

LAW OFFICES OF DAVID A. LOURIE
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(207) 799-4922 * fax 221-1688
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December 2, 2015

Board of Appeals
Portland City Hall
389 Congress Street
Portland, ME 04101

Re: Greg's Properties Washave LLC Appeal - 6 Washington Avenue

To the Chair and Members, Greetings:

The 6 Washington Avenue property was owned for more than 50 years by the Berenson family, which operated B&B Cleaners in a building on the site. The property consisted of a dilapidated building with accessory parking. Alec Altman (Greg's Properties WashAve LLC) purchased the property in 2006 (deed attached) proposing construction a second small *Bingas Wings* restaurant on the site in 2008. However, when City staff erroneously demanded payment of \$150,000 (the replacement housing fee for three apartments that had not existed since 1960), and the original *Bingas Wingas* restaurant burned, Alec Altman opened a larger *Bingas Wingas* restaurant on Free Street rather than continuing to fight with the City over building and re-building the two smaller restaurants. City staff continued to demand payment (refusing to grant a demolition permit without payment of the \$150,000.) Finally, the City amended the Ordinance under threat of a lawsuit, and Alec Altman demolished the derelict structure, leaving the property vacant. Alec fenced the vacant lot at the City's insistence, and maintained and repaired the fence for the last five years.

Recently, Alec Altman was approached by the owner of the Otto's pizza restaurant for permission to use the now vacant lot for parking accessory to his restaurant use at 223 Washington Avenue. The Otto's restaurant is a conforming use in the zoning district in which both properties are located. For

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the last few months the Washington Avenue property has been used for parking by Otto's delivery drivers under the attached lease. The owner of Otto's proposes to continue that use, as well as for accessory customer parking. A complaint from a neighbor that the lot was being used for parking as a principal use was received by the Inspections Division. The complaint resulted in the November 3, 2015 Order to cease such use.

The two properties abut each other in the rear, as is shown on the City's Tax map (6 Washington Avenue is highlighted in yellow.) The Otto's pizza restaurant is highlighted in red. The parking will be under the common control of the owner of Otto's pizza restaurant, which offers dine-in, call-in, and take-out pizza service.

The Applicant submits that the use of 6 Washington Ave for parking (by patrons and drivers for a permitted restaurant) is customary and incidental to the pizza restaurant use, and that the limited and dedicated parking therefore qualifies as an accessory use under Portland City Code §§14-182 and 14-404 (b).

§14-182 (b) lists both *Restaurants* and *Drinking Establishments* as permitted uses in the B-2b District. §14-182 (d) ¶four expressly permits "**Accessory uses, as provided in section 14-404.**" §14-404 (b) allows "**Off-street parking when serving conforming uses located in any zone.**"

Neither §404 (b), which authorizes parking as an *accessory use*, nor the definition of "accessory use" (in §14-47¹) expressly requires that an accessory parking use be located on the same lot or parcel as the principal use. Indeed, where the requirement that an accessory use be on the same lot as the

¹ §14-47 "*Accessory uses*: Uses which are customarily incidental and subordinate to the location, function and operation of permitted uses."

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principal use (found in sub-§404.a²), it applies only to accessory uses *other than parking*. Since sub-¶(b) governing accessory parking is an alternative of sub-¶(a) the same lot or parcel requirement clearly does not apply. Moreover, under the rules of statutory construction, in any perceived conflict between the two provisions, the more specific provision applicable to parking as an accessory use (sub-§(b)) is controls over the more general provision (sub-§(a).)

CONCLUSION

Appellant Greg's Properties Washave LLC's use of 6 Washington Avenue for *accessory* restaurant parking for Otto's drivers and customers is a permitted use in the B-2(b) zoning district, and the Order dated November 3, 2015 must be reversed or modified to the extent that it precludes otherwise lawful accessory parking on the Washington Avenue lot.

Sincerely,



David A. Lourie, Agent for Appellant

Submitted with

Original +10 Additional copies

Disk with electronic copy

Check for \$150 Application and Processing Fee

cc: Client

Otto's

² §14-404 “(a) A subordinate use of land or building which is customarily incidental to the main building or to the principal use of the land and which is located on the same lot with the principal building or use.”



