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Inspections Division
Approved with Conditions
Date: 02/06/18

LEASE INDENTURE

This Indenture, made in the City of Portland, County of Cumberland and State of Maine, between **1041 BRIGHTON AVE., LLC**, a Maine limited liability company (hereinafter "Landlord") with a mailing address of c/o CBRE|Boulos Asset Management, One Canal Plaza, Suite 500, Portland, ME 04101 and **PORTLAND SMOKE AND VAPE, INC.**, a Maine corporation (hereinafter "Tenant") with a mailing address of 1041 Brighton Ave., Unit 8, Portland, ME 04102.

WITNESSETH:

That Landlord and Tenant in consideration of the rents hereinafter reserved, and of the conditions, covenants, terms and conditions contained herein, hereby agree as follows:

I. GRANT AND TERM

Section 1.00 **LEASE OF PREMISES**. Landlord hereby leases to Tenant, and Tenant hereby accepts and leases from Landlord approximately 930 square feet (the "Premises") described in the plan attached hereto as Exhibit A, known as Unit 8 located in the building at 1041 Brighton Avenue, Portland, Maine (the "Building" or "Shopping Center"), together with the appurtenances, rights, privileges and easements benefiting, belonging or pertaining thereto for the term and upon the conditions provided in this Lease (the "Lease").

Section 1.01 **TERM.** The original term of this Lease shall commence upon Lease execution (the "Commencement Date"), and shall terminate on November 30, 2020.

Section 1.02 **OPTION TO EXTEND.** Provided Tenant has not been placed in default under this Lease throughout the term, or at the time of commencement of the extension term and further provided, Tenant has not assigned or subleased the Premises, Tenant shall have three (3) options to renew the Lease for a term of three (3) years each under the same terms and conditions of the existing Lease except for Base Rent. The Base Rent shall be set at then market rates, but in no instance shall Base Rent be less than the Base Rent paid in the last year of the initial term (or any extension thereof) plus 2% annual increases for each year thereafter. The option to renew shall be exercised if Tenant notifies Landlord, in writing, no less than six (6) months prior to the end of the then current term. Should Tenant fail to exercise its Option to Renew, Tenant shall have no further renewal right to extend the Lease pursuant to this clause.

II. RENT

Section 2.00 **BASE RENT**. Tenant covenants and agrees to pay a monthly Base Rent during the Lease Term in advance on the first day of each month

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without set-off or deduction as follows:

Term:	**Monthly Base Rent:**
Commencement Date - December 1, 2017	$0.00. Tenant shall be responsible for Premises utilities only.
December 2, 2017 - November 30, 2018	$930.00
December 1, 2018 - November 30, 2019	$948.60
December 1, 2019 - November 30, 2020	$967.57

Section 2.01 **ADDITIONAL RENT.** Tenant shall pay to Landlord as Additional Rent as described and in the manner indicated herein:

A. "Expenses" shall mean and include all those costs and expenses of every kind and nature associated with the management and operation of the Building, including but not limited to insurance, janitorial services, trash removal, water and sewer charges security services, common area maintenance, and management fee with the exception that Expenses shall not include costs of alterations of the premises of tenants of the Building, special services rendered to tenants of the Building, interest, penalties, amortizations and depreciation charges, interest and principal payments on mortgages, capital improvements, repair and capital costs caused by fire and other casualties, eminent domain, damages caused by the gross negligence or omissions of Landlord, its employees, agents or subcontractors, and expenditures for which Landlord has been reimbursed (including payment from other Tenants or insurance proceeds other than those pursuant to rent adjustment provisions in leases), any costs to the extent they are the responsibility of tenants under lease provisions, leasing expenses and installation of tenant improvements, travel and per diem expenses, disputes or arbitration or charitable contributions.

B. "Taxes" shall mean real estate taxes, assessments, sewer rents, rates and charges, and any other federal state or local governmental charge, general, special, ordinary or extraordinary (but does not include sales, inheritance, estate, succession, transfer, gift, profit, income or franchise taxes or any other taxes imposed upon or measured by Landlord's income or profits, by whatever name the same may be called, unless the same shall be imposed in lieu of real estate taxes and other ad valorem taxes), which may now or hereafter be levied or assessed against the Building. In case of special taxes, the amount of each installment paid during a calendar year shall be included in Taxes for that year. Taxes shall also include any personal property taxes imposed upon the furniture, fixtures, machinery, equipment, apparatus, systems and appurtenances for the use and benefits of all tenants connected with the Building and the operation thereof. Real Estate Taxes shall also include amounts paid to anyone hired by Landlord to contest the amount of any Real Estate Tax assessment of the Building, the rate of taxation or the legality of the imposition of any component of the Real Estate Taxes of the Building. The Real Estate Taxes "attributable to" or "for" a calendar year, for the purposes of this Lease, shall be those assessed for such year, even though not due and payable until a subsequent year.

