

COMMERCIAL LEASE (MODIFIED GROSS)

This Lease is made this ____ day of _____, 2014 (hereinafter "Effective Date") by and between **36 Market Street, Inc.**, a Maine business corporation with a mailing address of 42 Market Street, Portland, ME 04101 (hereinafter "Landlord") and **Drinkwater, Ohlson and Briggs, Inc.**, a Maine business corporation with a mailing address of 620 Highland Avenue, South Portland, Maine 04106 (hereinafter "Tenant").

1. DEFINITIONS. The following terms as used herein have the meanings set forth below:

- (a) "Exclusive Premises" means **those premises located on the garden-level of the Building adjacent to the building common restrooms;**
- (b) "Common Areas" means **areas customarily shared between and among tenants in the Building, including but not limited to stairwells, elevators, lobby areas, and the bathrooms located immediately adjacent to the Exclusive Premises, but not including stairwells, lobbies, and other areas solely contained within and solely accessible through a tenant's Exclusive Premises;**
- (c) "Leased Premises" means the Exclusive Premises together with any rights granted herein, if any, to use or access the Common Areas;
- (d) "Property" means the land, together with the buildings thereon, located at **36 Market Street, Portland, ME 04101;**
- (e) "Building" means any and all structures, whether temporary or permanent, located on Property;
- (f) "Tenant's Proportional Share" means a fraction, the numerator of which is the rentable area deemed to be contained within the Exclusive Premises, and the denominator of which is the rentable area contained within the Building. Tenant's Proportional Share is hereby established as **one-third (1/3)**. In the event the rentable space within the Building changes, Tenant's Proportional Share shall be recalculated according to the above formula;
- (g) "Operating Expenses" means the total amount paid or payable by Landlord in connection with the management, maintenance, repair, and operation of the Property, not including capital improvements, and further described in Section 6;
- (h) "Entertainment" means the playing of live or recorded music, theatrical performances, comedy routines, poetry and literature recitals, and other activities similar thereto.
- (i) "Base Year" means **Calendar Year 2015**.
- (j) "Rent" means the sum of Base Rent (as defined in Section 5) and Additional Rent (as defined in Section 6).

2. PREMISES. In consideration of the rents, covenants and agreements contained herein, Landlord demises and leases to Tenant the Exclusive Premises, together with the reasonable use, in common with others, of all Common Areas of the Property. Tenant leases and agrees to take Leased Premises “as is,” except as otherwise provided herein.
3. TERM. Tenant shall have and hold the Leased Premises for the Initial Term of **five (5) years**, commencing on **January 1, 2015** (hereinafter “Commencement Date”) and terminating on **December 31, 2019** (hereinafter “Termination Date”) unless such Initial Term otherwise expires, terminates or is cancelled at an earlier date pursuant to any of the terms, conditions, covenants or other provisions of this Lease, by operation of law, or by order of a court of competent jurisdiction. Notwithstanding the foregoing, upon providing Landlord with reasonable advance notice, Tenant shall have the right to access the Leased Premises early prior to the Commencement Date to inspect the same, complete measurements, commence the construction of Tenant’s initial improvements to the Exclusive Premises, and/or facilitate due diligence related to Tenant’s efforts to obtain the necessary permits and approvals for the operation of its business in the Leased Premises, provided such access is coordinated and accepted by the existing tenant as described in Section 4(a) hereof.
4. CONTINGENCY, CANCELLATION AND EXTENSION.
 - (a) Tenant acknowledges this Lease is subject to and contingent upon Landlord receiving a release from the existing tenant renting the Exclusive Premises and further acknowledges all of Landlord’s duties under this Lease do not become effective until such release is obtained. Landlord shall provide Tenant with a copy of such release from said existing tenant immediately upon receipt of the same, provided that Landlord may make such release contingent upon the expiration of all contingencies contained within this Lease. In the event such release is not received by Landlord and delivered to Tenant within sixty (60) days from the Effective Date, Tenant shall have the right to cancel this Lease by providing Landlord with written notice of the same. Upon such cancellation, this Lease shall terminate without further recourse to either party.
 - (b) Tenant shall have sixty (60) days from the Effective Date to cancel this Lease by providing Landlord with written notice that Tenant is unable to obtain necessary permits and approvals from the City of Portland and that Tenant represents it has made a good faith effort to obtain said permits and approvals. Upon such cancellation, this Lease shall terminate without further recourse to either party.
 - (c) Tenant shall have the option to extend this Lease for **one (1) additional five (5) year** period (hereinafter “Renewal Term”) commencing on expiration of the Initial Term. If Tenant desires to exercise its option to extend this Lease for the Renewal Term, Tenant shall give Landlord written notice of Tenant’s exercise of Tenant’s renewal option not less than nine (9) months prior to the expiration of the Initial Term, provided, however, in order to avoid the inadvertent failure of Tenant to exercise its Renewal Term, if Tenant has not provided written notice of exercise by the time provided above, Tenant’s renewal right shall nonetheless continue for ten (10) days after the date of Tenant’s receipt from

