



**City Council Special Meeting  
Auburn Hall Council Chambers  
November 27, 2017  
5:30 P.M.**

**5:30 P.M. City Council Meeting**

**Pledge of Allegiance**

- I. **Consent Items** – All items listed with an asterisk (\*) are considered as routine and will be approved in one motion. There will be no separate discussion of these items unless a Councilor or citizen requests. If requested, the item will be removed from the consent agenda and considered in the order it appears on the agenda.
  1. **Order 113-1127017\***  
Confirming Chief Crowell's appointments of Kenneth G. Jones and Nicholas C. Barnies as Constables with firearm for the Auburn Police Department.
- II. **New Business**
  2. **Order 114-1127017**  
Authorizing the City Manager or Assistant City Manager to finalize terms for and to sign a contract with the USPHL Hockey Team with the Norway Savings Bank Arena.
  3. **Order 115-1127017**  
Authorizing the City Manager or Assistant City Manager to finalize terms for and to sign a contract with Michael Violette, owner of Upper Level Pizza and Grill to operate the concessions/restaurant at the Norway Savings Bank Arena.
  4. **Order 116-1127017**  
Authorizing the Finance Director to record a waiver of foreclosure on St. Louis Church.



**City of Auburn  
City Council Information Sheet**

**Council Workshop or Meeting Date:** November 27, 2017

**Order:** 113-11272017

**Author:** Phillip L. Crowell, Jr., Chief of Police

**Subject:** Confirm Chief Crowell's appointments of Kenneth G. Jones and Nicholas C. Barnies as Constables with firearm for the Auburn Police Department.

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**Information:** The Auburn Police Department requests City Council appointment of Kenneth G. Jones and Nicholas C. Barnies as Constables with a firearm for the City of Auburn.

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**City Budgetary Impacts:** n/a

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**Staff Recommended Action:** Motion to confirm Chief Crowell's appointments of Kenneth G. Jones and Nicholas C. Barnies as Constables with a firearm for the Auburn Police Department.

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**Previous Meetings and History:** N/A

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**City Manager Recommendation:**

**I concur with the recommendation. Signature:** \_\_\_\_\_

A handwritten signature in black ink, appearing to read "Peter J. Crompton", is written over a horizontal line.

**Attachments:**

- Memo from the Chief.



# Auburn Police Department

Phillip L. Crowell, Jr. | Chief of Police  
Jason D. Moen | Deputy Chief of Police  
[www.AuburnPD.com](http://www.AuburnPD.com) | 207.333.6650  
60 Court Street | Auburn, Maine 04210

## MEMORANDUM

Date: November 20, 2017  
To: Honorable Mayor Jonathan Labonte and Members of the City Council  
From: Phillip L. Crowell, Jr., Chief of Police

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RE: CONSTABLES

We request that the following named individuals be named as Constables for the Auburn Police Department:

Kenneth G. Jones	with Firearm	New Hire	Police Officer
Nicholas C. Barnies	with Firearm	New Hire	Police Officer

James Pross, Ward One  
Robert Stone, Ward Two  
Andy Titus, Ward Three  
Adam R. Lee, Ward Four



Leroy Walker, Ward Five  
Grady R. Burns, At Large  
David C. Young, At Large

Jonathan P. LaBonte, Mayor

IN CITY COUNCIL

ORDER 113-11272017

ORDERED, that the City Council hereby names Kenneth G. Jones and Nicholas C. Barnies as Constables with a firearm for the Auburn Police Department.



**City of Auburn  
City Council Information Sheet**

**Council Workshop or Meeting Date:** November 27, 2017      **Order:** 114-11272017

**Author:** Peter Crichton

**Subject:** Norway Savings Bank Arena / Maine Hockey Management Group Team

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**Information:** City of Auburn Staff have had ongoing conversations with Maine Hockey Management Group (MHMG) over the past 9 months to discuss the potential of hosting a Jr. Hockey Team in the City of Auburn Maine. At a recent Council Workshop on November 20<sup>th</sup>, representatives of the MHMG were present to express their serious interest in having a team at the Arena. A group of City staff led by Assistant City Manager Denise Clavette are currently negotiating the terms of a contract with MHMG representatives. The proposed contract will be made available to the Mayor and Council as soon as possible in advance of a Special Council meeting that will take place on Monday, November 27<sup>th</sup>, at 5:30 pm.

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**City Budgetary Impacts:** Positive Gain for Arena Budget, Increased Restaurant revenues

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**Staff Recommended Action:** Approval of the Proposed Contract

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**Previous Meetings and History:** Executivesession and City Council Workshop

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**City Manager Comments:**

I concur with the recommendation. Signature: \_\_\_\_\_

A handwritten signature in blue ink, appearing to read "Peter J. Crichton", is written over a horizontal line.