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C. "Tenant's Proportion" shall be calculated by dividing the square footage contained in the Premises by the square footage contained in the Building.

D. Tenant shall make payments on account of Tenant's Expenses and Taxes monthly in advance on the first day of each calendar month during the Term, which payments shall initially be in the amount of onetwelfth of the sum of the Expenses and Taxes estimated for the calendar year (the "Estimated Initial Charge"). At the beginning of every lease year, except for the first "Lease Year" as defined herein, Landlord shall deliver to Tenant its estimate of Tenant's Expenses and Taxes for said lease year and in lieu of payments of onetwelfth of the Estimated Initial Charge, Tenant shall make payments on account of the Estimated Annual Maintenance Charge monthly in advance on the first day of each calendar month during the Term, in the amount of onetwelfth of the Estimated Annual Maintenance Charge. Landlord reserves the right to modify the Estimated Annual Maintenance Charge and the Estimated Initial Charge during the year, and Tenant's payments shall thereupon be adjusted accordingly. As soon as practicable after the end of each lease year during the Term and after Lease termination, Landlord shall render a statement ("Landlord's Statement") in reasonable detail and according to usual accounting practices certified by Landlord and showing for the preceding lease year or fraction thereof, as the case may be, the actual Annual Maintenance Charges for the said year or fraction, and thereupon any balance owed by Tenant or excess paid by Tenant under this Section shall be paid to Landlord, or credited to Tenant, as the case may be on the next rent payment date.

For purposes of this Lease, the first "Lease Year" shall be the period commencing on the commencement date and ending on December 31st of the year in which the commencement date occurs, subsequent Lease years shall be those consecutive annual periods thereafter, each commencing on the day following the end of the preceding lease year. Landlord shall have the right from time to time to change the periods of accounting under this Section D to any annual period other than a lease year, and upon any such change all items referred to in this Section shall be appropriately apportioned. In all Landlord's Statements rendered under this Section, amounts for periods partially within and partially without the accounting periods shall be appropriately apportioned, and any items which are not determinable at the time of a Landlord's Statement shall be included therein on the basis of Landlord's estimate, and with respect thereto Landlord shall render promptly after determination a supplemental Landlord's Statement, and appropriate adjustment shall be made according thereto. All of Landlord's Statements shall be prepared on an accrual basis of accounting.

Notwithstanding any other provision of this Section D, if the Term expires or is terminated as of a date other than the last day of a lease year, then for such fraction of a lease year at the end of the Term, Tenant's last payment to Landlord under this Section D shall be made on the basis of Landlord's best estimate of the items otherwise includable in Landlord s Statement and shall be made on or before the later of (a) 10 days after Landlord delivers such estimate to Tenant or (b) the last day of the Term, with an appropriate payment or refund to be made upon submission of Landlord's Statement.

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E. If any installment of rent is not paid within five (5) days after the date the same was due, it shall bear interest from the due date at the rate of twelve (12%) percent per annum, but in no event more than the highest rate of interest allowed by applicable law. Any amounts due under this Section E shall be Additional Rent.

F. The Base Rent and Additional Rent as defined in this Lease do not include Tenant's utility costs. The Tenant is directly responsible for its utility expenses including but not limited to electricity and fuel for lights, outlets and HVAC, telephone, internet and other communication services. In the event that the Premises are not separately metered, Tenant shall pay Landlord as an Additional Rent in monthly installments at the time prescribed for Adjusted Monthly Base Rent an annul amount reasonably estimated by Landlord from time to time to be Tenant's fair share.

III. ALTERATION AND RELOCATION OF IMPROVEMENTS AND ADDITIONS

Section 3.00 **CHANGES AND ADDITIONS TO BUILDING.** Landlord hereby reserves the right at any time to make alterations or additions to and to build additional stories on the Building in which the Premises are contained and to build adjoining the same. Landlord also reserves the right to construct other buildings or improvements to the Building from time to time and to make alterations thereof or additions thereto and to build additional stories on any such building or buildings and to build adjoining same and to construct doubledeck or elevated parking facilities.

