

LEASE AGREEMENT BY AND BETWEEN

CITY OF PORTLAND

AND

PORTLAND VENTURE PARTNERS

This Lease Agreement is made this 9th day of January, 1992, by and between the **CITY OF PORTLAND**, a body politic and corporate, located in the County of Cumberland, State of Maine (hereinafter "**CITY**") and **PORTLAND VENTURE PARTNERS**, a Maine Partnership, located in the County of Cumberland, State of Maine (hereinafter "**PVP**").

In consideration of the mutual covenants and agreements contained herein, and intending to be legally bound hereby, **CITY** and **PVP** hereby agree as follows:

Section 1. Granting of Leasehold

CITY does hereby lease and let to **PVP**, and **PVP** does hereby lease of and from **CITY**, upon the terms and conditions set forth herein, the following Premises situated, lying and being in the City of Portland, County of Cumberland, State of Maine described in Exhibit A, attached hereto and incorporated by reference herein.

Section 2. Term

The Term of this Lease Agreement shall be fifty (50) years beginning on the date of execution hereof and ending on the same date fifty (50) years thereafter, unless sooner terminated by **CITY** or **PVP**.

Section 3. Rent

(a) **PVP** covenants and agrees to pay **CITY** for use of the Premises without offset or deduction and without previous demand therefor, the sum of One Thousand Dollars (\$1,000.00) per year. Said yearly sum shall be due and payable as of the first day of each year of the term.

(b) PVP shall pay to CITY a single payment of Five Thousand Dollars (\$5,000.00) upon execution of this Lease Agreement. Said payment shall be used by CITY to improve the park land owned by CITY in the vicinity of Bank Road and the leased Premises.

Section 4. Net Lease

All amounts payable hereunder shall be net to CITY and all costs, expenses, and obligations relating to the Premises shall be paid by PVP.

Section 5. Use of Premises

(a) The Premises shall be used as parking spaces for tenants of the building located at 343 Forest Avenue, during the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday. At all other hours the Premises shall remain available to the general public for parking.

(b) PVP shall not charge any fee for the use of the Premises during the term hereof.

(c) At the sole expense of PVP, the Premises shall be properly graded, paved, drained and maintained as a parking area, which improvements shall include, without limitation, placement of a guardrail. Prior to commencement of said improvements, PVP shall obtain, at its own cost and expense, all required approvals and permits. In addition, said guardrail placement and improvements shall be subject to the approval of the Director of Parks and Public Works.

Section 6. Taxes and Utility Expenses

(a) Throughout the term, in addition to the rent herein provided, PVP shall pay and discharge punctually as and when the same shall become due and payable on account of Premises all taxes, special and general assessments; water rents, rates and charges; sewer rents, rates and charges; charges for gas, hot water, electricity, light and power or other services furnished to Premises; and other governmental charges of every kind and nature.

(b) PVP shall have the right to contest or review any and all of said taxes and charges by legal proceeding, or in such other manner as it deems suitable. Said contest or review, if instituted, shall be conducted promptly at the cost and expense of PVP, at no expense to CITY, and if required by law, in the name of and with the cooperation of CITY.

Section 7. Repairs and Maintenance

(a) At its sole expense, PVP shall keep the Premises in good order and repair during the entire term.

(b) PVP shall be responsible for snow plowing and snow removal from the Premises.

Section 8. Insurance, Indemnity

(a) PVP shall obtain and maintain throughout the term of this Lease Agreement at its sole cost and expense, Public Liability Insurance in the amount of not less than Three Hundred Thousand Dollars (\$300,000) Combined Single Limit, or such other amount as may be set forth as the limit of municipal liability by the Maine Tort Claims Act (14 M.R.S.A. §8101 et seq.) as it may be amended from time to time.

(b) To the fullest extent permitted by law, PVP shall, at its own expense, defend, indemnify and hold harmless CITY, its officers, agents, and employees from and against any and all liability, claims, damages, penalties, losses, expenses or judgments, just or unjust, including reasonable attorney's fees, arising from property damage or personal injury to anyone resulting from the use of the Premises due to any act or omission of PVP, its officers, employees, agents, servants, tenants or persons in privity with PVP. PVP shall, at its own cost and expense defend any and all suits or actions, just or unjust which may be brought against the CITY or which the CITY may be impleaded with others upon any such above-mentioned matter claim or claims, including claims of contractors, employees, laborers, materialmen and supplies. CITY shall have the right to participate in such suits or actions in its sole discretion and at its own expense and such suit or action shall be settled without prior consent of the CITY. The extent of this provision shall not be limited by any requirement of insurance contained herein. This obligation of indemnity and defense shall not be construed to negate or abridge any other right to indemnification or contribution running to the CITY which would otherwise exist.