Landlord of written notice that Landlord has not received Tenant's exercise notice, and if Tenant does not exercise within said ten (10) days, Tenant shall thereafter have no further right to exercise its Renewal Term. Tenant's exercise of said option shall only be valid if, at both the time of giving said notice and the expiration of the Initial Term, Tenant shall not be in default of any of the provisions or terms of this Lease beyond applicable notice and cure periods, if any. In the event of any extension of this Lease, all terms and provisions of this Lease shall remain applicable except for this Section which is applicable only to the Initial Term. The Base Rent for the Renewal Term shall be the Base Rent of the immediately preceding year as increased by **two point five (2.5%)** percent on each anniversary of the Commencement Date.

5. BASE RENT

- (a) Beginning on the Commencement Date, Tenant shall pay the following amounts as Base Rent according to the following schedule:

For the first lease year, commencing upon the Commencement Date through December 31, 2015	\$15,600.00/year
Payable in equal monthly installments of:	\$1,300.00
For the second lease year, commencing upon January 1, 2016 through December 31, 2016	\$15,990.00/year
Payable in equal monthly installments of:	\$1,332.50
For the third lease year, commencing upon January 1, 2017 through December 31, 2017	\$16,389.84/year
Payable in equal monthly installments of:	\$1,365.82
For each lease year, commencing upon January 1, 2018 through December 31, 2018	\$16,799.52/year
Payable in equal monthly installments of:	\$1,399.96
For each lease year, commencing upon January 1, 2019 through December 31, 2019	\$17,219.52/year
Payable in equal monthly installments of:	\$1,434.96

Each monthly installment is due in advance on the first day of each month at such place as is designated by Landlord and is due to Landlord without any defense, abatement, deduction or set-off for any reason except as may be expressly provided for in this Lease.

6. ADDITIONAL RENT

- (a) Commencing on January 1, 2016, Tenant shall pay to Landlord Additional Rent equal to the Tenant's Proportional Share of any increases in the Property's Operating Expenses over those incurred during the Base Year, also known as Common Area Maintenance ("CAM") expenses. Operating Expenses may include, but are not limited to:
- (i) Landlord's cost in repairing or maintaining the roof, roof membrane, exterior walls, exterior windows, and exterior doors of the Property;

- (ii) All real estate taxes or taxes in lieu thereof or in addition thereto imposed by the City of Portland or other taxing authority on the Property;
- (iii) Landlord's costs in maintain the outside paved areas, walkways, landscaping, and other Common Areas;
- (iv) Landlord's annual cost of insurance insuring against fire and extended coverage, including all risk coverage and all other insurance including, but not limited to, earthquake, flood, volcano, terrorism, Act of God, and/or surface water endorsements for the Property, rental value insurance against loss of rents in an amount equal to the amount of rent for a period of at least six months, but not more than twelve months, commencing on the date of loss;
- (v) Landlord's cost of modification to the Property and the Common Areas occasioned by any legal requirements adopted after the Commencement Date of this Lease;
- (vi) Landlord's cost of preventative maintenance and repair contracts including, but not limited to, contracts for elevator systems and HVAC systems, lifts for disabled persons, and/or trash or refuse collection;
- (vii) Landlord's cost of security and fire protection services to the Property;
- (viii) Landlord's expense for retention of a property management company or Landlord's reasonable fee, not to exceed five (5%) percent of the Property's gross rents, for managing the Property itself;
- (ix) Landlord's cost of supplies, equipment, rental equipment, and other similar items used in the operation and/or maintenance of the Property;
- (x) Landlord's cost of repairs and maintenance required of Landlord under this Lease, including janitorial services for Common Areas and costs of cleaning windows; and
- (xi) Landlord's cost of utilities for the Common Areas.

This list is for illustrative purposes only and is not exhaustive of all Operating Expenses. Landlord does not represent that any of the above actions will be taken and Landlord may, in its sole and absolute discretion, begin or discontinue any of the services or activities chargeable to Tenant as Operating Expenses.

Notwithstanding the foregoing, in no event shall Tenant be liable to pay for any of the following items and/or costs, which shall be excluded from Operating Expenses: (A) any capital expenditures; (B) interest, mortgage payments, ground lease payments or any costs related thereto; (C) depreciation, amortization or other expense not paid in cash; (D) reserves, whether actually funded or not, and/or any charges that relate to or benefit fewer than all of the tenants in the Building; (E) amounts expended related to solicitation, negotiation, acquisition or enforcement of leases; (F) rentals and other related expenses incurred in leasing air conditioning systems, or other equipment ordinarily considered to be of a capital nature; and (G) any income, receipts, estate or inheritance taxes.