Jeff Levine, AICP, Director
Planning & Urban Development Department

Ann Machado
Zoning Administrator

CITY OF PORTLAND ZONING BOARD OF APPEALS

Interpretation Appeal Application

Applicant Information:

NAME
Greg's Properties Washave LLC
BUSINESS NAME
Greg's Properties Washave LLC
BUSINESS ADDRESS
c/o David A. Lourie, 189 Spurwink Ave CE 04107
BUSINESS TELEPHONE & E-MAIL
799-4922 david@lourielaw.com
APPLICANT'S RIGHT/TITLE/INTEREST
Owner - attached deed
CURRENT ZONING DESIGNATION
B-2b
EXISTING USE OF THE PROPERTY:

Subject Property Information:

PROPERTY ADDRESS
6 Washington Avenue
CHART/BLOCK/LOT (CBL)
13-G-7, 12
PROPERTY OWNER (If Different)
Greg's Properties Washave LLC
ADDRESS (If Different)
26 Village Brook Road, Yarmouth, ME 04096
PHONE # AND E-MAIL
914-261-4440
DISPUTED PROVISIONS FROM SEC 14- 14-182 & 404

~~Accessory parking for Otto's Pizza Restaurant located on abutting property.~~

ORDER, DECISION, DETERMINATION OR INTERPRETATION UNDER DISPUTE:

Letter of Zoning Administrator dated November 3, 2015.

TYPE OF RELIEF REQUESTED

~~Determination that parking by Otto's customers and delivery drivers is a permitted accessory use.~~
~~Site Plan approval for change of use will be obtained if use is determined to be permitted.~~

NOTE: If site plan approval is required, attach preliminary or final site plan.

The undersigned hereby makes application for a conditional use permit as described above, and certifies that the information herein is true and correct to the best of his OR her knowledge and belief.

David Lourie, Agent for Greg's Properties Washave LLC 12/3/15
SIGNATURE OF APPLICANT DATE

Portland, Maine



Yes. Life's good here.

Jeff Levine, AICP
Director, Planning & Urban Development Department

November 3, 2015

Greg's Properties Washave LLC
26 Village Brook Road
Yarmouth, ME 04096
Attn: Alec Altman

RE: 6 Washington Avenue – 13-G-7 – B-2b Zone

Dear Mr. Altman,

A complaint has been received that the fence around your property at 6 Washington Avenue has been removed and the lot is now being used for parking. Parking as a principal use is not a listed, allowable use within the B-2b Zone in which this property is located. The current parking use is in violation of Section 14-182 of the Land Use Zoning Ordinance.

A similar incident occurred in 2010 and Marge Schmuckal, the Zoning Administrator at the time, sent a letter dated February 16, 2010 to you, see Attachment 1.

The lot must be vacated immediately and the fence line reestablished to maintain security. If you wish to change the use of the property at 6 Washington Avenue, you must first apply for a permit with Portland Inspection Division. If you have failed to vacate the lot and secure the property from vehicle access within 10 days of the receipt of this letter, the Department of Planning and Urban Development will commence legal action.

You have the right to appeal my decision. If you wish to exercise your right to appeal, you have 30 days from the date of this letter in which to appeal. If you should fail to do so, my decision is binding and not subject to appeal. Please contact the Zoning Administrator for the necessary paperwork that is required to file an appeal.

If you have any questions regarding this matter, please do not hesitate to contact me at 874-8720.

Sincerely,

Ann B. Machado
Zoning Administrator

Planning and Urban Development Department

Attachment

1. Letter to Greg's Properties Washave LLC from Marge Schmuckal, Zoning Administrator, Feb. 16, 2010.

Cc: Jeff Levine, Planning & Urban Development Director
Jennifer Thompson, Associate Corporation Counsel
Tammy Munson, Inspection Division Director
Stuart O'Brien, Planning Division Director
Barbara Barhydt, Development Review Services Manager



PORTLAND MAINE

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*Penny St. Louis Littell - Director of Planning and Urban Development
Marge Schmuckal, Zoning Administrator*

February 16, 2010

Greg's Properties Washave LLC
26 Village Brook Road
Yarmouth, ME 04096
Attn: Alec Altman

RE: 6 Washington Avenue - 13-G-7 - B-2b Zone

Dear Alec,

It has been noticed that the fence around your property at 6 Washington Avenue has been breached. The open lot is now being used for parking. There are three Seacoast Security trucks parked presently on the lot with other cars and trucks. Parking as a principal use is not a listed, allowable use within the B-2b Zone in which this property is located. The current parking use is in violation of Section 14-182 of the Land Use Zoning Ordinance.

The lot must be vacated immediately and the fence line reestablished to maintain security. If you wish to change the use of the property at 6 Washington Avenue, you must first apply appropriately for a permit.

