 (the "Conservation Easement"); and a declaration of environmental covenants to be recorded (the "Declaration of Environmental Covenants") in accordance with an August 30, 2010 Commissioner's Certification of Completion Of Remedial Actions Under A Voluntary Response Action Plan recorded in the Cumberland County Registry of Deeds, book 28269, page 281 (the "Certificate of Completion").

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **SALE.** City agrees to sell the Premises to AIM Riverside, and AIM Riverside agrees to purchase the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land only.

2. **CONSIDERATION**. The purchase price for the Premises shall be Six Hundred Five Thousand Seven Hundred Dollars ($604,800) (the "Purchase Price"), subject to the following cost adjustments and conditions:

    a. Buyer shall be responsible for all labor, materials and costs associated with the relocation of any and all utilities serving the Tower if Buyer determines that such utilities need to be relocated. In connection therewith, the City will reimburse the Buyer up to $6,500 for documented costs for such relocation.

    b. In addition to the Purchase Price, Buyer shall pay at closing two percent (2%) of the Purchase Price to NAI The Dunham Group, Inc.

c. The City acknowledges receipt of AIM Riverside's deposit in the amount of Twenty Thousand Dollars ($20,000.00) (the "Deposit") that the parties agree will be held in escrow as of the date of this Agreement; and

d. The AIM Riverside shall pay the remainder of the Purchase Price to the City by wire transfer at closing.

3. <u>TITLE.</u>

a. <u>Due Diligence Period</u>. AIM Riverside will have from the date of this Agreement until 4:00 PM Eastern Daylight Savings Time on the day that is three months after the date of this Agreement (the "Due Diligence Period") to complete any survey and title examinations.

b. <u>Title and Survey Objections</u>. AIM Riverside will have until the end of the Due Diligence Period to deliver to City any written objections to title or survey matters (other than the permitted exceptions identified herein) that materially affect marketability or use. Objections not made prior to the end of the Due Diligence Period will be deemed waived; provided, however, that objections pertaining to matters of record first appearing after the end of the Due Diligence Period may be made at any time prior to the closing.

d. <u>Option to Cure</u>. In the event of a title or survey objection, City will have the option, but not the obligation, to cure the objection and will notify AIM Riverside of its election within ten (10) business days after receipt of the objection. In the event that the City elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the City does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to AIM Riverside's reasonable satisfaction, AIM Riverside will have the option to (1) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement), (2) waive the objection and close, or (3) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so).

e. City shall convey the Premises to AIM Riverside at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good, marketable and insurable title, free and clear of all encumbrances except (i) the Tower Easement, Access Easement, and Declaration of Environmental Covenants, which shall be in form and substance satisfactory to the City; (ii) easements for utilities servicing the property, (ii) zoning ordinances, and (iii) real estate taxes not yet due and payable. Further, AIM Riverside acknowledges that the deed shall contain a restriction stating that in the event that the Premises or any portion thereof shall be exempt from real and personal property taxes, by transfer, conversion, or otherwise, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount equal to the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable. Such restriction shall also confirm that AIM Riverside and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.

4. INSPECTIONS.

a. During the Due Diligence Period, AIM Riverside and its employees, consultants, contractors and agents shall have the right, at AIM Riverside's expense, to enter on the Premises at reasonable times in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments, and (iii) do such other things as AIM Riverside determines, it is sole discretion, to be required to determine the suitability of the Premises for AIM Riverside's intended use (collectively, the "Inspections"). The City acknowledges that such Inspections may include the digging of test pits, which the City hereby approves.

b. AIM Riverside agrees to defend, indemnify and hold harmless the City against any mechanics liens that may arise from the activities of AIM Riverside and its employees, consultants, contractors and agents on the Premises.

c. AIM Riverside shall exercise the access and inspection rights granted hereunder at its sole risk and expense, and AIM Riverside hereby releases the City from, and agrees to indemnify, defend, and hold the City harmless against, any and all losses, costs, claims, expenses and liabilities (including without limitation reasonable attorney fees and costs) (collectively, "Damages") suffered by the City on account of any injury to person or damage to property arising out of the exercise by AIM Riverside of its rights hereunder, except to the extent that such Damages result from the act or omission of the City.

d. AIM Riverside shall cause any contractors, consultants or any other party conducting the Inspections to procure automobile insurance and general public liability insurance coverage in amounts of not less than Four Hundred Thousand Dollars ($400,000.00) per occurrence for bodily injury, death and property damage, listing the City as an additional insured thereon, and also Workers' Compensation Insurance coverage to the extent required by law.

e. In the event that AIM Riverside does not purchase the Premises, AIM Riverside agrees to either return the Premises as nearly as possible to its original condition after conducting the Inspections, or, at the City's option, reimburse the City for any physical damage caused to the Premises in connection with the Inspections; provided, however, the City hereby acknowledges and agrees that the term "physical damage" does not include any disturbance of any pre-existing environmental contamination on the Premises caused by such inspections, studies, tests, exams, and assessments,

.

and that AIM Riverside shall have no obligation to clean-up, remove or take any other action with respect to any pre-existing environmental contamination disturbed thereby.

f. The parties hereto acknowledge and agree that it is a condition to AIM Riverside's obligations under this Agreement that the results of the Inspections be acceptable to AIM Riverside in its sole discretion. If the results of such due diligence are not acceptable to AIM Riverside in its sole discretion, and if AIM Riverside exercises its right to terminate this Agreement, then the City shall refund to AIM Riverside the Deposit, if previously paid, without interest, within thirty (30) days after receipt of AIM Riverside's termination notice, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement.

5. REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX. AIM Riverside shall be liable for all real estate taxes beginning as of the start of fiscal year following the closing and continuing thereafter. Because the Property is currently owned by the City of Portland, which is exempt from real estate taxes, no taxes were assessed or will be due for any portion of the current fiscal year, and no taxes will be prorated at the closing. Any utilities for the Property shall be prorated as of the closing. The Maine real estate transfer tax shall be paid for by AIM Riverside in accordance with 36 M.R.S.A. § 4641-A. City is exempt from paying the transfer tax pursuant to 36 M.R.S.A. § 4641-C. The recording fee for the deed of conveyance and any expenses relating to AIM Riverside’s financing or closing shall be paid for by AIM Riverside.

6. DEFAULT AND REMEDIES. In the event that AIM Riverside defaults hereunder for a reason other than the default of the City, City shall retain the deposit, it being understood, however, the City’s acceptance thereof shall not constitute a waiver of any other legal or equitable remedy available to City. In the event City defaults under this Agreement, and if AIM Riverside is not then in default hereunder, AIM Riverside shall have the right to pursue specific performance, but at all times may elect in substitution therefor, as its sole remedy, the right to a return of its deposit.

7. RISK OF LOSS. The risk of loss or damage to the Premises by fire, eminent domain, condemnation, or otherwise, until transfer of title hereunder, is assumed by the City. The Premises is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated. In the event City is not able to deliver the Premises as stated, AIM Riverside may terminate this Agreement and receive a refund of the Deposit without interest, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement.

8. PROPERTY SOLD “AS IS, WHERE IS.” AIM Riverside acknowledges that AIM Riverside has had an opportunity to inspect the Premises, and to hire professionals to do so, and that Premises will be sold “as is, where is” and “with all faults.” City, and its agents, make no representations or warranties with respect to the accuracy of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues or the environmental, mechanical, or structural condition of the Premises. Acceptance by AIM Riverside of the Deed at closing and payment of the purchase price shall be deemed to be full performance and discharge by the City of every agreement and obligation contained herein.

9. **ENVIRONMENTAL INDEMNIFICATION**. AIM Riverside covenants and agrees to indemnify, defend, and hold the City harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys', consultants', and experts' fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against AIM Riverside or the City and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Premises. This duty to indemnify, defend, and hold harmless shall be included in a covenant in the deed and shall run with the land conveyed and be binding upon AIM Riverside's successors, assigns, and transferees.

10. **CONDITIONS PRECEDENT TO CLOSING.** The City shall pursue an amendment to the Riverside Subdivision approved by the City of Portland Planning Board on September 21, 2010, recorded in the Cumberland County Registry of Deeds, Plan Book 210, Page 352, in order to obtain approval for the creation of the parcel which constitutes the Premises. In the event the City is unable to obtain such approval, then the City shall refund the Deposit, if previously paid, without interest, and this Agreement shall be terminated and neither party shall have any further obligations or liabilities under this Agreement. Buyer acknowledges and agrees that the City is acting as Seller, and not in its regulatory capacity, in connection with this Agreement.

11. **CLOSING**. Time is of the essence in the performance of this agreement. The closing shall be held at the offices of AIM Riverside's counsel at a time agreeable to the parties on or before the day that is eight months after the date of this Agreement. At the Closing:

    a. the City shall execute, acknowledge and deliver to AIM Riverside a municipal quitclaim deed conveying to AIM Riverside good and marketable title to the Premises, free and clear of all encumbrances except as otherwise set forth herein.

    b. AIM Riverside shall deliver the balance of the Purchase Price to the City by wire transfer; and

c. Each party shall deliver to the other such other documents, certificates and the like as may be required herein or as may be necessary to carry out the obligations under this Agreement.

12. **<u>BUYER'S POST CLOSING OBLIGATIONS; RIGHTS OF CITY TO REPURCHASE PROPERTY</u>**. AIM Riverside agrees to submit engineering and development plans for permitting purposes within six (6) months from closing and commence construction of the project generally depicted on the attached Plan (the "Project") within twelve (12) months after closing. If AIM Riverside, its successors, assigns, or transferees fails to commence construction of the Project on the Property within 12 months after the closing, and construct 50,000 square feet of building within seven (7) years after closing, the City shall have the right, but not the obligation, to repurchase the Premises at the Purchase Price. The provisions of this paragraph will survive closing, and the City's deed to AIM Riverside shall include a reference to the City's option to repurchase the Premises.

13. **<u>ENTIRE AGREEMENT.</u>** This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Property hereunder. This Agreement cannot be amended except by written instrument executed by City and AIM Riverside.

14. **<u>NON-WAIVER</u>**. No waiver of any breach of any one or more of the conditions of this Agreement by either party shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

15. **<u>HEADINGS AND CAPTIONS.</u>** The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.

16. **<u>BINDING EFFECT</u>**. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.

17. **<u>TIME</u>.** The City and AIM Riverside each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.

18. **<u>GOVERNING LAW</u>**. This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

19. **<u>NOTICE</u>**. All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served

personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

FOR THE City:	City of Portland ATTN: City MANAGER 389 Congress Street Portland, ME 04101
With a copy to:	The Office of the Corporation Counsel at the same address.
FOR AIM Riverside:	AIM Riverside II, LLC c/o AIM Properties 531 E. Chapman Avenue Orange, CA 92866
With a copy to:	Thomas Jewell, Esq. 477 Congress Street Portland, ME 04101

20. <u>SIGNATURES; MULTIPLE COUNTERPARTS.</u> This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

21. <u>BROKERS</u>. City and AIM Riverside shall each pay NAI The Dunham Group at closing a brokerage commission equal to two percent (2%) of the Purchase Price at closing, for a total commission of four percent (4%) of the Purchase Price. The CITY and AIM Riverside each represent and warrant that they have not dealt with a real estate broker in connection with this transaction other than NAI The Dunham Group. AIM Riverside agrees to indemnify and hold harmless City from any claims made by any broker should AIM Riverside's representation in this paragraph be false. Subject to the limitations of liability set forth in the Maine Tort Claims Act, City agrees to indemnify and hold harmless AIM Riverside from any claims made by any broker should City's representation in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.

Signature page follows.

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IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first written above.

City OF PORTLAND

___________________ ________________________________
WITNESS Jon P. Jennings
Its City Manager

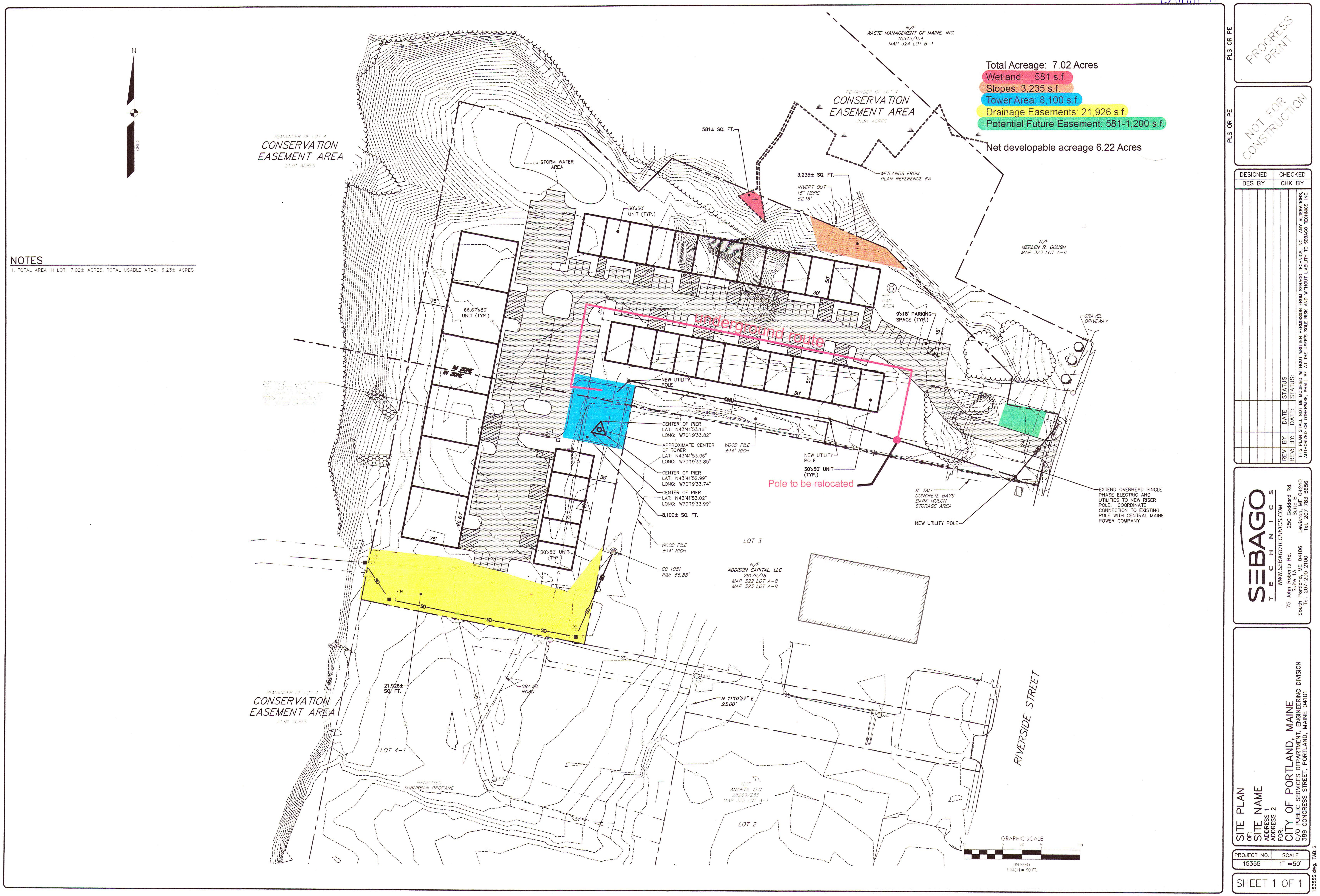
AIM RIVERSIDE II, LLC

_________________________ ________________________________
WITNESS Printed Name:____________________
Its ______________________________

Approved as to Form:

____
Corporation Counsel's Office

Exhibit "A"



Total Acreage: 7.02 Acres
Wetland: 581 s.f.
Slopes: 3,235 s.f.
Tower Area: 8,100 s.f.
Drainage Easements: 21,926 s.f.
Potential Future Easement: 581-1,200 s.f.
Net developable acreage 6.22 Acres
NOTES
1. TOTAL AREA IN LOT: 7.02± ACRES, TOTAL USABLE AREA: 6.23± ACRES
N/F
WASTE MANAGEMENT OF MAINE, INC.
10545/154
MAP 324 LOT B-1
CONSERVATION EASEMENT AREA
CONSERVATION EASEMENT AREA
CONSERVATION EASEMENT AREA
581± SQ. FT.
3,235± SQ. FT.
INVERT OUT
15" HDPE
52.16'
WETLANDS FROM PLAN REFERENCE 6A
N/F
MERLEN R. GOUGH
MAP 323 LOT A-6
STORM WATER AREA
30'x50' UNIT (TYP.)
66.67'x80' UNIT (TYP.)
underground route
9'x18' PARKING SPACE (TYP.)
GRAVEL DRIVEWAY
NEW UTILITY POLE
OHU
CENTER OF PIER
LAT: N43°41'53.16"
LONG: W70°19'33.82"
APPROXIMATE CENTER OF TOWER
LAT: N43°41'53.06"
LONG: W70°19'33.85"
CENTER OF PIER
LAT: N43°41'52.99"
LONG: W70°19'33.74"
CENTER OF PIER
LAT: N43°41'53.02"
LONG: W70°19'33.99"
8,100± SQ. FT.
WOOD PILE ±14' HIGH
NEW UTILITY POLE
30'x50' UNIT (TYP.)
Pole to be relocated
8' TALL CONCRETE BAYS BARK MULCH STORAGE AREA
NEW UTILITY POLE
EXTEND OVERHEAD SINGLE PHASE ELECTRIC AND UTILITIES TO NEW RISER POLE. COORDINATE CONNECTION TO EXISTING POLE WITH CENTRAL MAINE POWER COMPANY
WOOD PILE ±14' HIGH
CB 1081
RIM: 65.88'
LOT 3
N/F
ADDISON CAPITAL, LLC
28176/18
MAP 322 LOT A-8
MAP 323 LOT A-8
21,926± SQ. FT.
GRAVEL ROAD
N 11°10'27" E
23.00'
RIVERSIDE STREET
LOT 4-1
PROPOSED SUBURBAN PROPANE
LOT 2
GRAPHIC SCALE
1 INCH = 50 FT.
PROGRESS PRINT
NOT FOR CONSTRUCTION
PLS OR PE
DESIGNED
CHECKED
DES BY
CHK BY
REV | BY: | DATE: | STATUS:
THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM SEBAGO TECHNICS, INC. ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO SEBAGO TECHNICS, INC.
SEBAGO TECHNICS
WWW.SEBAGOTECHNICS.COM
75 John Roberts Rd. Suite 1A South Portland, ME 04106 Tel. 207-200-2100
250 Goddard Rd. Suite B Lewiston, ME 04240 Tel. 207-783-5656
SITE PLAN
OF:
SITE NAME
ADDRESS 1
ADDRESS 2
FOR:
CITY OF PORTLAND, MAINE
C/O PUBLIC SERVICES DEPARTMENT, ENGINEERING DIVISION
389 CONGRESS STREET, PORTLAND, MAINE 04101
PROJECT NO. 15355
SCALE 1" =50'
SHEET 1 OF 1
15355S.dwg, TAB:S

Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

TO: **Economic Development Committee (EDC)**

FROM: **Greg Mitchell, Economic Development Director**

DATE: **March 31, 2017**

SUBJECT: **Vote to recommend to the City Council the Amended and Restated Lease Agreement between the City of Portland and Bay Ferries Limited**

I. ONE SENTENCE SUMMARY

Minor amendments to the City Council approved Lease Agreement between the City and Bay Ferries are needed to support the 2017 second season for operating the CAT from Ocean Gateway.

