



Special City Council Meeting

January 31, 2013

Agenda

6:00 P.M. City Council Meeting

Pledge of Allegiance

I. Executive Session

Discussion on the Ice Arena contract, pursuant to 1 M.R.S.A. §405(6)(C).

II. New Business

1. Order 12-01312013

Approving the design and updated budget for the double sheet Ice Arena.

III. Adjournment

Executive Session: On occasion, the City Council discusses matters which are required or allowed by State law to be considered in executive session. Executive sessions are not open to the public. The matters that are discussed in executive session are required to be kept confidential until they become a matter of public discussion. In order to go into executive session, a Councilor must make a motion in public. The motion must be recorded, and 3/5 of the members of the Council must vote to go into executive session. An executive session is not required to be scheduled in advance as an agenda item, although when it is known at the time that the agenda is finalized, it will be listed on the agenda. The only topics which may be discussed in executive session are those that fall within one of the categories set forth in Title 1 M.R.S.A. Section 405(6). Those applicable to municipal government are:

- A. Discussion of personnel issues
- B. Discussion or consideration by a school board of suspension or expulsion
- C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or economic development only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency
- D. Labor contracts
- E. Contemplated litigation
- F. Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute;
- G. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes; consultation between a body or agency and any entity that provides examination services to that body or agency regarding the content of an examination; and review of examinations with the person examined; and
- H. Consultations between municipal officers and a code enforcement officer representing the municipality pursuant to Title 30-A, section 4452, subsection 1, paragraph in the prosecution of an enforcement matter pending in District Court when the consultation relates to that pending enforcement matter.



City Council Information Sheet

City of Auburn

Council Meeting Date: January 31, 2013

Subject: Executive Session

Information: Executive Session to review the Ice Arena contract, pursuant to 1 M.R.S.A. §405(6)(C).

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- F. Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute;
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LEASE AGREEMENT

THIS LEASE AGREEMENT is dated this 25 day of October, 2012 by and between assigns **Slap Shot, LLC or other entity formed by George Schott** (hereinafter referred to as "Landlord") and the City of Auburn (hereinafter referred to as "Tenant").

W I T N E S S E T H

FOR GOOD AND VALUABLE CONSIDERATION, and the mutual covenants contained herein, and intending to be legally bound hereby, Landlord and Tenant hereby agree with each other as follows:

1. Demised Premises and Improvements Thereon. Landlord, in consideration of the rents, terms, covenants, and agreements hereinafter set forth on the part of Tenant to be paid, kept, and performed, grants, demises, and lets to Tenant, and Tenant hereby takes and hires from Landlord, on the terms, covenants, provisions, and agreements hereinafter provided:

A building known as the Ice Arena to be constructed on that certain tract or parcel of land lying and being in the City of Auburn, County of Androscoggin, and State of Maine, as more particularly described in Exhibit "A" attached hereto and made a part hereof, together with the building known as the Ice Arena, and all easements, uses, including the storm water management facilities at the Auburn Plaza, as described below (except as the context may otherwise require, the above-mentioned premises being hereinafter referred to as the "Demised Premises").

In addition, the Demised Premises shall include non-exclusive use of parking spaces located in the north side of the Auburn Mall parking lot for the temporary parking of automobiles, easements to allow the Demised Premises to use all existing storm water management facilities at the Auburn Plaza, and the use of all other public facilities at the Ice Arena together with all easements depicted on a certain Plan entitled "Site Plan - Plan of the

Auburn Ice Arena,” dated July 12, 2012, revised through August 8, 2012, all of which together are the Demised Premises.

Landlord also agrees to mark pedestrian walkways in the Auburn Mall parking areas and to designate pedestrian crossings over King’s Way and all interior Auburn Mall roads as required.

To have and to hold the Demised Premises for and during the Term (as hereinafter defined); together with all and singular the appurtenances, rights, interest, easements, and privileges in any way appertaining thereto.

2. (a) Term. The initial term of this Lease shall be for a period of thirty (30) years beginning on the date the Ice Arena is ready for occupancy as defined in Exhibit B, attached hereto (the “Commencement Date”) and ending on the date thirty (30) years from the Commencement Date (the “Term”). There shall be no renewal terms beyond the initial 30 year term unless mutually agreed upon by the Landlord and the Tenant.

(b) Option to Purchase. During the initial term of the Lease and any extended term, Tenant shall have the exclusive option to purchase the Demised Premises from the Landlord. The purchase price shall be the total of all cost incurred by Landlord to Construct the demised premises, including but not limited to hard and soft construction cost, commercially reasonable cost relating to the initial financing any prepayment penalty charged by Landlord’s Lender which is the direct result of Tenant’s exercise of its option and Landlord’s reasonable attorney’s fees related to the negotiation of this project. All cost shall be approved by the Tenant, which approval shall not be unreasonably withheld (hereinafter “Purchase Price”). The total Cost shall not exceed Eight Million Five Hundred Thousand Dollars (\$8,500,000). In the event of a sale of the Demised Premises each party shall bear its own costs incurred in the sale, any closing

costs, State of Maine transfer taxes and any other costs directly attributable to the sale. The Purchase Price shall be reduced by that portion of the base rental payments made by the Tenant to the Landlord during the term of this Lease which would have been allocated to principal if the Tenant had purchased the Premises from the Landlord on the Commencement Date, with no down payment, 4.5% interest (with adjustment for interest adjustments as provided for later in this Lease) over a 30 year amortization at the Purchase Price paid pursuant to Owner Financing. The balance of the Purchase Price shall be paid to the Landlord at Closing in lawful currency of the United States in immediately available funds.

This option to purchase may be exercised by the Tenant at any time following the commencement date, by giving the Landlord six (6) months notice of its intention to purchase. Upon written notification the parties shall negotiate and execute a purchase and sale agreement reflecting the final terms of the sale.

In the case of non-appropriation pursuant to paragraph 33, Tenant shall have the right to exercise the purchase option upon notice of non-appropriation.

3. Rent. (a) Tenant covenants and agrees to pay to Landlord, at the address set forth in Section 23, or at such other place or places as Landlord shall from time to time designate in writing, for and throughout each Lease Year of years 1 through 5, a net annual base rent which is equal to the Purchase Price amortized over thirty (30) years at a fixed interest rate of 4.5%.

(b) The rent for years 6-10 shall be determined based on the total amount of the Purchase Price then outstanding amortized over twenty five (25) years, at an interest rate equal to the then rate charged by the current lender for the construction of the Demised Premises or if there is no current lender at a commercially reasonable rate available for this type of financing, which shall be reasonably agreed to by the parties.