Landlord may elect to estimate total Operating Expenses on an annual basis and invoice Tenant in equal monthly installments. Any estimated charges shall be considered Additional Rent. Within ninety (90) days after the end of each year, Landlord shall provide to Tenant a written statement of the actual CAM expenses for such year (hereinafter "Annual CAM Statement"). Within thirty (30) days of Tenant's receipt of the Annual CAM Statement, Tenant shall pay to Landlord any shortage unpaid by Tenant, or Landlord shall refund to Tenant any overage paid by

Tenant. Tenant may elect, within thirty (30) days of receipt of the Annual CAM Statement, to conduct an audit of Landlord's records of Operating Expenses and no shortage in Additional Rent due for the prior lease year shall be paid until Tenant completes such audit. The statement required to be delivered to Tenant summarizing Operating Expenses shall contain reasonable detail and support for the amounts payable by Tenant.

(b) In the event this Lease does not terminate, expire, or is otherwise cancelled on the final day of a calendar year, there shall be a final CAM accounting. Landlord shall divide the total Operating Expenses of the Base Year by twelve, multiplied by the number of months or fractions thereof then elapsed in the current calendar year as of the date of lease termination. Landlord shall then calculate the total Operating Expenses of the then-current calendar year as of the date of Lease. Tenant shall pay the difference calculated by subtracting the latter amounts from the former. In the event amounts of known Operating Expenses, including electricity and gas, have not been provided by vendors at the time of Lease termination, Landlord may elect to use the immediate prior bill as an estimate which shall be deemed the actual amount for purposes of this Subsection. In the event Landlord elects to estimate Operating Expenses under Subsection (b), the final CAM accounting shall permit refund to Tenant of any overpayments made to Landlord.

(c) Additional Rent shall be due and payable within ten (10) days after Tenant receives written notice from Landlord and a detailed invoice evidencing the amount to be paid by Tenant. If said Additional Rent is not paid when due, it shall be collectable with the next required installment of Base Rent, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder or limit any other right or remedy of Landlord.

7. LATE CHARGE. If Tenant fails to pay Landlord any Rent due under this Lease by the tenth (10th) day of the month in which such amount is due a late charge of five (5%) percent of the amount shall be added to the amount due.

8. UTILITIES.

(a) HVAC: Landlord shall provide heating and cooling in the Leased Premises, such heating and cooling units shall be configured in such a way that Tenant shall have the ability to control heat and air conditioning to the Leased Premises and said units shall have such capacities that the Leased Premises may be maintained at heating and cooling levels appropriate for Tenant's operations pursuant to this Lease. All costs for operating and maintaining any such heating and cooling system shall be considered an Operating Expense.

(b) Water/Sewer, Gas/Oil,: Tenant shall pay for utility services for the Building and Leased Premises as invoiced by Landlord as described in a separate agreement between and among Landlord and other Building tenants, as it may be amended from time to time.

- (c) Electricity: Beginning on the Commencement Date, Tenant shall pay to Landlord as Additional Rent the amounts charged by any electricity provider for Tenant's Electrical Use in the Building. "Tenant's Electrical Use" shall be calculated by reading the amount of electricity used by Tenant according to a submeter installed on Tenant's electrical panel for a given period ("Tenant Use"), divided by the total amount of electricity consumed in the building as calculated by the electricity provider ("Building Use"), the total of which shall be multiplied by the Building Use to establish Tenant's Electrical Use. In the event of failure of the submeter and inability of Landlord to calculate a reasonable approximation of Tenant Use, Tenant shall pay to Landlord the Building Use multiplied by Tenant's Proportional Share.
- (d)

9. REPAIRS AND MAINTENANCE.

- (a) Landlord shall be responsible for snow removal from the sidewalks adjacent to the Leased Premises. Except as set forth herein, Tenant shall be responsible for all interior cleaning, non-capital maintenance and repairs of the Exclusive Premises and Tenant shall at all times keep the Leased Premises in good order, condition, and repair, excepting damage by unavoidable casualty for which Landlord is insured.
- (b) Landlord shall repair and maintain in good condition the interior and exterior structural portions of the Leased Premises, Building and Property, together with the mechanical systems (including the HVAC system for the serving the Exclusive Premises), exterior walls and roof of the Building.
- (c) Landlord acknowledges that, prior to the Commencement Date, it shall fully update and completely overhaul the finishes and fixtures of the bathrooms servicing the Leased Premises, which work shall be completed by Landlord at its sole cost and expense.
- (d) At the expiration or other termination of the term hereof, Tenant shall surrender the Leased Premises in generally the same condition ("broom clean") as the Leased Premises were in upon delivery of possession thereto under this Lease, reasonable wear and tear excepted, and damage by casualty excepted, and shall surrender all keys for the Leased Premises to Landlord at the place then fixed for the payment of rent and shall inform Landlord of all combinations on locks, safes and vaults, if any, in the Leased Premises. Tenant shall remove any fixtures, alterations, or improvements as provided in Section 10(b) hereof before surrendering the Leased Premises as aforesaid and shall repair any damage to the Leased Premises caused thereby, except for those fixtures, alterations, or improvements Tenant is required to leave at the Leased Premises pursuant to this Lease or any subsequent agreement of Landlord and Tenant. Tenant's obligation to observe and perform this covenant shall survive the expiration or other termination of the term of this Lease.

