

Order 46-15/16

Passage: 9-0 on 8/3/2015

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

Effective 8/13/2015

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

**ORDER APPROVING
THE AMENDED AND RESTATED LEASE WITH ROSA TRUE LP
FOR LAND AND BUILDINGS AT 140 PARK STREET**

ORDERED, that the attached lease with Rosa True LP for land and buildings at 140 Park Street is hereby approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager to execute said document in substantially the form attached hereto, and any other related documents necessary or convenient to carry out the intent of said document.

AMENDED AND RESTATED LEASE AGREEMENT

This Amended and Restated Lease Agreement is made and entered into as of the _____ day of _____, 2015, by and between THE CITY OF PORTLAND, a Maine body corporate and politic with a place of business and mailing address of City Hall, 389 Congress Street, Portland, Maine 04101 (the "Landlord") and ROSA TRUE LP, a Maine limited partnership with a place of business in Portland, Maine and mailing address of 100 Commercial Street, Suite 414, Portland, Maine 04101 (the "Tenant")

WITNESSETH:

WHEREAS, Landlord entered into that certain Lease Agreement with Rosa True School Limited Partnership, a Maine limited partnership ("RTSLP") dated March 24, 1992 (the "Original Lease"), a memorandum of which is recorded in the Cumberland County Registry of Deeds in Book 9973, Page 147, concerning land and buildings located at 140 Park Street in Portland, Maine, consisting of the historic former Rosa True School (the "Property"); and

WHEREAS, RTSLP has this date transferred to Tenant all of RTSLP's right, title and interest in and to a certain affordable rental housing project operated by RTSLP at the Property, such transfer to include all of RTSLP's right, title and interest in and to the Original Lease; and;

WHEREAS, Tenant intends to continue the operation of the Property as affordable rental housing and to rehabilitate the Property at Tenant's expense under the low income housing tax credit program and the federal and state historic rehabilitation programs; and

WHEREAS, the Portland City Council, at a meeting duly called and held on _____, 2015, approved the assignment of the Original Lease from RTSLP to Tenant and also approved the terms of this Lease;

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Lease of Property. Subject to the terms and conditions of this Amended and Restated Lease Agreement (the "Lease"), Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Property, consisting of the land, buildings and improvements located at 140 Park Street in Portland, Maine, more particularly described in Exhibit A attached hereto and made a part hereof, together with all appurtenant rights and easements. During the term of this Lease, Tenant shall be deemed to be the owner of the building and improvements on the Property (collectively the "Improvements"), and Tenant alone shall be entitled to the tax attributes resulting from the rehabilitation and reconstruction of the Improvements, including, but not limited to, depreciation deductions, low income housing tax credits and federal and state historic rehabilitation credits thereon for income tax purposes as well as other benefits for federal and state income tax purposes. Tenant accepts the Property and Improvements as is without any warranty by the Landlord or reliance upon any Landlord statement or representation whatsoever as to the condition of the Property or Improvements or their fitness for any particular use.

2. Term. The term of this Lease shall commence on the date Tenant closes on its construction financing and shall expire on _____, 2105.

3. Lease Payment; Net Lease. Tenant shall pay to Landlord as full and complete rent under this Lease the sum of \$1.00 per annum, payable in advance on January 2 in each year of the term. Rent for all or portions of the term may be prepaid at Tenant's election. It is the intention of the parties that all amounts payable hereunder shall yield to the Landlord the net annual payment specified herein during each year of the term of this Lease, and that all costs, expenses, and obligations of every kind and nature whatsoever relating to the Property and the Improvements shall be paid by Tenant.

4. Property Taxes; Other Assessments and Utility Charges. Tenant shall be responsible for paying all property taxes or special assessments assessed against the Tenant's leasehold interest in the Property and the Improvements. Tenant agrees in the event that the Property, the Improvements or any portion thereof shall in the future become exempt from real property taxes, then the then-owner of the exempt portion shall make annual payments to Landlord in lieu of taxes in the amount equal to the amount of property taxes that would have been assessed on the exempt portion of said real property had such property remained taxable. Tenant 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 property in Maine.

5. Utilities. Tenant shall pay for all gas, heat, light, power, water, sewer, cable television, telephone services and all other services and utilities supplied to the Property and the Improvements.

6. Personal Property Taxes. Tenant shall pay, or cause to be paid any and all taxes levied or assessed and which become payable during the term hereof upon all Tenant's equipment, furniture, fixtures, and any other personal property (collectively "Personal Property") located in or on the Property. Tenant agrees that in the event that the Personal Property, or any portion thereof shall be exempt from personal property taxes, then the then-owner of the exempt portion shall make annual payments to Landlord 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 Personal Property had such portion remained taxable. Tenant 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 personal property in Maine.

7. Quiet Enjoyment. The Tenant upon payment of the rent herein reserved and upon performance of all the terms of this Lease, shall at all times during the term of this Lease, as it may be extended by mutual written agreement, peacefully and quietly enjoy the Property without unreasonable disturbance from the Landlord, subject however to all easements, restrictions and covenants of record and subject to compliance with the land use rules, regulations and ordinances of the City of Portland.