II. BACKGROUND AND LEASE OVERVIEW

In 2016, Bay Ferries returned to the Port of Portland operating the CAT ferry service between Yarmouth, Nova Scotia and Portland, Maine. The City Council approved a lease with Bay Ferries Limited on May 2, 2016. The Lease was for a two-year term with a single one-year renewal option. Minor amendments to the approved Lease are needed to support the 2017 ferry season.

Highlights of the Lease Amendments include:

Ferry Service Dates and Operating Season. The 2017 season is extended by two weeks and operates from four to five days a week during the shoulder times of the season (May/June and Sept./Oct.) and six to seven days a week during the peak time of the season (July/August). See attached 2017 ferry season schedule. The modification of the ferry season schedule to four to five days a week during the shoulder time of the season better supports increasing cruise ship activity at Ocean Gateway.

Terminal Building Use.
The use of the ground level space for the Terminal Building located at the end of Ocean Gateway is needed to process passengers through US Customs. See attached map of Ocean Gateway.

Rent and Fees.
The space rent for use of the Terminal Building increases the cost by $1,400 per month to a total of $16,629.60 during the season.

III. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

EDC vote, in the form of a recommendation to the City Council, to approve the Draft Amended and Restated Lease Agreement between the City of Portland and Bay Ferries Limited.

IV. FINANCIAL IMPACT

In 2016, the Lease with Bay Ferries generated over $265,000 from space rent, parking, passenger/ vehicle fees, and berthing fees. It is expected that this season will generate higher revenues based upon greater number of passengers.

V. STAFF RECOMMENDATION

Staff recommends that the EDC vote to recommend approval to the City Council of the attached Amended and Restated Lease in substantial conformance.

VI. LIST ATTACHMENTS

- Bay Ferries 2017 Schedule
- Map of Ocean Gateway
- Clean Version of Draft Amended and Restated Lease Agreement between the City of Portland and Bay Ferries.
- Redlined Version of Draft Amended and Restated Lease Agreement between the City of Portland and Bay Ferries.

EXHIBIT D

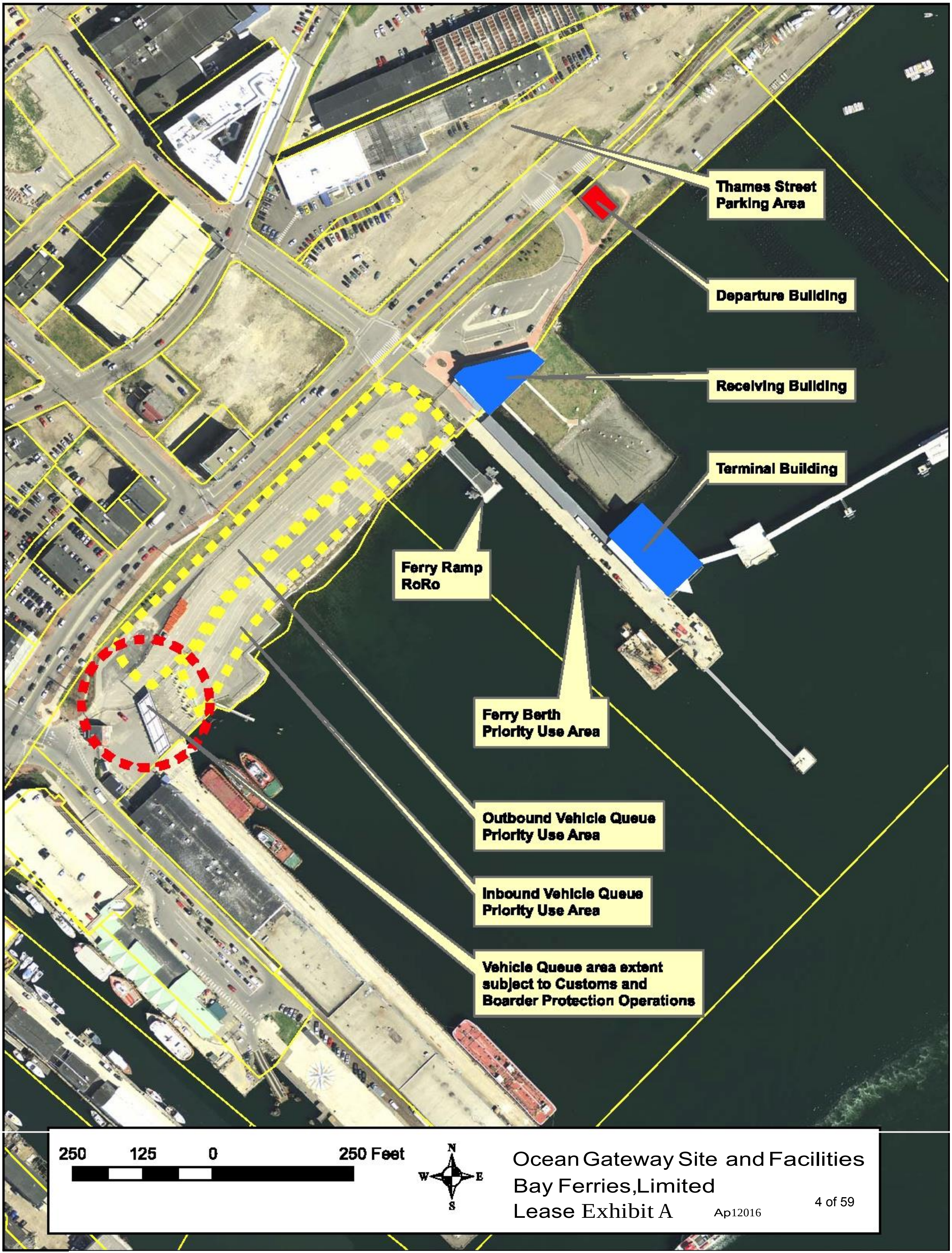
2017 The CAT Schedule

Departing from Yarmouth, Nova Scotia to Portland, Maine

2017 SERVICE DATES	DAYS	TIMES (Atlantic Time Zone)
MAY 31 - JUNE 28	MON, WED, FRI, SAT, SUN	8:30
JUNE 29 - JULY 27	MON, TUE, THU, FRI, SAT, SUN	8:30
JULY 28 - SEPT 2	MON, TUE, WED, THU, FRI, SAT, SUN	8:30
SEPT 3 - OCT 2	MON, WED, THU, FRI, SAT	8:30
OCT 3 - OCT 15	MON, FRI, SAT, SUN	8:30

Departing from Portland, Maine to Yarmouth, Nova Scotia

2017 SERVICE DATES	DAYS	TIMES (Eastern Time Zone)
MAY 31 - JUNE 28	MON, WED, FRI, SAT, SUN	14:30
JUNE 29 - JULY 27	MON, TUE, THU, FRI, SAT, SUN	14:30
JULY 28 - SEPT 2	MON, TUE, WED, THU, FRI, SAT, SUN	14:30
SEPT 3 - OCT 2	MON, WED, THU, FRI, SAT	14:30
OCT 3 - OCT 15	MON, FRI, SAT, SUN	14:30



Ocean Gateway Site and Facilities
Bay Ferries,Limited
Lease Exhibit A
Ap12016

AMENDED AND RESTATED LEASE AGREEMENT BETWEEN CITY OF PORTLAND AND BAY FERRIES LIMITED RE: OCEAN GATEWAY

THIS AMENDED AND RESTATED LEASE AGREEMENT dated this 26th____ day of May, 2017 is by and between the City of Portland, Maine, Maine municipal corporation with a principal office at 389 Congress Street, Portland, Maine 04101 (the "Landlord"), and Bay Ferries Limited, a Canadian registered corporation with a principal office at 94 Water Street, Charlottetown, Prince Edward Island, Canada, C1A 7L3 (the "Tenant").

WHEREAS, Landlord and Tenant are parties to a Lease Agreement dated June 1, 2016 (the "Original Lease") for certain space at the Landlord's property known as Ocean Gateway where Tenant operates an international ferry service between Portland, Maine and Yarmouth, Nova Scotia (the "Ferry Service") on a ferry vessel known as "Alakai" (commercially branded as "The Cat"), 106.5 meters in length (the "Vessel); and

WHEREAS, Landlord and Tenant desire to make substantial amendments to the terms and conditions of the Original Lease and wish to enter into an amended and restated lease agreement to address those amendments; and

NOW THEREFORE, in consideration of the mutual covenants and considerations herein contained, the sufficiency of which is hereby acknowledged, Landlord and Tenant hereby mutually agree that the Original Lease be amended and restated as of the Effective Date (as defined in Section 2 below).

1. Premises; As-Is Condition; Permitted Uses.

Landlord does hereby lease, demise and let unto Tenant, to have and to hold on the terms herein, subject to the reservations and conditions below, the premises identified herein and shown on Exhibit A, attached hereto and incorporated herein. Tenant agrees to accept the premises in "as-is" condition without representation or warranty by Landlord as to its condition or fitness for a particular purpose.

a. **Spaces for exclusive use at certain times**. The following spaces are available for the Exclusive use of Tenant for the hours stated during the Operating Season (as defined below):

i. **Queuing Areas**. The sole areas to be used for marshalling inbound and outbound vehicles and processing of passengers by U.S. Customs and Border Protection ("CBP") are the areas labeled "Outbound Queuing Area" and "Inbound Queuing Area" on Exhibit A (collectively the "Queuing Areas"), as may be modified to meet CBP requirements. The Outbound Queuing Area is to be used for vehicles and passengers preparing to depart from Portland. The Inbound Queuing Area is to be used for vehicles and passengers arriving in Portland. Said Queuing Areas are to be used by Tenant on a non-exclusive but priority basis during the Operating Season to accommodate its sailing schedule, as outlined below. During the Operating Season, the Inbound Queuing area will only be available to the Tenant for its exclusive use, between the hours of 1:15 P.M. and 3:15 P.M., only on the Service Dates listed on Exhibit D attached hereto (the "Service Dates"), and the Outbound Queuing area will be available to the Tenant for its exclusive use between the hours of 12:00 P.M. (or earlier, if permitted by the City of Portland's Director of Facilities Management or his/her designee (the "Director") and 3:00 P.M. only on the Service Dates. The Queuing Areas may be reduced temporarily by mutual agreement of the Director and the Tenant. Tenant may place in the Queuing area any trailers or other facilities or improvements required by CPB with the prior approval of the Landlord, which may not be unreasonably withheld, and subject to any applicable permits, licenses or approvals required federal, state, and municipal laws, rules, and regulations. No tractor trailer trucks, or other trucks or vehicles with trailers exceeding a total of fifty (50) feet in length, shall be allowed to transit on the Ferry Service or be present in the Queuing Areas.

ii. **Berthing Area**. During the Operating Season, the Berthing Area depicted on Exhibit A will be available to the Tenant for its exclusive use between the hours of 1:30 P.M. and 3:00 P.M., only on the Service Dates. In the event Tenant desires unscheduled berthing, Tenant shall request such berthing with as much advance notice as possible. Landlord shall grant such requests if berthing is available. When off-schedule berthing is not available, the Landlord shall use reasonable efforts to assign a secondary berth to Tenant. Tenant shall be solely responsible for the cost of moving its vessel to off- schedule secondary berthing, including but not limited to any security costs, and Landlord shall have no responsibility for such moving, security or related costs. During the Operating Season, as that term is defined below, Tenant's use of the Berthing Area shall at all times include the exclusive use of the "roll-on, roll-off' ramp facilities at the OG Terminal (the "Ramp") (as depicted on Exhibit A) for vehicle and passenger loading and unloading. During the "Wind Up and Wind Down" Seasons, as those terms are defined below, if Tenant desires unscheduled use of the Ramp, Tenant shall request such use with as much advance notice as possible. It is understood that Tenant may requiresome, although not exclusive, daytime and nighttime use of the ramp in the Wind Up Season for training and preparation purposes and Landlord and Tenant agree to work cooperatively to schedule such usage, if available, and to also enable Landlord's continued generation of berthage revenue from other parties. Tenant's use of the Ramp is at Tenant's sole risk. Unless otherwise agreed to by Landlord, Tenant shall have no right to use the Berthing Area at any time during the Off Season, as that term is defined below. It is further understood between the parties as follows:

(a) On those days during the Operating Season when there is no cruise ship berthed at the Portland Ocean Terminal, and otherwise no operating restrictions within the Port, Tenant shall be free to berth earlier than 1:30 P.M.; and

(b) On those days within the Operating Season when there is a cruise ship berthed at the Portland Ocean Terminal, the Vessel may be secured at the berthing area prior to 1:30 P.M. provided passengers and vehicles are not released prior to 1:30 P.M. and provided such does not otherwise impede port operations.The parties intend there to be close collaboration and communication at all times so as to facilitate the most efficient operations for all parties.

iii. **Departure Building**. Tenant will have the exclusive use of the Departure Building (depicted on Exhibit A) for the term of this Lease for ticketing, processing of passengers, passenger waiting area, restrooms, and related uses.

iv. **Terminal Building:** The Tenant shall have the right to access the inbound Customs processing facility in the Terminal Building depicted on Exhibit A for processing inbound pedestrian passengers, who shall be moved by the Tenant from the Vessel to the Terminal Building by means acceptable to CBP and the Landlord. Such processing shall be limited to the hours of 1:30 p.m. and 3:00 p.m. on the Service Dates.

b. **Exterior Common Areas**. The following spaces are available for the non-exclusive use of Tenant during the Operating, Wind Up, and Wind Down Seasons: The walkways, driveways and roadways at the Ocean Gateway may be used by **Tenant** on a non-exclusive basis, in common with others. However, during hours that another vessel (such as a cruise ship) or scheduled event is using the Ocean Gateway Terminal, the **Tenant** and its passengers will only use the area for dropping off of customers and passenger ticketing, and **Tenant** will co-operate with **Landlord** to adequately place personnel for incoming customers and passengers to be aware of this use restriction. No outboard queuing is allowed in the Receiving Building parking lot or any area other than the Outbound Queuing Area.

c. **Parking**. Landlord will assign a maximum of 10 parking spaces to Tenant for employee parking in the City-owned Thames Street parking lot as generally depicted on Exhibit A (the "Parking Area") during the Operating, Wind Up and Wind Down Seasons of each year of the term of this Lease or any renewal term. No overnight parking will be allowed. Landlord reserves the right at any time during the term of this Lease to assign different parking spaces to Tenant. Landlord will not provide any customer parking. Employee vehicles parked in the Receiving Building Lot (as depicted on Exhibit A) are subject to ticketing if parked beyond posted limits.

d. **Landlord's Right to Relocate Premises**. The Queuing Areas, Berthing Area, the Ramp, the Departure Building, the Parking Area, and the Exterior Common Areas may be collectively referred to herein as the "Premises". Except for the Departure Building, Landlord reserves the right to change particular locations of the Premises, subject to the condition that such re-location(s) will not unreasonably burden the operations of Tenant. The intent of this reserved right to re-locate is to allow Landlord to continue the ongoing development and enhanced utilization of its limited waterfront real estate in coordination with other parties using or desiring to use nearby locations.

e. **Use of Premises for Ferry Service**. During the term of this Lease, Tenant is permitted to use the Premises for the sole purpose of conducting an international Ferry Service between Portland, Maine and Yarmouth, Nova Scotia via the Vessel. Tenant agrees to provide four (4) to seven (7) days of service per week during the Operating Season, subject to normal exigencies of the ferry business, including weather and mechanical breakdown, lack of consumer demand, and other events beyond Tenant's control. Should sailings be fewer than seven (7) days per week during the Operating Season, monthly berthage payment shall not be reduced. Sailings shall be only on be on Service Dates with arrivals at 1:30 p.m. and departures before 3:00 p.m. Should Tenant wish to reduce its schedule of service, Tenant will provide as much notice as reasonably practicable and will provide best efforts to give notice at least fifteen (60) days in advance. Tenant acknowledges that no trade or occupation shall be conducted on or from the Premises or use made thereof that would be unlawful, improper, or offensive, or contrary to any law or any municipal by-law or ordinance.

There shall be no additional charge to the Tenant for overnight berthing in the Berthing Area during the Wind Up and Wind Down seasons, provided, however, that the Berthing Area will not be available overnight on Fridays during those periods.

f. **Service Dates**. Tenant may only use the Berthing Area, the Terminal Building, and the Queuing Area on the Service Dates.

g. **Landlord's Right to Relocate**. This Lease Agreement is non-exclusive, and nothing herein shall prevent or prohibit the Landlord from leasing other available space at either the Ocean Gateway or any other facility owned or operated by Landlord, to another Tenant for any purposes Landlord deems suitable, including but not limited to the operation of a similar ferry service. In no event, however, is the Landlord permitted to impair in any way the operations by Tenant. Tenant's use of the Queuing area and all other areas to be used by passengers is subject to any reduction in size or configuration or availability as may be required, at any time, by any security agencies having jurisdiction with respect to such areas.

2. Term; Seasons.

a. **Term**. Except as provided below, the Term of this Lease shall be from June 1, 2016 (the "Effective Date") through October 15, 2017Provided that Landlord, in its sole discretion, first determines that Tenant is not in default of any term or condition of this Lease, Landlord, in its sole discretion, may renew this Lease for up to one (1) additional year upon terms mutually agreeable to the parties. If Landlord desires to renew this Lease, Landlord shall so notify Tenant on or before September 15, 2017.

b. **Operating Season; Wind Up and Wind Down Seasons; Off-Season**. Tenant's Operating Season shall be May 31, 2017 to October 15, 2017 (the "Operating Season"). The term "Wind Up Season" shall mean May 26, 2017 to May 30, 2017. The term "Wind Down Season" shall mean no later than October 16, 2017. In the event that Landlord agrees to renew this lease as set forth above, the term "Off Season" shall mean the period between the end of the 2017 Wind Down Season and commencement of the 2018 Wind Up Season.

3. Rent; Fees; Security Deposit.

Tenant shall pay all rent and fees, when due, as provided below and on Exhibit B, attached hereto and incorporated herein.

4. Payment; Statements.

a. On or before the fifteenth (15th) day of each month, Tenant shall pay to Landlord the per-passenger and per-vehicle fees on Exhibit B that were incurred in the previous month. Such payment shall be made without the need for an invoice from Landlord and shall be accompanied by Tenant's statement as provided below.

b. Fees due during the Operating Season in paragraph a. above shall begin as of the first day of the month of said Operating Season. Tenant shall be responsible for payment of personal property taxes which may be payable on their trade fixtures and equipment, and for payment of any federal, state or local fees or taxes which may apply to their operations hereunder.

c. **Late payment:** Tenant shall make prompt and timely payment of all rentals, fees, and other charges due hereunder as the same may from time to time come due. In the event that any such payment is not made within thirty (30) days of the invoice due date, a penalty of one percent (1%) per month 12% per annum) shall be assessed and paid on all such amounts outstanding.

d. **Address:** All payments hereunder shall be written to the City of Portland and sent to the attention of: Public Assembly Facilities, Accounting Office, Portland Exposition Building, 239 Park Avenue, Portland, Maine 04102 or such other place as the Director may designate in writing from time to time.