10. SIGNS, FIXTURES, ALTERATIONS

- (a) Tenant shall not make or cause to be made any alterations, additions, or improvements or install or cause to be installed any trade fixtures, signs, floor coverings, or lighting or plumbing fixtures without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, it is hereby agreed and acknowledged that Tenant shall have the right, without Landlord's consent, to complete certain initial improvements to the Exclusive Premises substantially in accordance with the plans and specifications attached hereto as **Exhibit A** and made a part hereof, subject to all applicable laws, ordinances, and regulations. Landlord may, upon Tenant's request and at Tenant's expense, provide building signage on interior directories and the exterior of the Building consistent with the signage allocated for other tenants of the Building.
- (b) If, at the expiration or other termination of this Lease, Tenant fails to restore the Leased Premises and to remove such fixtures, alterations, additions, and improvements, excepting those required to be left pursuant to this Lease or any other agreement between the Landlord and Tenant, then, upon the expiration or other termination of this Lease and upon Tenant's removal from the Leased Premises, all said signs, fixtures, alterations, additions, and improvements shall, at the option of the Landlord, (i) become the property of the Landlord or (ii) be removed and stored or destroyed, if appropriate, in their entirety or any part thereof at Tenant's sole cost and expense.
- (c) Tenant shall promptly pay all contractors and materialmen for which it is responsible so as to minimize the possibility of a lien attaching to the Leased Premises. Should any lien be made or filed, Tenant shall bond against or discharge the same within thirty (30) days after notice of the lien is received by Tenant or written request by Landlord, whichever first occurs.
- (d) Landlord agrees, prior to the Commencement Date, to complete Landlord's Work in accordance with the description attached hereto as Exhibit B, provided that Tenant shall reimburse Landlord for fifty (50%) percent of the costs, capped at \$1,000, required to purchase and install submeters necessary to calculate Tenant's Electrical Use.
11. **SECURITY DEPOSIT.** Tenant shall deposit with Landlord **One Thousand Three Hundred (\$1,300.00) Dollars** to be held by Landlord in a non-interest bearing account. Such amount shall be promptly returned to Tenant within thirty (30) days following the termination, expiration, or cancellation of this Lease, provided Tenant has complied with all material terms of this Lease, including Section 9(c). Landlord may not expend any such amount deposited under this Section, except that, in the event of an uncured default by Tenant, Landlord may apply any such amount to amounts owed by Tenant without waiver of any of Landlord's other rights or remedies under this Lease, at law, or in equity.
12. **LANDLORD'S ACCESS.** Upon reasonable prior notice, Landlord shall have reasonable access to the Leased Premises for the purpose of examining the same, or to perform any repairs or maintenance deemed necessary by Landlord, or to show the Property to prospective purchasers, but the performance of such repairs, maintenance, examination,

or showing shall not unreasonably interfere with the Tenant's use of the Leased Premises nor disrupt the conduct of Tenant's business thereon. During the last nine (9) months of the term of this Lease, as may be extended, amended, or renewed under this Lease or subsequent agreement between Tenant and Landlord, Landlord shall have the right to show the Leased Premises to prospective tenants during normal business hours upon reasonable prior notice to Tenant. Nothing in this Section shall be construed to limit Landlord's access if Landlord, in its reasonable commercial judgment, believes an emergency situation, including fire, flooding, burst pipes, or structural failures, requires immediate access to protect the Property.