**Attachments:**

Overview of Previous City Staff / Ownership Group discussions

## ARENA SUBLEASE AGREEMENT

This ARENA SUBLEASE AGREEMENT ("Sublease") is made and entered into as of this 27th day of November 2017, by and between the **CITY OF AUBURN**, a Maine municipal corporation whose principal office is 60 Court Street, Auburn, Maine 04210 (hereinafter referred to as the "City"), and **MAINE HOCKEY MANAGEMENT GROUP, LLC**, a Maine limited liability company (hereinafter referred to as the "Team").

### BACKGROUND

Slap Shot, LLC, as Landlord ("Landlord") and the City as Tenant, entered into a Lease Agreement dated October 25, 2012, as the same may be amended or replaced from time to time ("Master Lease"), covering and describing the premises known as the "Ice Arena" and subsequently renamed "Norway Savings Bank Arena," consisting of a dual ice surface recreational facility and surrounding parking lots located at 985 Turner Street, Auburn, Maine (the "Demised Premises" or the "Arena"), a true and correct copy of the Master Lease being attached hereto as **Exhibit A** and made a part hereof for all purposes; and

The Master Lease authorizes the City to sublet the Demised Premises, subject to the reasonable consent of the Landlord; and

The City desires to secure a junior hockey team who will use the Arena as its primary facility for practices and home games, with the goal of increasing community use of the Arena as a sports tourism destination; and

The Team desires to bring a junior hockey franchise of the U.S. Premier Hockey League ("USPHL") to the Arena;

THEREFORE, the parties agree to the following:

#### **1. Subleased Premises and Use.**

The Team shall have the use of portions of the Arena designed by the City to operate a junior hockey team and related purposes between the months of September and March (the "League Season"), including practices, games, promotional events, and office and meeting space (the "Subleased Premises"). The Subleased Premises shall include the following:

**1.1.** One sheet of ice for two, 2-hour daytime practice slots per week, to be scheduled between the hours of 10:00 AM and 12:00 PM, Monday through Friday, during the League Season.

**1.2.** The use of one sheet of ice to host up to thirty (30) games of approximately 2.5 hours each at the Arena, to be scheduled between Fridays and Sundays throughout the designated League Season.

**1.3.** The private and exclusive use of Locker Room #8 at the Arena (the "Locker Room").

**1.4.** The private and exclusive use of an Arena room to be designated by the City, to house a commercial washing machine and dryer. Utilities for the washer and dryer shall be separately metered, and the City shall bear the cost of installing the meters. The Team shall be responsible for purchasing and installing and maintaining the washing machine and the dryer.

**1.5.** Space in the Arena lobby area for the Team to place a kiosk and sell Team-affiliated merchandise, but not food or beverages, during games, at a location to be designated by the City.

**1.6.** Coaches Office located at Room 208 of the Arena.

## **2. Term.**

Subject to and upon the terms and conditions hereinafter set forth, this Sublease shall be in force for a term commencing on July 1, 2018 and expiring on June 30, 2021("Initial Sublease Term"). The Team shall have the right to extend the Initial Sublease Term to June 20, 2023, if Team gives City not more than 120 days' and not less than 30 days' advance written notice of renewal, and further subject to the City's and the Team's agreement on the terms and conditions for the Base Rent and any additional rent for the two additional years of the Initial Sublease Term.

## **3. Rental.**

### **3.1.Base rent.**

In addition to other amounts due from Team, Team covenants and agrees to pay, on a monthly basis and without reduction, setoff, or counterclaim, as base rent during the Term in the amount of Forty-Five Thousand Dollars (\$45,000) annually for all practice and game ice time for Years 1 and 2 of the Sublease (July 1, 2018-June 30, 2020); and Fifty Thousand Dollars (\$50,000) annually for all practice and game ice time for year 3 of the Lease (July 1, 2020-June 30, 2021), for up to 30 home games per year. If the Team exercises its right to extend the Initial Sublease Term by two years pursuant to Section 2, the parties shall negotiate the Base Rent for the final two years. In the event they fail to agree on Base Rent by July 1, 2021, they shall resolve the matter through arbitration pursuant to Section 24.4 below, and until the arbitration is decided, Team shall continue to pay the City Base Rent on a monthly basis at a rate equal to 110% of the Base Rent for 2020-2021

### **3.2. Holdover.**

If the Team retains possession of the Subleased Premises or any part thereof after the termination of the Initial Sublease Term, the Team shall pay the Landlord Base Rent at one hundred fifty percent (150%) of the applicable Base Rent specified in Section 3.1 above, in addition to any other rent due hereunder, for the time the Team remains in possession of the Subleased Premises. In addition, Team shall pay for all damages, consequential as well as direct, after the termination of the Initial Sublease Term or any Sublease Renewal Term (as applicable). Such holding over shall, at the election of the City expressed in a written notice to the Team, and not otherwise, constitute a renewal of this Sublease from month to month. The provisions of this Section do not exclude the City's rights of re-entry or any other right hereunder.