If you have failed to vacate the lot and secure the property from vehicle access within 10 days of the receipt of this letter, this office will commence legal action.

You have the right to appeal my decision. If you wish to exercise your right to appeal, you have 30 days from the date of this letter in which to appeal. If you should fail to do so, my decision is binding and not subject to appeal. Please contact this office for the necessary paperwork that is required to file an appeal.

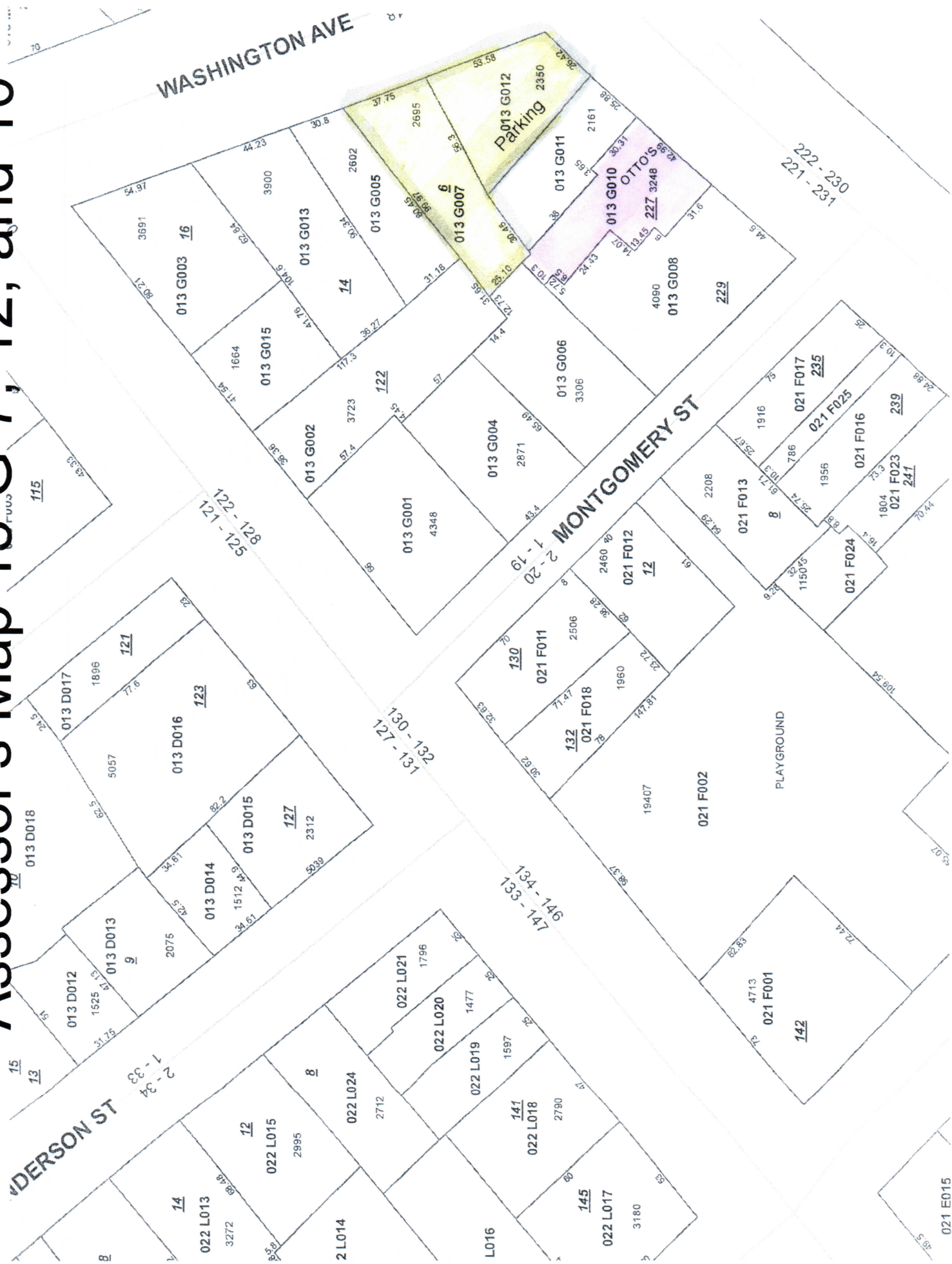
If you have any questions regarding this matter, please do not hesitate to contact me at 874-8695.