(c) The rent for years 11-15 shall be determined based on the Purchase Price then outstanding amortized over twenty (20) years at an interest rate equal to the then rate charged by the current lender for the construction of the Demised Premises or if there is no current lender at a commercially reasonable rate available for this type of financing, which shall be reasonably agreed to by the parties.

(d) The rent for years 16-20 shall be determined based on the Purchase Price then outstanding amortized over fifteen (15) years at an interest rate equal to the then rate charged by the current lender for the construction of the Demised Premises or if there is no current lender at a commercially reasonable rate available for this type of financing, which shall be reasonably agreed to by the parties.

(e) The rent for years 21-25 shall be determined based on the Purchase Price then outstanding amortized over ten (10) years at an interest rate equal to the then rate charged by the current lender for the construction of the Demised Premises or if there is no current lender at a commercially reasonable rate available for this type of financing, which shall be reasonably agreed to by the parties.

(f) The rent for years 26-30 shall be determined based on the Purchase Price then outstanding amortized over five (5) years at an interest rate equal to the then rate charged by the current lender for the construction of the Demised Premises or if there is no current lender at a commercially reasonable rate available for this type of financing, which shall be reasonably agreed to by the parties.

At the conclusion of which period the Purchase Price shall be paid in full and landlord shall transfer all right, title and interest it holds in the Demised Premises to Tenant.

(g) All rent payments shall be made directly to the Landlord unless Tenant receives notice from the Mortgagee that Landlord is in default of any payments under the construction and/or takeout financing. Upon default Tenant shall be entitled to make all payments of rent directly to the Mortgagee in amounts sufficient to cover current rent and any deficiencies which may exist. Provided Tenant is current on its payments, during any period in which Landlord is in payment default regarding his financing, Landlord shall forfeit the equity portion of the payment, which is defined as the pro rata portion of the rental payment that is not related to repayment of Landlord's outstanding construction financing of the Demised Premises.

The payment of the rent shall be in addition to and above all other sums and additional payments to be made and paid by Tenant as set forth in this Lease.

4. Use. The use of the Premises should be used for all legal purposes and activities.

5. Taxes. Tenant shall be responsible for all real estate taxes and personal property taxes assessed on the Premises during the term of this Lease. Notwithstanding the above, in the event that the Auburn City Council shall adopt a Tax Increment Financing Plan (TIF) during the term of this lease that contains a Credit Enhancement provision which results in the reimbursement of tax liability to Landlord, then taxes to be paid by Tenant shall be limited to the non-reimbursable portion of any real estate taxes remaining to be paid by Landlord.

6. Insurance. (a) During the Term of this Lease, Tenant covenants and agrees, at its sole cost and expense, to obtain, keep, and maintain the following policies of insurance in full force and effect for the mutual benefit of Landlord, Tenant, the holder(s) of mortgage(s):

- i. A commercial general liability policy including a combined single limit of \$400,000.00 per Maine Tort Claims Act with respect to bodily injury, death or property damage; and

ii. During any construction or alteration of the Improvements following the Commencement Date, Tenant shall keep in force for the protection of Landlord and Tenant workers' compensation insurance coverage with an insurance carrier licensed to do business in the State of Maine, covering all persons employed by Tenant, or its contractors, in connection with the construction of the Improvements and satisfying the requirements of the statutes of the State of Maine; and

iii. Tenant's trade fixtures, leasehold improvements and personal property upon the Demised Premises shall be held at Tenant's own risk, and Tenant shall, during the term of the Lease, maintain in place commercially reasonable casualty insurance policies, naming Landlord and Tenant, as their interests may appear.

(b) Landlord's Insurance. i. At all times, Landlord shall insure all buildings, for at least their full reasonable replacement value and shall also provide Landlord's normal liability coverages for the Auburn Malls parking and all other reasonable types of insurance in amounts as Landlord deems necessary or desirable for insuring the Ice Arena and Premises, which policies shall name Landlord and Tenant as their interests may appear.

ii. Landlord may obtain his own Commercial General Liability Insurance, including Contractual Liability Insurance coverage, covering the Demised Premises under which the Landlord and such other persons as are in privity of estate with Landlord and/or Tenant, as may be set out in notice from time to time, and under which the insurer agrees to hold Landlord (and those in privity of estate with Landlord) harmless from and against all costs, expenses and/or liability arising from any accident, injury or damage whatsoever caused to any person occurring during the Term of this Lease in or about the Premises.

iii. Tenant shall pay to Landlord, as additional rent, the reasonable cost of the insurance to be maintained by Landlord under this paragraph (b).

iv. The applicable insurance policies shall include a provision which shall make said policies non-cancelable without at least thirty (30) days prior written notice to all parties. Copies of the required insurance policies, or certificates thereof, shall be delivered to Landlord and Tenant, respectively, prior to the commencement date and thereafter at least thirty (30) days prior to the expiration of such policies.

All policies of insurance obtained by Landlord, which are to be paid for by Tenant, shall be subject to the reasonable approval, of Tenant. If not approved by the Tenant, the Tenant shall provide a comparable policy subject to the reasonable approval of Landlord.

(b) If Tenant fails to procure the aforesaid insurance policies and pay the premiums for the same and deliver all such certificates of insurance or duplicate originals thereof to Landlord within the time provided for in this Lease, Landlord shall nevertheless have the right, without being obligated to do so, to procure such insurance and pay the premiums therefor, and all such premiums paid by Landlord together with interest at the Default Rate from the time of payment until paid, shall be repaid to Landlord on demand as additional rent, and Tenant's failure to repay the same as aforesaid shall constitute a default under this Lease.

(c) To the extent obtainable, all insurance policies carried by either party covering the Demised Premises or the Improvements, including but not limited to contents, fire, casualty, and other insurance, shall expressly waive any right of the insurer against the other party and the holders of the mortgages described in Sections 13 and 14 hereof. The parties hereto agree that their insurance policies will include such waiver clause or endorsement so long as the same shall be charged therefor, so long as the other party pays such extra cost. If extra cost shall be

chargeable therefor, each party shall advise the other thereof and of the amount of the extra cost and the other party, at its election, may pay the same, but shall not be obligated to do so. Where applicable, policies shall name the Landlord as an additional named insured.