Any invoices shall be sent to Tenant at the following address: Bay Ferries Limited, 94 Water Street, PO Box 634, Charlottetown, Prince Edward Island, Canada, C1A 7L3, Attn: Danny Bartlett, Vice President, Finance and Administration, or such other person or address as Tenant may designate in writing from time to time.

e. **Tenant Statements:** Tenant shall submit its official manifest or other official documentation (or electronic equivalent) showing the number of passengers and vehicles transported by Tenant both to and from the City of Portland each month when it submits its per passenger and per vehicle fees under Exhibit B. No amount shall be payable to the City of Portland in respect of passengers or vehicles transported by the Tenant on a complimentary basis.

f. Landlord reserves the right to conduct an audit of Tenant's traffic records, upon reasonable notice and during regular business hours, to determine the accuracy of amounts paid hereunder. In the event such audit discloses an underpayment to Landlord of more than Five Percent (5%) in any year, Tenant shall pay to Landlord, in addition to the amount owed and any applicable late charges, the reasonable cost to Landlord of its audit, including legal, accounting, and consulting fees unless the underpayment shall have been the result of a bona fide mistake or miscalculation.

5. <u>Condition of Premises; Improvements to Premises.</u>

a. "As is." Tenant has had the full opportunity to inspect the Premises prior to execution of this Lease and takes all such space, specifically including the Ramp, "as is," except as specifically provided herein. Should Tenant's Vessel require modifications to, improvements or replacement of the Ramp, such modifications or replacement shall be solely at Tenant's cost and expense, and subject to all required reviews and permits for such structure, including but not limited to approval of the Director which shall not be unreasonably withheld. Should Tenant require modification or improvements to the Queuing Areas, such modifications or improvements shall be solely at Tenant's cost and expense, and subject to all required reviews and permits for such improvements or modifications, including but not limited to approval of the Director, which shall not be unreasonably withheld.

b. In the event Tenant wishes to make any improvements to any portion of the Premises, it shall obtain the written approval of Landlord prior to undertaking any such improvements, which approval shall not be unreasonably withheld. All such improvements shall be at Tenant's sole cost and expense, provided, however, that upon submission by Tenant and approval by Landlord of documented expenses for improvements to the Departure Building, Tenant shall be entitled to a credit against rent in the amount of twenty-four thousand dollars ($25,000.00) for improvements to the Departure Building**.** Such credit shall be provided in two $12,500.00 increments against rent due in June and July 2016.

c. Notwithstanding the foregoing, Landlord agrees that Tenant may install, at Tenant’s expense, only at particular locations approved in advance by the Director, its security camera system in order to monitor the docking basin, vehicle inspection or processing booth and waiting areas for security and operational issues; subject to the condition, however, that Tenant will share access with the Landlord to the ‘live feed' from such cameras, as well as any recordings from such cameras if and when requested.

6. <u>Obligations of Landlord; Maintenance, Utilities.</u>

Except as otherwise provided herein, the Landlord shall provide for the ‘landside' facilities only, at its expense, the following:

a. Except as otherwise provided in this Lease, Tenant acknowledges and agrees that this Lease is a 'net lease', for the Landlord, and that the Landlord shall not be responsible for any costs, charges, expenses or the like whatsoever arising from or related to the leased Premises or rights, or the business carried on or related to said Premises or rights, and Tenant shall pay all costs, charges, expenses or the like of every nature and kind whatsoever relating to the leased premises or rights, including any passenger or vehicle ramps, unless specifically agreed to in advance in writing by Landlord.

b. Landlord will provide heat and sewer services to the Departure Building. In addition, Landlord will provide water (including potable water) to the Vessel, at the Rates in Exhibit B.

c. Landlord shall ensure that the roof, exterior walls, and structure of the Departure Building are secure, water-tight, and allow the Departure Building to be occupied as offices and a public sales facility. Landlord shall also maintain and repair the marine infrastructure (i.e., the passenger bridge, security fencing, and fendering, in the same condition as they are in at the commencement of the term of this Lease or as they may be put in during the term of this Agreement, reasonable wear and tear, damage by fire and other casualty only excepted, unless such maintenance or repair is made necessary by fault or neglect of Tenant or the employees, contractors, agents or invitees of Tenant, in which case such maintenance or repair shall be at the expense of the Tenant and Tenant shall pay all costs therefor.

d. Maintenance and reasonable cleaning of the Exterior Common Areas, Queuing Area, and Parking Areas available for use by Tenant, its employees and invitees, including snow and ice removal.

e. After Tenant reconfigures and repaints the travel lanes in the Queuing Areas as set forth below, Landlord may, in its discretion, repaint the lines for the travel lanes, but it has no obligation to do so.

f. Access to washroom facilities in the Ocean Gateway on an escorted basis (if permitted by CBP) for outbound customers waiting in the Outbound Queuing Areas.

7. <u>Obligations of Tenant.</u>

Tenant covenants that it shall, at its expense:

a. Provide four (4) to seven (7) days of service per week during the Operating Season in accordance with the schedule set forth in <u>Exhibit D</u>, subject to normal exigencies of the ferry business, including weather and mechanical breakdown, lack of consumer demand, and other events beyond Tenant's control. Any suspension of operation of the vessel in excess of ten (10) consecutive days during the Operating Season, for reasons other than major mechanical failure of the Vessel, shall, at Landlord's option, be deemed to be a default and termination of this Lease. During any period of suspension, Tenant shall continue to be liable for any rent or utility payments.

b. Keep Landlord informed of any unavoidable changes to sailing times sufficiently in advance so that Landlord can accommodate its berthing needs, if possible; however, Landlord does not guarantee that any revised sailing times can be accommodated. But for such notice, Landlord may presume the Vessel will arrive at approximately 1:30 P.M, and depart between 2:30 P.M. and 3:00 P.M. on the Service Dates during the Operating Season;

c. Pay when due, all Rent, Fees and other charges or assessments hereunder;

d. Pay all costs associated with the ferry operation (except as otherwise stipulated herein), including but not limited to, office and ticketing staff, provision of all office and ticketing equipment, and direct Vessel costs including but not limited to fuel, water, electricity, stevedoring, screening and security staff, staff to direct and supervise vehicle traffic and queuing, trash removal and pilotage. Tenant shall be responsible for the repair, maintenance and cost of its own Vessel and fueling system subject to all applicable federal, state and local regulations.

e. Be directly and solely responsible for all expenses for electricity, water, sewer, natural gas, heating oil, HVAC, telephone, internet and any other utility or communications services. The rent does not include any utility expenses. Landlord shall install a submeter as needed for electrical service, for which Tenant shall pay Landlord monthly.

f. Utilize full service stevedores licensed by the City for line handling, loading and unloading luggage and baggage;

g. Pay all expenses for all installation and periodic charges associated with communications systems, including but not limited to phone systems and services, computer systems and communication services, television and cable access, satellite services, and security and video equipment and services within the exclusive use areas and used, except as provided herein, solely by the Tenant;

h. Maintain the Premises in such repair as on the commencement of this Agreement, except only for reasonable wear and tear and damage caused by fire or other unavoidable casualty not the fault of Tenant, its employees, contractors, agents or invitees. Tenant shall not injure or deface the Premises or any other property nor permit anyone else to do so. Tenant agrees to report to Landlord promptly, but in any case within 24 hours of when it knew or reasonably should have known of any substantial damage to the Premises or the Ocean Gateway facilities that poses any potential health or safety issue, including but not limited to any water damage or intrusion;

i. Be solely responsible for all repairs, maintenance, modifications, and replacement of the Ramp, which shall only be undertaken pursuant to a stamped drawing by an appropriately qualified professional engineer. In no event is Tenant responsible for damage of any kind attributable to the non-exclusive use of premises by others in privity with Landlord;

j. Properly contain and dispose of all trash and garbage from its operations, including but not limited to all vessel trash and garbage, in containers suitable for pickup by Tenant or Tenant's contractor. Landlord shall provide regular trash pickup for the Exterior Common Areas only;

k. Maintain in full force and effect the insurance coverage required below, and such fire and extended coverage or business interruption insurance for its own property or benefit as it may deem to be appropriate. Tenant shall hold its property, including fixtures, furniture, equipment and the like, or that of any other owner, on the Premises at Tenant's own risk;

l. Notify the Landlord in advance of any proposed alterations to the Premises, including but not limited to posting of signage by Tenant. All such alterations are subject to the prior written approval of the Director, which approval shall not be unreasonably withheld;

m. Pay and discharge punctually all generally applicable taxes and governmental assessments on any of Tenant's activities or property. The parties understand and agree that there are no real estate property taxes to be assessed against the Premises leased hereunder and chargeable to Tenant, but Tenant shall be responsible for payment of any personal property taxes which may be assessed. Tenant reserves the right to contest the imposition or amount of any such taxes or assessments by any means provided by law;

n. Permit Landlord at reasonable times to inspect the Premises and to permit Landlord to make, at its own expense, repairs, alterations, additions and improvements, structural or otherwise, in or to said Premises or any part thereof, and during such operations to take into and through said Premises or any part of the Premises all materials required, Landlord agreeing, however, that it will carry out such work in a manner which will cause Tenant minimum inconvenience;

o. Not permit any employee, agent, contractor or invitee of Tenant to violate any covenant or obligation of Tenant hereunder nor create a nuisance at the Premises or any City owned property;

p. Keep the Premises equipped with all safety appliances required by law or any public authority to the extent such results from the exclusive use made by the Tenant of the Premises;

q. Provide all security personnel, and any CPB facilities, utility connections and utilities services for the same, together with any required traffic control, at Tenant's cost and expense, as may be required by, or for compliance with, CPB or the United States Coast Guard operations, and such additional security personnel as may be deemed reasonably necessary by Tenant. It is the mutual intent of the parties that all such requirements be identified prior to the entry into this Lease. All such required facilities and improvements shall be property of Landlord at the end of the lease term;

r. Should any maintenance or repair of the Premises, the Ocean Gateway terminal building and pier, or the systems serving those facilities require repair or replacement as a result of the negligence or willful act of the Tenant or the Tenant's invitees, agents or contractors, Tenant shall be responsible for the timely repair or replacement of same. Any damage caused to such facilities including but not limited to waiting areas, hallways, stairwells, and restrooms, caused by any of Tenant's employees, contractors, agents or invitees, may be repaired by Landlord, in its sole discretion, and the cost of such repair shall be billed to Tenant at Landlord's cost, and shall be paid by Tenant as additional rent with the next due Rent payment; or, alternatively, taken from any security deposit being held by the Landlord, in which case the Tenant shall replenish that security deposit within ten (10) days of being informed in writing that this is necessary.

s. After reconfiguring the travel lanes in the Queuing Areas, Tenant shall, at its expense, paint or repaint the lines for the travel lanes to accommodate the Ferry Service.

8. <u>Certain Rights Reserved to the Landlord.</u>

The Landlord reserves the following rights:

a. To retain and use in appropriate instances keys to all doors within and into the Premises and to change the locks to the Premises if Landlord deems it advisable. No lock shall be changed by Tenant without the prior written consent of Landlord. Landlord shall have the right to access the utility rooms through Tenant's exclusive use space as reasonably necessary;

b. On reasonable prior notice to Tenant, to exhibit the Premises to prospective Tenants or users of the Ocean Gateway facilities and to others having a legitimate interest at any time during the term;

c. To adopt reasonable rules and regulations relating to the Premises and the Ocean Gateway facilities from time to time during the Term; provided, however, such rules and regulations shall not materially interfere with Tenant's permitted use of the Premises. Tenant agrees to comply with reasonable rules and regulations from and after the fifteenth (15th) day after Tenant's receipt thereof, unless earlier required by law;

d. To remove from the Premises, at Tenant's expense, any improvements, alterations, additions, signs, awnings, or the like, not consented to in writing by the Director; and

e. Landlord reserves the right, in its sole discretion, to berth vessels of any type at and otherwise make use of and allow events at the Ocean Gateway facilities, subject to Tenant's rights under this Lease.

9. <u>Signage.</u>

Tenant shall have the right to have signage on the Premises, including but not limited to outdoor signage, which signage shall be approved by the Director and shall be at Tenant's sole cost. It is the intent of the parties to prominently promote Tenant's Ferry Service. Tenant may also display flags referencing, as applicable, Tenant, the Vessel, the Tenant's Ferry Service, and the Province of Nova Scotia. Installation of such signage and flags may be done by the Landlord, or by the Tenant by a contractor acceptable to the Landlord, at Tenant's expense. All signage and flags shall be installed and maintained in accordance with all applicable local and state governmental codes. Subject to Landlord's approval which shall not be unreasonably withheld, Tenant may, at its expense, place murals and/or photographs and/or graphics on interior and exterior walls of the Departure Building for promotion of the Ferry Service.

Subject to applicable local and state governmental laws and codes, Landlord and Tenant shall cooperate to ensure prominent directional signage within the City of Portland to direct customers to the Ferry Service and to request the State of Maine to provide appropriate signage on its interstate highway system. Tenant acknowledges and agrees that the City of Portland is acting as landlord, and not in its regulatory capacity, in connection with this Lease.

10. Compliance with Laws.

Tenant agrees to comply with all present and future laws, ordinances, orders, rules, regulations and requirements of the federal, state and local governments or any of their departments, bureaus, boards, commissions and officials thereof (collectively, the "Laws") with respect to Tenant's use or occupancy of the Premises, including without limitation, all Laws relating to (i) air emissions, (ii) water discharges, (iii) noise emissions, (iv) air, water or ground pollution, or (v) any other environmental and health matter during the Term in connection with its use and occupancy of the Premises. Tenant shall not be responsible for any compliance attributable to the obligations of Landlord hereunder nor to any event, condition, act, or omission which occurred prior to the execution date or after the expiration date of this Lease Agreement, unless caused by the error or omission of Tenant, its officers, agents, employees, contractors or invitees.

11. Security Rules.

a. Tenant shall comply with all safety and security requirements in its operations hereunder. Tenant further agrees that its officers, employees and agents shall abide by the provisions of the Water Access Security/Safety Restrictions attached hereto as Exhibit C and incorporated herein, and with any other security directives or policies that may be promulgated from time to time by the Landlord, the State of Maine or by agencies of the Federal Government during the term of this Agreement. The Landlord agrees to provide Tenant with copies of the relevant portions of Landlord's Plan to permit Tenant to comply with its terms.

b. Tenant shall comply with the lawful directions of the City's Facility Security Officer's directions and commands, with respect to its operations at the OG

Terminal and berthing area. Tenant shall designate a particular person, who must be readily available, as its Security Contact Person, for the purposes of emergency and other communications to, from and with the City's Facility Security Officer.

c. Tenant shall, to the extent required by law or any agency with jurisdiction, prepare and file its own Facility Security Plan, which shall then become an amendment to Landlord's Facility Security Plan, for Tenant's operations and its use of Landlord's Facilities, and provide a copy of such Plan and amendment to the Landlord.

d. Transportation Workers Identification Credential Requirement: All persons requiring unescorted access to the secure areas of vessels, facilities, and OCS facilities regulated by parts 104, 105, and 106 of 33 CFR (Code of Federal Regulations) must, to the extent required by law and applicable authorities, possess a TWIC (Transportation Workers Identification Credential) before such access will be granted. A TWIC must be obtained via the procedures established by TSA (Transportation Security Administration) in 49 CFR part 1572.

e. In addition, Tenant employees working at the OG Facilities shall have Landlord- approved identification badges, including BIW identity badges, displayed at all times when at the OG Facilities, whether within the Premises or the common use space.

f. In the event that Tenant fails to provide adequate security, Tenant shall pay all reasonable costs and expenses for additional security, associated with the Tenant's use of the facilities, in accordance with the rates set forth in Article 4 Rent and Fees.

g. In addition, Tenant shall pay all reasonable security costs, expenses, liabilities, losses, damages, fines, penalties, claims, and demands, including reasonable counsel fees, which may arise directly out of Tenant's failure to comply with the covenants of this paragraph, and such failure shall be deemed a default under this Agreement. Tenant shall be responsible for obtaining all necessary permits and licenses required for its use and occupancy of the OG Facilities at its own cost and expense.

12. <u>Indemnification.</u>

a. **<u>General</u>**. To the fullest extent permitted by law, Tenant shall at its own expense defend, indemnify, and hold harmless the Landlord, its officers, agents, and employees, from and against any and all liability, claims, damages, penalties, losses, expenses, including costs of investigation and attorneys' fees, or judgments, just or unjust, arising from injury or death to any person, or damage to, or loss of use of, property sustained by anyone (including but not limited to Landlord's employees or property) and arising, in whole or in part, out of Tenant's use, activities at or on, or occupancy of the OG Facilities, except that such obligation of indemnification shall not include indemnification for claims to the extent such claim is caused by (i) the acts or omissions of Landlord, its officers, agents, employees or contractors, (ii) the acts or omissions of third parties (including but not limited to other users of the Premises), or (iii) a breach by Landlord of its obligations under this Lease. Tenant shall include Tenant, its officers, agents, employees, contractors, subcontractors and/or invitees.

Tenant shall, at its own cost and expense, defend any and all suits or actions, just or unjust, which may be brought against Landlord or in which Landlord may be impleaded with others upon any such above-mentioned matter, claim or claims, including claims of contractors, employees, laborers, materialmen, and suppliers. In cases in which Landlord is a party, Landlord shall have the right to participate at its own discretion and expense and no such suit or action shall be settled without prior written consent of Landlord. Such obligation of indemnity and defense shall not be construed to negate nor abridge any other right of indemnification or contribution running to Landlord which would otherwise exist.

b. **Covenant against Liens:** Tenant shall not cause nor permit any lien against the Landlord's property or any improvements thereto to arise out of or accrue from any action or use thereof by Tenant and shall hold the Landlord harmless therefrom; provided, however, that Tenant may in good faith contest the validity of any alleged lien. Upon request of the Landlord, Tenant shall post a bond warranting payment of any such lien, or provide other security acceptable to Landlord, in the event Tenant contests such lien.

c. As used in this Lease, "Environmental Condition" shall mean any material adverse condition relating to surface water, ground water, drinking water supply, land, surface or subsurface strata or the ambient air, and includes, without limitation, air, land and water pollutants, noise, vibration, light and odors, which may result in a claim of liability under the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), or the Resource Conservation and Recovery Act ("RCRA"), or any claim of violation of the Clean Air Act, the Clean Water Act, the Toxic Substance Control Act ("TSCA"), or any claim of liability or of violation under any federal statute hereafter enacted dealing with the protection of the environment or with the health and safety of employees or members of the general public, or under any rule, regulation, permit or plan under any of the foregoing, or under any law, rule or regulation now or hereafter promulgated by the state in which the Premises are located, or any political subdivision thereof, relating to such matters (collectively, "Environmental Laws"). "Hazardous Materials" shall include, but shall not be limited to, substances requiring investigation, removal or remediation under any federal, state or local statute, regulation, ordinance or policy including substances defined as "hazardous substances" in CERCLA; "toxic substances" TSCA; "hazardous wastes" in RCRA; or radon, asbestos and petroleum products.

Tenant shall, at all times during the term, comply with all environmental laws applicable to the Premises and Tenant's use and occupancy thereof. Except to the extent caused by Landlord or any other tenant at the Premises or attributable in whole or in part to a preexisting environmental condition, Tenant will defend, indemnify and save harmless Landlord and its directors, officers, shareholders, employees and agents from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' and consultants' fees and expenses) of whatever kind or nature, contingent or otherwise, known or unknown, incurred or imposed, based upon any Environmental Laws or resulting from any Environmental Condition on or about the Premises which is caused by Tenant during the Term of this Lease, which indemnity, in the case of an Environmental Condition caused by Tenant shall include costs incurred by Landlord to remediate such Environmental Condition to clean-up or remediation standards consistent with Tenant’s use of the Premises specified in this Lease. In case any action, suit or proceeding is brought against any of the parties indemnified herein by reason of any occurrence described in this section Tenant will, at Tenant’s expense, by counsel reasonably approved by Landlord, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended.

d. **Survival.** The Terms of this section shall expressly survive the expiration or termination of this Lease.