13. ASSIGNMENT AND SUBLETTING

- (a) Tenant agrees not to assign, mortgage, pledge, or encumber this Lease, in whole or in part, or sublet the Leased Premises, in whole or in part, or permit the same or any portion thereof to be used or occupied by others, nor shall this Lease be assigned or transferred by operation of law, without the prior written consent of Landlord in each instance, which consent shall not be unreasonably withheld, conditioned or delayed provided, however, Tenant shall have the right to assign or transfer this Lease for estate planning purposes upon notice to Landlord but without the need for the Landlord's consent.. A transfer of fifty (50%) percent or more of the ownership interest in Tenant shall be deemed to constitute an assignment of the Lease and shall be subject to the provisions of this Section. Except to the extent Landlord's consent is not required by this Section, if this Lease is assigned or transferred or if all or any part of the Leased Premises are sublet or occupied by anyone other than Tenant, Landlord may, after default by Tenant, collect rent (including Base Rent and Additional Rent) from the assignee, transferee, subtenant or occupant and apply the net amount collected to the rent reserved herein, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of any agreement, term, covenant or condition hereof, or of the acceptance of the assignee, transferee, subtenant or occupancy as Tenant, or a release of Tenant from the performance or further performance by Tenant of the agreements, terms, covenants and conditions hereof. The consent by Landlord to an assignment, mortgage, pledge, encumbrance, transfer or subletting shall not in any way be construed to relieve Tenant from obtaining the express consent in writing of Landlord to any further assignment, mortgage, pledge, encumbrance, transfer, or subletting. In the event of any assignment, mortgage, pledge, encumbrance, transfer, or subletting which is approved by Landlord hereunder, Tenant shall nevertheless remain liable under all of the agreements, terms, covenants, and conditions hereof, unless Landlord expressly releases Tenant from its obligations hereunder.
- (b) Subject to the rights of the holder of any mortgage on the fee, Tenant hereby assigns to Landlord all of its right, title, and interest in and to all present and future subleases and all rents (including Base Rent and Additional Rent) due and to become due thereunder. In the event of any default or breach of this Lease, Landlord shall apply any net amount collected by it from subtenants to the net rent or additional rent due hereunder. In the event of the failure of any subtenant to pay subrent to Landlord pursuant to the foregoing assignment after the happening of any such event of default or breach of this Lease, any

such rent thereafter collected by Tenant shall constitute a trust fund for the benefit of Landlord.

- (c) Tenant shall not directly or indirectly collect or accept any payment of rent (other than Additional Rent) under any sublease more than one month in advance of the date when the same shall become due, except that, in case of a sublease where the sublessor thereunder is required to make subtenant changes or alterations at such sublessor's expense, such sublessor may collect rent in advance for an amount not in excess of one year's rent or the estimated cost of the work, whichever is less. Any sublease may require the subtenant thereunder to make a rent security deposit in an amount not exceeding ten (10%) percent of the aggregate subrent reserved for the term of such sublease.
- (d) Tenant shall not modify any sublease so as to reduce the rent (including Base Rent or Additional Rent), shorten the term, or adversely affect in any other respect to any material extent the rights of the sublessor thereunder, or permit cancellation or accept the surrender of any sublease, or surrender any security deposited thereunder, or release any guarantor thereof without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed, provided, however, that Tenant may permit the cancellation or accept the surrender of a sublease if made in connection with the making of a new sublease permitted by the terms hereof.
- (e) Notwithstanding anything to the contrary contained herein, Landlord shall have the discretion to refuse to consent to any proposed sublease which impairs or tends to impair the character, reputation, or appearance of Landlord's property as a first-class commercial property, provided that such discretion shall be exercised on a reasonable basis. The provisions of this Section are intended to be in furtherance, and not in limitation, of the grounds upon which Landlord may refuse to consent to a proposed sublease.

14. INSURANCE AND INDEMNITY

- (a) Tenant shall, during the term hereof, keep in full force and effect a policy of commercial liability insurance with respect to the Leased Premises and the business operated with respect to the Leased Premises and the business operated by Tenant in the Leased Premises insuring Landlord and Tenant against all claims and demands for any personal injury to or death of any person and damage to or destruction or loss of property which may have or be claimed to have occurred on the Leased Premises with an aggregate limit of not less than **One Million (\$1,000,000.00)** Dollars, which policy shall contain a clause that the insurer will not cancel or change the insurance without first giving Landlord ten (10) days prior written notice. Tenant shall provide evidence of all insurance required hereunder to Landlord upon Landlord's written request.
- (b) Tenant shall provide, at its sole expense and throughout the term of this Lease, special form (all risk) insurance, or fire and extended coverage insurance, in amounts sufficient to cover any and all losses which might be incurred through the damage or destruction of furniture, equipment, machinery, and personal property not owned by Landlord kept on the Leased Premises.

- (c) Throughout the term of this Lease, Landlord shall maintain Comprehensive General Liability Insurance and casualty insurance upon the Property under a so-called "All Risk" policy in such forms and in such amounts as would customarily be carried by prudent owners of similar properties in the same locale as the Leased Premises.
- (d) Notwithstanding anything in this Lease to the contrary, Landlord and Tenant each hereby waive any and all rights of recovery, claim, action, or cause of action against the other for any loss or damage that may occur to the Premises or any improvements thereto, or any personal property of Landlord or Tenant, arising from any cause that (a) would be insured against under the terms of any special form (all risk) property insurance or (b) is insured against under the terms of any property insurance actually carried, regardless of whether it is required hereunder. The foregoing waiver shall apply regardless of the cause or origin of the claim, including, but not limited to, the negligence of a party or that party's agents, officers, employees, or contractors.
- (e) Tenant shall indemnify Landlord and hold and save it harmless from and against any and all claims, actions, damages, liability, and expense, including reasonable attorney's fees, in connection with loss of life, personal injury, and/or damage to property arising from or out of any occurrence inside, above, upon or at the Leased Premises, or the occupancy or use by Tenant of the Leased Premises or any part thereof. Landlord shall indemnify Tenant and hold and save it harmless from and against any and all claims, actions, damages, liability, and expense, including reasonable attorney's fees, in connection with loss of life, personal injury, and/or damage to property arising from or out of any occurrence inside, above, upon or at the Building or Property, or the occupancy or use by Landlord of the Building or Property or any part thereof, except for claims, actions, damages, liabilities, or expenses attributable to Tenant's negligent or intentional acts or omissions.