7. Indemnity.

(a) Tenant covenants and agrees that from and after the Commencement Date, Landlord shall have no, and Tenant hereby releases Landlord from any, liability or responsibility for damages for any personal injury or injuries, death(s), damages, or losses to any person(s) or property that may be suffered or sustained by Tenant or subtenant(s) or any of their respective agents, servants, employees, patrons, customers, invitees, visitors, licensees, departments, and concessionaires or by any other person or persons in, on or about the Property or any part thereof, arising from Tenant's failure to keep or cause to be kept the Property in good condition and repair, or arising from the use or occupancy of the Property by Tenant or subtenant(s) or any of their respective agents, servants, employees, patrons, customers, invitees, visitors, licensees, departments, and concessionaires. Notwithstanding the above, nothing herein shall be construed or deemed a waiver of tenant's rights and immunity under the Maine Tort Claims Act.

(b) Tenant covenants and agrees to indemnify and save Landlord harmless from and against any and all liability, costs and expenses, including reasonable attorneys fees, for damages, losses, injuries, or death to persons or damages or losses to property which may be imposed upon or incurred by or asserted against Landlord as to any of the matters, provisions and conditions set forth in Section 7(a); in case any action or proceeding be brought against Landlord by reason of any such claim, Tenant upon notice from Landlord shall defend the same at Tenant's expense, with counsel satisfactory to Landlord.

(c) Landlord covenants and agrees to indemnify and save Tenant harmless from and against all liability costs and expenses, including reasonable attorney's fees, for damages, losses, injuries, or death to persons or damages or losses to property which may be imposed upon or incurred by or asserted against Tenant in any action or proceeding against Tenant arising from the negligent acts or omissions of Landlord, its agents, servants, employees, or invitees.

8. Condemnation. If the entire Demised Premises is taken by the exercise of the right of eminent domain, then this Lease shall terminate as of the date of taking of possession by the condemning authorities with the same force and effect as if said date had been originally fixed herein as the expiration date of the Term of this Lease. In the event the Lease shall terminate or be terminated, the Purchase Price due under paragraph 2(b) less the amount paid by the condemning authority to Landlord shall be paid by Tenant to Landlord within 30 days of said taking.

9. Leasehold Financing.

(a.) Notwithstanding anything to the contrary contained in this Lease, Tenant shall have the right, at any time and from time to time, to mortgage its Leasehold interest herein demised on such terms, conditions, and maturity as Tenant shall determine, and to enter into any and all extensions, modifications, amendments, replacement(s), and refinancing(s) of any such Leasehold mortgage as Tenant may desire. Any such Leasehold mortgage (the "Leasehold Mortgage") shall be subject and subordinate to the terms and provisions of this Lease. In no event shall the Leasehold Mortgage encumber Landlord's fee interests in the Demised Premises, nor shall Landlord be obligated to execute any instrument in connection therewith.

(b). If Tenant shall mortgage said Leasehold interest, then, so long as any such Leasehold Mortgage shall remain unsatisfied of record, the following provisions shall apply,

notwithstanding anything to the contrary contained in this Lease, and any pertinent provisions of this Lease shall be deemed to be amended and modified to the extent necessary so as to provide as follows:

- i. If the holder of any Leasehold Mortgage shall register with Landlord his or its name and address in writing, there shall be no cancellation, surrender, acceptance or surrender, or modification of this Lease without prior notice to such Leasehold Mortgage holder; and
- ii. If the holder of any Leasehold Mortgage shall register with Landlord his or its name and address in writing, Landlord, on serving on Tenant any notice of default or any other notice pursuant to the provisions of, or with respect to, this Lease, shall at the same time serve a duplicate counterpart of such notice on such Leasehold Mortgage holder; and
- iii. Such Leasehold Mortgage holder, in the event Tenant shall be in default hereunder, shall have the right, within the period and otherwise as herein provided, to remedy or cause to be remedied such default, and Landlord shall accept such performance by or at the instigation of such Leasehold Mortgage holder as if the same had been performed by Tenant; and
- iv. Notwithstanding anything herein contained to the contrary, during such time as the Leasehold Mortgage remains unsatisfied of record, if an event or events shall occur which shall entitle Landlord to terminate this Lease, and if before the expiration of thirty (30) days after the effective date of notice of termination under this Lease such Leasehold Mortgage holder shall have paid to Landlord all rent and additional rent and other payments herein provided or then in default, and

shall have complied with all the other requirements of this Lease, if any, then in default, then Landlord shall not be entitled to terminate this Lease and any notice of termination theretofore given shall be void and of no effect, provided, however, that nothing herein contained shall in any way affect, diminish, or impair Landlord's right to terminate this Lease (if such default is not cured within said thirty (30) day period) or to enforce any other remedy in the event of the nonpayment of any such rent and additional rent thereafter payable by Tenant or in case of any other subsequent default in the performance of any of the obligations of Tenant hereunder, in accordance with this Lease, subject, however, to all of the provisions of this Section.

(c) If any Leasehold Mortgage holder acquires title to Tenant's interest in the Leasehold estate created hereby, such Leasehold Mortgage holder shall be obligated to assume and perform each and every one of Tenant's obligations and covenants hereunder.

10. Assignment and Subletting.

(a) This Lease may not be assigned in whole or in part. Tenant may sublet all or any portion of the Demised Premises, but any sublet shall not change the liability of the Tenant herewith, and shall be subject to the terms and conditions of this Lease and the approval of Landlord, which approval shall not be unreasonably withheld.

(b) Landlord's right to sell, convey or transfer its fee title in the Demised Premises shall at all times be subject to Tenant's option to purchase which option shall be exercisable by Tenant upon Landlord's acceptance of any bona fide purchase agreement, change of ownership of fifty (50) percent or more of Landlord or death of George Schott, except as set out in

Paragraph 2 of this Lease or upon default of the Tenant which is not cured pursuant to Paragraph 11 below.