**3.3.**All Rent and Additional Rent payments provided for herein shall be due at the time stipulated and shall be due and payable in full without off-set, set-off, recoupment or deduction of any kind.

#### **4. Schedule.**

On or before July 1 of each year of this Sublease, the parties shall meet to discuss scheduling. Landlord shall provide Team with a list of all existing tournaments and other Arena events scheduled for the upcoming year and Team shall provide Landlord with a list of up to 45 dates to be reserved for game scheduling, subject to the final schedule of Team's league ("Reserved Dates"). Once the league schedule is finalized for the upcoming season, all Reserved Dates not designated for a Team game will be released and the City may rent that ice time or otherwise schedule its use as City in its discretion deems appropriate. No Team game dates shall conflict with contracted and existing tournaments or other events previously scheduled by the Arena.

#### **5. Ticketing.**

##### **5.1. Ticket Sales.**

The City shall be responsible for all ticket sales at the Arena, which may be conducted through a third-party vendor secured by the City, or conducted directly by the City, in its sole discretion. The Team shall pay the City an administrative fee of \$1 per ticket sold for every Team home game, in addition to all sales taxes, third party processing fees charged by any ticket agency or credit card processing vendor (collectively, the "Ticketing Fees") as additional rent, which shall be due at the point-of-sale and which shall be deducted from the total price per ticket set by the Team. Once all Ticketing Fees have been collected, the City shall remit to the Team, within 7 days of each Home Game, the net ticket sales proceeds for that game (the "Net Ticket Proceeds").

##### **5.2. Reserved Seating.**

On or before July 1, 2018, the City shall cause the seating in Rink #1 to be individually numbered in order to facilitate ticket sales and the assignment of season tickets.

##### **5.3. Season Tickets.**

The Team shall have the right to sell advance seats in Rink #1, to be reserved as season tickets for all Team home games. The Team shall set all season ticket prices, and shall refer all season ticket purchasers to the City for ticket processing. The City will continue to collect and remit all fees required by Section 5.1, and will issue all season tickets. The City shall submit the Net Ticket Proceeds for season ticket sales within 7 days of sale.

##### **5.4. Sales Tax on Tickets.**

The City shall be responsible for collecting and remitting all sales taxes generated by the sale of tickets for Team home games during the term of this Sublease Agreement.

##### **5.5. Courtesy Tickets.**

The City may set aside up to 25 tickets for each Team home game, for promotional uses, at no cost to the City (the "Courtesy Tickets"). The City shall not be required to pay any Net Ticket Proceeds on Courtesy Tickets, and the City shall pay the Ticketing Fees, if any, assessed against the Courtesy Tickets.



## **6. Concessions**

### **6.1. Food and Beverage Concession.**

The City shall directly operate, or contract for the operation of, the sale of food and non-alcoholic beverages at the Arena during the term of this Sublease (the "Food and Beverage Concessions"), as well as the operation of a tavern licensed to serve alcoholic beverages (the "Tavern Concession"). The City shall use reasonable efforts to cause the Food and Beverage Concessions and the Tavern Concession to be open for business during all Team home games. For each team home game for which ticket sales reach the minimum level stated below (the "Ticket Minimum"), the City shall pay the Team the sum of \$250.00, within 7 days of the date of the game. In determining whether the Ticket Minimum has been met, the City's ticket sales records shall be final. For Team games held between July 1, 2018 and June 30, 2019, the Ticket Minimum shall be 50% of the seats in Rink #1 (excluding Courtesy Tickets). For Team games held between July 1, 2019 and June 30, 2020, the Ticket Minimum shall be 65% of the seats in Rink #1 (excluding Courtesy Tickets), and for all Team games held after July 1, 2020, the Ticket Minimum shall be 80% of all seats in Rink #1 (excluding Courtesy Tickets). As of the Effective Date, the seating capacity in Rink #1 is 831 seats. Additional seating capacity may be added, in the discretion of the City, at any time during the term of this Sublease. The parties may agree to adjust the Ticket Minimum levels following the addition of seating to Rink #1. Except as stated above, the Team shall not be entitled to any additional commission on sales generated by the Food and Beverage Concessions or the Tavern Concessions.