Section 3.01 **LANDLORD'S WORK**. Tenant accepts space in "as-is" condition. Any additional improvements to the Premises will be done at the Tenant's sole cost and expense and in accordance with all local, state, and federal codes and ordinances, providing Landlord gives prior written approval, which shall not be unreasonably withheld or delayed.

Section 3.02 **TENANT'S WORK.** Tenant shall at its sole cost and expense, using a Landlord approved contractor, remove two existing offices. Any additional improvements to the Premises will be done at the Tenant's sole cost and expense and are subject to Landlord's prior written approval. All work is to be done in accordance with all local, state, and federal codes and ordinances and all of Tenant's contractors must agree to waive lien rights against Landlord and sign the Mechanics Lien Waiver form attached hereto as Exhibit B prior to commencing any work at the Premises.

IV. CONDUCT OF BUSINESS

Section 4.00 **USE OF PREMISES.** Tenant shall use the Premises solely for the purpose of conducting a smoke and vape shop and no other purpose. Tenant shall occupy the Premises provided for in Section 1.00 hereof, and shall conduct continuously in the

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Premises the business above stated. Tenant will not use or permit, or suffer the use of the Premises for any other business or purpose. Tenant shall not conduct catalog sales in or from the Premises except of merchandise which Tenant is permitted to sell "over the counter" in or at the Premises pursuant to the provisions of this Section 4.00.

Landlord and Tenant acknowledge that if Tenant closes its business, Landlord will incur substantial damages which are difficult to ascertain. Tenant agrees that in the event this clause is violated, Tenant will pay Landlord as Additional Rent $2.00 per square foot per year payable in monthly installments as liquidated damages together with Base Rent and Additional Rent as outlined in this Lease.

Section 4.01 **OPERATION OF BUSINESS.** Tenant shall operate all of the Premises during the entire term of this Lease with due diligence and efficiency, unless prevented from doing so by causes beyond Tenant's control. Tenant shall be open for business at a minimum from 10:00 AM to 5:00 PM weekdays and 10:00 AM to 5:00 PM Saturday and 12:00 PM to 5:00 PM on Sunday. Tenant shall install and maintain at all times displays of merchandise in the display windows (if any) of the Premises. Tenant shall keep the display windows and signs, if any, in the Premises well lighted during the hours from sundown to closing, unless prevented by causes beyond the control of Tenant.

Section 4.03 **STORAGE, OFFICE SPACE.** Tenant shall warehouse, store and/or stock in the Premises only such goods, wares and merchandise as Tenant intends to offer for sale at retail at, in, from or upon the Premises. This shall not preclude occasional emergency transfers of merchandise to the other stores of Tenant, if any, not located in the Building. Tenant shall use for office, clerical or other non-selling purposes only such space in the Premises as is from time to time reasonably required for Tenant's business in the Premises. No auction, fire or bankruptcy sales may be conducted in the Premises without the previous written consent of Landlord.

Section: 4.04. **LANDLORD'S ACCESS AND RIGHT TO RELOCATE.** Landlord and Landlord's agents shall have the right to enter the Premises at reasonable times for the purpose of inspecting the same, showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises or to the Building or Shopping Center as Landlord may deem necessary or desirable. Landlord may at any time place on or about the Premises any ordinary "For Sale" signs and Landlord may at any time during the last one hundred eighty (180) days of the term hereof place on or about the Premises any ordinary "For Lease" signs, all without rebate of rent or liability to Tenant. Further, Landlord reserves the right, at any time during the term of this Lease (or any extensions or renewals thereof) to relocate all or a portion of Tenant's space from time to time to other reasonably comparable space, not to exceed 2,000 square feet, within the Building or Shopping Center provided that: a) Landlord notifies Tenant in writing of its decision to relocate Tenant at least sixty (60) days prior to the effective date of the relocation; and b) Landlord pays for all reasonable moving and relocation expenses incurred by Tenant in connection with Tenant's vacation of the Premises; and c) Landlord

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compensates Tenant for the reasonable value of any permanent fixtures or improvements which must remain affixed to the Premises. Tenant agrees that should such relocation occur, the provisions, terms and conditions of this Lease shall apply to the Tenant's leasing of the relocation space and the rent, and the pro rata share shall be adjusted accordingly.

V. CONCESSIONS

Section 5.00 **CONSENT OF LANDLORD.** Tenant shall not permit any business to be operated in or from the Premises by any concessionaire or licensee without the prior written consent of Landlord.