11. Default of Tenant. If, at any time subsequent to the date of this Lease, any one or more of the following events shall occur: (i) Tenant shall default in the payment of basic rent or additional rent and such default shall continue for thirty (30) days after written notice to Tenant from Landlord; (ii) Tenant shall assign, transfer, encumber, sublet or permit the use of the Premise by others except in a manner permitted in Paragraph 10 and 4; (iii) Tenant shall be adjudicated a bankrupt, whether voluntarily or involuntarily, or make any general assignment for the benefit of creditors, or take or attempt to take the benefit of insolvency, receivership or bankruptcy act, or a receiver or trustee shall be appointed for, or take possession of all or a substantial part of the property of Tenant or Tenant's leasehold interest; (iv) Tenant shall vacate or abandon the Premises; (v) there shall be any attachment, execution or other judicial seizure of all or any substantial part of the assets of Tenant or Tenant's leasehold, which such attachment, execution or seizure is not discharged within sixty (60) days; (vi) Tenant shall default under the terms of the Ground Lease between the parties; (vii) Tenant shall default in the performance or observance or any other covenant herein contained to be performed or observed by it and shall fail to cure such default within thirty (30) days after notice thereof from Landlord or, if such default shall reasonably require longer than thirty (30) days to cure and Tenant shall fail to commence to cure such default within a reasonable time after the date of such notice thereof, and prosecute the curing and completion of same with due diligence, then in any such case, while such default exist, Landlord may, at its option, refrain from terminating Tenant's right of possession and enforce against Tenant the provisions of this Lease for the full term thereof, or give to Tenant a written notice of its intention to terminate this Lease, in which the latter event

the term hereof shall expire at noon upon the thirtieth business day following the day upon which such notice is given as fully and completely as if that day was the date fixed for the expiration of the term, without the necessity of any legal process whatsoever; provided always, however, that Tenant shall remain liable to pay the monthly deficiencies throughout the full stated term of this Lease as hereinafter provided. Tenant upon such a termination of this Lease shall thereupon quit and surrender the Premises to Landlord and Landlord, its agents and servants, may, immediately or at any time thereafter, reenter the premises and dispossess the Tenant, and remove any and all persons and any or all property therefrom, either by summary possession proceedings or by any suitable action or proceeding at law, or by force or otherwise, without being liable to prosecution or damage therefor (and no person claiming through or under Tenant or by virtue of any statute or of any order of any court shall be entitled to possess force or otherwise, without being liable to prosecution or damage therefor (and no person claiming through or under Tenant or by virtue of any statute or of any order of any court shall be entitled to possession of the Premises).

In the event of any such reentry or retaking by Landlord, Tenant shall nevertheless remain in all events liable and answerable for the full rental to the date of retaking or reentry, and Tenant shall also be and remain answerable in damages for the deficiency of loss of rents which Landlord may thereby sustain in respect of the balance of the term.

Tenant shall pay and indemnify the Landlord against all costs, charges and expenses, including reasonable counsel fees incurred by the Landlord in connection with enforcement of its rights under this lease, whether or not suit is commenced, including the collection of rents or other amounts due under this lease, or in obtaining possession of the Premises after the default of Tenant or after the Tenant's default in surrendering possession upon the expiration or earlier

termination of the term of this lease or extended term, or enforcing any covenants of the Tenant herein contained.

12. Default of Landlord. In the event that the Landlord shall default in the observance or performance of any of the Landlord's covenants, obligations, or agreements hereunder and such default shall not be cured within thirty (30) days following written notice from the Tenant of such default, Tenant shall be entitled to all remedies available to Tenant at law or equity, including without limitation, the right to cure any default on behalf of the Landlord and deduct the cost of said cure from future rent payments. Default of Landlord shall include any default of Landlord pursuant to any loan documents evidencing the financing of the Demised Premises.

13. Subordination Clause. This lease shall be subject and subordinate at all times to the lien of any mortgage or encumbrances, which may now or may at any time hereafter be made a lien upon the buildings of which the Premises are a part or upon Landlord's interest therein. Tenant shall execute and deliver such further instrument or instruments subordinating this lease to the lien of any mortgage and encumbrances as shall be desired by any mortgagee or party secured or proposed mortgagee or any party proposed to be secured; and Tenant hereby appoints Landlord the attorney in fact of Tenant, irrevocably, to execute and deliver any such instruments for Tenant. Landlord covenants and agrees that the Demised Premises shall not, except for the original financing, refinancing, modification or extension of the original financing, be pledged or used for purposes of security or collateral without the express written consent of Tenant.

14. Surrender of Premises. Tenant agrees to remove from the Premises, at the expiration or other termination of this Lease, all goods and effects not belonging to Landlord, and to surrender possession of the Premises and all fixtures and furnishings connected therewith in good repair, order and condition in all respects, reasonable wear and use thereof and damage by fire or

other casualty not caused by the acts or negligence of the Tenant, its employees, agents or invitees, only excepted; and if Tenant shall have made any alterations or improvements in or to the Premises whether consented to by the Landlord or not, Tenant shall, if requested to do so by the Landlord in writing prior to the expiration of the term of this Lease, remove the same or such thereof as may be specified in such notice, and repair any damage caused by such removal, all at Tenant's expense. If Tenant shall fail to perform any of the foregoing obligations, Landlord is authorized to do so in Tenant's behalf and at Tenant's request.

15. Alterations. Subject to the provisions of this Lease, Tenant shall have the right, at all times during the continuance of this Lease and at its own cost and expense, to make such changes, improvements, alterations and additions to the Demised Premises, erect such building(s) and/or improvements thereon as Tenant may desire provided that no such changes, improvements, alterations or additions shall diminish the value of the improvements. All alterations, additions, or improvements, whether made by the Landlord or the Tenant, shall be done in a good and workmanlike manner in full compliance with all Federal, State, and Municipal laws, ordinances, rules, and regulations and in accordance with the specifications, requirements, and standards of any regulatory authority having jurisdiction over the Premises.

Except as otherwise provided, the Landlord shall not be responsible for any costs of construction arising from alterations or the erection of any additions or improvements to be done by the Tenant, nor for any lien or other obligation involved in such repair or construction. No work may be commenced until the Tenant has provided written notice to all parties who will perform work, on behalf

of the Tenant, that the Landlord will not be responsible for the same as provided in 10 M.R.S.A. §3252, as amended, or any successor thereto. The Tenant agrees to furnish the Landlord with the names, addresses, and telephone numbers of all parties to whom it shall become obligated for payment of monies for construction to be done on the Premises at the time when the Tenant shall have contracted with the parties to commence work on the Premises for the Tenant. The Tenant agrees to indemnify and hold the Landlord harmless from and against any lien or claim of the Tenant's creditors on account of such additions, alterations, or improvements. If, for any reason, a mechanic's lien is placed on the Premises as a result of work done by or for the Tenant, the Tenant shall immediately cause said lien to be extinguished or bonded over without any further request or action on the part of the Landlord, failing which the Tenant shall be in default hereunder.