15. CONDUCT OF BUSINESS BY TENANT.

- (a) Tenant shall use the Leased Premises solely for activities consistent with **beer, liquor and wine retail sales and Entertainment**. Tenant shall not permit any business to be operated in or from the Leased Premises by any concessionaire or licensee, provided, however, that Tenant shall have the right to host parties, charity poker tournaments, fundraisers or similar private functions without the Landlord's consent. Tenant shall not keep within the Leased Premises any article of dangerous, flammable, or explosive character (beyond reasonable commercial amounts necessary as accessory to the primary use) which increases the danger of fire or other casualty upon the Leased Premises, or which would be deemed "hazardous" or "extra-hazardous" by any responsible insurance company. The Tenant shall conduct its business in such a manner as will not unreasonably interfere with or disturb any other Building tenant in the conduct of its business, or the Landlord in the reasonable management of the Building. The sidewalks, entrances, corridors, and halls shall not be unreasonably obstructed or encumbered by the Tenant or used for any purpose other than ingress or egress to and from the Leased

Premises without written permission of the Landlord, provided further that all such use shall comply with all applicable laws, codes, and ordinances. Supplementing and not limiting the foregoing, **Tenant agrees to use reasonable commercial efforts to prevent the congregation of Tenant's guests, customers, or invitees on the sidewalk between the hours of 10:00 p.m. and 2:00 a.m. on all evenings Tenant is open and conducting business.**

- (b) Any Entertainment conducted or held by Tenant in the Leased Premises shall comply with all applicable laws, ordinances, rules, and regulations of any governmental agency having jurisdiction over such matters. Tenant represents and agrees that any such Entertainment shall not unreasonably interfere or disturb the operations of other tenants in the Building, the tenants and landlords of adjacent buildings, or the Portland Regency Hotel and Spa. **Tenant shall not permit sound levels deriving primarily from Tenant's use of the Leased Premises to exceed Eighty (80 dB) Decibels between the hours of 10:00 p.m. and 8:00 a.m. as measured from the sidewalk immediately adjacent to the Building.** Tenant and Landlord agree that this subsection is a material term of the Lease.

16. GOVERNMENTAL REGULATIONS. Tenant shall faithfully observe in the use of the Leased Premises all municipal and county ordinances and state and federal statutes, rules, and regulations now in force or which may hereafter be in force.

17. FIRE, CASUALTY, OR EMINENT DOMAIN. If all or a substantial portion of the Leased Premises shall be destroyed or damaged by fire or other casualty, or shall be taken by exercise of the power of eminent domain or by private purchase in lieu thereof, then this Lease and the term hereof shall terminate at the election of the Landlord. If this Lease shall not be terminated by Landlord pursuant to the first sentence hereof, then Landlord shall restore the Leased Premises, or what may remain thereof after such casualty or taking, within a reasonable period to the same condition they were in prior to such damage, destruction or taking. If such restoration shall not be completed within ninety (90) days after the date of such damage, destruction or taking, Tenant shall have the right to terminate this Lease, unless such completion shall be delayed by reason of strikes, lock-outs, labor troubles, unanticipated inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, terrorism, war or other reason beyond Landlord's reasonable control. In the event of condemnation, Tenant shall have no claim against the Landlord nor the condemning authority for the value of any unexpired term of this Lease, provided, however, that Tenant shall have the right to claim and recover from the condemning authority such compensation or damages as may be separately awarded to or recoverable by Tenant, or fairly attributable to Tenant on account of any and all damage to Tenant's leasehold improvements or fixtures by reason of the condemnation and for or on account of any cost or loss suffered by Tenant in removing Tenant's furniture, fixtures, leasehold improvements, and equipment.