VI. MAINTENANCE AND CONTROL OF PREMISES, BUILDING AND COMMON AREAS

Section 6.00 **LANDLORD SERVICES.** It shall be Landlord's responsibility to operate the Shopping Center as a firstclass retail shopping center and Landlord shall cause all common areas including the parking facilities and sidewalks, and lighting thereof, to be maintained in reasonably good repair and clean condition at all times during the term of this Lease.

Section 6.01 **TENANT'S MAINTENANCE.** Tenant shall at all times maintain the Premises in the same order and repair as they are in at the commencement of the term, reasonable use and wear and damage by fire or other casualty only excepted; shall keep all fixtures and equipment in, and solely serving, the Premises, including without limitation all doors, glass, heating, air conditioning, (with regard to the HVAC system, Landlord will implement a quarterly maintenance program with a certified HVAC contractor and supply Tenant with a copy of the maintenance contract), plumbing, electrical and mechanical fixtures and equipment in the same operating condition as they are in at the commencement of the term, reasonable use and wear and damage by fire or casualty only expected; and Tenant agrees to make all repairs and do all other work necessary for the foregoing purposes at its sole cost and expense. In the event Landlord supplies, any of such services to Tenant, Tenant shall reimburse Landlord for the cost. If Tenant does not cause the repairs to be made which are its responsibility hereunder to make, promptly and adequately, Landlord may, but need not, make such repairs, and Tenant shall promptly pay the reasonable cost thereof including all reasonable overhead, general conditions, fees and other reasonable costs or expenses arising from Landlord's involvement with such repairs and replacements, forthwith upon being billed for same. Tenant shall pay Landlord for overtime incurred in the event repairs, alterations, decorating or other work in the Premises are made outside ordinary business hours at Tenant's request. Tenant is responsible for its Premises pest control and janitorial cost.

Interior Safety Devices such as fire extinguishers, interior office locks, emergency exit lights, etc., are the responsibility of each Tenant to provide and maintain. One fire extinguisher is required at each entrance to your Premises, or as designated by the City of Portland Fire Department. Tenant shall maintain these required safety devices in working

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Section 6.02 **LANDLORD'S MAINTENANCE.** Landlord alone shall be responsible for maintaining the Building, except for Tenant's Maintenance described in this Section above, in suitable condition for Tenant's use thereof, including but not limited to all roof, exterior brick work, the load-bearing walls, beams and structural members, the replacement of the septic system, the replacement of any HVAC, plumbing and electrical systems, and any costs incurred which by their nature are considered capital expenditures according to generally accepted account principles unless the need for such repair shall have resulted from the affirmative acts or negligence of Tenant, its employees, agents or contractors.

Section 6.03 **CONTROL OF COMMON AREAS BY LANDLORD.** All automobile parking areas, driveways, entrances and exits thereto, and other facilities furnished by Landlord in or near the Building, including employee parking areas, the truck way or ways, loading docks, package pick-up stations, pedestrian sidewalks and ramps, landscaped areas, exterior stairways and other areas and improvements provided by Landlord for the general use, in common, of tenants, their officers, agents, employees and customers, shall at all times be subject to the exclusive control and management of Landlord, and Landlord shall have the right from time to time to establish, modify and enforce reasonable rules and regulations with respect to all facilities and areas mentioned in this Article. Landlord shall have the right to construct, maintain and operate lighting facilities on all said areas and improvements, to police the same; from time to time to change the area, level, location and arrangement of parking areas and other facilities hereinabove referred to; to restrict parking by tenants, their officers, agents and employees to employee parking areas; to enforce parking charges (by operation of meters or otherwise), with appropriate provisions for free parking ticket validating by Tenants; to close all or any portion of said areas or facilities to such extent as may, in the opinion of Landlord's counsel, be legally sufficient to prevent a dedication thereof or the accrual of any rights to any person or the public therein; to close temporarily all or any portion of the parking areas of the facilities; to discourage non-customer parking; and to do and perform such other acts in and to said areas and improvements as, in the use of good business judgment, Landlord shall determine to be advisable with a view to the improvement of the convenience and use thereof by Tenant, their officers, agents, employees, and customers. Landlord will operate and maintain the common facilities referred to above in such manner as Landlord, in its sole discretion, shall determine from time to time. Without limiting the scope of such discretion, Landlord shall have the full right and authority to employ all personnel and to make all rules and regulations pertaining to and necessary for the proper operation and maintenance of the common areas and facilities.