13. Insurance.

a. Amounts. Without expense to the Landlord, and with no lapse in coverage, Tenant shall procure and maintain, at its own cost, and show evidence to the Landlord of the following insurance to protect the Landlord from claims and damages which may arise from Tenant's operations under this Agreement, whether such operations shall be performed by the Tenant or by anyone directly or indirectly employed by it in the types and minimum amounts set forth below:

Description	Coverage	Each Occurrence
(i) Commercial General Liability, including Broad Form Property Damage	B.I./P.D./ Death	$5,000,000
(ii) Vehicle Liability, including owned, hired, or non-owned	B.I./P.D./ Death	$2,000,000
(iii) Workers' Compensation, Including U.S. Longshoremen and Harbor Workers' Coverage, as Applicable	B.I./Death	Statutory
(iv) Protection & Indemnity Insurance Including Federal Maritime and Jones Act Coverage		$5,000,000
(v) Pollution coverage/Sea to Sea/ Land to Sea/Land to Land		$5,000,000
(vi) Employers Liability B.I./P.D. including Us. Longshoremen & Harbor Workers, as applicable		$1,000,000

b. **Landlord protected.** The Landlord shall be named as an additional insured under items (i) and (ii) above. Item (iii) shall include a waiver of subrogation against Landlord. To the extent that Tenant has any employees who are not covered by the Longshoremen & Harbor Workers, Federal Maritime and Jones Act coverages, Tenant shall provide evidence of Workers Compensation coverage in the statutory amounts, including a waiver of subrogation against Landlord.

c. Notice to Landlord. All policies of insurance required herein shall be in a form and issued by a company or companies approved to do insurance business in the State of Maine. Each such policy shall provide that such policy may not be changed, altered or canceled by the insurer during its term without first giving thirty (30) days' notice in writing to the Landlord. Each liability policy required to be obtained hereunder shall be on an occurrence basis. In the event that policies are not available on an occurrence basis, Tenant shall purchase a "tail" which provides coverage hereunder for a minimum of six (6) years after termination of this Agreement.

All policies required hereunder shall be primary to any insurance or self-insurance which Landlord may maintain for its own benefit. Liability insurance coverage shall also extend to damage, destruction, and injury to Landlord-owned or Landlord-leased property and Landlord personnel, to the extent caused by, or resulting from negligent acts, operations, or omissions of Tenant, its officers, agents, employees, invitees, and/or contractors.

d. **Certificates.** Certificates or other evidence of insurance coverages required of Tenant in this Section, in amounts no less than those stipulated herein or as may be in effect from time-to-time, shall be delivered to the Landlord prior to use of the Premises. Such certificate or certificates shall at all times while this Lease Agreement is in effect provide Landlord with at least thirty (30) days prior written notice of any change or modification in insurance coverage or insurance carrier.

e. **Tenant Property Insurance.** Tenant shall procure and maintain, at its option and election, such all risks fire and casualty insurance covering its property on the Premises as it deems necessary.

f. Landlord reserves the right to require a commercially reasonable increase in the minimum insurance limits hereunder at the commencement of any Renewal Term of this Lease.

14. Assignment/Subletting.

a. **By Tenant.** Tenant shall not sublease, transfer or assign this Agreement or the rights granted hereunder at any time during the Term of this Agreement without the prior written approval of Landlord, which may be granted or withheld in Landlord's discretion; except, however, Tenant may, if required by written agreement written agreement between Tenant and the Province of Nova Scotia, assign this Agreement and the rights granted hereunder to the Province of Nova Scotia in the event the Tenant is itself unable to continue operating the Service, in which case the Province of Nova Scotia will assume all of the obligations of Tenants herein, as well as the rights of Tenant herein. No such assignment or subletting shall relieve Tenant of any obligations hereunder and any person accepting such assignment shall take the Agreement subject to all prior breaches and shall be liable therefor in the same manner as Tenant.

b. **By Landlord**. Landlord reserves the right to assign this Lease to a quasi-municipal or State entity, provided, however, that in such event such entity shall agree to assume all of the terms and obligations of the Landlord under this Lease. Landlord shall not assign this Lease to a private party without the prior written approval of Tenant, which may be granted or withheld in Tenant's discretion.

15. Casualty Damage.

a. If the Premises or any part thereof shall be destroyed or damaged by fire or other unavoidable casualty, so that the same shall be thereby rendered unfit for use, then, and in such case, the Rent hereinabove stated or a just and proportional part thereof, according to the nature and extent of injuries sustained, shall be suspended or abated, until the Premises shall have been put in proper condition for use by Tenant; provided, however, in the event of such destruction or damage, either Landlord or Tenant shall have the right to terminate this Lease by giving the other party written notice of such termination within thirty (30) days after such damage or destruction, and upon the giving of such notice, the term of this Agreement shall cease and come to an end as of the date of such damage or destruction and any unearned rent shall be returned to Tenant.

b. Landlord and Tenant each hereby waive any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Premises or to the property of either party, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the parties, or either of them. Landlord and Tenant shall each be responsible for maintaining such casualty insurance on its property as it deems necessary and such policies shall waive any right of subrogation thereunder against the other party.

16. <u>Default.</u>

a. Tenant shall be determined to be in default hereunder if it shall fail to perform any obligations or comply with any terms or conditions stated herein within fifteen (15) days after receipt of notice of such failure from the other party or (if the default is of such nature that it cannot be cured within such period) if it shall fail to commence to cure the default within such period and thereafter diligently prosecute the cure to completion within a reasonable time. Upon such default and failure to cure, Landlord shall have the right, at its option, and in addition to any other remedies, to terminate this Lease by giving the party in default written notice thereof and upon the giving of such notice, this Lease and the term hereof shall cease. Upon any termination of this Lease, Tenant shall quit and surrender to Landlord the Demised Premises in accordance with the provisions of this Lease. Further, upon any termination of this Lease, Tenant shall remain liable to Landlord for all rent and fees accrued and unpaid up to the date of such termination. Tenant shall pay all reasonable costs, expenses, liabilities, losses, damages, fines, penalties, claims, and demands, including reasonable counsel and consultant fees, incurred by Landlord on account of Tenant’s failure to comply with any of the terms of this lease, holding-over, and/or as a result of Tenant's default under this Lease.

b. In no event shall either party be liable to the other for incidental, special, or consequential damages of any nature claimed as a result of the breach of any term of the termination of this Lease.

17. <u>Return of Premises; Holding Over.</u>

a. At the expiration or earlier termination of this Lease, Tenant shall promptly ensure that all vessels with which it is in any way affiliated are removed from the Premises and all of Landlord's berthing areas, and will also promptly quit and surrender the Premises to Landlord broom clean and in good order and condition, ordinary wear excepted, and free from debris, trash and waste, and shall cease its operations from the Premises. Tenant shall, if, and only if, so requested by Landlord, remove all trade fixtures, equipment and other personal property installed or placed by it at its expense in, on or about the Premises; provided, however, all damage caused by or as a result of such removal shall be repaired by Tenant at its sole expense. All trade fixtures, equipment, furniture, furnishings and personal effects not removed by Tenant within thirty (30) days after expiration or termination of this Lease shall, at Landlord's option, be deemed to have been conveyed to Landlord in fee title, and may be appropriated, sold, stored, destroyed or otherwise disposed of by Landlord without obligation to account therefor, or, at Landlord's option, Landlord can have such trade fixtures and items removed and the cost of any such removal and the expense of any repair necessitated by such removal shall be borne by Tenant.

b. If Tenant or any party claiming through or under Tenant shall remain or continue to be in possession of the Premises or any part thereof after the termination of the Lease or any renewal thereof, without Landlord's consent, then, at Landlord's option, Tenant or such party or both shall be deemed to be illegally retaining possession or, at Landlord's option, shall be deemed to be a month-to-month Tenant of the Premises and subject to all the terms and conditions of this Lease except that the monthly rent hereunder shall be One Hundred and Fifty Percent (150%) of the rent payable during the month prior to such termination. This section shall not be construed as giving Tenant any right to hold over after the expiration of the Term or to limit Landlord's rights to obtain possession of the Premises upon termination by any lawful means available to Landlord if Landlord does not elect to treat the continued possession by Tenant or any party claiming through or under Tenant as a month-to-month tenancy.

c. Landlord lawfully may upon termination of this Lease Agreement, enter into and upon the said Premises or any part thereof in the name of the whole, and repossess the same as of its former estate, and expel Tenant, and those claiming through or under Tenant, by any lawful means, and remove its or their effects without being deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant.

18. Quiet Enjoyment.

So long as Tenant shall observe and perform the covenants and agreements binding on it hereunder, Tenant shall at all times during the term herein granted peacefully and quietly have and enjoy possession of the Premises without any encumbrance or hindrance by, from or through the Landlord.

19. Notices.

Any notice required to be given under this Lease shall be in writing and shall be hand-delivered or sent by U.S. certified mail, return receipt requested, postage prepaid, addressed to the parties as stated below or such other address as either party may designate in writing to which its future notices shall be sent:

To Tenant: Mark MacDonald
Bay Ferries Limited
Suite A201
5855 Spring Garden Road
Halifax, Nova Scotia
Canada B3H 4S2

With a copy to: Danny Bartlett
Bay Ferries Limited
94 Water Street
PO Box 634
Charlottetown, Prince Edward Island
Canada C1A 7L3

To Landlord: Jon P. Jennings, City Manager
City of Portland
389 Congress Street
Portland, Maine 04101

With a copy to: Corporation Counsel
City of Portland
389 Congress Street
Portland, ME 04101

20. <u>Amendment; Authority.</u>

Both parties hereto acknowledge and agree that they have not relied upon any statements, representations, agreements or warrantees except such as are expressed herein. The terms of this Lease may be modified or amended by the mutual assent of the parties hereto; provided, however, that no such modification or amendment to this Lease shall be binding until in writing and signed by both parties.

Each party warrants that this Lease Agreement has been signed by a representative duly authorized to bind that party to this Lease Agreement.

21. <u>Governing Law.</u>

This Agreement shall be governed by and construed in accordance with the laws of the State of Maine. Tenant warrants to Landlord that it is licensed to do business in the State of Maine and has an agent authorized to accept service of process in said State. Tenant shall provide such information upon request to Landlord.

22. <u>Force Majeure.</u>

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

23. Non-Waiver.

No waiver of any breach of any one or more of the conditions of this Lease by the Landlord or Tenant shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

24. Maritime Rights Preserved

Nothing in this Lease is intended by Landlord to waive any rights or claims it may have against *The Cat*, or any other vessel utilized by Tenant in performing the Ferry Service, either in rem or in personam, arising under the maritime law of the United States, including, without limitation, rights under The Maritime Lien Act, 46 USC 31341 *et. seq*., The Suits in Admiralty Act, 46 USC 30901 and 30903 *et seq.,* and/or The Public Vessels Act, 46 USC 781 *et. seq*.

25. Brokers.

Landlord and **Tenant** each represent and warrant to the other that it has not dealt with any agents, brokers or finders in connection with this Agreement. Each party agrees to hold and indemnify the other harmless from and against any losses, damages, costs or expenses (including attorneys' fees) that either party may suffer as a result of claims made or suits brought by any broker in connection with this transaction, the obligated party hereunder to be the party whose conduct gives rise to such claim.

26. Special Right of Termination

In the event of termination or discontinuance of the Ferry Service, or any other material adverse event impacting the Ferry Service, Tenant shall have the right to terminate this Lease without penalty upon providing six (6) months' notice in writing to Landlord. Tenant's obligations applicable to termination of the Lease as set forth herein shall continue to apply.

27. Transition Provision.

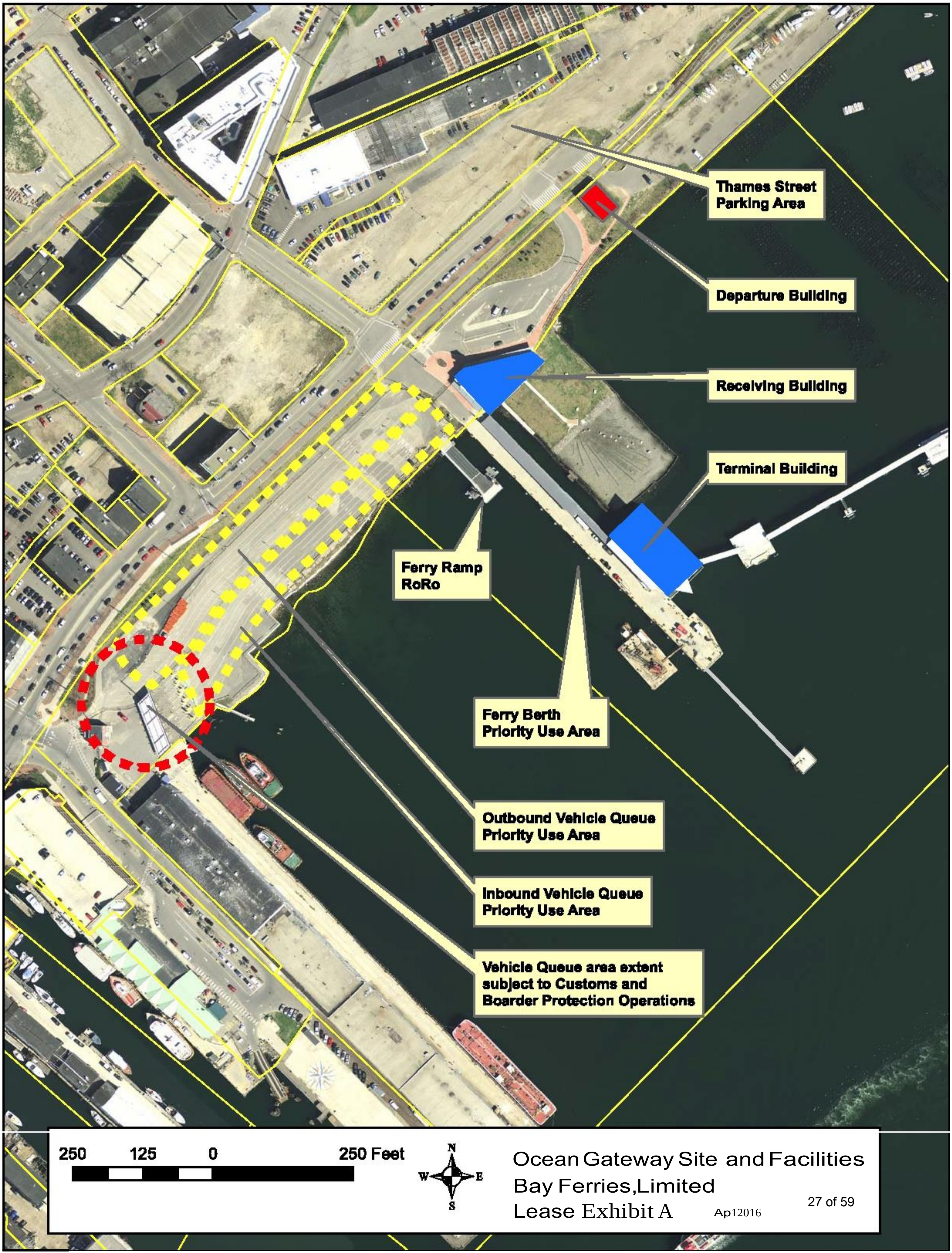
Prior to the Effective Date, the rights and obligations of Landlord and Tenant are those described in the Original Lease. On the Effective Date, the Existing Lease shall be deemed amended and restated so as to contain all of the terms of this Lease, and this Lease as amended and restated shall govern all future rights, obligations, duties and liabilities of the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed as of the day and year first above written.

WITNESS:	**BAY FERRIES LIMITED**
______________________________	By:____________________________
	Mark MacDonald Its Chairman and CEO
	CITY OF PORTLAND
______________________________	By:__________________________
	Jon P. Jennings Its City Manager

EXHIBIT A

DIAGRAM OF PREMISES



Ocean Gateway Site and Facilities
Bay Ferries,Limited
Lease Exhibit A Ap12016

Exhibit B Schedule
of Rent and Fees

<u>Monthly Rent</u>

May 31, 2017 – September 30, 2017

- Tenant shall make monthly rental payments for the Premises in advance on the 1st day of each month for the period from May 31, 2017 – September 30, 2017 in the amount of **$16,629.60**; October 1, 2017 – October 15, 2017 monthly rent will be at **$8,314.80.**

October 1, 2016 – May 30, 2017 and October 16, 2017 – May 30, 2018 (if renewed)

- Tenant shall make monthly rental payments for the Departure Building in advance on the 1st day of each month for the period from October 1, 2016 – May 30, 2017, and October 16, 2017 –May 30, 2018 (if renewed) in the amount of **$4,000.00.**
- If Tenant requires parking or berthing during this period, it shall be provided, if available, at the rates set forth below.

<u>Passenger and Vehicle Fees</u>

On or before the fifteenth (15th) day of each month, Tenant shall pay to Landlord the following per-passenger and per-vehicle fees that were incurred in the previous month. Such payment shall be made without the need for an invoice from Landlord and shall be accompanied by Tenant's statement as provided below.

• Passenger (the first 60,000 per Operating Season)	$ 2.00
• Passenger (over 60,000)	$ 3.50
• Bicycle	$ 0.50
• Motorcycle	$ 1.00
• Passenger Vehicle (the first 60,000 per Operating Season)	$ 3.00
• Passenger Vehicle (over 60,000)	$ 5.00
• Passenger Vehicle with Camper/Utility Trailer	$ 5.00
• Recreational Vehicles/Motor Homes	$ 5.00
▪ Straight Trucks	$10.00
• Tour Busses/Motor Coaches	$20.00

<u>Other Fees</u>

• Fuel License, per season	$100.00
• Daily Parking per space, per month	$75.00
• Fresh Water, per metric ton	$ 4.00
• Security Badges, each	$ 2.50
• Security Badges, replacement, each	$25.00
• Berthing (other than the exclusive use of the Berthing Area as allowed in section 1(a)(ii)	$1.00/ft/day

▪ Electrical Service – sub-meter monthly actual usage charges apply.

Exhibit C

Waterfront Access Security/Safety Restrictions

All visitors must check in with the Facility Security Officer ("FSO") or designee upon arrival. All visitors must provide photo identification or a Transportation Workers Identification Credential ("TWIC") card prior to accessing the facility. Vessel must provide an expected visitor list to on site security. All those not on the list will be denied access or Non TWIC'd personal must be escorted by a TWIC'd person. A single TWIC'd person can provide access for up to 5 Non TWIC'd personal, or otherwise directed by the FSO.

Crew must check in with on site security and provide photo identification.

Vessel must provide a crew and/or passenger manifest to the FSO or on site security.

A form of communication between vessel and on site security must be determined upon arrival.

A declaration of security must be signed upon arrival if deemed necessary by the FSO.

All deliveries, packages, crates, etc., must be accompanied by a manifest per US Federal Standards. All items including personal vehicles are subject to random search. All delivery drivers must provide photo identification upon arrival. A list of vendors will need to be provided prior to accepting deliveries.