16. Maintenance. Tenant shall be responsible for all maintenance which may be required to the Demised Premises during the term of this Lease. Maintenance shall include, but not be limited to, the structure, all interior and exterior systems, including the electrical, water, air conditioning and heating, and ventilation systems, and a schedule of building maintenance shall be provided to Landlord by the Tenant upon execution of this Lease. Any failure by Tenant to maintain the building and the systems to a reasonable standard shall be a default under this Lease. In addition to the right to terminate this Lease for default, Landlord reserves the right to enter the Demised Premises and to complete all required maintenance which the Tenant fails to complete and shall have the right to charge any costs associated back to the Tenant plus ten (10) percent of the cost, as additional rent. The Landlord shall not be liable for any damage occasioned by the Tenant's failure to keep the Premises in repair as set forth in this agreement.

17. Utilities. Landlord shall be responsible for bringing and hooking up all utility services to the building. Upon occupancy of the building, the Tenant shall be responsible for hooking up and paying for all utilities which may be required, including trash removal from the Premises. Landlord shall be responsible for agreed to snowplowing of parking areas for the Demised Premises, which cost shall be reimbursed by Tenant to Landlord at commercially customary price and terms as the parties may agree. Tenant shall be responsible for any snow removal from parking areas on the Demised Premises, excluding any Auburn Mall parking areas, as required, and for clearing all pedestrian walkways and accesses to the building.

18. Landlord's Right of Access. Landlord, upon twenty-four (24) hours notice to the Tenant, or without prior notice if an emergency exists, shall have the right at all reasonable times of access to the Demised Premises for inspection of the Demised Premises. If emergency access is required by the Landlord due to maintenance or other emergency issue(s), Landlord shall have the right of immediate access but shall notify the Tenant as soon as possible following the emergency access.

19. Estoppel Certificates. Landlord and Tenant shall, without charge at any time and from time to time, within ten (10) days after the request by the other party, certify by written instrument in recordable form and deliver to the other party, or any mortgagees selected by the other party:

(a) That this Lease is unmodified and in full force and effect, (or, if there has been a modification, that the same is in full force and effect as modified and stating the modification); and

(b) The dates, if any, to which the Base Rent and additional rent, and other charges hereunder payable to Landlord have been paid in advance; and

(c) Whether, to the best of such party's knowledge, there is or is not in default in the performance of any covenant, condition or agreement to be performed by the other party and the nature of such default, if any; and

(d) Such other pertinent information as the requesting party may reasonably request.

20. Possession and Ownership Upon Termination. Upon termination of this Lease, all improvements on the property, including any improvements which have been made by the Tenant subsequent to occupancy of the Premises, shall pass with the real estate to Landlord and shall be owned solely by the Landlord.

21. Holdover. If Tenant or any party claiming through or under Tenant shall remain or continue to be in possession of the Demised Premises or any part thereof after the termination of this Lease, then, at Landlord's option, Tenant or such party or both shall be deemed to be illegally retaining possession or Tenant or such party or both shall be deemed to be a month to month Tenant of the Demised Premises on all of the terms and conditions of this Lease.

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

23. Written Notices. Whenever under the terms of this Lease a written notice is required, or whenever a written notice or communication is sent, the same shall be personally delivered or

given by registered or certified mail. Any such notice shall be deemed to be given on the earlier of:

a. the term which such notice is actually received; or

b. the third business day following its deposit with the United States Postal

Service, postage prepaid, addressed as follows:

If intended for Landlord, to:

**George Schott
PO Box 9340
Auburn, Maine 04210**

With a copy to:

**Daniel A. D'Auteuil, Jr.
Isaacson & Raymond, P.A.
PO Box 891
Lewiston, ME 04243-0891**

If intended for Tenant, to:

**City Manager
City of Auburn
60 Court Street, Suite 246
Auburn, ME 04210**

With a copy to:

**John W. Conway, Esq.
Linnell, Choate & Webber
P.O. Box 190
Auburn, ME 04212-0190**

Any party may change the address to which its future notices shall be sent by notice given as above, to be effective only upon actual receipt.

24. Binding on Successors and Assigns. Except as otherwise provided in this Lease, all covenants, agreements, provisions, and conditions of this Lease shall be binding on and inure to the benefit of the parties hereto, their respective personal representatives, successors, and assigns.

No modification or termination of this Lease shall be binding unless evidenced by an agreement in writing signed by Landlord and Tenant.

25. Broker. Landlord and Tenant each warrant, covenant, and agree with the other that no broker brought about this Lease, nor was any broker involved in the negotiations leading to its consummation.

26. No Merger. Notwithstanding any provision of this Lease to the contrary, if at any time or times during the term of this Lease or any renewal(s) or extension(s) thereof, Landlord and Tenant shall be the same person, party, or entity, Landlord's and Tenant's interests shall remain separate and distinct, and shall not be merged into one estate, so as to cancel, terminate, or extinguish this Lease by law or otherwise.

27. Captions. The captions of the Sections of this instrument are solely for convenience and shall not be deemed a part of this instrument for the purpose of construing the meaning thereof, or for any other purpose.

28. Quiet Enjoyment. Landlord agrees, covenants, and warrants that as long as Tenant faithfully performs the agreement, terms, covenants, and conditions of this Lease within the grace periods and extended periods for any unavoidable delays, Tenant shall peaceably and quietly have, hold, and enjoy the Demised Premises for the term and extensions thereof hereby granted without molestation or disturbance by or from Landlord.

29. No Waiver. No waiver of any covenant or condition contained in this Lease or of any breach of any such covenant or condition shall constitute a waiver of any subsequent breach of such covenant or condition by either party, or justify or authorize the nonobservance on any other occasion of the same or any other covenant or condition hereof of either party.

30. Interpretation. This Lease shall be construed in accordance with the law of the State of Maine. Whenever the contents of any provision shall require it, the singular number shall be held to include the plural number, and vice versa. The neutral gender includes the masculine and the feminine.

31. Entire Agreement. This Lease contains the entire agreement of the parties hereto with respect to the letting and hiring of the Demised Premises described above and this Lease may not be amended, modified, released, or discharged, in whole or in part, except by an instrument in writing signed by the parties hereto, their respective successors or assigns.

32. Recording. Landlord and Tenant agree not to record this Lease, but each party hereto agrees, upon request of the other, to execute a Memorandum of Lease in recordable form and satisfactory to future Landlord and Tenant. In no event shall such memorandum set forth the rent or other charges payable by Tenant under this Lease and any such memorandum shall expressly state it is executed pursuant to the provisions contained in this Lease and is not intended to vary the terms and conditions hereof.