8. Rehabilitation and Alteration of Improvements; Maintenance of Property and Improvements; Environmental Indemnification. As of the date of this Lease, the Improvements consist of eight units of affordable rental housing within the single building on the Property, together with related improvements consisting of all drives, parking areas, landscaping, utility lines and components, drainage structures and any other improvements to the Property related to the building or the use and operation thereof. Landlord has made no representations or warranties to Tenant about the condition of the Property or the Improvements, and Tenant has accepted the same in the condition in which they exist as of the date of the Lease. The Improvements, including fixtures, are part of the land comprising the Property, but such Improvements shall be deemed to be owned by Tenant, as set forth in Section 1 above, until the expiration or earlier termination of the term of this Lease. Tenant shall undertake a historic rehabilitation of the building on the Property, at the end of which the building will contain ten residential dwelling units, all such rehabilitation work to be done in accordance with the City of Portland building code and subject to the approval of all applicable City, state and federal reviewing or licensing authorities, including, without limitation, the National Park Service Historic Part 1 and Part 2 approvals.

a. Tenant shall at its own cost and expense, develop, repair and renovate the Property and Improvements as generally described in Exhibit B, (hereinafter the "Project") subject to any amendments or modifications which may be required by any City, state or federal reviewing or licensing authority. Tenant shall commence the renovation or rehabilitation of the Property and Improvements within ninety (90) days of the date of issuance of a City building permit, which permit Tenant shall diligently pursue. Tenant shall require performance and payment bonds from the general contractor for the full amount of the construction contracts. If no general contractor, performance and payment bonds shall be provided by each contractor for the full amount of its contract. Tenant shall substantially complete such renovation or rehabilitation on or before the expiration of eighteen (18) months from the date of this Lease, unless prevented from doing so by reasons beyond the control of Tenant, including but not limited to adverse winter conditions, fire, other natural disaster, or an inability to procure building materials or permits, strikes, riots, war, or other insurrection, in which event the performance of such act shall be excused for the period of the delay. In the event of an unexcused failure of performance by Tenant of the said conditions, Landlord shall give written notice of such default to Tenant, and, to every leasehold mortgagee then holding a recorded mortgage on the Premises or this Lease, and Tenant or any such leasehold mortgagee shall have a right, but not an obligation, within 90 days of said notice to cure such failure. If Tenant fails to comply with the conditions set forth hereinabove, and such failure is neither excused nor cured as provided hereinabove, Tenant agrees that this Lease will terminate, and the Landlord shall have the right, but not the obligation, to re-enter the Premises and retake possession thereof. In addition, the Landlord shall have a right to pursue all remedies for default, both in law and equity. Tenant and Landlord recognize that there is no plain, complete or adequate remedy at law for breach of the above described conditions, and that Landlord shall have a right to specific performance of the obligations of Tenant, its successors and assigns, with respect to' said conditions.

b. Subject to the foregoing, Tenant shall have the right at any time to perform such construction and rehabilitation and replacement of the Improvements as Tenant shall deem appropriate and to install, upgrade or construct utility lines and structures on the Property, subject to all federal, state and local laws governing zoning and land use. Tenant shall obtain all federal, state and local permits and approvals needed for any construction and rehabilitation of the Improvements, all at Tenant's sole cost and expense. Tenant shall adhere to the Historic Part 1 and Part 2 approvals of the National Park Service and shall take no action that would jeopardize the federal or state rehabilitation credits claimed or to be claimed by Tenant. Tenant shall engage qualified contractors, architects, engineers and other professionals in connection with the design, rehabilitation and construction of the Improvements, but the selection of such contractors, architects, engineers and other professionals shall be left solely to Tenant's discretion. All plans and specifications for construction or rehabilitation work shall be subject to Landlord's prior approval, such approval not to be unreasonably withheld, delayed or conditioned. All work done on the Improvements and on any further improvements made by Tenant shall be undertaken in a good and workerlike manner and in accordance with all federal, state and local laws, and after any such work, Tenant shall restore the surface of the Property to substantially the same condition as existed prior to the work.

c. Tenant shall pay all fees and costs associated with the construction or rehabilitation of the Improvements and shall not permit any mechanics' liens to be filed against the Property. Tenant shall pay promptly all persons furnishing labor or materials with respect to any work performed by Tenant or its contractors on or about the Property. In the event any mechanic's or other statutory lien shall at any time be filed against the Property or any portion thereof by reason of work, labor, services or materials performed or furnished, or alleged to be performed or furnished, to Tenant or to anyone holding the Property through or under Tenant, Tenant shall within thirty (30) days cause the same to be bonded off or discharged. Tenant shall have the right to contest any such lien at Tenant's sole expense, provided the lien shall have been discharged as aforesaid. If Tenant fails to cause any lien to be discharged, Landlord may but shall not be obligated to do so, and if Landlord does so, it shall be entitled to assess all costs of obtaining such discharge or bond, including reasonable attorneys fees, to tenant, and Tenant shall pay the same forthwith upon demand.