Section 9. Subletting and Assignment

PVP shall not sublet the Premises or assign this Lease Agreement or the Premises without the prior written approval of the City of Portland.

Section 10. Default by PVP

(a) If PVP causes or permits the Premises to be used or operated in violation of this Lease Agreement, this Lease Agreement shall immediately and without notice be null and void and the Premises shall revert to the possession of CITY or its successor in interest.

(b) Events of Default

PVP shall be in default hereunder if any of the following events occur during the term:

1. PVP fails to pay any amount or installment of rent or other sum specified herein;
2. PVP fails to observe or perform any covenant, agreement or obligation of this Lease Agreement;
3. There shall occur the dissolution of PVP or PVP shall file any petition or institute any proceedings under the United States Bankruptcy Code, as it may be amended from time to time, or any state or federal act dealing with or relating to the subject of bankruptcy or insolvency as it may be amended from time to time; or any involuntary petition in bankruptcy is filed against PVP and the same is not discharged or stayed within thirty (30) days from such filing or any other petition or proceedings of a similar kind; or a receiver of the assets of PVP shall be appointed by any court except a receiver appointed at the request of CITY; or PVP shall make any assignment general or otherwise, for the benefit of PVP's creditors, except for the extent such assignment is to CITY.
4. PVP shall substantially abandon or vacate Premises.

(c) Remedy for Default

1. If PVP is in default under Section 10(b) of this Lease Agreement, CITY shall give reasonable notice of said default and a reasonable opportunity to cure.
2. In the event PVP fails or refuses to cure said default within a reasonable time of said notice, CITY may proceed to cure PVP's default immediately. CITY may thereafter deliver receipts and records reflecting the costs of cure, which costs shall constitute additional rent. PVP shall pay said additional rent within sixty

(60) days of receipt of said bill if said steps and costs of cure are reasonable.

3. In the event PVP fails or refuses to cure such default within a reasonable time of said notice, CITY may take whatever action at law or in equity, may appear necessary or desirable to enforce the performance and observance of any obligation, agreement or covenant of PVP under this Lease Agreement.

4. General Provision

No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expeditious, and the exercise of any one right or remedy shall not impair the right of CITY to any or all of the remedies.

Section 11. Termination and Expiration of Term

As of termination of PVP's tenancy for any reason or expiration of PVP's tenancy, the Premises in its entirety including the improvements thereon shall immediately vest as property of CITY or any lawful successor of CITY.

Section 12. Notices

Every notice, demand, request, approval, consent, or other communication authorized or required by this Lease Agreement shall be in writing and shall be deemed to have been properly given when delivered in hand or sent postage prepaid by United States registered or certified mail, return receipt requested, addressed as follows:

If to CITY, to the attention of the City Manager, City of Portland, 389 Congress Street, Portland, ME 04101, with copy to Director of Economic Development;

If to PVP, Richard McGoldrick and Michael F. Mastronardi, 100 Silver Street, Portland, ME 04101 or such other persons or addresses as such party may designate by notice given from time to time in accordance with this Section 12. The rent payable by PVP hereunder shall be paid to CITY at the same place where a notice to CITY is herein required to be directed.

Section 13. Governing Law

This Lease Agreement and the performance thereof shall be governed, interpreted, construed, and regulated by the laws of the State of Maine.

Section 14. No Merger

The fee title of the Premises, and the leasehold estate granted by this Lease Agreement shall not merge, but shall always remain separate and distinct notwithstanding the union of said estates either in PVP or in a third party by purchase or otherwise.

Section 15. Partial Invalidity

If any term, covenant, condition, or provision of this Lease Agreement 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 Agreement, 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 Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 16. Short Form Lease

The parties shall at any time, at the request of either one, or any mortgagee, promptly execute an instrument, or instruments, in recordable form, which constitutes a short form of Lease setting forth a description of the Premises, the Term, and any other portions thereof, excepting the rental provisions, as either party may request or as may be required by any applicable law, ordinance, or governmental rule or regulation.

Section 17. Entire Agreement

This Lease Agreement (including exhibits hereto) expresses the entire understanding and all agreements of CITY and PVP with each other, and neither CITY nor PVP has made or shall be bound by any agreement with or any representation to the other which is not expressly set forth in this Lease Agreement (including the exhibits hereto). This Lease Agreement (including the exhibits hereto) may be modified only by an agreement in writing signed by CITY and PVP.

Section 18. Parties

Except as herein otherwise expressly provided, the covenants, conditions, and agreements contained in this Lease Agreement shall bind and inure to the benefit of CITY and PVP and their respective successors and assigns.