Very truly yours,

Marge Schmuckal
Zoning Administrator

Cc: Penny Littell, Planning and Urban Development Director
Ann Freeman, Corporation Counsel

Assessor's Map 13-G-7, 12, and 10



6 Washington Avenue 12-2-2015 3 pm



Deed to 6 Washington Avenue Page 1

Doc#: 16419 Bk:23771 Ps: 200

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that **UMBEL PROPERTIES, LLC**, a Maine limited liability company with a place of business at Portland, Maine, for consideration paid, grant to **GREG'S PROPERTIES WASHAVE LLC**, a Maine limited liability company with a mailing address of 26 Village Brook Road, Yarmouth, ME 04096, with **WARRANTY COVENANTS**, the land in Portland, County of Cumberland and State of Maine, described below:

A certain lot or parcels of land, with the buildings thereon, situated in the City of Portland, County of Cumberland and State of Maine, more particularly described as follows:

Beginning at a point on the westerly side of Washington Avenue, which is ninety-one and thirty-three hundredths (91.33) feet from the intersection of the northerly sideline of Congress Street, and the westerly sideline of Washington Avenue; thence southwesterly at an internal angle of 73° 26' ninety-nine and ninety-seven hundredths (99.97) feet to a post; thence southeasterly by an internal angle of 81° 51' twenty-five and ten hundredths (25.10) feet to a post; thence easterly thirty and forty-five hundredths (30.45) feet to an iron pin; thence easterly fifty-six and three hundredths (56.03) feet to an iron pin on the westerly sideline of Washington Avenue; said line making an internal angle with Washington Avenue of 95° 44'; thence northerly along the westerly sideline of said Washington Avenue thirty-seven and seventy-five hundredths (37.75) feet to the point of beginning.

Also, a certain lot or parcel of land situated on Congress Street, in said City of Portland, bounded and described as follows:

Commencing at the northwesterly corner of Congress Street and Washington Avenue in the City of Portland; thence by said Congress Street southwesterly twenty-six (26) feet five (5) inches to land formerly owned by Samuel H. Quincy; thence by said Quincy's land northwesterly sixty-seven (67) feet nine (9) inches; thence northeasterly fifty-two (52) feet three (3) inches to Washington Avenue; thence southerly by said Washington Avenue fifty-three (53) feet seven (7) inches to the first mentioned bounds.

Also, a certain lot or parcel of land, with the buildings thereon, situated on the southwesterly side of Washington Avenue, in said Portland, bounded and described as follows:

Beginning at the most Easterly corner of the lot of land

MAINE REAL ESTATE TAX PAID

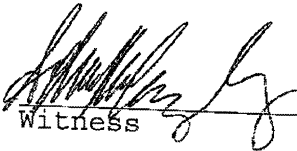
Deed to 6 Washington Avenue Page 2

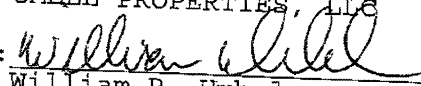
Doc#: 16419 Bk:23771 Pg: 201

which was conveyed to John C. Preston by Deeds from Sidney S. Nason and others and Charles A. York and others, dated November 16, 1881 and recorded in Cumberland County Registry of Deeds, in Book 482, Page 313 and 314; thence running Southwesterly by said Preston's land Ninety and thirty-four one-hundredths (90.34) feet to land of Edward Moore; thence Southeasterly at an included angle of Eighty-five degrees and twenty-two minutes (85° 22') by said Moore's land Thirty-one and eighteen one-hundredths (31.18) feet to land formerly of Ann Woodman; thence Northeasterly at an included angle of Ninety-three degrees and fifty-one minutes (93° 51') and by said Woodman's land Eighty and forty-five one-hundredths (80.45) feet to Washington Avenue; thence Northwesterly at an included angle of one hundred four degrees and forty-six minutes (104° 46') Thirty and eight tenths (30.8) feet to the place of beginning.

Being the same premises conveyed to the Grantor herein by warranty deed dated June 8, 2001 from East End Corp. and recorded in the Cumberland County Registry of Deeds in Book 16402, Page 196.

IN WITNESS WHEREOF, the said Umbel Properties, LLC has set its hand this 20 day of March, 2006.

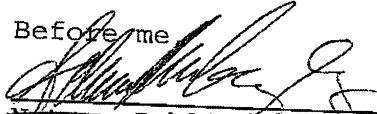

Witness

UMBEL PROPERTIES, LLC
BY: 
William R. Umbel
Its Manager

STATE OF MAINE
COUNTY OF CUMBERLAND

March 20, 2006

Then personally appeared Umbel Properties, LLC by its Manager, William R. Umbel and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said company.