All passenger buses are subject to a search prior to entering the facility.

No explosive devices, weapons, or open fires will be allowed within the facility at any time.

All fuel transfers must be done in accordance within DEP,EPA, OSHA, Coast Guard regulations. This applies to any quantity of gasoline, diesel, oil etc.

All employees working in or around the facility must meet all OSHA regulations.

"Hot Work" permits are required for work on the pier or vessel. These permits are issued through the Port Director or FSO. Permit costs apply. ($125.00 each)

At no time will vehicles be left overnight within the facility without prior authorization from the Port Director or FSO.

Emergency vehicles must have a clear pathway at all times to service the entire pier. No objects or vehicles are to be left unattended at any time. Objects and vehicles must be able to be removed immediately upon notice of emergency personnel needing access to the pier.

Vessels must use "Bits and Bollards" only for vessel tie up. No lines are to be laid around steel piles.
No work is to be performed on the vessel's hull without prior authorization by the Port Director or FSO.

No dumping of gray water while alongside of the berth.

All small vessels performing maintenance, security, etc. for a berthed vessel must have prior authorization to do so from the Port Director or FSO.

All gates are to remain locked or staffed by facility trained security personal.

EXHIBIT D

2017 The CAT Schedule

Departing from Yarmouth, Nova Scotia to Portland, Maine

2017 SERVICE DATES	DAYS	TIMES (Atlantic Time Zone)
MAY 31 - JUNE 28	MON, WED, FRI, SAT, SUN	8:30
JUNE 29 - JULY 27	MON, TUE, THU, FRI, SAT, SUN	8:30
JULY 28 - SEPT 2	MON, TUE, WED, THU, FRI, SAT, SUN	8:30
SEPT 3 - OCT 2	MON, WED, THU, FRI, SAT	8:30
OCT 3 - OCT 15	MON, FRI, SAT, SUN	8:30

Departing from Portland, Maine to Yarmouth, Nova Scotia

2017 SERVICE DATES	DAYS	TIMES (Eastern Time Zone)
MAY 31 - JUNE 28	MON, WED, FRI, SAT, SUN	14:30
JUNE 29 - JULY 27	MON, TUE, THU, FRI, SAT, SUN	14:30
JULY 28 - SEPT 2	MON, TUE, WED, THU, FRI, SAT, SUN	14:30
SEPT 3 - OCT 2	MON, WED, THU, FRI, SAT	14:30
OCT 3 - OCT 15	MON, FRI, SAT, SUN	14:30

AMENDED AND RESTATED LEASE AGREEMENT BETWEEN CITY OF PORTLAND AND BAY FERRIES LIMITED RE: OCEAN GATEWAY

THIS AMENDED AND RESTATED LEASE AGREEMENT dated this 26th~~—~~___day of May~~May~~, 201~~6~~7 is by and between the City of Portland, Maine, Maine municipal corporation with a principal office at 389 Congress Street, Portland, Maine 04101 (the "Landlord"), and Bay Ferries Limited, a Canadian registered corporation with a principal office at 94 Water Street, Charlottetown, Prince Edward Island, Canada, C1A 7L3 (the "Tenant").

WHEREAS, Landlord and Tenant are parties to a Lease Agreement dated June 1, 2016 (the “Original Lease”) for certain space at the Landlord’s property known as Ocean Gateway where Tenant operates an international ferry service between Portland, Maine and Yarmouth, Nova Scotia (the "Ferry Service") on a ferry vessel known as "Alakai" (commercially branded as "The Cat"), 106.5 meters in length (the "Vessel); and

~~**WHEREAS,** Landlord is the owner of certain real property known as the Ocean Gateway, which includes, among other things, the Departure Building at 14 Ocean Gateway Pier, and related berthing, queuing and parking areas located in Portland, Maine; and~~

~~**WHEREAS**, Tenant intends to operate an international ferry service between Portland, Maine and Yarmouth, Nova Scotia (the "Ferry Service") on a ferry vessel known as "Alakai" (commercially branded as "The Cat"), 106.5 meters in length (the "Vessel); and~~

WHEREAS, Landlord and Tenant desire to make substantial amendments to the terms and conditions of the Original Lease and wish to enter into an amended and restated lease agreement to address those amendments~~for certain premises at the Ocean Gateway in order for Tenant to operate the Ferry Service, from the original Lease Agreement executed June 1, 2016~~; and

NOW THEREFORE, in consideration of the mutual covenants and considerations herein contained, the sufficiency of which is hereby acknowledged, Landlord and Tenant hereby mutually agree that the Original Lease be amended and restated as of the Effective Date (as defined in Section 2 below)~~follows:~~.

1. Premises; As-Is Condition; Permitted Uses.

Landlord does hereby lease, demise and let unto Tenant, to have and to hold on the terms herein, subject to the reservations and conditions below, the premises identified herein and shown on Exhibit A, attached hereto and incorporated herein. Tenant agrees to accept the premises in "as-is" condition without representation or warranty by

Landlord as to its condition or fitness for a particular purpose.

a. **Spaces for exclusive use at certain times**. The following spaces are available for the Exclusive use of Tenant for the hours stated during the Operating Season (as defined below):

i. **Queuing Areas**. The sole areas to be used for marshalling inbound and outbound vehicles and processing of passengers by U.S. Customs and Border Protection ("CBP") are the areas labeled "Outbound Queuing Area" and "Inbound Queuing Area" on Exhibit A (collectively the "Queuing Areas"), as may be modified to meet CBP requirements. The Outbound Queuing Area is to be used for vehicles and passengers preparing to depart from Portland. The Inbound Queuing Area is to be used for vehicles and passengers arriving in Portland. Said Queuing Areas are to be used by Tenant on a non-exclusive but priority basis during the Operating Season to accommodate its sailing schedule, as outlined below. During the Operating Season, the Inbound Queuing area will only be available to the Tenant for its exclusive use, between the hours of 1:15 P.M. and 3:15 P.M., ~~daily~~only on the Service Dates listed on Exhibit D attached hereto (the "Service Dates"), and the Outbound Queuing area will be available to the Tenant for its exclusive use between the hours of 12:00 P.M. (or earlier, if permitted by the City of Portland's Director of Facilities Management or his/her designee (the "Director") and 3:00 P.M. ~~daily~~only on the Service Dates. The Queuing Areas may be reduced temporarily by mutual agreement of the Director and the Tenant. Tenant may place in the Queuing area any trailers or other facilities or improvements required by CPB with the prior approval of the Landlord, which may not be unreasonably withheld, and subject to any applicable permits, licenses or approvals required federal, state, and municipal laws, rules, and regulations. No tractor trailer trucks, or other trucks or vehicles with trailers exceeding a total of fifty (50) feet in length, shall be allowed to transit on the Ferry Service or be present in the Queuing Areas.

ii. **Berthing Area**. During the Operating Season, the Berthing Area depicted on Exhibit A will be available to the Tenant for its exclusive use between the hours of 1:30 P.M. and 3:00 P.M., ~~daily~~only on the Service Dates. In the event Tenant desires unscheduled berthing, Tenant shall request such berthing with as much advance notice as possible. Landlord shall grant such requests if berthing is available. When off-schedule berthing is not available, the Landlord shall use reasonable efforts to assign a secondary berth to Tenant. Tenant shall be solely responsible for the cost of moving its vessel to off- schedule secondary berthing, including but not limited to any security costs, and Landlord shall have no responsibility for such moving, security or related costs. During the Operating Season, as that term is defined below, Tenant's use of the Berthing Area shall at all times include the exclusive use of the "roll-on, roll-off' ramp facilities at the OG Terminal (the "Ramp") (as depicted on Exhibit A) for vehicle and passenger loading and unloading. During the "Wind Up and Wind Down" Seasons, as those terms are defined below, if Tenant desires unscheduled use of the Ramp, Tenant shall request such use with as much advance notice as possible. It is understood that Tenant may require ~~substantial~~some, although not exclusive, daytime and nighttime use of the ramp in the Wind Up Season for training and preparation purposes and Landlord and Tenant agree to work cooperatively to schedule such usage, if available, and to also enable Landlord's continued generation of berthage revenue from other parties. Tenant's use of the Ramp is at Tenant's sole risk. Unless otherwise agreed to by Landlord, Tenant shall have no right to use the Berthing Area at any time during the Off Season, as that term is defined below. It is further understood between the parties as follows:

(a) On those days during the Operating Season when there is no cruise ship berthed at the Portland Ocean Terminal, and otherwise no operating restrictions within the Port, Tenant shall be free to berth earlier than 1:30~~15~~ P.M.; and

(b) On those days within the Operating Season when there is a cruise ship berthed at the Portland Ocean Terminal, the Vessel may be secured at the berthing area prior to 1:30 P.M. provided passengers and vehicles are not released prior to 1:30 P.M. and provided such does not otherwise impede port operations.

The parties intend there to be close collaboration and communication at all times so as to facilitate the most efficient operations for all parties.

iii. **Departure Building**. Tenant will have the exclusive use of the Departure Building (depicted on Exhibit A) for the term of this Lease for ticketing, processing of passengers, passenger waiting area, restrooms, and related uses.

iv. **Terminal Building:** The Tenant shall have the right to access the inbound Customs processing facility in the Terminal Building depicted on Exhibit A for processing inbound pedestrian passengers, who shall be moved by the Tenant from the Vessel to the Terminal Building ~~as depicted on Exhibit A~~ by means acceptable to CBP and the Landlord. Such processing shall be limited to the hours of 1:30 p.m. and 3:00 p.m. on the Service Dates.

b. **Exterior Common Areas**. The following spaces are available for the non-exclusive use of Tenant during the Operating, Wind Up, and Wind Down Seasons: The walkways, driveways and roadways at the Ocean Gateway may be used by **Tenant** on a non-exclusive basis, in common with others. However, during hours that another vessel (such as a cruise ship) or scheduled event is using the Ocean Gateway Terminal, the **Tenant** and its passengers will only use the area for dropping off of customers and passenger ticketing, and **Tenant** will co-operate with **Landlord** to adequately place personnel for incoming customers and passengers to be aware of this use restriction. No outboard queuing is allowed in the Receiving Building parking lot or any area other than the Outbound Queuing Area.

c. **Parking**. Landlord will assign a maximum of 10 parking spaces to Tenant for employee parking in the City-owned Thames Street parking lot as generally depicted on Exhibit A (the "Parking Area") during the Operating, Wind Up and Wind Down Seasons of each year of the term of this Lease or any renewal term. No overnight parking will be allowed. Landlord reserves the right at any time during the term of this Lease to assign different parking spaces to Tenant. Landlord will not provide any customer parking. Employee vehicles parked in the Receiving Building Lot (as depicted on Exhibit A) are subject to ticketing if parked beyond posted limits.

d. **Landlord's Right to Relocate Premises**. The Queuing Areas, Berthing Area, the Ramp, the Departure Building, the Parking Area, and the Exterior Common Areas may be collectively referred to herein as the "Premises". Except for the Departure Building, Landlord reserves the right to change particular locations of the Premises, subject to the condition that such re-location(s) will not unreasonably burden the operations of Tenant. The intent of this reserved right to re-locate is to allow Landlord to continue the ongoing development and enhanced utilization of its limited waterfront real estate in coordination with other parties using or desiring to use nearby locations.

e. **Use of Premises for Ferry Service**. During the term of this Lease, Tenant is permitted to use the Premises for the sole purpose of conducting an international Ferry Service between Portland, Maine and Yarmouth, Nova Scotia via the Vessel. Tenant agrees to provide ~~seven (7) days of service per week~~four (4) to seven (7) days of service per week during the Operating Season, subject to normal exigencies of the ferry business, including weather and mechanical breakdown, lack of consumer demand, and other events beyond Tenant's control. Should sailings be fewer than seven (7) days per week during the Operating Season, monthly berthage payment shall not be reduced. Sailings shall be only on be on Service Dates ~~daily~~ with arrivals at 1:30 p.m. and departures before 3:00 p.m. Should Tenant wish to reduce its schedule of service, Tenant will provide as much notice as reasonably practicable and will provide best efforts to give notice at least fifteen (60) days in advance. Tenant acknowledges that no trade or occupation shall be conducted on or from the Premises or use made thereof that would be unlawful, improper, or offensive, or contrary to any law or any municipal by-law or ordinance.

There shall be no additional charge to the Tenant for overnight berthing in the Berthing Area during the Wind Up and Wind Down seasons, provided, however, that the Berthing Area will not be available overnight on Fridays during those periods.

f. **~~Blackout~~Service Dates**. ~~Notwithstanding anything to the contrary above, Tenant shall not use the Berthing Area or the Queuing Area on any of the following "Blackout Dates" without the prior written consent of Landlord: For the 2016 Season – August 28, September 11, 12, 21, 23, 24, 25, 26, and 30, 2016. Landlord reserves the right to designate additional Blackout Dates for the 2017 Operating Season, prior to March 1, 2017. In the event Landlord fails to notify Tenant of the 2017 Blackout Dates by March 1, 2017, Tenant shall notify Landlord of its failure to do so, and Landlord shall have ten (10) days from its receipt of such notice to provide Tenant with its list of 2017 Blackout Dates. The berthing rent shall be abated for each Blackout Date. It is the intent of the parties to work cooperatively to lessen or eliminate Blackout Dates where that can be reasonably accomplished without harm to the overall business interests of the Landlord, the determination of which shall be made by the Landlord, in its discretion.~~Tenant may only use the Berthing Area, the Terminal Building, and the Queuing Area on the Service Dates.

g. **Landlord's Right to Relocate**. This Lease Agreement is non-exclusive, and nothing herein shall prevent or prohibit the Landlord from leasing other available space at either the Ocean Gateway or any other facility owned or operated by Landlord, to another Tenant for any purposes Landlord deems suitable, including but not limited to the operation of a similar ferry service. In no event, however, is the Landlord permitted to impair in any way the operations by Tenant. Tenant's use of the Queuing area and all other areas to be used by passengers is subject to any reduction in size or configuration or availability as may be required, at any time, by any security agencies having jurisdiction with respect to such areas.

2. Term; Seasons.

a. **Term**. Except as provided below, the Term of this Lease shall be from June 1, 2016 (the "Effective Date") through October 15, 2017~~3, 2017.~~ Provided that Landlord, in its sole discretion, first determines that Tenant is not in default of any term or condition of this Lease, Landlord, in its sole discretion, may renew this Lease for up to one (1) additional year upon terms mutually agreeable to the parties. If Landlord desires to renew this Lease, Landlord shall so notify Tenant on or before September 15, 2017.

b. **Operating Season; Wind Up and Wind Down Seasons; Off-Season**. Tenant's Operating Season shall be May 31, 2017 to October 15, 2017~~June 1 to September 30, annually~~ (the "Operating Season"). The term "Wind Up Season" shall mean May 26, 2017 to May 30, 2017~~the fourteen (14) day period prior to scheduled commencement of operations for the Operating Season~~. The term "Wind Down Season" shall mean no later than October 16, 2017. In the event that Landlord agrees to renew this lease as set forth above, ~~the three (3) day period following scheduled termination of operations for the Operating Season. T~~the term "Off Season" shall mean the period between ~~the end of the 2016 Wind Down Season and commencement of the 2017 Wind Up Season~~the end of the 2017 Wind Down Season and commencement of the 2018 Wind Up Season.

3. Rent; Fees; Security Deposit.

Tenant shall pay all rent and fees, when due, as provided below and on Exhibit B, attached hereto and incorporated herein.

4. Payment; Statements.

a. On or before the fifteenth (15th) day of each month, Tenant shall pay to Landlord the per-passenger and per-vehicle fees on Exhibit B that were incurred in the previous month. Such payment shall be made without the need for an invoice from Landlord and shall be accompanied by Tenant's statement as provided below.

b. Fees due during the Operating Season in paragraph a. above shall begin as of the first day of the month of said Operating Season. Tenant shall be responsible for payment of personal property taxes which may be payable on their trade fixtures and equipment, and for payment of any federal, state or local fees or taxes which may apply to their operations hereunder.

c. **Late payment:** Tenant shall make prompt and timely payment of all rentals, fees, and other charges due hereunder as the same may from time to time come due. In the event that any such payment is not made within thirty (30) days of the invoice due date, a penalty of one percent (1%) per month 12% per annum) shall be assessed and paid on all such amounts outstanding.

d. **Address:** All payments hereunder shall be written to the City of Portland and sent to the attention of: Public Assembly Facilities, Accounting Office, Portland Exposition Building, 239 Park Avenue, Portland, Maine 04102 or such other place as the Director may designate in writing from time to time.

Any invoices shall be sent to Tenant at the following address: Bay Ferries Limited, 94 Water Street, PO Box 634, Charlottetown, Prince Edward Island, Canada, C1A 7L3, Attn: Danny Bartlett, Vice President, Finance and Administration, or such other person or address as Tenant may designate in writing from time to time.

e. **Tenant Statements:** Tenant shall submit its official manifest or other official documentation (or electronic equivalent) showing the number of passengers and vehicles transported by Tenant both to and from the City of Portland each month when it submits its per passenger and per vehicle fees under Exhibit B. No amount shall be payable to the City of Portland in respect of passengers or vehicles transported by the Tenant on a complimentary basis.

f. Landlord reserves the right to conduct an audit of Tenant's traffic records, upon reasonable notice and during regular business hours, to determine the accuracy of amounts paid hereunder. In the event such audit discloses an underpayment to Landlord of more than Five Percent (5%) in any year, Tenant shall pay to Landlord, in addition to the amount owed and any applicable late charges, the reasonable cost to Landlord of its audit, including legal, accounting, and consulting fees unless the underpayment shall have been the result of a bona fide mistake or miscalculation.

5. Condition of Premises; Improvements to Premises.

a. "As is." Tenant has had the full opportunity to inspect the Premises prior to execution of this Lease and takes all such space, specifically including the Ramp, "as is," except as specifically provided herein. Should Tenant's Vessel require modifications to, improvements or replacement of the Ramp, such modifications or replacement shall be solely at Tenant's cost and expense, and subject to all required reviews and permits for such structure, including but not limited to approval of the Director which shall not be unreasonably withheld. Should Tenant require modification or improvements to the Queuing Areas, such modifications or improvements shall be solely at Tenant's cost and expense, and subject to all required reviews and permits for such improvements or modifications, including but not limited to approval of the Director, which shall not be unreasonably withheld.

b. In the event Tenant wishes to make any improvements to any portion of the Premises, it shall obtain the written approval of Landlord prior to undertaking any such improvements, which approval shall not be unreasonably withheld. All such improvements shall be at Tenant's sole cost and expense, provided, however, that upon submission by Tenant and approval by Landlord of documented expenses for improvements to the Departure Building, Tenant shall be entitled to a credit against rent in the amount of twenty-four thousand dollars ($25,000.00) for improvements to the Departure Building**.** Such credit shall be provided in two $12,500.00 increments against rent due in June and July 2016.

c. Notwithstanding the foregoing, Landlord agrees that Tenant may install, at Tenant’s expense, only at particular locations approved in advance by the Director, its security camera system in order to monitor the docking basin, vehicle inspection or processing booth and waiting areas for security and operational issues; subject to the condition, however, that Tenant will share access with the Landlord to the ‘live feed' from such cameras, as well as any recordings from such cameras if and when requested.