d. Tenant shall maintain and keep the Property and Improvements in as good order and repair as at the commencement of this Lease, reasonable wear and tear excepted. Tenant's maintenance, repair and replacement responsibilities hereunder shall include, without limitation, custodial services, security, minor and major repairs and replacement of all aspects of the Property and Improvements, plowing, shoveling, sanding, salting and clearing, mowing and landscaping, all as customarily provided in multifamily affordable rental housing projects. All such responsibilities shall be at Tenant's sole cost and expense. Tenant shall not do anything to cause the Property or Tenant's activities therein to violate any municipal, county, state or federal law, ordinance, or requirement, and shall promptly act on any direction of any officer or competent authority. Tenant shall permit no waste with regard to the Property. Without limiting the generality of the foregoing, Tenant shall not dispose of, store, use or transport hazardous or toxic substances from or at the Property except in compliance with all applicable laws, rules, regulations and ordinances. Tenant shall indemnify, defend and hold harmless Landlord 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 Landlord as a result of Tenant's violation of the provisions in the preceding sentence. Tenant's obligations under this paragraph shall survive termination of this Lease.

9. Insurance.

a. Tenant will at all times during the term of this Lease maintain insurance on the Property of the following character:

i. Comprehensive automobile and general public liability insurance (including coverage for elevators, if any, in the Improvements) against claims for bodily injury, death, or property damage occurring on, in, or about the Property and the adjoining streets, sidewalks, and passageways, such insurance to afford protection of not less than \$2,000,000 with respect to bodily injury or death to all persons in any one accident, and not less than \$50,000 with respect to property damage in any one occurrence. Tenant shall cause the Landlord to be included as an additional insured on the insurance policies required by this paragraph.

ii. Insurance against loss or damage by fire and other risks and perils from time to time included under standard extended coverage endorsements in an amount equal to not less than one hundred percent (100%) of the replacement value of the Improvements, (exclusive of the costs of excavation, foundations, and footings below the lowest floor). During construction of the Improvements, Tenant or its contractors shall maintain builder's risk coverage on those Improvements then being built. Tenant shall cause the Landlord to be included as loss payee on the insurance policies required by this paragraph.

iii. Workers compensation insurance to the extent required under Maine law, and to the extent Tenant has employees.

b. Such insurance shall be written by companies of recognized financial standing which are well rated by a national rating agency and are legally qualified to issue such insurance in the State of Maine, and such insurance shall name as the insured parties thereunder, Landlord, or its assigns, Tenant and any mortgagees of Tenant's, as their respective interests may appear. Such insurance may be obtained by Tenant by endorsement on its blanket insurance policies, provided that (i) such blanket policies satisfy the requirements specified herein and (ii) Landlord shall be furnished with the certificate of the insurer to the effect that (a) the amount of insurance allocable to the Property is not less than the amount required by this Section and (b) the protection afforded Tenant and Landlord is not less than the protection which would have been afforded under a separate policy or policies relating only to the Property. Landlord shall not be

required to prosecute any claim against any insurer or contest any settlement proposed by an insurer, and in such event Tenant may bring any such prosecution or contest in the name of Landlord, Tenant, or both, and Landlord shall cooperate with Tenant and will join therein at Tenant's written request upon receipt by Landlord of an indemnity from Tenant against all costs, liabilities, and expenses in connection with such cooperation, prosecution, or contest.

c. Tenant shall deliver to Landlord promptly after the execution and delivery of this Lease the original or duplicate policies or certificates of insurers satisfactory to Landlord evidencing all the insurance which is then required to be maintained by Tenant hereunder, and Tenant shall, within 30 days prior to the expiration of any such insurance, deliver other original or duplicate policies or other certificates of the insurers evidencing the renewal of such insurance. Should Tenant fail to effect, maintain, or renew any insurance provided for herein, or to pay the premium therefor, or to deliver to Landlord any of such policies or certificates, Landlord, at its option, but without obligation so to do, may procure such insurance, and any sums expended by it to procure such insurance shall be additional rent hereunder and shall be repaid by Tenant within 30 days following the date on which demand therefor shall be made by Landlord. All insurance policies carried by the Tenant under this Lease shall expressly waive any right of subrogation on the part of the insurer against the Landlord.

d. Tenant and Landlord understand and agree that the minimum limits of the insurance herein required, or the types of coverage may become inadequate during the term of this Lease and Tenant agrees that it will increase such minimum limits by reasonable amounts within thirty (30) days of receipt of a written request to do so from the City Manager.

10. Indemnity. Tenant agrees to and does hereby defend and indemnify Landlord and save Landlord, its city councilors, managers, staff, agents and employees, harmless from and against any claims, actions, damages, liability and expense, including attorney's and other professional fees, in connection with loss of life, personal injury and/or damage to property arising from or out of the occupancy, use, construction or rehabilitation by Tenant of the Property and Improvements, occasioned wholly or in part by any act or omission of Tenant, its officers, visitors, agents, contractors or employees. Tenant's obligations under this paragraph shall survive termination of this Lease.