Before me

Notary Public/Attorney at Law

Received
Recorded Register of Deeds
Mar 20, 2006 12:59:38P
Cumberland County
John B O'Brien

PARKING LOT LEASE

THIS PARKING LOT LEASE (the "Agreement" or "Lease") is entered into as of 10/1/2015, 2015, between **GREG'S PROPERTIES WASHAVE LLC**, a Maine limited liability company, with a mailing address of 26 Village Brook Road, Yarmouth, Maine 04096 ("Landlord"), and **OSCAR PIZZA, LLC**, a Maine limited liability company with an address of 576 Congress Street, Portland, Maine ("Tenant").

RECITALS

WHEREAS Landlord is the fee owner of property situated in the City of Portland, County of Cumberland and State of Maine at 6 Washington Avenue, Portland ME 04104, and 221 Congress Street, Portland, Maine 04104, more particularly described in a deed dated March 20, 2006 recorded in the Cumberland County Registry of Deeds in Book 23771, Page 200, and also identified by the City of Portland as Tax Assessors Map 13, Block G, Lot 12 and Lot 7 (the "Leased Premises").

WHEREAS Tenant wishes to lease the Leased Premises, and Landlord wishes to let the Leased Premises to Tenant, for the purpose of providing accessory parking in connection with building(s) on adjacent premises under Tenant's ownership or control and in accordance with the terms and conditions of this Agreement.

AGREEMENT

1. Term. The term of this Agreement will begin on 10/1/15, (the "Commencement Date") and shall continue on a month to month basis. ~~Either party/shall have the option of terminating this Lease by providing the other party sixty (60) days advance written notice of its request to terminate.~~

2. Rent. Tenant agrees to pay Landlord the amount of 1200 - Dollars (\$14400) per month (the "Rent"). The first such payment shall be due and payable on the Commencement Date, and thereafter Rent shall be paid on the first day of each month during the Term. Rent shall be prorated for any partial months.

3. Intentionally Deleted.

4. No Set Off. Tenant waives and disclaims any present or future right to withhold any rent payment or other payment due under this Agreement, or to set off in any action for rent, as a result of any obligation of Landlord, Tenant agrees that it will not claim or assert any right to so withhold or set off rent.

5. Interest/Service Charge. Tenant shall pay Landlord a service charge of Five Percent (5%) of the amount due for all monthly rent payments not paid by the fifth (5th) day of the month for which they are payable. The service charge is imposed upon Tenant in an effort to reimburse Landlord for the inconvenience of handling, receiving and collecting delinquent payments.

N

6. Permitted Uses. The Leased Premises shall be under the exclusive control of Tenant but shall be used only for, and for the purpose of providing accessory parking in connection with building(s) on adjacent premises under Tenant's ownership or control and for no other use or purpose without the Landlord's prior written consent, which shall be granted or withheld in Landlord's sole and subjective discretion. The Tenant shall comply with all laws, ordinances, codes and regulations regarding the Leased Premises and the permitted uses upon the Leased Premises.

7. Operating Expenses. Tenant agrees to pay all expenses associated with holding and operating the Leased Premises, including all utilities, if any, trash and snow removal, general maintenance, insurance, property taxes, special assessments, water and sewer assessments, if any, and other charges imposed by law or against the Leased Premises as part of Tenant's obligation hereunder.

8. Permits. Tenant will apply for, pay for and keep current all permits and licenses required for the lawful operation of the Leased Premises.

9. Intentionally Deleted.

10. Insurance. Tenant shall procure and maintain throughout the Term an insurance policy, at its sole cost and expense, insuring Tenant against all claims, demands or actions arising out of or in connection with Tenant's use or occupancy of the Leased Premises or the condition of the Leased Premises (the "Policy"). The amount of insurance shall be what Landlord may reasonably require and approve, but shall be in amounts not less than Two Million Dollars (\$2,000,000.00) combined single limit with deductibles of not less than Five Thousand Dollars (\$5,000) per occurrence under standard Maine form policies. Tenant shall deposit with Landlord certificates for such insurance at or prior to the commencement of the term, and thereafter within thirty (30) days prior to the expiration of any such policies. Such certificates of insurance shall name Landlord as an additional insured. All such insurance certificates shall provide that such policies shall not be canceled without at least thirty (30) days prior written notice to each assured named therein. If these provisions are not met, the Landlord shall be entitled, but shall not be required, to obtain such insurance at the cost of Tenant, which shall be paid by Tenant within ten (10) days after the Landlord gives Tenant notice. Any premium remaining unreimbursed to Landlord after said ten day period shall bear interest at eighteen percent (18%) per annum. Failure to maintain insurance shall be an Event of Default (as hereinafter defined).