6. <u>Obligations of Landlord; Maintenance, Utilities.</u>

Except as otherwise provided herein, the Landlord shall provide for the ‘landside' facilities only, at its expense, the following:

a. Except as otherwise provided in this Lease, Tenant acknowledges and agrees that this Lease is a ‘net lease', for the Landlord, and that the Landlord shall not be responsible for any costs, charges, expenses or the like whatsoever arising from or related to the leased Premises or rights, or the business carried on or related to said Premises or rights, and Tenant shall pay all costs, charges, expenses or the like of every nature and kind whatsoever relating to the leased premises or rights, including any passenger or vehicle ramps, unless specifically agreed to in advance in writing by Landlord.

b. Landlord will provide heat and sewer services to the Departure Building. In addition, Landlord will provide water (including potable water) to the Vessel, at the Rates in Exhibit B.

c. Landlord shall ensure that the roof, exterior walls, and structure of the Departure Building are secure, water-tight, and allow the Departure Building to be occupied as offices and a public sales facility. Landlord shall also maintain and repair the marine infrastructure (i.e., the passenger bridge, security fencing, and fendering, in the same condition as they are in at the commencement of the term of this Lease or as they may be put in during the term of this Agreement, reasonable wear and tear, damage by fire and other casualty only excepted, unless such maintenance or repair is made necessary by fault or neglect of Tenant or the employees, contractors, agents or invitees of Tenant, in which case such maintenance or repair shall be at the expense of the Tenant and Tenant shall pay all costs therefor.

d. Maintenance and reasonable cleaning of the Exterior Common Areas, Queuing Area, and Parking Areas available for use by Tenant, its employees and invitees, including snow and ice removal.

e. After Tenant reconfigures and repaints the travel lanes in the Queuing Areas as set forth below, Landlord may, in its discretion, repaint the lines for the travel lanes, but it has no obligation to do so.

f. Access to washroom facilities in the Ocean Gateway on an escorted basis (if permitted by CBP) for outbound customers waiting in the Outbound Queuing Areas.

7. <u>Obligations of Tenant.</u>

Tenant covenants that it shall, at its expense:

a. Provide four (4) to seven (7) days of service per week during the Operating Season in accordance with the schedule set forth in Exhibit D, subject to normal exigencies of the ferry business, including weather and mechanical breakdown, lack of consumer demand, and other events beyond Tenant's control. Any suspension of operation of the vessel in excess of ten (10) consecutive days during the Operating Season, for reasons other than major mechanical failure of the Vessel, shall, at Landlord's option, be deemed to be a default and termination of this Lease. During any period of suspension, Tenant shall continue to be liable for any rent or utility payments.

b. Keep Landlord informed of any unavoidable changes to sailing times sufficiently in advance so that Landlord can accommodate its berthing needs, if possible; however, Landlord does not guarantee that any revised sailing times can be accommodated. But for such notice, Landlord may presume the Vessel will arrive at approximately 1:30 P.M, ~~except~~ and depart between 2:30 P.M. and 3:00 P.M. on the Service Dates ~~daily~~ during the Operating Season~~, except on Blackout Days~~;

c. Pay when due, all Rent, Fees and other charges or assessments hereunder;

d. Pay all costs associated with the ferry operation (except as otherwise stipulated herein), including but not limited to, office and ticketing staff, provision of all office and ticketing equipment, and direct Vessel costs including but not limited to fuel, water, electricity, stevedoring, screening and security staff, staff to direct and supervise vehicle traffic and queuing, trash removal and pilotage. Tenant shall be responsible for the repair, maintenance and cost of its own Vessel and fueling system subject to all applicable federal, state and local regulations.

e. Be directly and solely responsible for all expenses for electricity, water, sewer, natural gas, heating oil, HVAC, telephone, internet and any other utility or communications services. The rent does not include any utility expenses. Landlord shall install a submeter as needed for electrical service, for which Tenant shall pay Landlord monthly.

f. Utilize full service stevedores licensed by the City for line handling, loading and unloading luggage and baggage;

g. Pay all expenses for all installation and periodic charges associated with communications systems, including but not limited to phone systems and services, computer systems and communication services, television and cable access, satellite services, and security and video equipment and services within the exclusive use areas and used, except as provided herein, solely by the Tenant;

h. Maintain the Premises in such repair as on the commencement of this Agreement, except only for reasonable wear and tear and damage caused by fire or other unavoidable casualty not the fault of Tenant, its employees, contractors, agents or invitees. Tenant shall not injure or deface the Premises or any other property nor permit anyone else to do so. Tenant agrees to report to Landlord promptly, but in any case within 24 hours of when it knew or reasonably should have known of any substantial damage to the Premises or the Ocean Gateway facilities that poses any potential health or safety issue, including but not limited to any water damage or intrusion;

i. Be solely responsible for all repairs, maintenance, modifications, and replacement of the Ramp, which shall only be undertaken pursuant to a stamped drawing by an appropriately qualified professional engineer. In no event is Tenant responsible for damage of any kind attributable to the non-exclusive use of premises by others in privity with Landlord;

j. Properly contain and dispose of all trash and garbage from its operations, including but not limited to all vessel trash and garbage, in containers suitable for pickup by Tenant or Tenant's contractor. Landlord shall provide regular trash pickup for the Exterior Common Areas only;

k. Maintain in full force and effect the insurance coverage required below, and such fire and extended coverage or business interruption insurance for its own property or benefit as it may deem to be appropriate. Tenant shall hold its property, including fixtures, furniture, equipment and the like, or that of any other owner, on the Premises at Tenant's own risk;

l. Notify the Landlord in advance of any proposed alterations to the Premises, including but not limited to posting of signage by Tenant. All such alterations are subject to the prior written approval of the Director, which approval shall not be unreasonably withheld;

m. Pay and discharge punctually all generally applicable taxes and governmental assessments on any of Tenant's activities or property. The parties understand and agree that there are no real estate property taxes to be assessed against the Premises leased hereunder and chargeable to Tenant, but Tenant shall be responsible for payment of any personal property taxes which may be assessed. Tenant reserves the right to contest the imposition or amount of any such taxes or assessments by any means provided by law;

n. Permit Landlord at reasonable times to inspect the Premises and to permit Landlord to make, at its own expense, repairs, alterations, additions and improvements, structural or otherwise, in or to said Premises or any part thereof, and during such operations to take into and through said Premises or any part of the Premises all materials required, Landlord agreeing, however, that it will carry out such work in a manner which will cause Tenant minimum inconvenience;

o. Not permit any employee, agent, contractor or invitee of Tenant to violate any covenant or obligation of Tenant hereunder nor create a nuisance at the Premises or any City owned property;

p. Keep the Premises equipped with all safety appliances required by law or any public authority to the extent such results from the exclusive use made by the Tenant of the Premises;

q. Provide all security personnel, and any CPB facilities, utility connections and utilities services for the same, together with any required traffic control, at Tenant's cost and expense, as may be required by, or for compliance with, CPB or the United States Coast Guard operations, and such additional security personnel as may be deemed reasonably necessary by Tenant. It is the mutual intent of the parties that all such requirements be identified prior to the entry into this Lease. All such required facilities and improvements shall be property of Landlord at the end of the lease term;

r. Should any maintenance or repair of the Premises, the Ocean Gateway terminal building and pier, or the systems serving those facilities require repair or replacement as a result of the negligence or willful act of the Tenant or the Tenant's invitees, agents or contractors, Tenant shall be responsible for the timely repair or replacement of same. Any damage caused to such facilities including but not limited to waiting areas, hallways, stairwells, and restrooms, caused by any of Tenant's employees, contractors, agents or invitees, may be repaired by Landlord, in its sole discretion, and the cost of such repair shall be billed to Tenant at Landlord's cost, and shall be paid by Tenant as additional rent with the next due Rent payment; or, alternatively, taken from any security deposit being held by the Landlord, in which case the Tenant shall replenish that security deposit within ten (10) days of being informed in writing that this is necessary.

s. After reconfiguring the travel lanes in the Queuing Areas, Tenant shall, at its expense, paint or repaint the lines for the travel lanes to accommodate the Ferry Service.

8. <u>Certain Rights Reserved to the Landlord.</u>

The Landlord reserves the following rights:

a. To retain and use in appropriate instances keys to all doors within and into the Premises and to change the locks to the Premises if Landlord deems it advisable. No lock shall be changed by Tenant without the prior written consent of Landlord. Landlord shall have the right to access the utility rooms through Tenant's exclusive use space as reasonably necessary;

b. On reasonable prior notice to Tenant, to exhibit the Premises to prospective Tenants or users of the Ocean Gateway facilities and to others having a legitimate interest at any time during the term;

c. To adopt reasonable rules and regulations relating to the Premises and the Ocean Gateway facilities from time to time during the Term; provided, however, such rules and regulations shall not materially interfere with Tenant's permitted use of the Premises. Tenant agrees to comply with reasonable rules and regulations from and after the fifteenth (15th) day after Tenant's receipt thereof, unless earlier required by law;

d. To remove from the Premises, at Tenant's expense, any improvements, alterations, additions, signs, awnings, or the like, not consented to in writing by the Director; and

e. Landlord reserves the right, in its sole discretion, to berth vessels of any type at and otherwise make use of and allow events at the Ocean Gateway facilities, subject to Tenant's rights under this Lease.

9. <u>Signage.</u>

Tenant shall have the right to have signage on the Premises, including but not limited to outdoor signage, which signage shall be approved by the Director and shall be at Tenant's sole cost. It is the intent of the parties to prominently promote Tenant's Ferry Service. Tenant may also display flags referencing, as applicable, Tenant, the Vessel, the Tenant's Ferry Service, and the Province of Nova Scotia. Installation of such signage and flags may be done by the Landlord, or by the Tenant by a contractor acceptable to the Landlord, at Tenant's expense. All signage and flags shall be installed and maintained in accordance with all applicable local and state governmental codes. Subject to Landlord's approval which shall not be unreasonably withheld, Tenant may, at its expense, place murals and/or photographs and/or graphics on interior and exterior walls of the Departure Building for promotion of the Ferry Service.

Subject to applicable local and state governmental laws and codes, Landlord and Tenant shall cooperate to ensure prominent directional signage within the City of Portland to direct customers to the Ferry Service and to request the State of Maine to provide appropriate signage on its interstate highway system. Tenant acknowledges and agrees that the City of Portland is acting as landlord, and not in its regulatory capacity, in connection with this Lease.

10. <u>Compliance with Laws.</u>

Tenant agrees to comply with all present and future laws, ordinances, orders, rules, regulations and requirements of the federal, state and local governments or any of their departments, bureaus, boards, commissions and officials thereof (collectively, the "Laws") with respect to Tenant's use or occupancy of the Premises, including without limitation, all Laws relating to (i) air emissions, (ii) water discharges, (iii) noise emissions, (iv) air, water or ground pollution, or (v) any other environmental and health matter during the Term in connection with its use and occupancy of the Premises. Tenant shall not be responsible for any compliance attributable to the obligations of Landlord hereunder nor to any event, condition, act, or omission which occurred prior to the execution date or after the expiration date of this Lease Agreement, unless caused by the error or omission of Tenant, its officers, agents, employees, contractors or invitees.

11. Security Rules.

a. Tenant shall comply with all safety and security requirements in its operations hereunder. Tenant further agrees that its officers, employees and agents shall abide by the provisions of the Water Access Security/Safety Restrictions attached hereto as Exhibit C and incorporated herein, and with any other security directives or policies that may be promulgated from time to time by the Landlord, the State of Maine or by agencies of the Federal Government during the term of this Agreement. The Landlord agrees to provide Tenant with copies of the relevant portions of Landlord's Plan to permit Tenant to comply with its terms.

b. Tenant shall comply with the lawful directions of the City's Facility Security Officer's directions and commands, with respect to its operations at the OG Terminal and berthing area. Tenant shall designate a particular person, who must be readily available, as its Security Contact Person, for the purposes of emergency and other communications to, from and with the City's Facility Security Officer.

c. Tenant shall, to the extent required by law or any agency with jurisdiction, prepare and file its own Facility Security Plan, which shall then become an amendment to Landlord's Facility Security Plan, for Tenant's operations and its use of Landlord's Facilities, and provide a copy of such Plan and amendment to the Landlord.

d. Transportation Workers Identification Credential Requirement: All persons requiring unescorted access to the secure areas of vessels, facilities, and OCS facilities regulated by parts 104, 105, and 106 of 33 CFR (Code of Federal Regulations) must, to the extent required by law and applicable authorities, possess a TWIC (Transportation Workers Identification Credential) before such access will be granted. A TWIC must be obtained via the procedures established by TSA (Transportation Security Administration) in 49 CFR part 1572.

e. In addition, Tenant employees working at the OG Facilities shall have Landlord- approved identification badges, including BIW identity badges, displayed at all times when at the OG Facilities, whether within the Premises or the common use space.

f. In the event that Tenant fails to provide adequate security, Tenant shall pay all reasonable costs and expenses for additional security, associated with the Tenant's use of the facilities, in accordance with the rates set forth in Article 4 Rent and Fees.

g. In addition, Tenant shall pay all reasonable security costs, expenses, liabilities, losses, damages, fines, penalties, claims, and demands, including reasonable counsel fees, which may arise directly out of Tenant's failure to comply with the covenants of this paragraph, and such failure shall be deemed a default under this Agreement. Tenant shall be responsible for obtaining all necessary permits and licenses required for its use and occupancy of the OG Facilities at its own cost and expense.

12. Indemnification.

a. **General**. To the fullest extent permitted by law, Tenant shall at its own expense defend, indemnify, and hold harmless the Landlord, its officers, agents, and employees, from and against any and all liability, claims, damages, penalties, losses, expenses, including costs of investigation and attorneys' fees, or judgments, just or unjust, arising from injury or death to any person, or damage to, or loss of use of, property sustained by anyone (including but not limited to Landlord's employees or property) and arising, in whole or in part, out of Tenant's use, activities at or on, or occupancy of the OG Facilities, except that such obligation of indemnification shall not include indemnification for claims to the extent such claim is caused by (i) the acts or omissions of Landlord, its officers, agents, employees or contractors, (ii) the acts or omissions of third parties (including but not limited to other users of the Premises), or (iii) a breach by Landlord of its obligations under this Lease. Tenant shall include Tenant, its officers, agents, employees, contractors, subcontractors and/or invitees.

Tenant shall, at its own cost and expense, defend any and all suits or actions, just or unjust, which may be brought against Landlord or in which Landlord may be impleaded with others upon any such above-mentioned matter, claim or claims, including claims of contractors, employees, laborers, materialmen, and suppliers. In cases in which Landlord is a party, Landlord shall have the right to participate at its own discretion and expense and no such suit or action shall be settled without prior written consent of Landlord. Such obligation of indemnity and defense shall not be construed to negate nor abridge any other right of indemnification or contribution running to Landlord which would otherwise exist.

b. **Covenant against Liens:** Tenant shall not cause nor permit any lien against the Landlord's property or any improvements thereto to arise out of or accrue from any action or use thereof by Tenant and shall hold the Landlord harmless therefrom; provided, however, that Tenant may in good faith contest the validity of any alleged lien. Upon request of the Landlord, Tenant shall post a bond warranting payment of any such lien, or provide other security acceptable to Landlord, in the event Tenant contests such lien.

c. As used in this Lease, "Environmental Condition" shall mean any material adverse condition relating to surface water, ground water, drinking water supply, land, surface or subsurface strata or the ambient air, and includes, without limitation, air, land and water pollutants, noise, vibration, light and odors, which may result in a claim of liability under the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), or the Resource Conservation and Recovery Act ("RCRA"), or any claim of violation of the Clean Air Act, the Clean Water Act, the Toxic Substance Control Act ("TSCA"), or any claim of liability or of violation under any federal statute hereafter enacted dealing with the protection of the environment or with the health and safety of employees or members of the general public, or under any rule, regulation, permit or plan under any of the foregoing, or under any law, rule or regulation now or hereafter promulgated by the state in which the Premises are located, or any political subdivision thereof, relating to such matters (collectively, "Environmental Laws"). "Hazardous Materials" shall include, but shall not be limited to, substances requiring investigation, removal or remediation under any federal, state or local statute, regulation, ordinance or policy including substances defined as "hazardous substances" in CERCLA; "toxic substances" TSCA; "hazardous wastes" in RCRA; or radon, asbestos and petroleum products.

Tenant shall, at all times during the term, comply with all environmental laws applicable to the Premises and Tenant's use and occupancy thereof. Except to the extent caused by Landlord or any other tenant at the Premises or attributable in whole or in part to a preexisting environmental condition, Tenant will defend, indemnify and save harmless Landlord and its directors, officers, shareholders, employees and agents from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' and consultants' fees and expenses) of whatever kind or nature, contingent or otherwise, known or unknown, incurred or imposed, based upon any Environmental Laws or resulting from any Environmental Condition on or about the Premises which is caused by Tenant during the Term of this Lease, which indemnity, in the case of an Environmental Condition caused by Tenant shall include costs incurred by Landlord to remediate such Environmental Condition to clean-up or remediation standards consistent with Tenant's use of the Premises specified in this Lease. In case any action, suit or proceeding is brought against any of the parties indemnified herein by reason of any occurrence described in this section Tenant will, at Tenant's expense, by counsel reasonably approved by Landlord, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended.

d. **Survival.** The Terms of this section shall expressly survive the expiration or termination of this Lease.

13. **Insurance.**

a. Amounts. Without expense to the Landlord, and with no lapse in coverage, Tenant shall procure and maintain, at its own cost, and show evidence to the Landlord of the following insurance to protect the Landlord from claims and damages which may arise from Tenant's operations under this Agreement, whether such operations shall be performed by the Tenant or by anyone directly or indirectly employed by it in the types and minimum amounts set forth below:

Description	Coverage	Each Occurrence
(i) Commercial General Liability, including Broad Form Property Damage	B.I./P.D./ Death	$5,000,000
(ii) Vehicle Liability, including owned, hired, or non-owned	B.I./P.D./ Death	$2,000,000
(iii) Workers' Compensation, Including U.S. Longshoremen and Harbor Workers' Coverage, as Applicable	B.I./Death	Statutory
(iv) Protection & Indemnity Insurance Including Federal Maritime and Jones Act Coverage		$5,000,000
(v) Pollution coverage/Sea to Sea/ Land to Sea/Land to Land		$5,000,000
(vi) Employers Liability B.I./P.D. including Us. Longshoremen & Harbor Workers, as applicable		$1,000,000

b. **Landlord protected.** The Landlord shall be named as an additional insured under items (i) and (ii) above. Item (iii) shall include a waiver of subrogation against Landlord. To the extent that Tenant has any employees who are not covered by the Longshoremen & Harbor Workers, Federal Maritime and Jones Act coverages, Tenant shall provide evidence of Workers Compensation coverage in the statutory amounts, including a waiver of subrogation against Landlord.

c. Notice to Landlord. All policies of insurance required herein shall be in a form and issued by a company or companies approved to do insurance business in the State of Maine. Each such policy shall provide that such policy may not be changed, altered or canceled by the insurer during its term without first giving thirty (30) days' notice in writing to the Landlord. Each liability policy required to be obtained hereunder shall be on an occurrence basis. In the event that policies are not available on an occurrence basis, Tenant shall purchase a "tail" which provides coverage hereunder for a minimum of six (6) years after termination of this Agreement.