11. Damage or Destruction.

a. If the Improvements or any part thereof shall be damaged or destroyed by fire or other casualty, Tenant shall promptly notify Landlord of such destruction or damage.

b. If all or a substantial portion of the Improvements are substantially damaged or destroyed in any single fire or by any single casualty, such that the same are rendered in whole or in part uninhabitable, and if Tenant determines in its sole discretion that it is economically infeasible to reconstruct the destroyed or damaged Improvements, Tenant may within 90 days after the occurrence of such damage or destruction, give notice to Landlord of the termination of this Lease, provided, however, that no such termination shall be effective without the consent of each of the holders of any leasehold mortgages upon the Property. In the event Tenant terminates

the Lease pursuant to this paragraph, any available insurance proceeds shall be distributed first to the Landlord, then to mortgagees of record, and then to Tenant as their respective interests may appear.

c. If Tenant does not elect to terminate this Lease, then Tenant shall, promptly and diligently after any damage or destruction and at its own cost and expense, repair or restore those Improvements as nearly as may be possible under the circumstances to substantially the condition thereof immediately prior to such damage or destruction, subject, however, to the availability or sufficiency of any fire or other insurance proceeds payable with respect thereto. The net proceeds of any insurance claim shall immediately be paid over to Tenant or to Tenant's leasehold mortgagee(s) as they may require, to be used by Tenant for the purposes of repairing and restoring the Improvements.

d. With regard to any Improvements or any part thereof damaged or destroyed by fire or other casualty which Tenant elects not to rebuild, Tenant shall promptly and diligently undertake to remove such Improvements or parts thereof at its own cost and expense and undertake such other work as is reasonably necessary to restore or improve the underlying portion of the Property to its original condition or the condition deemed appropriate to bring the Property into harmony with the surrounding Improvements.

12. Condemnation.

a. If at any time during the term of this Lease there shall be any taking in the exercise of the power of eminent domain by any sovereign or other public or private authority, Tenant shall promptly notify Landlord of such taking.

b. If all or a substantial portion of the Property is taken by eminent domain, such that the same are rendered in whole or in part uninhabitable, and if Tenant determines in its sole discretion that it is economically infeasible to replace the portion of the Property (including any Improvements) so taken, Tenant may within 90 days after the occurrence of such taking, give notice to Landlord of the termination of this Lease, provided, however, that no such termination shall be effective without the consent of each of the holders of any leasehold mortgages upon the Property. Any award for such taking of all or substantially all of the Property or Improvements shall be paid to the parties hereto in accordance with the following:

i. To Landlord the amount of the award attributable to the Property and to the Improvements as they existed on the date hereof, excluding therefrom the amount of the award attributable to the Improvements as further improved by Tenant and all other sums not directly attributable to the value of the land constituting the Property.

ii. To Tenant, the entire award, except that portion allotted to Landlord in subsection i. above, such that Tenant shall receive the value of Tenant's rehabilitation and reconstruction of the Improvements.

c. If the temporary use of the whole or any part of the Property or the Improvements shall be taken at any time during the term of this Lease in the exercise of the power of eminent domain by any sovereign, municipality, or other authority, the term of this Lease shall not be reduced or affected in any way, and the entire award for such temporary taking shall be paid to Tenant. Tenant shall repair and restore any and all damage to the Property and the Improvements as soon as reasonably practicable after such temporary taking.

d. In the event Tenant does not elect to terminate this Lease as a result of such taking, then Tenant shall, promptly and diligently after any such taking and at its own cost and expense, repair or restore the Improvements as nearly as may be possible under the circumstances to substantially the condition thereof immediately prior to such taking, subject, however, to the availability or sufficiency of any taking proceeds payable with respect thereto. The net proceeds shall immediately be paid over to Tenant, to be used by Tenant for the purposes of repairing and restoring the Improvements. In the event Tenant elects to continue its operations under this Lease despite any such taking, it shall do so for the balance of the term of this Lease and upon the same terms and conditions set forth in this Lease.

13. Assignment and Subleasing. Tenant shall not assign this Lease, in whole or in part, or any interest herein, or enter into subleases, at any time, or from time to time, without first obtaining Landlord's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned; provided, however Tenant may at any time without needing to obtain Landlord's prior approval: (i) in the ordinary course of Tenant's business enter into subleases for terms of at least six months' duration with one or more individuals or families with respect to individual dwelling units comprising the Improvements, and (ii) assign this Lease as collateral security for any indebtedness of Tenant's provided that Tenant first notifies Landlord of such assignment. Tenant agrees that any mortgage, lien, or other encumbrance entered into by Tenant shall contain a clause that said mortgage or lien holder shall notify Landlord of any default by Tenant in making any payment owed under said mortgage, lien or encumbrance and that Landlord shall have the right, but not the obligation, to cure said default by making said payment. Any payment made by Landlord to cure a default by Tenant shall be added to Tenant's annual rental owed to Landlord. Notwithstanding the foregoing, in the event of Tenant's default as aforesaid Landlord shall have the right, but not the obligation, upon thirty (30) days prior written notice to Tenant and to the holder of any mortgage, lien or encumbrance to assume Tenant's obligations under any outstanding mortgage, lien or encumbrance, or to prepay the remaining amounts owed under such mortgage, lien or encumbrance, and to declare Tenant in default of this Lease, whereupon this Lease shall terminate.