11. Intentionally Deleted.

12. Security Deposit. Tenant shall deposit with Landlord and shall maintain at all times the sum of _____ Dollars, (\$ 0), as security for the faithful performance by Tenant of every term and condition of this Lease. Tenant shall not be entitled to apply the security in payment of rent. If there should be a default by Tenant in respect to any term or condition of this Lease, Landlord may use all or any part of the security deposit to perform the same for the account of the Tenant, or for any damages or deficiency. Any interest accruing thereon shall be for the sole benefit of Landlord. If Tenant shall fully and faithfully comply with all of the provisions of this Lease, then the security deposit or any balance thereof remaining shall be repaid to Tenant within sixty (60) days from the termination of this Lease. In the event of any

Parking Lease to Otto's Page 3

sale, transfer or assignment of Landlord's interest under this Lease, Landlord shall transfer the security to the vendee, transferee, or assignee, as the case may be, and Landlord thereupon shall be released from all liability for repayment of the security, and Tenant in each instance shall look solely to such vendee, transferee or assignee for repayment of the security deposit.

13. Tenant's Obligations. The Tenant, at its own expense, shall properly maintain and keep the Leased Premises and all improvements in good order, condition and repair. The Tenant in maintaining, repairing or improving the Leased Premises shall not allow any mechanic's liens to arise which are not bonded over within sixty (60) days of filing. The Tenant shall not permit waste, damage, or injury to the Leased Premises or the improvements.

14. Subordination and Quiet Enjoyment. This Lease shall be subject and subordinate to any and all mortgages, deeds of trust and other instruments in the nature of a mortgage, now or at any time hereafter a lien or liens on the Leased Premises of which the Leased Premises are a part and the Tenant shall, when requested, promptly execute and deliver such written instruments as shall be necessary to show the subordination of this Lease to said mortgages, deeds of trust or other such instruments in the nature of a mortgage. Provided Tenant performs all of its obligations under this Lease, Tenant shall be entitled to the quiet enjoyment of the Leased Premises.

15. Landlord's Access. Landlord or agents of Landlord may, at all reasonable times during the term of this Lease, enter the Leased Premises (i) to examine the Leased Premises and, if Landlord shall so elect, to make any repairs or additions Landlord may deem necessary and, at Tenant's expense, to remove any alterations, additions, or the like, not consented to in writing; and (ii) to show the Leased Premises to prospective purchasers, grantees and mortgagees.

16. Indemnification and Liability. Tenant will defend and, except to the extent caused solely by the gross negligence or willful conduct of Landlord, will indemnify Landlord and its employees, agents and management company, and save them harmless from any and all injury, loss, claim, damage, liability and expense (including reasonable attorneys' fees and costs of collection) in connection with the loss of life, personal injury or damage to property or business, arising from, related to, or in connection with the occupancy or use by Tenant of the Leased Premises, or occasioned wholly or in part by any act or omission of Tenant, its contractors, subcontractors, licensees or concessionaires, or its or their respective agents, servants or employees while on or about the Leased Premises. Tenant shall also pay Landlord's expenses, including reasonable attorneys' fees and costs of collection, incurred by Landlord in successfully enforcing any obligation, covenant or agreement of this Lease or resulting from Tenant's breach of any provisions of this Lease. The provisions of this paragraph shall survive the termination or earlier expiration of the term of this Lease.

17. Eminent Domain. Should a substantial portion of the Leased Premises, be taken by eminent domain, the Landlord may elect to terminate this Lease. When such taking renders the Leased Premises unfit for use and occupation and Landlord does not so elect to terminate this Lease, a just and proportionate abatement of rent shall be made until the Leased Premises, or in the case of a partial taking what may remain thereof, shall have been put in proper condition for use and occupation. Landlord reserves and excepts all rights to damages to the Leased Premises and the