Section 6.04 **LICENSE.** All common areas and facilities not within the Premises, which Tenant may be permitted to use and occupy, are to be used and occupied under a revocable license, and if the amount of such areas be diminished, Landlord shall not be subject to any liability nor shall Tenant be entitled to any compensation or

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diminution or abatement of Base Rent or Additional Rent, nor shall such diminution of such areas be deemed constructive or actual eviction.

Section 6.05 **SMOKING**. Smoking will not be permitted around the front entrances of the building, smoking is only permitted at the rear entrance of the Premises. Tenant is responsible to maintain a clean smoking area. Tenant shall at its sole cost and expense provide a cigerette disposal receptacle for its employees, vendors, agents and client use.

VII. SIGNS, AWNINGS, FIXTURES AND ALTERATIONS

Section 7.00 **INSTALLATIONS OF TENANT.** All fixtures installed by Tenant shall be new or completely reconditioned. Tenant shall not make or cause to be made any alterations, additions or improvements or install or cause to be installed any trade fixture, exterior signs, floor covering, interior or exterior lighting, plumbing fixtures, shades or awnings or make any changes to the store front without first obtaining Landlord's written approval and consent. Tenant shall present to Landlord plans and specifications for such work at the time approval is sought.

Section 7.01 **REMOVAL AND RESTORATION BY TENANT.** All alterations, decorations, additions and improvements made by Tenant, or made by Landlord on Tenant's behalf by agreement under the Lease, shall remain the property of Tenant for the term of the Lease, or any extension or renewal thereof. Such alterations, decorations, additions and improvements shall not be removed from the Premises prior to the end of the Term hereof without prior consent in writing from Landlord. Upon expiration of this Lease, or any renewal Term thereof, Tenant shall remove all such alterations, decorations, additions, and improvements made by Tenant and restore the Premises, and upon the expiration of this Lease, or any renewal thereof, and upon the Tenant's removal from the Premises, all such alterations, decorations, additions and improvements shall become the property of the Landlord.

Section 7.02 **SIGNS, AWNING AND CANOPIES.** (a) Tenant will not place or suffer to be placed or maintained on any exterior door, wall or window of the Premises any sign, awning or canopy, or advertising matter or other thing of any kind, and will not place or maintain any decoration, lettering or advertising matter on the glass of any window or door of the Premises without first obtaining Landlord's written approval and consent which consent shall not be unreasonably withheld. Tenant further agrees to maintain such sign, awning, canopy, decoration, lettering, advertising matter or other things, as may be approved, in good condition and repair at all times.

(b) Tenant shall, at Tenant's cost, have the rights to one 84"W x 12"H sign panel on the pylon sign at the entrance to the center.

VIII. EXTERIOR

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Section 8.00 **PARKING LOT LIGHTS.** The parking lot lights are not in operation after the regular closing hours of the Building. Therefore, it is agreed that if the Tenant requires parking lot lighting past the regular hours, the Tenant will pay the cost incurred to keeping all the parking lot lights on in the Building since there is no separate metering or lighting applicable to the Tenant's immediate parking area. The Landlord will be entitled to charge the entire cost of the extended lighting period to the Tenant and Tenant will be bound to pay all the additional lighting costs.

IX. INSURANCE AND INDEMNITY

Section 9.00 **FIRE AND EXTENDED COVERAGE.** Landlord shall maintain a policy of fire and extended coverage insurance on the Premises in such amounts and with such companies as shall from time to time be satisfactory to Landlord. Tenant shall reimburse Landlord for it's pro rata share of the cost of such insurance as determined in Section 2.01.

Section 9.01 **PUBLIC LIABILITY COVERAGE.** Tenant shall maintain a policy of public liability insurance insuring Landlord, CBRE|Boulos Asset Mangement and Tenant, said policy to be in an amount not less then One Million Dollars ($1,000,000.00) and with such companies as shall from time to time be satisfactory to Landlord. Tenant shall furnish Landlord with a certificate evidencing such insurance and showing that Landlord and CBRE|Boulos Asset Management is named in such policy upon execution of this Lease.

Section 9.02 **ADDITIONAL INSURANCE.** In addition to the insurance required under this Section IX, Tenant shall maintain insurance against such other hazards as Landlord may from time to time reasonably require.

Section 9.03 **INDEMNIFICATION.** Tenant hereby agrees to indemnify and hold Landlord harmless from and against any and all claims for injury to persons or damage to property in or about the Premises or arising in any way from the use or condition of the Premises, and against any costs or damages which Landlord may incur by reason of the assertion of any such claims, unless caused by Landlord's willful acts or gross negligence.