14. Use of Property as Affordable Rental Housing. Tenant shall use the Property as an affordable rental housing project containing 10 units, or such other number of units as may be approved by the City of Portland, all as allowed under the City of Portland's zoning ordinances. All 10 units shall be available to individuals and families earning not more than 60% of the area median income for the Portland Metropolitan Statistical Area (MSA) established by the U.S. Department of Housing and Urban Development (HUD) adjusted for family size, or any successor or comparable agency and/or housing assistance program. The parties acknowledge that the terms of Tenant's financing may require different and potentially more restrictive

affordability covenants. Tenant agrees to comply with all affordability and/or use restrictions that may be required by Tenant's funding sources. Tenant and Landlord recognize that there is no plain, complete or adequate remedy at law for breach of the covenants in this paragraph, and that Landlord shall have a right to specific performance of the obligations of Tenant, its successors and assigns, with respect to said covenants.

15. Mortgages by Landlord. Landlord covenants, warrants and agrees that, from the date hereof and continuing for the term of this Lease or any new or direct Lease entered pursuant to Section 16 hereof, Landlord will not execute and shall not have the right or power to grant any mortgage, deed of trust or create or suffer any lien or security or encumbrance upon or which shall affect the fee interest in the Property or the Improvements or any part thereof, at any time and from time to time unless it is related to debt of the Tenant or in connection with the operation of the Property and the mortgagee or holder of any such lien or security interest shall recognize and agree to the rights of the Tenant hereunder and Landlord shall not have the right or power, without Tenant's consent, which consent shall not be unreasonably withheld, delayed or conditioned, to modify, extend, replace, renew, refinance or otherwise affect any Mortgage granted pursuant to this Section.

16. Leasehold Mortgages. In addition to any other rights herein granted, Tenant may mortgage its interests in the Lease, or any part or parts thereof, for purposes of rehabilitating the Property, and to assign this Lease, or any part or parts thereof, and any sublease or subleases as collateral security for such mortgage(s), upon the condition that all rights acquired under such mortgage(s) shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights and interests of Landlord herein, none of which covenants, conditions or restrictions is or shall be waived by Landlord by reason of the right given so to mortgage such interest in this Lease, except as expressly provided herein. No leasehold mortgage given by Tenant under the provisions of this Section shall be deemed to be an assignment of this Lease so as to relieve Tenant of its obligations and liabilities under this Lease or to require the assumption of said obligations and liabilities by the holder(s) of such mortgage. If Tenant and/or Tenant's successors and assigns shall mortgage this leasehold or any part or parts thereof, all in conformity with the foregoing, and if the holder(s) of such Mortgage(s) shall send to Landlord written notice of such mortgage(s) specifying the name and address of the mortgagee(s) and the pertinent recording data with respect to such mortgage(s), Landlord agrees that so long as any such leasehold mortgage(s) shall remain unsatisfied of record or until written notice of satisfaction is given by the holder(s) to Landlord, the following provisions shall apply notwithstanding any other provisions to the contrary contained in this Lease:

a. There shall be no cancellation (either by Tenant or by joint action of Landlord and Tenant), surrender, acceptance of surrender or modification of this Lease without the prior consent in writing of the leasehold mortgagee(s).

b. Landlord shall, upon serving Tenant with any notice of default, or of termination of this Lease, also serve a copy of such notice upon the holder(s) of such leasehold mortgage(s), and no such notice of default or termination to Tenant shall be effective or duly given, unless and

until a copy of such notice is received by each such holder. The leasehold mortgagee(s) shall thereupon have the same period, after service of such notice upon it, to remedy or cause to be remedied the defaults complained of, and Landlord shall accept such performance by or at the instigation of such leasehold mortgagee(s) as if the same had been done by Tenant.

c. Anything herein contained notwithstanding, while such leasehold mortgage(s) remains unsatisfied of record, or until written notice of satisfaction is given by the holder(s) to Landlord, if any default shall occur which, pursuant to any provision of this Lease, entitles Landlord to terminate this Lease, and if before the expiration of sixty (60) days from the date of service of notice of termination upon such leasehold mortgagee(s) such leasehold mortgagee(s) shall have notified Landlord of its desire to nullify such notice and shall have paid to Landlord all rent and additional rent and other payments herein provided for, and then in default, and shall have complied or shall commence the work of complying with all of the other requirements of this Lease, if any are then in default, and shall prosecute the same to completion with reasonable diligence, then in such event Landlord shall not be entitled to terminate this Lease and any notice of termination theretofore given shall be void and of no effect.