33. Contingencies.

(a) This Lease Agreement is subject to final approval by the Auburn City Council.

Following Auburn City Council approval, in the case that there is a voter initiative referendum which meets the requirements of the City of Auburn Charter to require reconsideration of the City Council order to approve the lease, the obligations under the lease shall be suspended until a vote of reconsideration is held and the results are confirmed. During the period of the referendum, Tenant will reimburse the Landlord for expenses actually incurred for construction of the ice arena, not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00). Any amounts exceeding the \$250,000.00 shall be the expense of the Landlord and

will only be reimbursed if the referendum fails to reverse the City Council approval of the lease, and the ice arena is actually constructed to specification.

(b) Notwithstanding the terms and conditions of this Lease, if, at any time, the legislative body for the City of Auburn fails to appropriate monies for the payment of rent required by this Lease, Tenant shall so notify Landlord of the non-appropriation, and this Lease shall terminate, subject to the conditions set out in subparagraph (c) of this paragraph.

(c) In case of the City exercising its right of non-appropriation, it shall give the Landlord two year's written notice of such non-appropriation. During the notice period the Tenant shall remain obligated under the Lease and shall also be liable for two year's additional rental payments following the termination of the Lease. Said amount shall be due and payable one year following the end of the non-appropriation notice period.

(d) In case of non-appropriation the City agrees not to construct, on its own or together with any third party, an ice arena which would compete with the Demised Premises for the duration of Landlord's ownership of the ice arena or ten years, whichever is less. For purposes of this section, Landlord shall be deemed to have ceased ownership if the Landlord's principle, George Schott, shall sell, convey or transfer 50% or more of ownership interests in Landlord. In case of breach of this provision, Landlord shall be entitled to injunctive relief, together with any remedies available at law.

34. Late Charge. Notwithstanding the foregoing, in the event that the Tenant fails to pay any rental amount within the same period allowed by Landlord's Lender but in no event greater than 15 days from the date when due, the Landlord shall have the right to impose a late charge of Five Percent (5%) per month for each month that the rent remains unpaid; provided, however, that the imposition of such a late charge by the Landlord shall not constitute a waiver of the

Tenant's default by the Landlord or otherwise prevent the Landlord from pursuing any other remedies available to the Landlord under this Lease.

35. No Joint Venture: Landlord shall not become or be deemed to be a partner or joint venturer with Tenant by reason of the provisions of this Lease.

36. Ice Arena Construction: (a) Specifications: Landlord agrees to construct an Ice Arena (the "Ice Arena") and related site improvements on the Premises pursuant to the following specifications (the "Specifications"): as set forth in Exhibit C.

37. Net Lease: The parties acknowledge that it is their intention that this Lease shall be an absolute net lease, so-called, and that except as otherwise expressly provided herein, Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations in, about or to the Premise and Tenant shall assume full and sole responsibility for the condition, operation, repair, replacement, and maintenance of the Premises, including the Ice Arena and all other improvements located thereon and hereby waives any rights created by any law now or hereafter in force that would require Landlord to make repairs to the Premises.

38. Environmental: (a) For purposes of this Lease, the term "Hazardous Materials" shall mean and include any and all hazardous, pathological, radioactive, special, medical, toxic or dangerous waste substance or material, including pollutants, contaminants, underground storage tanks, asbestos, waste oil, lube oil, fuel and petroleum products, defined in, or regulated by, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC Section 9601, et. seq.), the Hazardous Materials Transportation Act (49 USC Section 1802, et. seq.) and the Resource Conservation and Recovery Act (42 USC Section 6901, et. seq.) or any other federal, state or local statute, law, ordinance, code, rule, regulation, guideline, order or decree regulating, relating to or imposing liability or standards of conduct concerning the environment or

any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect (collectively, "Environmental Laws").

(b) Tenant agrees, at its sole expense, to comply with all Environmental Laws affecting the Premises. Tenant shall not install any underground storage tanks on the Premises. Tenant shall not discharge, release, store, create, use, move onto or remove from the Leased Premises any Hazardous Materials. Upon request of Landlord, Tenant shall provide Landlord with a material safety data sheet with respect to each Hazardous Material which Tenant utilizes on the Premises. If Landlord, in its sole judgment, reasonably believes, in good faith, that Tenant has caused the Premises or the surrounding environment to become contaminated with Hazardous Materials or that Tenant has violated any Environmental Laws, Landlord may, in addition to its other rights under this Lease, enter upon the Premises and obtain samples from the Premises, including the soil and groundwater, to determine whether and to what extent the Premises or the surrounding environment have become contaminated. Such testing shall be performed at Landlord's expense unless such tests indicate that Tenant has contaminated the Premises or the environment with Hazardous Materials or that Tenant has violated any Environmental Laws, in which case Tenant shall pay the cost of such testing upon demand. In the event that it is found that Tenant contaminated the Premises or the environment with Hazardous Materials, Tenant shall take all necessary steps to fully remove such Hazardous Material from the Premises, any adjacent property and the environment including, but not limited to, the cost of any required or necessary repair, cleanup or detoxification and preparation of any closure or other remediation plans in connection therewith, all to the reasonable satisfaction of Landlord. Tenant further covenants and agrees: (i) that, with respect to any Hazardous Materials which Tenant, its agents or employees, may use, handle, store or generate in the conduct of its business at the Premises Tenant will comply with all applicable Environmental

Laws which relate to the treatment, storage, transportation and handling of the Hazardous Materials; (ii) that Tenant will in no event permit or cause any disposal of Hazardous Materials in, on or about the Premises and in particular will not deposit any Hazardous Materials in, on or about the floor or in any drainage system or in the trash containers which are customarily used for the disposal of solid waste; (iii) that with respect to any off-site disposal, shipment, storage, recycling or transportation of any Hazardous Materials, it shall properly package the Hazardous Materials and shall cause to be executed and duly filed and retained all records required by federal, state or local law; (iv) that at all reasonable times, upon reasonable prior notice, it shall permit Landlord or its agent or employees to enter the Premises to inspect the same for compliance with the terms of this Section and will further provide upon ten (10) days notice from Landlord copies of all records which Tenant may be obligated to obtain and keep in accordance with the terms of this Section 39; (v) that upon termination of this Lease, it shall at Tenant's expense, remove all Hazardous Materials placed on the Premises by Tenant from the Premises and, if applicable, comply with Maine and federal law as the same may be amended from time to time, including without limitation Chapter 851 of the Regulations for the Maine Department of Environmental Protection, Section 11 relating to "Closure."