Section 19. Waivers

Failure of CITY or PVP to complain of any act or omission on the part of the other party no matter how long the same may continue, shall not be deemed to be a waiver by said party of its rights hereunder. No waiver by CITY or PVP at any time, express or implied, of any breach of any provision of this Lease Agreement shall be deemed a waiver or a breach of any other provision of this Lease Agreement or a consent to any subsequent breach of the same or any other provision.

Section 20. Right to Enter, Inspect and Repair

CITY by its authorized officers, employees, agents, contractors, sub-contractors and other representatives shall have the right but not the duty to enter upon and in the Premises without charge for the following purposes:

(a) Inspection. To inspect the Premises to determine whether PVP has complied and is complying with the terms and conditions of this Lease Agreement.

(b) Maintenance. To perform maintenance and make repairs in any case where PVP has failed to carry out its obligation to do so. In that event, PVP shall promptly upon demand reimburse CITY for the reasonable cost of CITY's performing PVP's maintenance or repair obligation as Additional Rental.

IN WITNESS WHEREOF, the said CITY OF PORTLAND has caused this Lease Agreement to be signed in its corporate name and sealed with its corporate seal by Robert B. Ganley, its City Manager, thereunto duly authorized, and PORTLAND VENTURE PARTNERS, has caused this Lease Agreement to be signed by Richard McGoldrick and Michael F. Mastronardi, its General Partners,

thereunto duly authorized, as of the day and date first set forth above.

WITNESS:

CITY OF PORTLAND

Virginia S. Kane

By: Robert B. Ganley
Robert B. Ganley
Its City Manager

STATE OF MAINE
CUMBERLAND, ss.

Dated:

Personally appeared the above-named Robert B. Ganley, City Manager of said City of Portland, as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of the City of Portland.

Before me,
Virginia S. Kane
Notary Public/Attorney at Law
VIRGINIA S. KANE
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES MAY 2, 1997

WITNESS:

Jane E. Plojrde

By: Richard McGoldrick
PORTLAND VENTURE PARTNERS
Richard McGoldrick
General Partner

STATE OF MAINE
CUMBERLAND, ss.

Dated: 1/9/92

Personally appeared the above-named Richard McGoldrick, General Partner of Portland Venture Partners, as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of Portland Venture Partners

Before me,
Jane E. Plojrde
Notary Public/Attorney at Law

JANE E. PLOJRDE
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES JULY 13, 1993

WITNESS:

Jane E. Plourde By:

~~PORTLAND VENTURE PARTNERS~~

Michael F. Mastronardi
General Partner

STATE OF MAINE
CUMBERLAND, ss.

Dated: 1/9/91

Personally appeared the above-named Michael F. Mastronardi, General Partner of Portland Venture Partners, as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of Portland Venture Partners

Before me,

Jane E. Plourde
Notary Public/Attorney at Law

JANE E. PLOURDE
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES JULY 13, 1993





OWEN HASKELL, INC.

H.I. and E.C. JORDAN SURVEYORS

- SURVEYING
- PERMITTING
- WETLANDS MAPPING

8 Broadway • South Portland, Maine 04106 • 207/799-5694 • FAX 799-7607

February 24, 1992

**DEED DESCRIPTION
PORTION OF FENWICK ROAD TO
BE CONVEYED TO
COMMERCIAL PROPERTIES, INC.**

A certain lot or parcel of land, being approximately one half of a portion of Fenwick Road and a small portion of Bank (formerly Oakleigh) Road both now discontinued roads, in the City of Portland, County of Cumberland, State of Maine and further bounded and described as follows:

Beginning at the Southeast corner, on said discontinued Fenwick Road, of the lot conveyed by C.F. Associates to Stokes Brothers Investments by deed dated June 30, 1986 and recorded in Book 7249, Page 87. Said point of beginning is further located as distant from Forest Avenue, measured by the Northerly sideline of discontinued Fenwick Road, N-50°-15'-E, 150.01 feet to a point of curvature; Thence, by a curve to the Southeast having a radius of 99.25 feet a distance of 52.40 feet measured on the arc thereof, said curve having a chord bearing and distance of N-65°-22'-30"-E, 51.79 feet to the point of beginning of the land herein conveyed;

Thence, from said point of beginning and continuing by the Northerly sideline of said discontinued Fenwick Road, the adjoiner to the North being other land of the City of Portland, and still by said curve to the Southeast having a radius of 99.25 feet a distance of 55.72 feet measured on the arc thereof, said curve having a chord bearing and distance of S-83°-25'-E, 54.99 feet to a point of tangent;

Thence, continuing by said discontinued Fenwick Road and other land of the City of Portland on the following described courses and distances:

S-67°-20'-E, 77.60 feet to a point of curve;

Thence, by a curve to the Northeast having a radius of 139.27 feet a distance of 106.81 feet measured on the arc thereof, said curve having a chord bearing and distance of S-89°-18'-15"-E, 104.21 feet to a point;

Commercial Properties, Inc.