Section 9.04 **USE OF PREMISES.** Tenant shall not cause annoyance or disturb other tenants at the Building. Tenant shall not use or allow the Premises to be used for any illegal purpose or for any purpose that would lead to cancellation of any insurance policy covering the Premises, whether such policy is in the name of Landlord or Tenant. To the extent that Tenant may use odorous materials and or chemicals in its business, it shall be the Tenants responsibility to properly vent the Premises in such a manner that will not interfere with other Tenants and or neighbors in the Shopping Center area.

X. ASSIGNMENT AND SUBLETTING

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Section 10.00 Tenant shall not be permitted to assign this Lease or sublet the Premises or any part thereof without Landlord's prior written consent such consent not to be unreasonably withheld or delayed. In the event of any sublease or assignment, Tenant shall obtain market rental rates for the Premises and Tenant shall remain primarily liable for the Lease. Landlord shall receive all rent received by Tenant in excess of the base rent herein. Landlord shall have the right to recapture the space and release Tenant from its Lease obligation for the portion of the Premises to be subleased or assigned rather than approve any sublease or assignment of the Lease. Notwithstanding the above, Tenant shall have the right to freely assign or sublease the Premises to affiliates or subsidiaries so long as Tenant remains primarily liable for the Lease and so long as this provision continues for any subsequent non-affiliated assignment or sublease.

XI. FIRE, EMINENT DOMAIN AND CASUALTY

Section 11.00 **DAMAGE OR DESTRUCTION.** In case during the Term all or any substantial part of the Premises or Shopping Center are damaged materially by fire or any other cause or by action of public or other authority in consequence thereof or are taken by eminent domain or Landlord receives compensable damage by reason of anything lawfully done in pursuance of public or another authority, this Lease shall terminate at Landlord's election, which may be made, notwithstanding Landlord's entire interest may have been divested, by notice to Tenant within thirty (30) days after the occurrence of the event giving rise to the election to terminate, which notice shall specify the effective date of termination which shall be not less than 30 nor more than sixty (60) days after the date of notice of such termination. If in any such case the Premises are rendered unfit for use and occupation and the Lease is not so terminated, Landlord shall use due diligence to put the Premises, or, in case of a taking, what may remain thereof (excluding any items installed or paid for by Tenant which Tenant may be required or permitted to remove) into proper condition for use and occupation to the extent permitted by the net award of insurance or damages available to Landlord, and a just proportion of the Base Rent and Additional Rent according to the nature and extent of the injury shall be abated until the Premises or such remainder shall have been put by Landlord in such condition; and in case of a taking which permanently reduces the area of the Premises, a just proportion of the Rent and Additional Rent shall be abated for the remainder of the Term and an appropriate adjustment shall be made to the Estimated Annual Maintenance Charge.

Section 11.01 **RESERVATION OF AWARD.** Landlord reserves to itself any and all rights to receive awards made for damages to the Premises or Shopping Center and the leasehold hereby created, or any one or more of them, accruing by reason of exercise of eminent domain or by reason of anything lawfully done in pursuance of public or other authority. Tenant hereby releases and assigns to Landlord all Tenant's rights to such awards, and covenants to deliver such further assignments and assurances thereof as Landlord may from time to time request, and hereby irrevocably designates and appoints Landlord its attorney-in-fact to execute and deliver in Tenant's name and behalf all such further assignments thereof. It is agreed and understood, however, that Landlord does not

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reserve to itself, and Tenant does not assign to Landlord, any damages payable for (i) moveable trade fixtures installed by Tenant or anybody claiming under Tenant, at its own expense or (ii) relocation expenses recoverable by Tenant from such authority in a separate action.

Section 11.02 **TENANT'S PROPERTY.** All merchandise, furniture, fixtures, effects and property (the "Personal Property") of Tenant and of all persons claiming through or under Tenant which may be on the Premises during the term or any occupancy by Tenant thereof, shall be at the sole risk and hazard of Tenant, and if the whole or any part of the Personal Property shall be destroyed or damaged by fire, water or otherwise, or by the leakage or bursting of water pipes, steam pipes or other pipes, by theft or from any other cause, no part of said loss or damage is to be borne by Landlord, unless caused by the gross negligence of Landlord.