leasehold hereby created, accrued or subsequently accruing by reason of anything lawfully done in pursuance of any public, or other, authority; and by way of confirmation, Tenant grants to Landlord all Tenant's rights to such damages and covenants to execute and deliver such further instruments of assignment thereof as Landlord may from time to time request. Landlord shall give Tenant notice of its decision to terminate this Lease or restore said Premises within ninety (90) days after any occurrence giving rise to Landlord's right to so terminate or restore. Notwithstanding anything to the contrary, Landlord shall have no obligation to put the Leased Premises in proper condition for use and occupation. In addition, and notwithstanding anything herein to the contrary, if it shall appear that the Leased Premises have been rendered wholly untenable by reason of any such occurrence for a period in excess of 90 days, Tenant may at its election terminate this Lease and the tenancy granted herein by giving to the Landlord, within thirty (30) days following the date of such occurrence, written notice of its election to do so.

18. Default and Bankruptcy.

In the event that:

- A. The Tenant shall default in the payment of any installment of rent or other sum herein specified when due; or
- B. The Tenant shall default in the observance or performance of any of the Tenant's covenants, agreements, or obligations hereunder and such default shall not be corrected within ten (10) days after written notice thereof; or
- C. The leasehold hereby created shall be taken on execution, or by other process of law; or
- D. An assignment shall be made of Tenant's property for the benefit of creditors, or a receiver, guardian, conservator, trustee in bankruptcy or similar officer shall be appointed by a court of competent jurisdiction to take charge of all or any part of Tenant's property, which assignment is not dismissed within sixty (60) days after commencement, or petition is filed by Tenant under any bankruptcy, insolvency or other debtor relief law;

Landlord shall be entitled to all remedies available to Landlord at law and equity, including without limitation, the remedy of forcible entry and detainer, and Landlord lawfully may, immediately or at any time thereafter, and without demand or notice, mail a notice of termination to and repossess the same as of its former estate, and expel Tenant and those claiming through or under it and remove it or their effects without being deemed guilty of any manner or trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant, and upon such mailing or entry as aforesaid, this lease shall terminate; and Tenant covenants and agrees, notwithstanding any entry or reentry by Landlord, whether by summary proceedings, termination, or otherwise, that Tenant shall, as of the date of such termination, immediately be liable for and pay to Landlord the entire unpaid rental and all other balances due under this Lease for the remainder of the term. In addition, Tenant

Parking Lease to Otto's Page 5

agrees to pay to Landlord, as damages for any above described breach, all costs of reletting the Leased Premises including real estate commissions and costs of renovating the Premises to suit any new Tenant.

19. NOTICE

Any notice from the Landlord to the Tenant relating to the Leased Premises or to the occupancy thereto, shall be deemed duly served, if mailed to the Tenant at the address set forth in Article 1 of this Lease, or at such other address as Tenant may from time to time advise in writing, registered or certified mail, return receipt requested, postage prepaid, addressed to Tenant. Any notice from Tenant to Landlord relating to the Leased Premises or to the occupancy thereof, shall be deemed duly served, if mailed to the Landlord by registered or certified mail, return receipt requested, postage prepaid, addressed to Landlord at Landlord's address set forth in Article 1, or at such other address as Landlord may from time to time advise in writing.

20. SURRENDER

Tenant shall at the expiration or other termination of this Lease peaceably yield up the Leased Premises and leaving the Leased Premises clean and in as good order, repair and condition as the same are in at the commencement of the term of the Lease.

21. HAZARDOUS MATERIALS

Tenant covenants and agrees that, with respect to any hazardous, toxic or special wastes, materials or substances including asbestos, waste oil and petroleum products (the "Hazardous Materials") which Tenant, its agent employees, may use, handle, store or generate in the conduct of its business at the Leased Premises Tenant will: (i) comply with all applicable laws, ordinances and regulations which relate to the treatment, storage, transportation and handling of Hazardous Materials; (ii) that Tenant will in no event permit or cause any disposal of Hazardous Materials in, on or about the Leased Premises; (iii) that Tenant will with advance notice and at all reasonable times permit Landlord or its agents or employees to enter the Leased Premises to inspect the same for compliance with the terms of this paragraph and will further provide upon five (5) days notice from Landlord copies of all records which Tenant may be obligated by federal, state or local law to obtain and keep; (iv) that upon termination of this Lease, Tenant will, at its expense, remove all Hazardous Materials from the Leased Premises which came to exist on, in or under the Leased Premises during the terms of this Lease or any extensions thereof and comply with applicable state, local and federal laws as the same may be amended from time to time; and (v) Tenant further agrees to deliver the Leased Premises to Landlord at the termination of this Lease free of all Hazardous Materials which came to exist on, in or under the Leased Premises during the term of this Lease or any extension thereof. The terms used in this paragraph shall include, without limitation, all substances, materials, etc., designated by such terms under any laws, ordinances or regulations, whether federal, state or local.