d. If the Landlord shall elect to terminate this Lease by reason of any default of Tenant that is not cured within any applicable grace period, the leasehold mortgagee(s) shall not only have the right to nullify any notice of termination by curing such default, as aforesaid, but shall also have the right to postpone and extend the specified date for the termination of this Lease as fixed by Landlord in its notice of termination, for a period of not more than 90 days, provided that such leasehold mortgagee(s) shall cure or cause to be cured any then existing defaults in payment of rent and meanwhile pay any rent and additional rent and comply with and perform all of the other terms, conditions and provisions of this Lease on Tenant's part to be complied with and performed, other than past non-rent defaults, and provided further, that the leasehold mortgagee(s) shall take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the mortgage(s) or otherwise and shall prosecute the same to completion with all due diligence. If at the end of said 90 day period the leasehold mortgagee(s) shall be engaged in steps to acquire or sell Tenant's interest herein, the time of said mortgagee to comply with the provisions of this section shall be extended for such period as shall be reasonably necessary to complete such steps with reasonable diligence and continuity.

e. Landlord agrees that in the event of termination of this Lease by reason of any default by Tenant other than for nonpayment of rent or additional rent and other payments herein provided for, then the mortgagee will have the right to continue this Lease in effect or Landlord will enter into a new lease of the Property with the leasehold mortgagee(s) or its nominee(s), for the remainder of the term, effective as of the date of such termination, at the rent and additional rent and upon the terms, provisions, covenants and agreements as herein contained and subject only to the same conditions of title as this Lease is subject to on the date of the execution hereof, and to the rights, if any, of the parties then in possession of any part of the Property, provided:

i. Said mortgagee(s) or its nominee(s) shall make written request upon Landlord to continue this Lease in effect or for such new lease prior to such termination and such written request is accompanied by payment to Landlord of sums then due to Landlord

under this Lease.

ii. Said mortgagee(s) or its nominee(s) shall pay to Landlord at the time of the request to continue this Lease in effect or at the execution and delivery of said new lease, any and all sums which would at the time of the execution and delivery thereof, be due pursuant to this Lease but for such termination, and in addition thereto, any expenses, including reasonable attorney's fees, to which Landlord shall have been subjected by reason of such default.

iii. Said mortgagee(s) or its nominee(s) shall perform and observe all covenants herein contained on Tenant's part to be performed (except for any non-rent default which is not susceptible of being cured by such new Tenant, which defaults shall be deemed to be waived) and shall further remedy any other conditions which Tenant under the terminated lease was obligated to perform under the terms of this Lease.

iv. The tenant under such continued or new lease shall have the same right, title and interest in and to the buildings and improvements on the Property as Tenant had under the terminated lease.

v. If the holders of more than one such leasehold mortgage shall make written requests for a new or continued lease in accordance with this Section, the new lease shall be entered into pursuant to the request of the holder whose leasehold mortgage is prior in lien and thereupon the written requests for a new or continued lease of or any new lease with each holder of a leasehold mortgage junior in lien shall be deemed to be terminated and of no further force or effect.

f. Although no agreement is necessary to effectuate the provisions hereby, Landlord shall upon request, execute, acknowledge and deliver to each leasehold mortgagee(s), an agreement prepared to the sole cost and expense of Tenant in form satisfactory to such leasehold mortgagee(s) among Landlord, Tenant and the leasehold mortgagee(s), agreeing to all of the provisions of this Section.

17. Default. If Tenant shall fail to perform any obligation hereunder and such failure shall continue for sixty (60) days after written notice thereof by Landlord, or if the estate hereby created shall be taken on execution or other process of law, or if Tenant shall file or have filed against it a petition in bankruptcy, or if a receiver, trustee or other officer shall be appointed by any court to take charge of Tenant's assets, or if the Tenant shall hold over at the termination of this Lease as provided herein, then in any of said cases, notwithstanding any license of any former breach of covenant or waiver or consent in former instances, the Landlord lawfully may, in addition to and not in derogation of any remedies for any preceding breach of covenant, immediately or at any time thereafter, (a) terminate this Lease by notice in writing forthwith or on a date stated in said notice; (b) pursuant to appropriate civil proceedings, enter into and upon the Property or any part thereof and repossess the same as of the Landlord's former estate; and (c) expel the Tenant and those claiming through or under the Tenant, and remove its and 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 preventing a breach of covenant, and upon entry or notice as aforesaid, all rights of Tenant hereunder shall terminate, and Tenant covenants that in case of such termination, Tenant shall forthwith pay to Landlord all amounts then owed by Tenant to Landlord. Tenant further agrees to pay the Landlord's reasonable costs and charges, including attorneys' fees reasonably incurred, in obtaining possession of the Property after a default by the Tenant, after the Tenant's failure to surrender possession upon the expiration or earlier termination of the term of this Lease or in enforcing any covenant or obligation of the Tenant herein contained. For as long as _____ (the "Investor") is a limited partner in Tenant, Landlord agrees to give the Investor written notice of a default by Tenant under this Lease, addressed to Investor at _____, whereupon the Investor shall have a period of time, not to exceed 90 days, in which the Investor shall have the right (but not the obligation) to cure any such default. For as long as any leasehold mortgagee holds a leasehold mortgage on the Improvements and on Tenant's leasehold interest in the Property, Landlord agrees to give each such leasehold mortgagee written notice of default by Tenant under this Lease at the following addresses:

Maine State Housing Authority, 353 Water Street, Augusta, Maine 04330, Attn: Legal Services Department

Coastal Enterprises, Inc., P.O. Box 268, Wiscasset, Maine 04578

and each such leasehold mortgagee shall have a period of time, not to exceed 90 days, in which such leasehold mortgagee shall have the right (but not the obligation) to cure any such default.