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Thence, departing from the Northerly sideline of said discontinued Fenwick Road and running into the interior of said road S-01°-42'-W, 14.69 feet to a 6" X 8" wooden post being the most Westerly post in a row of said posts extending Easterly from it;

Thence, by said row of posts S-88°-18'-E, 44.81 feet to a point. This point does not reach the Easterly end of said row of posts.

Thence, through said discontinued Fenwick Road and a portion of discontinued Bank (Oakleigh) Road by a line which on its Southerly portion is one foot, more or less, Westerly of a chain link fence of a baseball field, S-03°-57'-E, 70.69 feet to a point one foot, more or less, from the fence post at the Southwest corner of said baseball field;

Thence, through said Bank Road N-47°-48'-W, 39.67 feet to a point on the line between said Bank Road and Fenwick Road;

Thence, by the approximate centerline of said Fenwick Road, the sidelines of said road not being parallel in this area, N-73°-50'-W, 138.92 feet to a point;

Thence, continuing by said centerline, the sidelines now being parallel, N-67°-20'-W, 77.60 feet to a point of curvature;

Thence, continuing by said centerline and by a curve to the Northwest having a radius of 74.89 feet a distance of 26.82 feet measured on the arc thereof, said curve having a chord bearing and distance of N-77°-35'-45"-W, 26.69 feet to a point;

Thence, through said discontinued Fenwick Road by the projection Southeasterly of the rear line of said Stokes Brothers Investments Property, N-39°-46'-W, 29.99 feet to the point of beginning.

Said above described courses are magnetic 1971.

Said above described lot contains 8,794 square feet.

Meaning and intending to convey and hereby convey a portion of Fenwick Road and a portion of Bank Road. Both roads were discontinued by order of the City Council passed April 1, 1991.

Commercial Properties, Inc.
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The discontinuance of Fenwick Road is subject to the retention of a public easement by the City of Portland. "Said easement shall provide access to Barrows Park and a location for any public utility facilities necessary to provide service".

Louis T. Maguire, PLS

CERTIFICATE OF INSURANCE

ISSUE DATE (MM/DD/YY)

3/14/92

PRODUCER
 Morse, Fayor & Hayes
 100 Middle Plaza
 P.O. Box 406 OTS
 Portland, ME 04112

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

COMPANY LETTER	A	Continental Insurance Company
COMPANY LETTER	B	
COMPANY LETTER	C	
COMPANY LETTER	D	
COMPANY LETTER	E	

INSURED
 Richard J. McGoldrick and
 Michael Mastronardi dba
 Portland Venture Partners
 c/o Commercial Properties
 100 Silver Street, Portland ME

KAB

COVERAGES

THIS IS TO CERTIFY THAT POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH POLICIES.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	ALL LIMITS IN THOUSANDS	
A	GENERAL LIABILITY				GENERAL AGGREGATE	\$ 2000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				PRODUCTS-COMPOPS AGGREGATE	\$ 2000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCURRENCE				PERSONAL & ADVERTISING INJURY	\$ 1000
	OWNER'S & CONTRACTORS PROTECTIVE				EACH OCCURRENCE	\$ 1000
					FIRE DAMAGE (ANY ONE FIRE)	\$ 50
					MEDICAL EXPENSE (ANY ONE PERSON)	\$ 5
	AUTOMOBILE LIABILITY				COL	\$
	<input type="checkbox"/> ANY AUTO				EACH ACCIDENT PER PERSON	\$
	<input type="checkbox"/> ALL OWNED AUTOS				EACH ACCIDENT PER PERSON	\$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE	\$
	<input type="checkbox"/> HIRED AUTOS					
	<input type="checkbox"/> NON-OWNED AUTOS					
	EXCESS LIABILITY				EACH OCCURRENCE	AGGREGATE
	<input type="checkbox"/> OTHER THAN UMBRELLA FORM				\$	\$
	WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY				STATUTORY	
					\$	(EACH ACCIDENT)
					\$	(DISEASE-POLICY LIMIT)
					\$	(DISEASE-EACH EMPLOYEE)
	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS: The City of Portland is hereby added as an Additional Insured as respects a parking lot leased by Portland Venture Partners and located at the rear portion of Denwick Road, Portland, ME as reflected on survey of Dan Haskell, Inc. dated 3/14/92.

CERTIFICATE HOLDER
 City of Portland
 City Hall
 339 Congress Street
 Portland, ME

CANCELLATION
 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