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly

executed the day and year first above written.

WITNESS



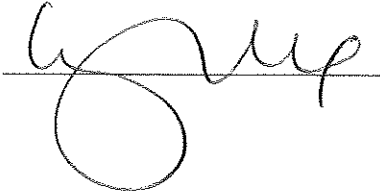
SLAP SHOT, LLC

By:


George Schott

Its: MANAGER

WITNESS



CITY OF AUBURN

By:



Its:



Exhibit B

Lease Commencement Contingencies

The Commencement Date of the lease shall occur upon completion to the reasonable satisfaction of the Tenant:

1. Ice Arena completed to specifications, all punch list items completed, all lien waivers received from contractors, subcontractors, material suppliers; all approvals and permits required in final form; building approved for occupancy.
2. Landlord obtains all financing to his satisfaction. All financing of Landlord includes the condition that Tenant is to be notified of any default at same time as Landlord, and Tenant is authorized to receive all information regarding loan status and is authorized to make loan payments directly to any lender in lieu of rent.



City Council Agenda Information Sheet

City of Auburn

Council Meeting Date: January 31, 2013

Order 12-01312013

Author: Sue Clements-Dallaire, City Clerk

Subject: Design and Budget of the double sheet Ice Arena

Information: The Council has requested regular updates on this project. As the design is very close to final, the general contractor and subcontractors are about to order materials, and updates are prepared for the budget; the timing to hold a special meeting and update the City was appropriate.

Financial:

Action Requested at this Meeting:

Previous Meetings and History:

Attachments:

- Design plans
- Budget – to be posted 01-30-2013
- Order 12-01312013

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GENERAL NOTES:

REVISIONS:



2 FINEST ROAD
FALMOUTH, ME 04103
Phone: 207-781-1344
Fax: 207-699-3344
Office @ foresidearchitects.com

Project Status:
CONCEPT
PLANS
Project Number:
FA00972

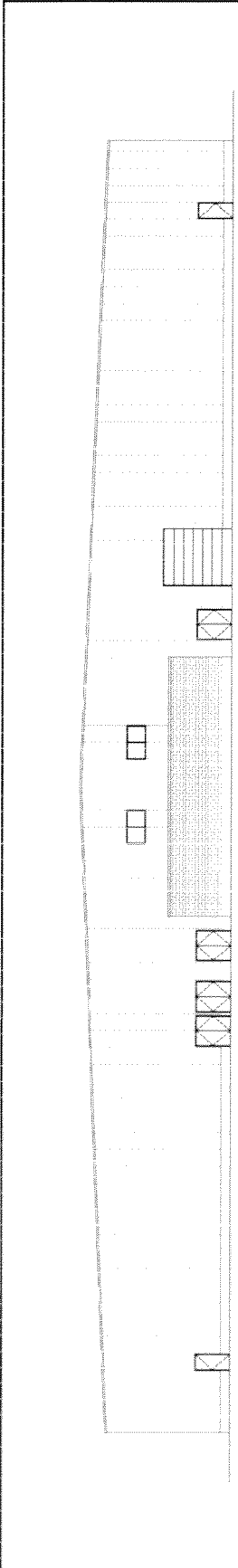
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Auburn Mall
Turner Street
Auburn, Maine

Drawing Name:
Ground Floor Plan

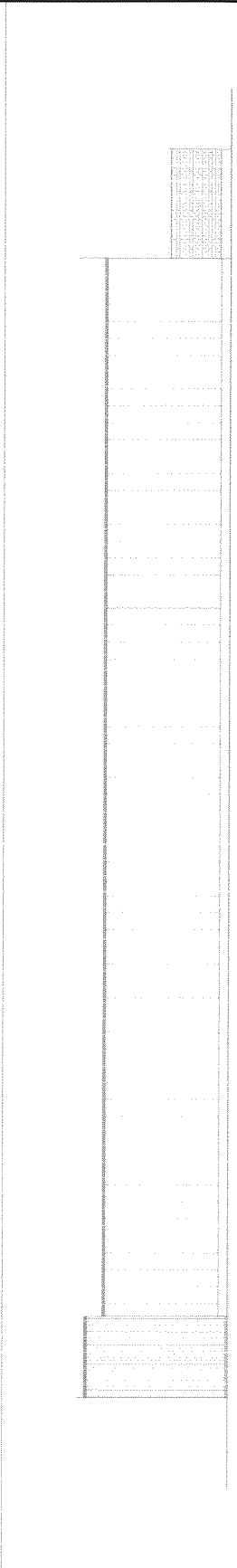
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3/32" = 1'-0"

Date:
01/09/13

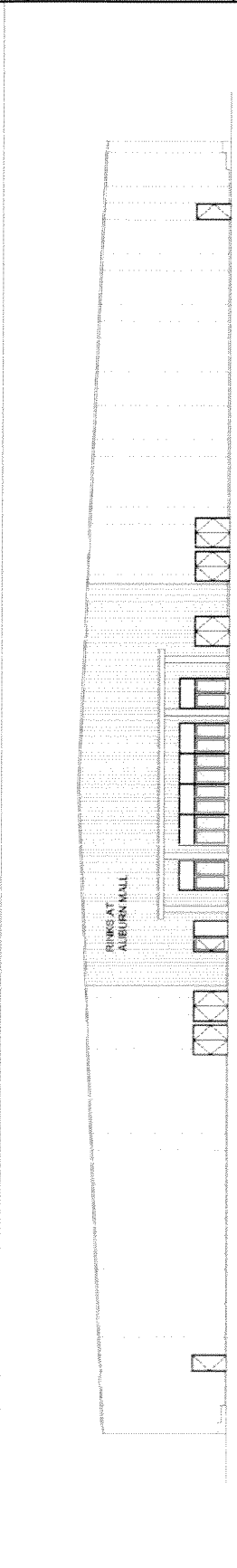
SHEET
A2.1



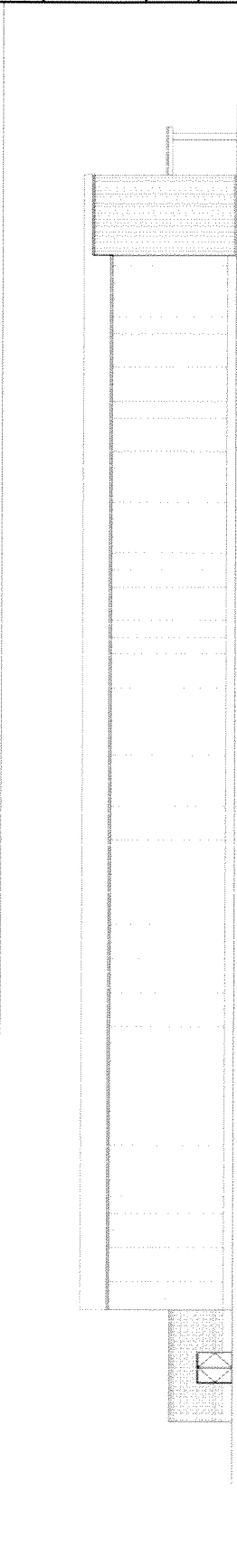
1 REAR ELEVATION
SCALE 3/32" = 1'-0"