All policies required hereunder shall be primary to any insurance or self-insurance which Landlord may maintain for its own benefit. Liability insurance coverage shall also extend to damage, destruction, and injury to Landlord-owned or Landlord-leased property and Landlord personnel, to the extent caused by, or resulting from negligent acts, operations, or omissions of Tenant, its officers, agents, employees, invitees, and/or contractors.

d. **Certificates.** Certificates or other evidence of insurance coverages required of Tenant in this Section, in amounts no less than those stipulated herein or as may be in effect from time-to-time, shall be delivered to the Landlord prior to use of the Premises. Such certificate or certificates shall at all times while this Lease Agreement is in effect provide Landlord with at least thirty (30) days prior written notice of any change or modification in insurance coverage or insurance carrier.

e. **Tenant Property Insurance.** Tenant shall procure and maintain, at its option and election, such all risks fire and casualty insurance covering its property on the Premises as it deems necessary.

f. Landlord reserves the right to require a commercially reasonable increase in the minimum insurance limits hereunder at the commencement of any Renewal Term of this Lease.

14. Assignment/Subletting.

a. **By Tenant.** Tenant shall not sublease, transfer or assign this Agreement or the rights granted hereunder at any time during the Term of this Agreement without the prior written approval of Landlord, which may be granted or withheld in Landlord's discretion; except, however, Tenant may, if required by written agreement written agreement between Tenant and the Province of Nova Scotia, assign this Agreement and the rights granted hereunder to the Province of Nova Scotia in the event the Tenant is itself unable to continue operating the Service, in which case the Province of Nova Scotia will assume all of the obligations of Tenants herein, as well as the rights of Tenant herein. No such assignment or subletting shall relieve Tenant of any obligations hereunder and any person accepting such assignment shall take the Agreement subject to all prior breaches and shall be liable therefor in the same manner as Tenant.

b. **By Landlord**. Landlord reserves the right to assign this Lease to a quasi-municipal or State entity, provided, however, that in such event such entity shall agree to assume all of the terms and obligations of the Landlord under this Lease. Landlord shall not assign this Lease to a private party without the prior written approval of Tenant, which may be granted or withheld in Tenant's discretion.

15. Casualty Damage.

a. If the Premises or any part thereof shall be destroyed or damaged by fire or other unavoidable casualty, so that the same shall be thereby rendered unfit for use, then, and in such case, the Rent hereinabove stated or a just and proportional part thereof, according to the nature and extent of injuries sustained, shall be suspended or abated, until the Premises shall have been put in proper condition for use by Tenant; provided, however, in the event of such destruction or damage, either Landlord or Tenant shall have the right to terminate this Lease by giving the other party written notice of such termination within thirty (30) days after such damage or destruction, and upon the giving of such notice, the term of this Agreement shall cease and come to an end as of the date of such damage or destruction and any unearned rent shall be returned to Tenant.

b. Landlord and Tenant each hereby waive any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Premises or to the property of either party, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the parties, or either of them. Landlord and Tenant shall each be responsible for maintaining such casualty insurance on its property as it deems necessary and such policies shall waive any right of subrogation thereunder against the other party.

16. <u>Default.</u>

a. Tenant shall be determined to be in default hereunder if it shall fail to perform any obligations or comply with any terms or conditions stated herein within fifteen (15) days after receipt of notice of such failure from the other party or (if the default is of such nature that it cannot be cured within such period) if it shall fail to commence to cure the default within such period and thereafter diligently prosecute the cure to completion within a reasonable time. Upon such default and failure to cure, Landlord shall have the right, at its option, and in addition to any other remedies, to terminate this Lease by giving the party in default written notice thereof and upon the giving of such notice, this Lease and the term hereof shall cease. Upon any termination of this Lease, Tenant shall quit and surrender to Landlord the Demised Premises in accordance with the provisions of this Lease. Further, upon any termination of this Lease, Tenant shall remain liable to Landlord for all rent and fees accrued and unpaid up to the date of such termination. Tenant shall pay all reasonable costs, expenses, liabilities, losses, damages, fines, penalties, claims, and demands, including reasonable counsel and consultant fees, incurred by Landlord on account of Tenant’s failure to comply with any of the terms of this lease, holding-over, and/or as a result of Tenant's default under this Lease.

b. In no event shall either party be liable to the other for incidental, special, or consequential damages of any nature claimed as a result of the breach of any term of the termination of this Lease.

17. <u>Return of Premises; Holding Over.</u>

a. At the expiration or earlier termination of this Lease, Tenant shall promptly ensure that all vessels with which it is in any way affiliated are removed from the Premises and all of Landlord's berthing areas, and will also promptly quit and surrender the Premises to Landlord broom clean and in good order and condition, ordinary wear excepted, and free from debris, trash and waste, and shall cease its operations from the Premises. Tenant shall, if, and only if, so requested by Landlord, remove all trade fixtures, equipment and other personal property installed or placed by it at its expense in, on or about the Premises; provided, however, all damage caused by or as a result of such removal shall be repaired by Tenant at its sole expense. All trade fixtures, equipment, furniture, furnishings and personal effects not removed by Tenant within thirty (30) days after expiration or termination of this Lease shall, at Landlord's option, be deemed to have been conveyed to Landlord in fee title, and may be appropriated, sold, stored, destroyed or otherwise disposed of by Landlord without obligation to account therefor, or, at Landlord's option, Landlord can have such trade fixtures and items removed and the cost of any such removal and the expense of any repair necessitated by such removal shall be borne by Tenant.

b. If Tenant or any party claiming through or under Tenant shall remain or continue to be in possession of the Premises or any part thereof after the termination of the Lease or any renewal thereof, without Landlord's consent, then, at Landlord's option, Tenant or such party or both shall be deemed to be illegally retaining possession or, at Landlord's option, shall be deemed to be a month-to-month Tenant of the Premises and subject to all the terms and conditions of this Lease except that the monthly rent hereunder shall be One Hundred and Fifty Percent (150%) of the rent payable during the month prior to such termination. This section shall not be construed as giving Tenant any right to hold over after the expiration of the Term or to limit Landlord's rights to obtain possession of the Premises upon termination by any lawful means available to Landlord if Landlord does not elect to treat the continued possession by Tenant or any party claiming through or under Tenant as a month-to-month tenancy.

c. Landlord lawfully may upon termination of this Lease Agreement, enter into and upon the said Premises or any part thereof in the name of the whole, and repossess the same as of its former estate, and expel Tenant, and those claiming through or under Tenant, by any lawful means, and remove its or their effects without being deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant.

18. <u>Quiet Enjoyment.</u>

So long as Tenant shall observe and perform the covenants and agreements binding on it hereunder, Tenant shall at all times during the term herein granted peacefully and quietly have and enjoy possession of the Premises without any encumbrance or hindrance by, from or through the Landlord.

19. <u>Notices.</u>

Any notice required to be given under this Lease shall be in writing and shall be hand-delivered or sent by U.S. certified mail, return receipt requested, postage prepaid, addressed to the parties as stated below or such other address as either party may designate in writing to which its future notices shall be sent:

To Tenant: Mark MacDonald
Bay Ferries Limited
Suite A201
5855 Spring Garden Road
Halifax, Nova Scotia
Canada B3H 4S2

With a copy to: Danny Bartlett
Bay Ferries Limited
94 Water Street
PO Box 634
Charlottetown, Prince Edward Island
Canada C1A 7L3

To Landlord: Jon P. Jennings, City
Manager
City of
Portland
389 Congress
Street
Portland, Maine
04101

With a copy to: Corporation Counsel
City of Portland
389 Congress Street
Portland, ME 04101

20. Amendment; Authority.

Both parties hereto acknowledge and agree that they have not relied upon any statements, representations, agreements or warrantees except such as are expressed herein. The terms of this Lease may be modified or amended by the mutual assent of the parties hereto; provided, however, that no such modification or amendment to this Lease shall be binding until in writing and signed by both parties.

Each party warrants that this Lease Agreement has been signed by a representative duly authorized to bind that party to this Lease Agreement.

21. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Maine. Tenant warrants to Landlord that it is licensed to do business in the State of Maine and has an agent authorized to accept service of process in said State. Tenant shall provide such information upon request to Landlord.

22. Force Majeure.

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

23. Non-Waiver.

No waiver of any breach of any one or more of the conditions of this Lease by the Landlord or Tenant shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

24. Maritime Rights Preserved

Nothing in this Lease is intended by Landlord to waive any rights or claims it may have against *The Cat*, or any other vessel utilized by Tenant in performing the Ferry Service, either in rem or in personam, arising under the maritime law of the United States, including, without limitation, rights under The Maritime Lien Act, 46 USC 31341 *et. seq*., The Suits in Admiralty Act, 46 USC 30901 and 30903 *et seq.*, and/or The Public Vessels Act, 46 USC 781 *et. seq*.

25. Brokers.

Landlord and **Tenant** each represent and warrant to the other that it has not dealt with any agents, brokers or finders in connection with this Agreement. Each party agrees to hold and indemnify the other harmless from and against any losses, damages, costs or expenses (including attorneys' fees) that either party may suffer as a result of claims made or suits brought by any broker in connection with this transaction, the obligated party hereunder to be the party whose conduct gives rise to such claim.

26. Special Right of Termination

In the event of termination or discontinuance of the Ferry Service, or any other material adverse event impacting the Ferry Service, Tenant shall have the right to terminate this Lease without penalty upon providing six (6) months' notice in writing to Landlord. Tenant's obligations applicable to termination of the Lease as set forth herein shall continue to apply.

27. Transition Provision.

Prior to the Effective Date, the rights and obligations of Landlord and Tenant are those described in the Original Lease. On the Effective Date, the Existing Lease shall be deemed amended and restated so as to contain all of the terms of this Lease, and this Lease as amended and restated shall govern all future rights, obligations, duties and liabilities of the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed as of the day and year first above written.

WITNESS: **BAY FERRIES LIMITED**

_____________________________ By:___________________________

Mark MacDonald
Its Chairman and CEO

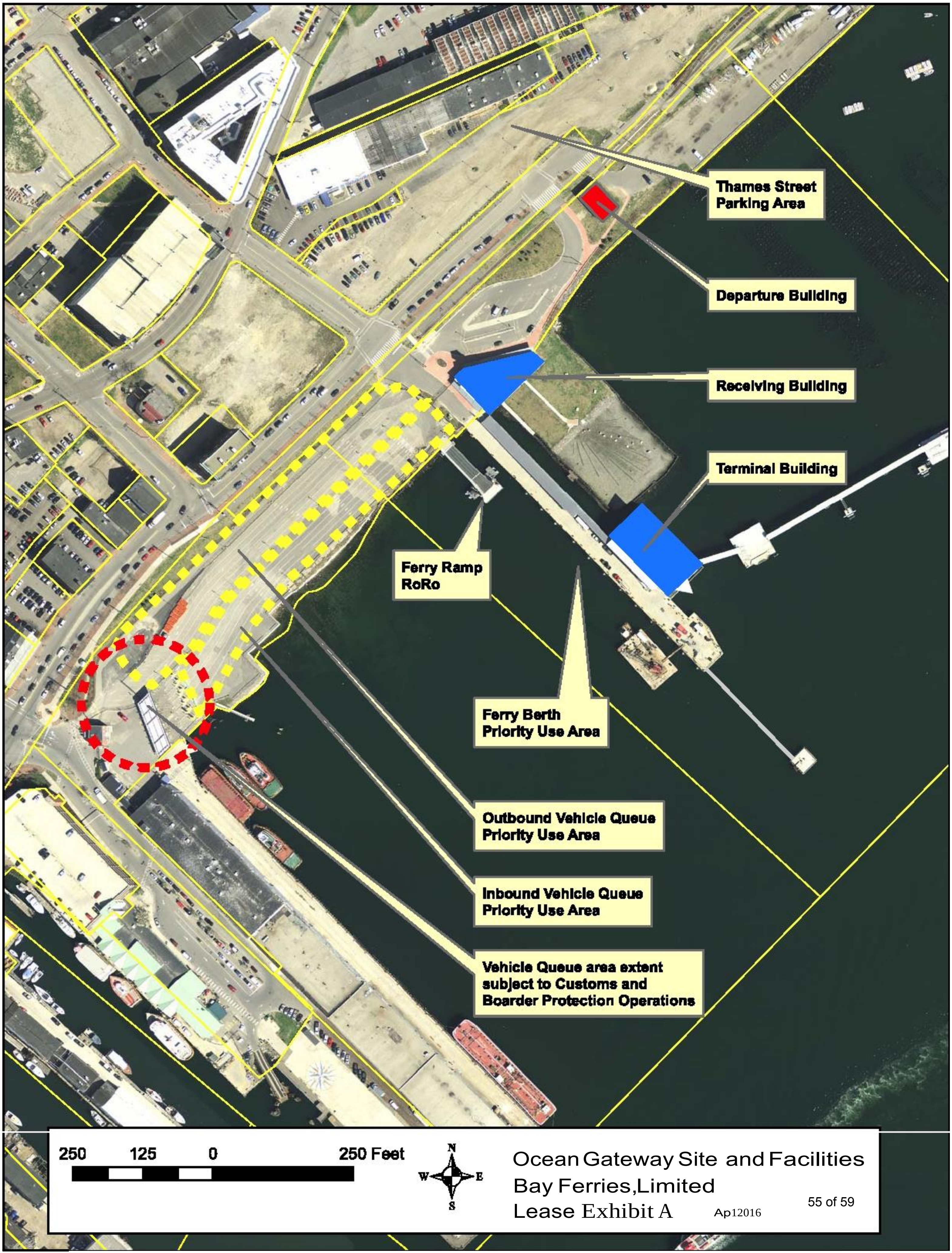
CITY OF PORTLAND

_____________________________ By:_________________________

Jon P. Jennings
Its City Manager

EXHIBIT A

DIAGRAM OF PREMISES



Ocean Gateway Site and Facilities
Bay Ferries, Limited
Lease Exhibit A

Ap12016

Exhibit B Schedule
of Rent and Fees

Monthly Rent
~~June 1 - September 30, 2016 and June 1, 2017 - September 30, 2017~~May 31, 2017 – September 30, 2017

- Tenant shall make monthly rental payments for the Premises in advance on the 1st day of each month for the period from May 31, 2017 – September 30, 2017~~June 1 - September 30, 2016 and the period from June 1, 2017 - September 30, 2017~~ in the amount of **$16,629.60~~15,229.60~~**; October 1, 2017 – October 15, 2017 monthly rent will be at **$8,314.80**.

October 1, 2016 – May 30~~1~~, 2017 and October 16, 2017 – May 30, 2018 (if renewed)~~October 3, 2017~~

- Tenant shall make monthly rental payments for the Departure Building in advance on the 1st day of each month for the period from October 1, 2016 – May 30~~1~~, 2017, and October 16, 2017 –May 30, 2018 (if renewed)~~ – October 15, 2017~~ in the amount of **$4,000.00.**
- If Tenant requires parking or berthing during this period, it shall be provided, if available, at the rates set forth below.

Passenger and Vehicle Fees
On or before the fifteenth (15th) day of each month, Tenant shall pay to Landlord the following per-passenger and per-vehicle fees that were incurred in the previous month. Such payment shall be made without the need for an invoice from Landlord and shall be accompanied by Tenant's statement as provided below.

• Passenger (the first 60,000 per Operating Season)	$ 2.00
• Passenger (over 60,000)	$ 3.50
• Bicycle	$ 0.50
• Motorcycle	$ 1.00
• Passenger Vehicle (the first 60,000 per Operating Season)	$ 3.00
• Passenger Vehicle (over 60,000)	$ 5.00
• Passenger Vehicle with Camper/Utility Trailer	$ 5.00
• Recreational Vehicles/Motor Homes	$ 5.00
▪ Straight Trucks	$10.00
• Tour Busses/Motor Coaches	$20.00

Other Fees

• Fuel License, per season	$100.00
• Daily Parking per space, per month	$75.00
• Fresh Water, per metric ton	$ 4.00
• Security Badges, each	$ 2.50
• Security Badges, replacement, each	$25.00
• Berthing (other than the exclusive use of the Berthing Area as allowed in section 1(a)(ii)	$1.00/ft/day

▪ Electrical Service – sub-meter monthly actual usage charges apply.

Exhibit C

Waterfront Access Security/Safety Restrictions

All visitors must check in with the Facility Security Officer ("FSO") or designee upon arrival. All visitors must provide photo identification or a Transportation Workers Identification Credential ("TWIC") card prior to accessing the facility. Vessel must provide an expected visitor list to on site security. All those not on the list will be denied access or Non TWIC'd personal must be escorted by a TWIC'd person. A single TWIC'd person can provide access for up to 5 Non TWIC'd personal, or otherwise directed by the FSO.

Crew must check in with on site security and provide photo identification.

Vessel must provide a crew and/or passenger manifest to the FSO or on site security.

A form of communication between vessel and on site security must be determined upon arrival.

A declaration of security must be signed upon arrival if deemed necessary by the FSO.

All deliveries, packages, crates, etc., must be accompanied by a manifest per US Federal Standards. All items including personal vehicles are subject to random search. All delivery drivers must provide photo identification upon arrival. A list of vendors will need to be provided prior to accepting deliveries.

All passenger buses are subject to a search prior to entering the facility.

No explosive devices, weapons, or open fires will be allowed within the facility at any time.

All fuel transfers must be done in accordance within DEP,EPA, OSHA, Coast Guard regulations. This applies to any quantity of gasoline, diesel, oil etc.

All employees working in or around the facility must meet all OSHA regulations.

"Hot Work" permits are required for work on the pier or vessel. These permits are issued through the Port Director or FSO. Permit costs apply. ($125.00 each)

At no time will vehicles be left overnight within the facility without prior authorization from the Port Director or FSO.

Emergency vehicles must have a clear pathway at all times to service the entire pier. No objects or vehicles are to be left unattended at any time. Objects and vehicles must be able to be removed immediately upon notice of emergency personnel needing access to the pier.

Vessels must use "Bits and Bollards" only for vessel tie up. No lines are to be laid around steel piles.

No work is to be performed on the vessel's hull without prior authorization by the Port Director or FSO.

No dumping of gray water while alongside of the berth.

All small vessels performing maintenance, security, etc. for a berthed vessel must have prior authorization to do so from the Port Director or FSO.

All gates are to remain locked or staffed by facility trained security personal.