18. DEFAULT

- (a) (i) In the event of any failure of the Tenant to pay any Rent due hereunder on or before

- the tenth (10th) day after it is due hereunder;; or
- (ii) any failure of the Tenant to perform any other of the terms, conditions, covenants, or other provisions of this Lease to be observed or performed by Tenant, if Tenant has not cured or commenced to cure such failure within thirty (30) days after receipt of written notice of such default (which notice shall specify in detail the nature of such default); or
 - (iii) if Tenant shall become bankrupt or insolvent, or file any debtor proceeding or have taken against Tenant in any court pursuant to any statute, either of the United States or of any state, a petition in bankruptcy or insolvency or for the reorganization or for the appointment of a receiver or trustee of all or a portion of Tenant's property and the foregoing proceeding remains undismissed for a period of thirty (30) days, or if Tenant makes an assignment for the benefit of creditors, or petitions for or enters into an arrangement; or
 - (iv) if Tenant shall suffer this Lease to be taken under any writ of execution which remains undischarged or undismissed for a period of thirty (30) days;

then Landlord, in addition to any other rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the Leased Premises and such property may be removed and stored at the cost of and for the account of Tenant, all without service or notice or resort to legal process and without Landlord being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby, and Landlord shall be entitled to evict Tenant by civil action.

- (b) In the event of re-entry by Landlord under Subsection (a), Landlord shall use reasonable diligence, at the expense of Tenant, in finding another tenant for the Leased Premises in order to mitigate damages. No such re-entry or taking possession of the Leased Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. Should the Lease be terminated, in addition to other remedies it may have, Landlord may recover from Tenant all damages it may incur by reason of the breach under which this Lease is terminated, including the cost of recovering the Leased Premises, reasonable attorneys' fees and including the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease for the remainder of the stated term over the then reasonable rental value of the Leased Premises for the remainder of the stated term, discounted to present value (using a discount rate equal to the Wall Street Journal Prime Rate) all of which amounts shall be immediately due and payable from Tenant to Landlord.

- (c) If Landlord shall default in the performance or observance of any agreement, condition or other provision in this Lease contained on its part to be performed or observed, and shall not cure such default within thirty (30) days after notice in writing or such additional time as is necessary to cure provided that Landlord promptly commences and is diligently pursuing cure to completion, Tenant, at its option, without waiving any claims for breach of agreement, at any time thereafter may cure such default for the account of Landlord, and Landlord shall reimburse Tenant for any amount paid and any expense or contractual liability

so incurred, subject to any good faith dispute relating to the commercial reasonableness of the amount of, or the necessity for, any such expenditure; and provided further that Tenant may cure any such default as aforesaid prior to the expiration of said waiting period but after notice to the Landlord, if it is necessary to prevent loss of business or injury or damage to persons or property. Landlord shall reimburse Tenant for the reasonable attorneys' fees, expert witness fees, and court costs incurred by Tenant in successfully enforcing Tenant's rights under this Lease.

19. QUIET ENJOYMENT. Subject to the terms and conditions of this Lease, Tenant may have and enjoy the Leased Premises free from hindrance by Landlord.

20. ESTOPPEL CERTIFICATE; ATTORNMENT

(a) Within ten (10) days after a written request therefor by Landlord, or in the event that upon any sale, assignment, or hypothecation of the Leased Premises, in whole or in part, and/or the Property by Landlord, an estoppel certificate shall be required from Tenant. Tenant agrees to deliver said certificate to any proposed mortgagee or purchaser, or to Landlord, certifying if true that this Lease is in full force and effect and that, to Tenant's knowledge, there are no defaults or defenses thereto or stating those claimed by Tenant, and/or providing any additional reasonably requested information regarding this Lease.

(b) Upon request of Landlord, Tenant shall subordinate its right hereunder to the lien of any mortgage or mortgages, or the lien resulting from any other method of financing or refinancing, provided, however, that the subordination of this Lease to any such mortgagee, shall, in any event, be subject to the delivery to Tenant of such mortgagee's written agreement, for so long as Tenant shall not be in default hereunder beyond applicable notice and cure periods, to fully recognize Tenant's rights and remedies under this Lease, and to permit quiet enjoyment by Tenant in the event of entry, foreclosure or sale in lieu of foreclosure. Concurrent with the execution of this Lease, any current holders of interests superior to this Lease shall also execute and deliver such agreements to Tenant if requested by Tenant. Tenant shall, in the event any proceedings are brought for the foreclosure at or in the event of exercise of the power of sale of any mortgage made by Landlord covering the Leased Premises or in the event of a sale in lieu of foreclosure to the mortgagee or any purchaser, upon any such foreclosure or sale and such mortgagee or purchaser assuming this Lease, recognize such mortgagee or purchaser as Landlord hereunder, and no sale for the purpose of foreclosing the Property, or repossessing or other action pursuant to said mortgage or other security indenture, shall be regarded as an eviction of Tenant or its successors, constructive or otherwise, or give the Tenant or any successor of the Tenant any rights to terminate this Lease, provided that such mortgagee shall be subject to the above-mentioned commitment and agreement.