2 RIGHT ELEVATION
SCALE 3/32" = 1'-0"



3 FRONT ELEVATION
SCALE 3/32" = 1'-0"



4 LEFT ELEVATION
SCALE 3/32" = 1'-0"

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GENERAL NOTES

REVISIONS

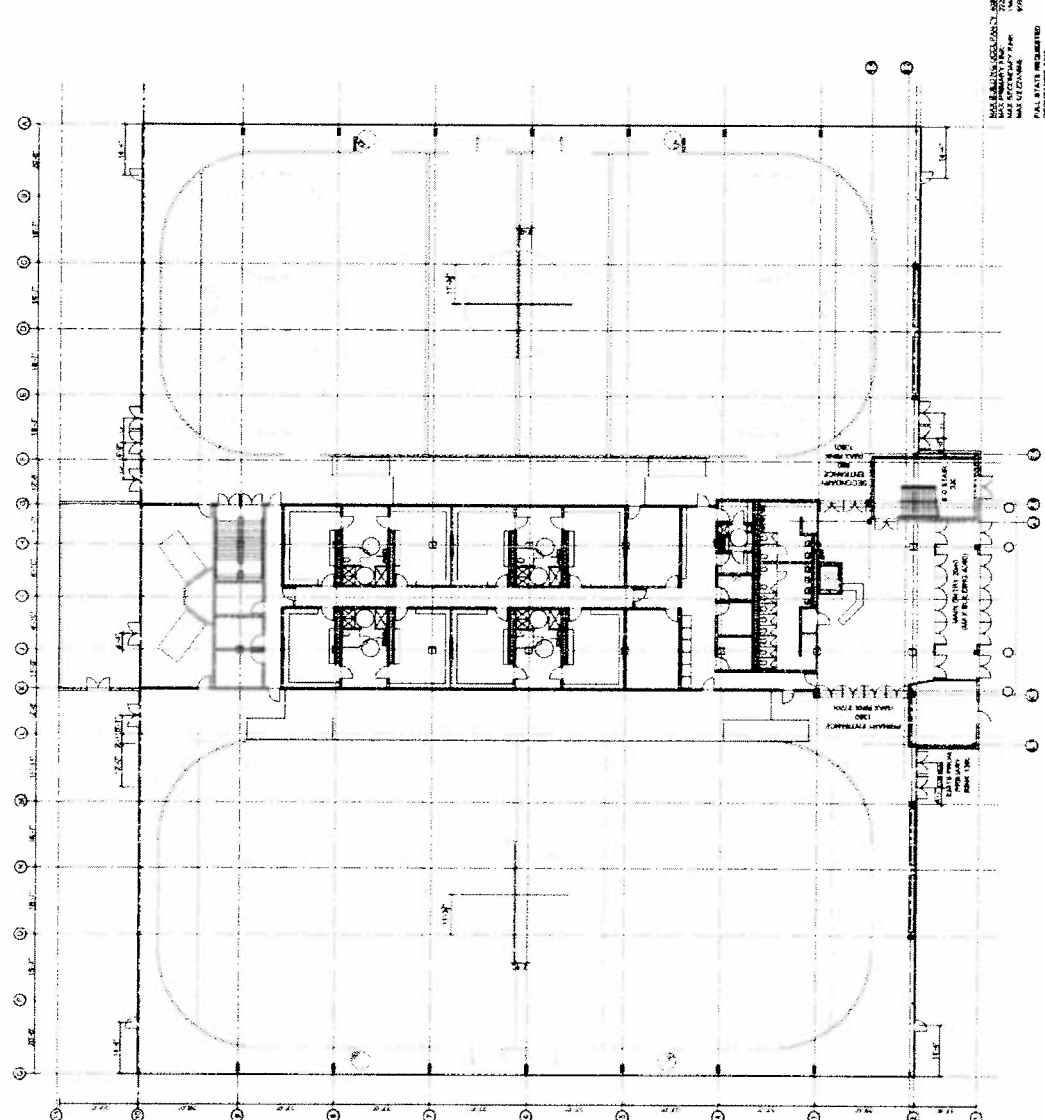
FORESIDE ARCHITECTS
LLC
5 FENDEL ROAD Phone: 207.781.3344
PALM BEACH, FL 33411 Fax: 207.699.1384
www.foresidearchitects.com

PROJECT NO. 10
CONCEPT
PLANS
FACILITY
PRELIMINARY
PLANS
FOR
CONSTRUCTION

Rinks at
Auburn Mall
Turner Street
Auburn, Maine

OWNER: Maine
Ground Floor Plan

Scale: 3/32"=1'-0"
Date: 01/25/13
SHEET
A1.1



NOTES:
1. ALL DIMENSIONS ARE IN FEET AND INCHES.
2. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
3. ALL DIMENSIONS ARE TO BE VERIFIED BY THE CONSTRUCTION TEAM.
4. ALL DIMENSIONS ARE TO BE VERIFIED BY THE CONSTRUCTION TEAM.
5. ALL DIMENSIONS ARE TO BE VERIFIED BY THE CONSTRUCTION TEAM.

Tizz E. H. Crowley, Ward One
Robert Hayes, Ward Two
Mary Lafontaine, Ward Three
David Young, Ward Four



Jonathan LaBonte, Mayor

Leroy Walker, Ward Five
Belinda Gerry, At Large
Joshua Shea, At Large

IN CITY COUNCIL

ORDER 12-01312013

ORDERED, that the City Council hereby approves the design and updated budget for the double sheet Ice Arena.