XII. DEFAULT

Section 12.00 **PAYMENT.** If Tenant shall fail to pay any Base Rent, Additional Rent or any other rents or charges due hereunder when due, or shall default in the observance or performance of any of its obligations hereunder, or if any assignment shall be made by Tenant for the benefit of creditors, or if any Tenant's leasehold interest hereunder shall be taken on execution, then in any of such cases Landlord may lawfully, immediately and at any time thereafter, and without further notice or demand, and without prejudice to any other remedies, enter into and upon the Premises or any part thereof, in the name of the whole, or mail a notice of termination addressed to Tenant at the Premises, and upon such entry or mailing this Lease shall terminate. If a petition is filed by Tenant for adjudication as a bankrupt, or for reorganization or arrangement under any provision of the Bankruptcy Act as then in force and effect, or any involuntary petition under any provision of the Bankruptcy Act is filed against Tenant and is not dismissed within thirty (30) days thereafter, then in either of such cases this Lease shall automatically terminate without the necessity of any action by Landlord. In case of termination of the term of the Lease for any such cause and in the manner above provided, Landlord shall be deemed to have waived no rights or other remedies hereunder, either at law or in equity, and shall be entitled to recover arrearages of rent, damages for breach of contract, which shall include, without limitation, the amount of the total rent reserved under this Lease for the full term as if same had not been terminated, less any proper credits, and Landlord's reasonable attorneys' and paralegal fees and any other expenses of Landlord incurred in connection with the retaking of possession of the Premises and removal and storage of Tenant's effects and the recovery of damages or the exercise of other rights or remedies. Landlord shall use all reasonable diligence, at the expense of Tenant, in finding another new tenant for the Premises in order to mitigate damages and rentals.

Section 12.01 **HOLDOVER.** If Tenant remains in possession of the 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, (except

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in the case of Rent, which shall be equal to twice the amount payable for the period just preceding such termination), shall be applicable. Landlord or tenant may terminate any such month-to-month tenancy by giving the other thirty (30) days prior written notice.

XIII. MISCELLANEOUS

Section 13.00 **ESTOPPEL CERTIFICATES.** Tenant shall, within ten (10) days after each and every request by Landlord execute, acknowledge and deliver to Landlord a statement in writing (a) certifying that the Lease is unmodified and in full force or effect (or if there had been modifications, that the same is in full force and effect as modified, in stating the modifications), (b) specifying the dates to which the annual rent has been paid, (c) stating whether or not Landlord is in default in performance or observance of its obligations under the Lease, and, if so, specifying each such default, (d) stating whether or not to the best knowledge of Tenant, any event has occurred which, with the giving of notice or the passage of time, or both, would constitute a default by Landlord under the Lease, and, if so, specifying each such event, and (e) certifying that Tenant, as of the date of the statement, has no charge, lien or claim of offset under the Lease, or otherwise, against rents or other charges due or to become due thereunder. Any such statement delivered pursuant to this Article may be relied upon by any perspective assignee, transferee or mortgagee of the Shopping Center or any interest therein.

Section 13.01 **SUCCESSORS AND ASSIGNS.** The provisions of this Lease shall be binding upon and inure to the benefit of the respective successors and assigns of Landlord and Tenant. In the event of any transfer of Landlord's interest in the Premises, the Landlord or any subsequent transferor shall cease to be liable and shall be released from all liability for the performance or observation of any agreements or conditions on the part of Landlord to be performed or observed subsequent to the time of said transfer, it being understood and agreed that from and after said transfer, the transferee shall be liable.

Section 13.02 **ACCESS OF LANDLORD.** At all times during the Term of this Lease, Landlord shall have reasonable access to the Premises upon reasonable advance notice, except in the case of an emergency as reasonably defined by Landlord for the purpose of examining the same, or to make any repairs or reconstruction deemed necessary by Landlord, but the making of such repairs or reconstruction or such examination shall not unduly interfere with Tenant's use of the Premises nor the conducting of Tenant's business thereon.

Section 13.03 **LANDLORD'S COVENANT OF QUIET ENJOYMENT.** Upon payment by Tenant of the rent herein provided and upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Premises for the term hereof without hindrance or interruption by Landlord of any person or persons claiming by, through or under Landlord.