22. LIMITATION OF LIABILITY



Parking Lease to Otto's Page 6

Tenant agrees to look solely to Landlord's interest in the Leased Premises for recovery of any judgment from Landlord it being agreed that Landlord is not personally liable for any such judgment.

23. Landlord DEFAULT

Landlord shall in no event be in default in the performance of any of its obligations hereunder unless and until Landlord shall have failed to perform such obligations within thirty (30) days or such additional time as is reasonably required to correct any such default after notice by the Tenant to the Landlord properly specifying wherein the Landlord has failed to perform any such obligation. Further, if the holder of the mortgage on the Leased Premises notifies Tenant that such holder has taken over Landlord's rights under this Lease, Tenant shall not assert any right to deduct the cost of repairs or any monetary claim against Landlord from rent thereafter due and accruing, but shall look solely to the Landlord for satisfaction of such claim.

24. WAIVER OF RIGHTS

No consent or waiver, express or implied, by either party to or of any breach of any covenant, condition or duty of the other, shall be construed as a consent or waiver to or of any other breach of the same or other covenant, condition or duty.

25. SUCCESSORS AND ASSIGNS

The covenants and agreements of Landlord and Tenant shall run with the land and be binding upon and inure to the benefit of them and their respective heirs, executors, administrators, successor and assigns, but no covenant or agreement of Landlord, express or implied shall be binding upon any person except for defaults occurring during such person's period of ownership not binding individually upon any fiduciary, any shareholder or any beneficiary under any trust.

26. HOLDOVER

If Tenant fails to vacate Leased Premises at the termination of this Lease, then the terms of this Lease shall be applicable during said holdover period, except for base rent, which shall be increased to two (2) times the then current base rent for the period just preceding such termination; but this provision shall not be interpreted as consent or permission by the Landlord for Tenant to holdover at the termination of this Lease and the terms of this holdover provision shall not preclude Landlord from recovering any other damages which it incurs as a result of Tenant's failure to vacate the Leased Premises at the termination of this Lease.

27. MISCELLANEOUS

*month to month lease - As Agreed in
demand - just request 60 Days Notice
To Terminate - Anthony AL*

Parking Lease to Otto's Page 7

- a. The captions appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of this Lease, nor in any way affect this Lease.
- b. This Lease shall not be recorded, but each party agrees, at the request of the other, to enter into a mutually satisfactory Memorandum of Lease in recordable form.
- c. If any provision of this Lease or its application to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such provision to persons or circumstance other than those as to which it is invalid or unenforceable, shall not be affected thereby and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.
- d. This Lease constitutes the entire agreement between Landlord and Tenant with respect to the subject matter contained herein and there are no understandings or agreements between Landlord and Tenant with respect to said subject matter which are not contained herein. This Lease cannot be amended except by written instrument executed by Landlord and Tenant.
- e. For the purposes of this Lease, the words "Landlord" and "Tenant" shall be deemed and taken to mean each and every person or party mentioned as Landlord or Tenant herein, be the same one or more; and if there shall be more than one Landlord or Tenant, any notice required or permitted by the terms of this Lease may be given by or to any one thereof, and shall have the same force and effect as if given by or to all thereof. The use of the neuter singular pronoun to refer to Landlord or Tenant shall be deemed a proper reference even though Landlord or Tenant may be an individual, a partnership, a corporation, or a group of two or more individuals or corporations. The necessary grammatical changes required to make provisions of this Lease apply in the plural sense where there is more than one Landlord or Tenant and to either corporations, associations, partnerships, or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.

28. BROKERAGE

There are no brokers involved in this transaction. Tenant warrants and represents to Landlord that it has not dealt with any broker, finder or similar person concerning the leasing of the Premises. In the event of any brokerage claims against Landlord by anyone claiming to be Tenant's Broker, Tenant agrees to defend the same and indemnify Landlord against such claim. Landlord warrants and represents to Tenant that it has not dealt with any broker, finder or similar person concerning the leasing of the Premises. In the event of any brokerage claims against Tenant by anyone claiming to be Landlord's Broker, Landlord agrees to defend the same and indemnify Tenant against such claim.

18th IN WITNESS WHEREOF, the said parties hereunto set their hands and seals this day of September, 2015.