18. Default by Landlord/Self-Help. Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord specifying wherein Landlord has failed to perform such obligations; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance then Landlord shall not be in default if Landlord commences performance within such thirty (30) days period and thereafter diligently prosecutes the same to completion.

19. Access; Landlord's Right to Maintain. The Landlord and its agents or employees, may, upon reasonable notice (except in the case of an emergency, when no notice shall be required), enter the Property for the purpose of inspecting the same, performing any work which the Landlord elects to undertake, or for such other purposes as Landlord shall determine, provided the same does not unreasonably interfere with the quiet enjoyment of Tenant. All such work shall be done in a good and workerlike manner on a timely basis. In the event that Tenant has failed to carry out its obligation hereunder to perform maintenance and make repairs or replacements, but only after the Landlord has given Tenant reasonable notice under the circumstances to perform its obligations and Tenant has failed to do so, Landlord may undertake such maintenance, repairs or replacements. In that event, Tenant shall promptly upon demand reimburse Landlord for the reasonable costs of Landlord's performing Tenant's obligations. Should Tenant fail to reimburse Landlord within Thirty (30) days' of written request therefor

from Landlord, then Landlord shall add such amount to the annual rental payment and it shall be due and payable immediately.

20. Surrender; Title to Improvements. Tenant shall, on the last day of the term of this Lease or upon any termination of this Lease for any other reason, well and truly surrender and deliver up the Property, with the Improvements then located thereon, into the possession and use of Landlord, without delay and in good order (reasonable wear and tear excepted), condition, and repair, free and clear of all lettings and occupancies (except residential tenants in the ordinary course of business), free and clear of all liens and encumbrances other than those existing on the date of this Lease and those, if any, created by Landlord, without any payment or allowance whatever by Landlord on account of or for any Improvements existing on the Property at the time of the surrender, or for the contents thereof or appurtenances thereto. Provided, however, that Tenant's trade fixtures (if any), personal property, and other belongings of Tenant or other occupants of space in the Property shall be and remain the property of Tenant or such occupants, as the case may be, and Tenant shall have a reasonable time, not to exceed 60 days, after the expiration of the term of this Lease to remove the same. Any and all property not removed by Tenant within the said sixty (60) day period shall thereupon become part of the land on which it is located and title thereto shall thereupon vest in the Landlord.

21. Notices. Any notice or communication relating to this Lease shall be deemed duly given if in writing and hand delivered or sent by certified mail, return receipt requested, by registered mail, by overnight United States mail, or by recognized overnight commercial delivery service to the parties (and to the Tenant's leasehold mortgagees) at the addresses set forth at the beginning and in Section 17 of this Lease. Any party may change addresses for notice purposes by providing the other party with written notice of the new address in the manner provided in this Section.

22. Signage. All signage shall be installed and maintained in accordance with applicable federal, state and local laws and ordinances.

23. Entire Agreement; No Other Representations. This instrument contains the entire and only agreement between the parties, and no oral statements or representations or prior written matter not contained in this instrument shall have any force or effect. This Lease shall not be modified in any way except by a writing executed by both parties.

24. Interpretation of Lease. This Lease shall be governed in all respects by the laws of the State of Maine.

25. Estoppel Certificates. Either party agrees, at any time, and from time to time, upon request of the other party, upon not less than ten (10) days' prior request, to execute, acknowledge and deliver to the requesting party a statement in writing certifying, if such be the case, that this Lease is unmodified and in full force and effect (or, if there have been modifications, stating the modifications, and that the Lease as modified is in full force and effect), stating the dates to which the rent payable under this Lease has been paid and stating whether or not to the best knowledge of party providing the statement there exists any default in

the performance of any covenant, agreement, term, provision or condition contained in this Lease, and if so specifying each such default, it being intended that any such statement delivered pursuant to this Article may be relied upon by any prospective purchaser of, or any prospective mortgagee, or by any other properly interested party.

26. Memorandum of Lease. This Lease shall not be recorded. Landlord and Tenant shall execute and deliver a memorandum of this Lease in proper form for the purpose of recording pursuant to 33 M.R.S.A. § 201, but said memorandum shall not in any circumstances be deemed to modify or change any of the provisions of this Lease, the provisions of which shall in all instances prevail.