EXHIBIT D

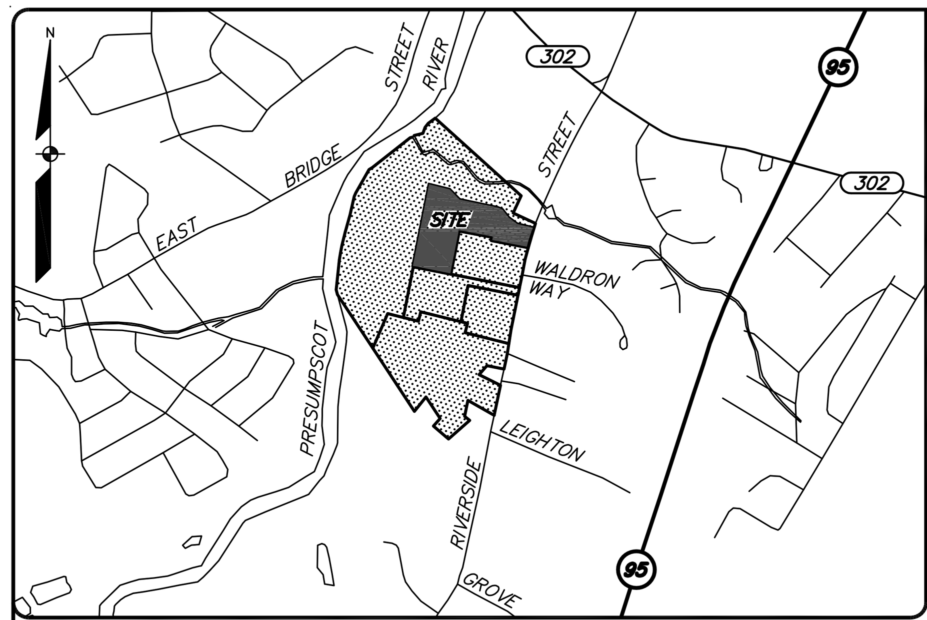
2017 The CAT Schedule

Departing from Yarmouth, Nova Scotia to Portland, Maine

2017 SERVICE DATES	DAYS	TIMES (Atlantic Time Zone)
MAY 31 - JUNE 28	MON, WED, FRI, SAT, SUN	8:30
JUNE 29 - JULY 27	MON, TUE, THU, FRI, SAT, SUN	8:30
JULY 28 - SEPT 2	MON, TUE, WED, THU, FRI, SAT, SUN	8:30
SEPT 3 - OCT 2	MON, WED, THU, FRI, SAT	8:30
OCT 3 - OCT 15	MON, FRI, SAT, SUN	8:30

Departing from Portland, Maine to Yarmouth, Nova Scotia

2017 SERVICE DATES	DAYS	TIMES (Eastern Time Zone)
MAY 31 - JUNE 28	MON, WED, FRI, SAT, SUN	14:30
JUNE 29 - JULY 27	MON, TUE, THU, FRI, SAT, SUN	14:30
JULY 28 - SEPT 2	MON, TUE, WED, THU, FRI, SAT, SUN	14:30
SEPT 3 - OCT 2	MON, WED, THU, FRI, SAT	14:30
OCT 3 - OCT 15	MON, FRI, SAT, SUN	14:30



LOCATION MAP

N.T.S.

GENERAL NOTES:

1. THE RECORD OWNER OF THE PARCEL IS THE CITY OF PORTLAND BY DEED DATED MAY 18, 2010 AND RECORDED AT THE CUMBERLAND COUNTY REGISTRY OF DEEDS IN BOOK 27825, PAGE 68.
2. THE PROPERTY IS A PORTION OF LANDS AS SHOWN ON MAP 323 LOTS A-3 AND LOT A-3-5 ON THE CITY OF PORTLAND TAX MAPS AND IS LOCATED IN THE IH/IM ZONING DISTRICT DISTRICT.
3. SPACE AND BULK CRITERIA FOR THE IH/IM ZONING DISTRICT ARE AS FOLLOWS:

MINIMUM LOT SIZE:	NONE (CORRECTIONAL 10,000 SF)
MINIMUM STREET FRONTAGE:	60 FEET/60 FEET
MINIMUM FRONT YARD:	25 FEET/1' PER 1' OF BUILDING HEIGHT UP TO 25 FEET
MINIMUM SIDE YARD:	35 FEET/1' PER 1' OF BUILDING HEIGHT UP TO 25 FEET
MINIMUM REAR YARD:	35 FEET/1' PER 1' OF BUILDING HEIGHT UP TO 25 FEET
MAXIMUM BUILDING HEIGHT:	75 FEET/75 FEET
MAXIMUM IMPERVIOUS SURFACE RATIO:	85%/75%
PAVEMENT SETBACK FROM LOT BOUNDARIES:	10 FEET

   * SIDE & REAR SETBACKS ARE 35' FROM ABUTTING RESIDENTIAL ZONE
   * SEE ORDINANCE FOR MORE PARTICULAR INFORMATION.
4. TOTAL AREA OF THE PROPOSED LOT IS APPROXIMATELY 7.01 ACRES.
5. BOUNDARY INFORMATION AS DEPICTED HEREON IS BASED ON PLAN REFERENCE 6A, 6B AND 6C HEREON. SEBAGO TECHNICS, INC. HAS DONE A RETRACEMENT SURVEY OF LOT 2 AND A PARTIAL RETRACEMENT OF LOT 1 AND LOT 3 AS DEPICTED THEREON. THE PROPOSED LOT TO BE CONVEYED BY THE CITY OF PORTLAND, MAINE BEING A PORTION OF LOT 4 AS DEPICTED ON THE HEREIN REFERENCED PLANS. TOPOGRAPHIC INFORMATION SHOWN HEREON IS BASED UPON PLAN REFERENCE 6A AND FIELD WORK PERFORMED BY SEBAGO TECHNICS, INC. ON THE PROPOSED SUBURBAN PROPANE LOT AND 60-FOOT WIDE RIGHT-OF-WAY IN OCTOBER 2015. AN ADDITIONAL TOPOGRAPHIC SURVEY WAS PERFORMED IN SEPTEMBER 2016 ON A PORTION OF THE REMAINDER OF LOT 4 FOR THIS PROPOSED CONVEYANCE BY THE CITY OF PORTLAND, MAINE.
6. PLAN REFERENCES:
   A. "RIVERSIDE SUBDIVISION - SUBDIVISION RECORDING PLAT - OWNER OF RECORD: CITY OF PORTLAND, MAINE, PUBLIC SERVICES DEPARTMENT, ENGINEERING SECTION, 389 CONGRESS STREET, PORTLAND, MAINE 04101" DATED OCTOBER 7, 2010 BY WOODARD & CURRAN, STAMPED BY JOHN W. SWAN, PLS 1038. THIS PLAN IS RECORDED AT THE CUMBERLAND COUNTY REGISTRY OF DEEDS IN PLAN BOOK 210, PAGE 352.
   B. "CONSERVATION EASEMENT PLAN FOR THE TRUST FOR PUBLIC LAND, 116 NEW MONTGOMERY STREET, SAN FRANCISCO, CA 94105 EASEMENT LOCATED RIVERSIDE STREET, PORTLAND, MAINE" DATED MARCH 3, 2010 BY BOUNDARY POINTS, PROFESSIONAL LAND SURVEYING, LLC. THIS PLAN IS RECORDED AT THE CUMBERLAND COUNTY REGISTRY OF DEEDS IN PLAN BOOK 210, PAGE 129.
   C. "AMENDMENT TO RIVERSIDE SUBDIVISION LOT #3, (EXISTING CONDITIONS/PROPOSED LEASE AREA & ACCESS/UTILITY EASEMENT PLAN), MAP 323 LOT A008, LUCAS TREE, 636 RIVERSIDE STREET, PORTLAND, MAINE" DATED JANUARY 3, 2014 BY PROMISED LAND SURVEY, LLC. THIS PLAN IS RECORDED AT THE CUMBERLAND COUNTY REGISTRY OF DEEDS IN PLAN BOOK 214, PAGE 218.
   D. "EXISTING CONDITIONS PLAN OF LAND FOR RECORD OWNER THE CITY OF PORTLAND, MAINE C/O PUBLIC SERVICES DEPARTMENT, ENGINEERING SECTION, 389 CONGRESS STREET, PORTLAND, MAINE 04101 PREPARED FOR FOREFRONT PARTNERS, I LP, 501 DANFORTH STREET, PORTLAND, MAINE 04102" DATED OCTOBER 29, 2015 BY SEBAGO TECHNICS, INC., PROJECT NO. 15254.
   E. "2ND AMENDED RIVERSIDE SUBDIVISION FOR RECORD OWNER THE CITY OF PORTLAND, MAINE C/O PUBLIC SERVICES DEPARTMENT, ENGINEERING SECTION PREPARED FOR FOREFRONT PARTNERS I, LP 501 DANFORTH STREET, PORTLAND, MAINE 04102" DATED OCTOBER 29, 2015 BY SEBAGO TECHNICS, INC., PROJECT 15254..
7. PLAN ORIENTATION IS GRID NORTH, MAINE STATE PLANE COORDINATE SYSTEM, WEST ZONE 1802-NAD83, ELEVATIONS DEPICTED HEREON ARE NGVD29, BASED ON DUAL FREQUENCY GPS OBSERVATIONS. ELEVATIONS WERE CONVERTED TO NGVD29 UTILIZING THE U.S. ARMY CORPS CORPSCON 6.0.1 SOFTWARE, THE CHANGE FROM NAVD88 TO NGVD29 IS +0.688 FEET IN THIS VICINITY.
8. UTILITY INFORMATION DEPICTED HEREON IS COMPILED USING PHYSICAL EVIDENCE LOCATED IN THE FIELD. UTILITIES DEPICTED HEREON MAY NOT NECESSARILY REPRESENT ALL EXISTING UTILITIES. CONTRACTORS AND/OR DESIGNERS NEED TO CONTACT DIG-SAFE SYSTEMS, INC. (1-888-DIG-SAFE) AND FIELD VERIFY EXISTING UTILITIES PRIOR TO CONSTRUCTION AND/OR EXCAVATION.
9. A PORTION OF THE REMAINDER OF LOT 4 AS DEPICTED HEREON DOES FALL WITHIN A SPECIAL FLOOD HAZARD AREA AS DELINEATED ON THE FLOOD INSURANCE RATE MAP FOR THE CITY OF PORTLAND, MAINE, CUMBERLAND COUNTY, COMMUNITY-PANEL NUMBER 230051 0006 C, HAVING AN EFFECTIVE DATE OF DECEMBER 8, 1998. PORTIONS OF THE SUBDIVISION PROPERTY IN PROXIMITY TO THE PRESUMPSCOT RIVER, IT'S TRIBUTARIES AND ADJACENT AREAS FALL WITHIN A ZONE AE, AREAS OF 100-YEAR FLOOD, HAVING A BASE FLOOD ELEVATION OF 35 NGVD FEET IN THE SUBJECT AREA. THE PROPOSED PORTION OF LOT 4 AS DEPICTED HEREON DOES NOT FALL WITHIN A SPECIAL FLOOD HAZARD AREA. THE PROPOSED LOT FALLS IN AN UNSHADED ZONE X, AREAS DETERMINED TO BE OUTSIDE OF THE 500-YEAR FLOODPLAIN.
10. THERE ARE NO BUILDINGS LOCATED ON THE PROPOSED LOT 4-2.
11. THE PROPOSED LOT IS SUBJECT TO THE DRAINAGE EASEMENTS AS DEPICTED HEREON.
12. THE 60' WIDE AND 37' WIDE RIGHTS-OF-WAY WILL BE OWNED IN FEE BY LOT 4-1. LOTS 2 AND 3 WILL HAVE RIGHTS OF INGRESS AND EGRESS OVER THIS 60' WIDE STRIP OF LAND TO THEIR RESPECTIVE LOTS. LOT 4 WILL HAVE RIGHTS OF INGRESS AND EGRESS OVER BOTH THE 60' AND 37' WIDE RIGHTS-OF-WAY. THESE RIGHT-OF WAY MAY ALSO BE USED FOR PURPOSES OF THE INSTALLATION AND MAINTENANCE OF ALL UTILITIES.
13. PROPOSED LOT 4-2 IS SUBJECT TO AN EASEMENT WHICH IS 54' BY 79' FOR PURPOSES OF THE INSTALLATION OF A COMMUNICATIONS TOWER SITE AS DEPICTED HEREON.

STRUCTURE TABLE

STRUCTURE #	RIM	SUMP	INVERT IN	INVERT OUT
8232	72.94	68.84	70.99 6" CMP @ 6	70.84 6" CMP @ 12
8346	70.11	65.27	67.79 6" CMP @ 6 67.89 4" PVC @ 7	67.89 10" CMP @ 12
8391	64.10	60.57	62.12 10" CMP @ 6 61.30 6" PVC @ 3	61.18 12" PVC @ 12
8408	64.30	60.34	62.30 6" PVC @ 4	62.08 6" PVC @ 10
8428	62.48	58.64	59.28 4" HDPE @ 5 59.61 4" HDPE @ 6 59.23 4" HDPE @ 7	59.29 12" PVC @ 12
8540	65.80	58.95	62.74 8" PVC @ 5	59.60 12" PVC @ 1
8470	58.70	53.71	54.68 3" PVC @ 7	54.67 4" PVC @ 1
8434	60.76	48.82	54.30 12" PVC @ 5 54.00 12" PVC @ 8	49.26 12" PVC @ 12

PROPERTY CURVE TABLE

CURVE	LENGTH	RADIUS	CRD. BEARING	CRD. DIST.
C1	95.10'	990.18'	S 16°10'18" W	95.06'
C2	100.78'	990.18'	N 21°50'19" E	100.73'

EASEMENT LINE TABLE

LINE	DIRECTION	DISTANCE
L1	S 78°49'51" E	54.00'
L2	S 11°10'09" W	79.00'
L3	N 78°49'51" W	54.00'
L4	N 11°10'09" E	79.00'

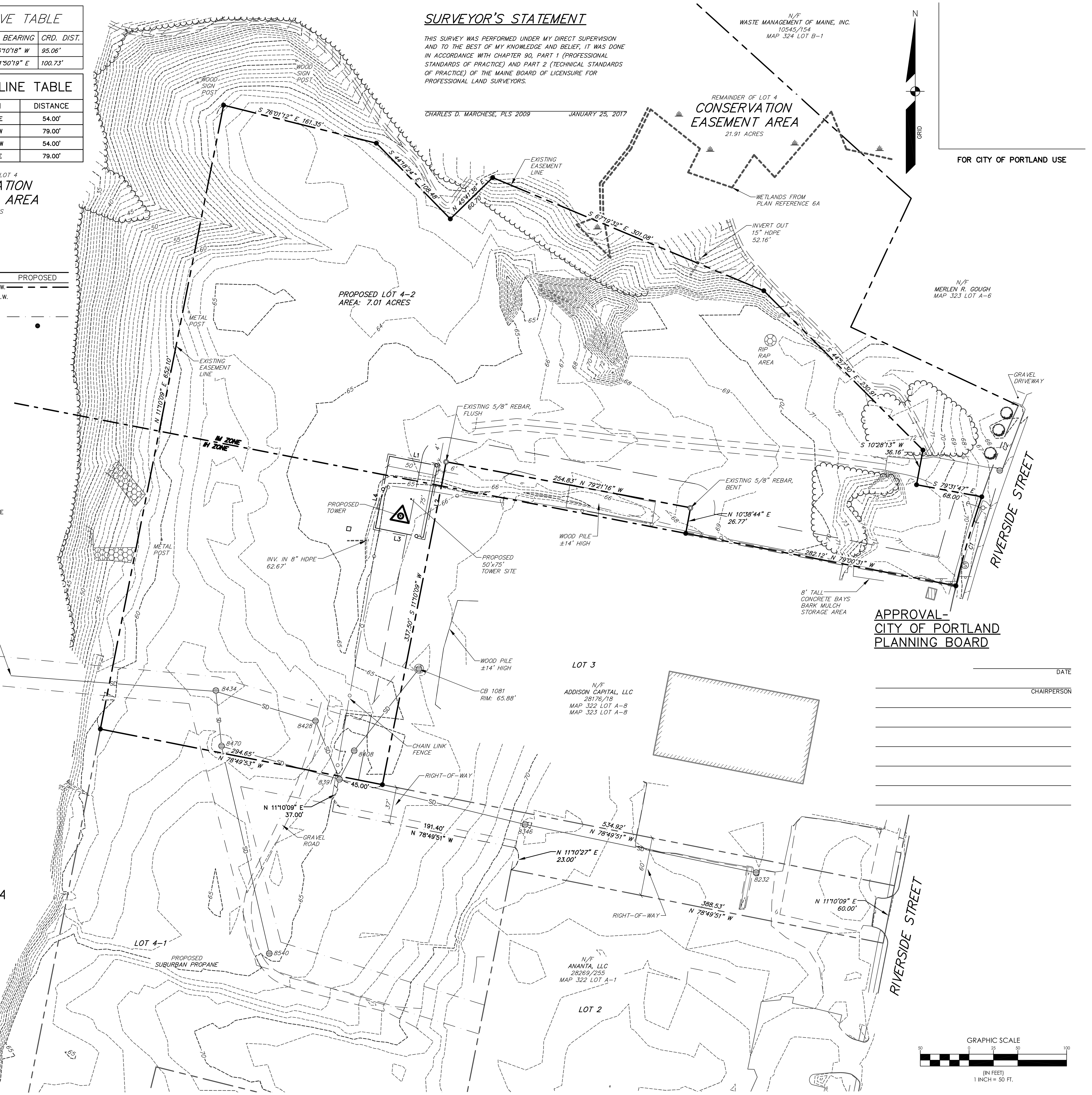
LEGEND

EXISTING		PROPOSED
	PROPERTY LINE/R.O.W.	
	ABUTTER LINE/R.O.W.	
	SETBACK	
	EASEMENT	
	IRON PIPE/ROD	
	ZONE LINE	
	ZONE LINE ON PL	
BENCHMARK DESCRIPTION WITH ELEVATION	BENCHMARK	
	BUILDING	
	EDGE WETLAND	
	WETLANDS	
	EDGE PAVEMENT	
	PAVEMENT PAINT	
	EDGE GRAVEL	
	CURB LINE	
	TREELINE	
---120--- ---118---	CONTOURS	
×120.00	SPOT GRADE	
	CHAIN LINK FENCE	
	RETAINING WALL	
	DECIDUOUS TREE	
	SIGN	
	SANITARY MANHOLE	
SD	STORM DRAIN	
	CATCH BASIN	
	UTILITY POLE	
	GUY WIRE	
	RIPRAP	

SURVEYOR'S STATEMENT

THIS SURVEY WAS PERFORMED UNDER MY DIRECT SUPERVISION AND TO THE BEST OF MY KNOWLEDGE AND BELIEF, IT WAS DONE IN ACCORDANCE WITH CHAPTER 90, PART 1 (PROFESSIONAL STANDARDS OF PRACTICE) AND PART 2 (TECHNICAL STANDARDS OF PRACTICE) OF THE MAINE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS.

CHARLES D. MARCHESE, PLS 2009 *JANUARY 25, 2017*



APPROVAL-
CITY OF PORTLAND
PLANNING BOARD

DATE

CHAIRPERSON

PROGRESS PRINT

NOT FOR CONSTRUCTION

CHARLES D. MARCHESE, PLS 2009

DESIGNED	CHECKED
CDM	MWE

REV:	BY:	DATE:	STATUS:
D	CDM	01-25-17	REVISED PER CITY COMMENTS
C	CDM	11-14-16	REVISED PER CITY COMMENTS
B	CDM	11-08-16	ISSUED TO CLIENT FOR REVIEW
A	CDM	10-20-16	ISSUED TO CLIENT FOR REVIEW

SEBAGO TECHNICS
WWW.SEBAGOTECHNICS.COM
75 John Roberts Rd. Suite 1A South Portland, ME 04106 Tel. 207-200-2100
250 Goddard Rd. Suite B Lewiston, ME 04240 Tel. 207-783-5656

EXISTING CONDITIONS PLAN
OF:
RIVERSIDE SUBDIVISION, LOT 4
RIVERSIDE STREET
PORTLAND, MAINE 04103
FOR:
THE CITY OF PORTLAND, MAINE
389 CONGRESS STREET
PORTLAND, MAINE 04101

PROJECT NO.	SCALE
16354	1" = 50'

SHEET 2 OF 5

16354EC.dwg, TAB:16354EC