21. LIABILITY FOR CASUALTY. Except in the case of the negligence or intentional misconduct of Landlord, its officers, agents and employees, Landlord shall not be liable for any injury or damage to Tenant's property resulting from fire, explosion, falling objects, steam, gas, electricity, water, rain or snow, or leaks from any part of the Building or from the roof, street or subsurface or from any other cause of any nature, provided, however, that, in

the case of the foregoing, Landlord shall use commercially reasonable efforts to mitigate any such damage to Tenant's property. Except in the case of the negligence or intentional misconduct of Landlord, its officers, agents and employees, Landlord shall not be liable for any such damage caused by other tenants or persons in the Building or caused by constructions operations of any public, quasi-public, or private work; nor shall Landlord be liable for any latent defect in the Leased Premises or in the Building, Tenant shall give reasonably prompt notice to Landlord in case of fire or accident in the Leased Premises or of defects therein.

22. **LIMITATION OF LANDLORD'S LIABILITY.** Tenant shall neither assert nor seek to enforce any claim (except injunctive relief where appropriate) for breach of this Lease against any of Landlord's assets other than Landlord's interest in the Property and in the rents, issues and profits thereof. Tenant agrees to look solely to such interest for the satisfaction of any liability of Landlord under the Lease. In no event shall Landlord, its officers, trustees, directors, partners, partners in partners, beneficiaries, joint venturers, members, stockholders, or other principals or representatives, whether disclosed or undisclosed, ever be personally liable for any such liability or ever be liable for damages, whether direct, consequential, punitive, or otherwise.
23. **EXCULPATORY PROVISIONS.** The term "Landlord," as used in this Lease, means only the owner for the time being of the Property, so that in the event of any sale or sales of such land, or assignment, transfer, or other conveyance of its rights under this Lease, the said Landlord shall be entirely freed and relieved of all covenants and obligations of Landlord hereunder, and it shall be deemed construed, except as hereinafter stated, without further agreement between the parties or their successors in interest, or between the parties and the purchaser at any such sale, or the successor to the Landlord by reason of any assignment, transfer, or other conveyance of its rights under this Lease, that such purchaser or successor has assumed and agreed to carry out any and all covenants and obligations of Landlord hereunder, whether arising before or after such assignment or transfer.
24. **SUCCESSORS.** All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors, and assigns of said parties. No rights, however, shall inure to the benefit of any assignee of Tenant. If more than one party executes this Lease as Tenant, the liability of such parties hereunder shall be joint and several.
25. **HOLDOVER.** If the Tenant shall remain in possession of the Leased Premises after the expiration of the term of this Lease, such possession shall be as a month-to-month tenant. During such month-to-month tenancy, the provisions of this Lease, including the rental provisions, shall be applicable, except that the rent shall accrue at 150% of the rental amount due during the last month of the Lease. Landlord or Tenant may terminate any such month-to-month tenancy by giving to the other party thirty (30) days prior written notice.
26. **WAIVER.** The waiver of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same, or any other term, covenant or condition herein contained. The

subsequent acceptance or rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant or any term, covenant, or condition of this Lease, other than the failure of Tenant to pay the particular rental so accepted.

27. NOTICE. Unless otherwise provided herein, any notice, demand, request, or other instrument which may be or is required to be given under this Lease shall be delivered in person or sent by United States certified mail, postage prepaid, and shall be addressed if to Landlord 42 Market Street, Portland, ME 04101-5022 or such other address as Landlord may designate by written notice, and if to Tenant the Leased Premises or such other address the Tenant shall designate by written notice, with a copy to Bernstein Shur, 100 Middle Street, West Tower, Portland, Maine 04104, Attn: Hawley R. Strait, Esq..
28. TITLES AND NUMBERS. The Section and Subsection numbers and titles appearing herein are inserted solely for convenience and in no way define, limit, construe or describe the scope or intent of this Lease.
29. SEVERANCE. Should any term or provision of this Lease, or portion thereof be determined invalid or unenforceable under law, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof.
30. LANDLORD AND TENANT. The terms "Landlord" and "Tenant" shall be deemed and taken to mean each and every person or party mentioned as a Landlord or Tenant herein, be the same one or more; if there shall be more than one 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.
31. ENTIRE AGREEMENT. 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 and effect.
32. CHOICE OF LAW. This Lease shall be construed according to the laws of the State of Maine and any disputes or actions related to this Lease shall be brought in the trial courts of Cumberland County having jurisdiction over such actions.
33. MEMORANDUM OF LEASE. The parties hereto agree that, upon request by either party, the other shall execute a Memorandum of Lease in the usual form suitable for recording and the parties agree that this Lease shall not be recorded.

IN WITNESS WHEREOF, Landlord and Tenant each have caused this Lease to be signed and sealed as of the Effective Date.

WITNESS

36 Market Street, Inc. ("Landlord")

WITNESS
("Tenant")

By:
Its:

Drinkwater, Ohlson and Briggs, Inc.

By: Mark Ohlson
Its: President

By: Stephen Briggs
Its: Co-owner

By: Nathan Drinkwater
Its: Co-owner

Exhibit A

[See Attached Plan for Tenant's Initial Improvements to the Exclusive Premises]

Exhibit B

[See Attached Landlord's Work Description]