27. No Other Waivers or Modifications.

a. The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the obligations of this Lease, or to exercise any election herein contained, shall not be construed as a waiver or relinquishment for the future of the performance of such one or more obligations of this Lease or of the right to exercise such election, but the same shall continue and remain in full force and effect with respect to any subsequent breach, act or omission. No agreement hereafter made between Landlord and Tenant or course of conduct shall be effective to change, modify, waive, release, discharge, terminate or effect an abandonment of this Lease, in whole or in part, unless the same is in writing, refers expressly to this Lease and is signed by the party against whom enforcement of the change, modification, waiver, release, discharge or termination or effectuation of the abandonment is sought.

b. The following specific provisions hereof shall not be deemed to limit the generality of subsection (a): (i) No agreement to accept a surrender of all or any part of the Property shall be valid unless in writing and signed by Landlord; (ii) the receipt by Landlord of Rent with knowledge of breach of any obligation of this Lease shall not be deemed a waiver of such breach; (iii) no payment by Tenant or receipt by Landlord of a lesser amount than the correct Rent due hereunder shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance or pursue any other remedy in this Lease or at law provided; and (iv) failure of Landlord to complain of any act or omission on the part of Tenant, no matter how long the same may continue, shall not be deemed to be a waiver by Landlord of any of its rights hereunder.

c. No waiver by Landlord at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver or a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. If any action by Tenant shall require the consent or approval of Landlord, Landlord's consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion or a consent to or approval of any other action on the same or any subsequent occasion. Any and all rights and remedies which Landlord may have under this

Lease or by operation of law, either at law or in equity, upon any breach, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other; and no one of them, whether exercised by Landlord or not, shall be deemed to be in exclusion of any other; and any two or more of all such rights and remedies may be exercised at the same time.

28. Holding Over. In the event that Tenant shall continue in occupancy of the Property after the expiration of the term of this Lease or any earlier termination thereof, such occupancy shall not be deemed to extend or renew the term of this Lease, but, at the option of Landlord, such occupancy shall continue as a tenancy at will from month to month upon the covenants, provisions and conditions herein contained and at twice the Rent in effect during the last lease year of the term, prorated and payable for the period of such occupancy. This Section shall not be construed as giving Tenant any right to hold over after the expiration of the term hereof.

29. Force Majeure. The time within which either party hereto shall be required to perform any act under this Lease, other than the payment of money, shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably by strikes, lockouts, acts of God, governmental restrictions, failure, or inability to secure materials or labor by reason of priority or similar regulation or order of any governmental or regulatory body, enemy action, civil disturbance, fire, unavoidable casualties, or any other cause beyond the reasonable control of either party hereto, excluding, however, the inability or failure of either party to obtain any financing which may be necessary to carry out its obligations. Notwithstanding the foregoing, unless the party entitled to such extension shall give notice to the other party hereto (plus concurrent notice by telephone or e-mail if such other party's telephone number is not readily available) of its claim to such extension within three (3) business days after the event giving rise to such claim shall have occurred, there shall be excluded in computing the number of days by which the time for performance of the act in question shall be extended, the number of days which shall have elapsed between the occurrence of such event and the actual giving of such notice.

30. Historic Tax Credit Provisions. Tenant is solely responsible for compliance with all rules and regulations of the National Park Service, Maine Historic Preservation Commission and the Internal Revenue Service with respect to Tenant's claiming federal and state historic rehabilitation credits. Both Landlord and Tenant agree to the maximum extent commercially reasonable to avoid taking any action in connection with this Lease or the Property that might violate such rules and regulations or result in a recapture of such tax credits.

31. Miscellaneous Provisions.

a. The covenants and agreements of Landlord and Tenant shall be binding upon and shall inure to the benefit of them and their respective heirs, executors, administrator, successors and assigns, but no covenant or agreement of Landlord, expressed or implied, shall be binding upon any person except for defaults occurring during such person's period of ownership nor binding individually upon any fiduciary or shareholder or any beneficiary under any trust.

b. Time is of the essence in the performance of the terms and conditions of this Lease.

c. Tenant generally shall keep records of its operations and finances according to generally accepted accounting principles and in accord with any applicable federal or state requirements and Landlord shall have the right, upon reasonable notice, to inspect all data, and records relating to Tenant's performance under this Lease, such inspection to be done during normal business hours and at Landlord's expense.

d. If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

e. The provisions of this Lease amend, supersede and replace in their entirety the terms and provisions of the Original Lease. This Lease expresses the entire agreement of the parties with respect to Tenant's occupancy of the Property. Other documents and instruments of near or even date between Tenant and Landlord relate to financing provided by Landlord to Tenant.

[remainder of page left blank intentionally—signatures begin on next page]

IN WITNESS WHEREOF, the parties have caused this Lease to be executed as of the date set forth at the beginning of this Lease.

WITNESS:

CITY OF PORTLAND, Landlord

By: _____
Jon P. Jennings, its City Manager

ROSA TRUE LP, Tenant

BY: Rosa True GP Inc., its General
Partner

By: _____
Kevin R. Bunker, its President

EXHIBIT A

(Property description)