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Section 13.04 **ABANDONMENT; WAIVER OF RIGHTS TO NOTICE AND DISPOSITION.** If at any time during the Term of this Lease, Tenant abandons the Premises or any part thereof, Landlord may, at its option, enter the Premises by any means without being liable for any prosecution therefor, and without becoming liable to Tenant for damages or for any payment of any kind whatever, and may, at its discretion, as agent for Tenant, re-let the Premises, or any part thereof, for the whole or any part of the then unexpired Term, and may receive and collect all Rent payable by virtue of such reletting, and, at Landlord's option, hold Tenant liable for any difference between the Rent that would have been payable under this Lease during the balance of the unexpired Term, if this Lease had continued in force, and the net Rent for such period realized by Landlord by means of such re-letting. If Landlord's right of reentry is exercised following abandonment of the Premises by Tenant, then Landlord may consider any personal property belonging to Tenant and left of the Premises also to have been abandoned, in which case Landlord may dispose of all such personal property in any manner Landlord shall deem proper, and is hereby relieved of all liability for doing so. Tenant, with full and complete knowledge thereof, hereby waives any right he may have to advance notice of any sale or other disposition by Landlord of the personal property herein deemed abandoned by Tenant, and further waives any right he may have to have such sale or other disposition effected by public auction or in accordance with any other procedure prescribed by statue.

Section 13.05 **WAIVER OF RIGHT TO RECEIPTS.** Tenant, with full and complete knowledge thereof, hereby waives any right to any receipt from Landlord for any cash Rent or Security Deposit payment by virtue of Title 14, M.R.S.A., 6022.

Section 13.06 **FLAMMABLES.** Naphtha, benzine, benzol, gasoline, benzine-varnish, gunpowder, fireworks, nitroglycerine, phosphorus, salt-peter, nitrate of soda, camphene, spirit-gas, or any flammable fluid or oil, shall not be allowed or used on the Premises without written permission of the Landlord. Notwithstanding the above, vape juices and other products related to running a smoke and vape shop shall be allowed.

Section 13.07 **COMPLIANCE.** Tenant shall in every respect comply with the ordinances of the City of Portland, with the rules and orders of the health officers thereof, with the orders and requirements of the police department thereof, with the requirement of any insurance company insuring the Premises so as not to increase the rates of insurance upon the Building and contents thereof, and with the rules and orders of the fire department in respect to any matters coming within its jurisdiction.

Section 13.08 **SEVERABILITY.** If any clause, phrase, provision or portion of this Lease or the application thereof to any person or circumstance shall be invalid or unenforceable under applicable law, such invalidity or unenforceability shall not affect, impair or render invalid or unenforceable the remainder of this Lease nor any other clause, phrase, provision or portion hereof, nor shall it affect the application of any clause, phrase, provision or portion hereof to other persons or circumstances.

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Section 13.09 **SECURITY DEPOSIT.** Tenant shall deposit with Landlord the sum of $2,000.00, which deposit will represent the security deposit due under this Lease. Said depoist will be returned to Tenant at the end of the Lease Term, provided the Lease Premises are left in good repair, "broom clean", and provided Tenant has not been in default of the Lease. Tenant shall not be entitled to interest on said Security Deposit.

Section 13.10 **NOTICES.** Whenever by the terms of this Lease notice, demand, or other communication shall or may be given either to Landlord or to Tenant, the same shall be in writing and shall be sent by registered or certified mail, postage prepaid: if intended for Landlord, addressed to it at the address set forth on the first page of this Lease, (or to such other addresses as may from time to time hereafter be designated by Landlord); if intended for Tenant, addressed to it at the address set forth on the first page of this Lease (or to such other address or addresses as may from time to time hereafter be designated by Tenant in writing by like notice).

After receiving written notice from any person, firm, or other entity, stating that it holds a mortgage on the Complex, Tenant shall, so long as such mortgage is outstanding, be required to give to such holder the same notices as are required to be given to Landlord under the terms of this Lease, but such notices may be given by Tenant to Landlord and such holder concurrently. It is further agreed that such holder shall have the same opportunity to cure any default, and the same time within which to effect such curing, as is available to Landlord; and if necessary to cure such a default, such holder shall have access to the Complex.

All notices shall be deemed effective when mailed.

Section 13.11 **ENTIRE AGREEMENT.** This Lease constitutes the entire agreement of the parties, and no warranties or representations not herein contained have been relied upon by either party.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease this 8th day of November, 2017.

WITNESSETH:

LANDLORD: **1041 BRIGHTON AVE., LLC**

DocuSigned by:
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By: Thomas A. Toye III
Its: Member

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TENANT: **PORTLAND SMOKE AND VAPE, INC.**

By: Mark J. Scott
Its: President

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CITY OF PORTLAND, MAINE
RESURGAM
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GRAHAM ARCHITECTS

PROJECT
1041 Brighton Avenue
Portland, Maine

TITLE
Ground Floor Plan

A1.1

16

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EXHIBIT A
Not to scale

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