### **6.2. Kiosk Concession**

At its option, the Team may prepare and sell printed programs for each game at its own cost and expense with the understanding that all advertising revenue generated by said program, or from other printed matter such as yearbooks, shall belong to the Team. It is further understood, that all sales of novelties (pennants, banners, hockey sticks, programs, other hockey publications, etc.) in the Arena will be sold at the Kiosk by people paid by and working on behalf of Team, and Team shall retain all revenues from said sales and shall collect and submit all sales tax, and shall hold the City harmless against any claims for unpaid sales taxes. No such items may use the Arena logo or the logo of Norway Savings Bank or any other sponsor without the prior written permission of the City and of the Sponsor. Team shall be responsible at its sole cost and expense for the security of merchandise and temporary sales apparatus after each game. Nothing herein shall be deemed to permit Team to sell, contract to sell or provide to any party any of the City Commercial Rights without the prior written permission of City.

## **7. Team Improvements.**

### **7.1. Locker Room Improvements**

The Team shall be responsible for all fit out and improvements to the Locker Room, the City's only obligation being to provide a "vanilla-box," code-compliant room. The Team shall install all lockers, furniture, cabinets, benches, countertops, and other equipment necessary for the Team's use of the Locker Room ("Team Improvements"), which shall be performed at the Team's expense in a workmanlike manner in accordance with all applicable laws, regulations, and insurance

requirements, and to the reasonable satisfaction of the Arena's General Manager. All Tenant Improvements shall remain with the Subleased Premises upon the termination of this Sublease for any reason. All contractors hired by the Team to perform the Tenant's improvements shall provide satisfactory evidence of insurance coverage to the Arena's General Manager prior to commencing work, and the Team shall submit such plans and information describing the proposed Team Improvements as the Arena's General Manager shall reasonably require, all of which shall be subject to the prior approval of the General Manager. The Team Improvements may, with the prior written consent of the General Manager, be commenced at any time following the Effective Date of this Sublease, and shall be completed on or before August 1, 2018. The Team shall not suffer or permit any contractor, supplier, or vendor hired by the Team in connection the Team Improvements, to record a mechanic's lien against the Arena, and if any such lien is recorded, the City may immediately discharge it and the Team shall reimburse the City of the cost of discharging the same, including all costs, within 3 days of the City's demand, which shall be paid as additional rent.

#### **8. Condition of Subleased Premises.**

Team accepts the Subleased Premises and the Furnished Equipment and any leasehold improvements thereto in their then existing condition, on an "AS IS" basis. City shall not be required to make for the benefit of Team any additional improvements to or repairs of any kind or character in or to the Subleased Premises or the Arena, unless such improvements or repairs are needed due to the negligence of the City, but this sentence shall not relieve City of its obligations to Landlord under the Master Lease. To the extent Landlord has obligations to City pursuant to the Master Lease regarding repair, maintenance, or condition of the Subleased Premises or Arena, City agrees to use reasonable diligence to cause Landlord to perform the same for the benefit of Team, when applicable.

#### **9. Specific Covenants by the Team.**

As part of its obligations hereunder, and in addition to Team's other obligations, agreements and covenants contained herein, Team covenants and warrants with the City that:

**9.1.** Team shall assure that all property, installations and debris owned by or caused by Team or Team's invitees shall be clear from all spaces inside and outside the Arena before and after games, and that all portions of the Premises that Team has limited rights to use shall be, in addition to the foregoing, vacated by Team and any Team invitees or agents during all times that Team is not permitted to use such portions of the Premises.

**9.2.** Team will (i) at all times during the term of this Sublease provide a junior hockey team which holds a USPHL or comparable league franchise in good standing. It is understood that players may be rotated or shifted away from Auburn; (ii) at all times during the Term ice a full team for all regularly scheduled games; and (iii) at all times during all USPHL hockey seasons during the Term maintain in full force and effect and good standing a written affiliation agreement with a USPHL organization. Team agrees upon City's request from time to time to provide satisfactory evidence of Team's compliance with this Section.

**9.3.** Team shall control ticketholder access to Rink #1 during all Team games through the use of turnstiles and/or staff, at the Team's expense.

**9.4.** Team agrees to conform to the following provisions during the Term: (i) Team shall not injure or deface the Premises or Arena; (ii) No inflammable fluids, chemicals, nuisance, objectionable noise or odor shall be permitted on the Arena; (iii) Team shall not permit the use of the Premises for any purpose other than set forth herein or any use thereof which is improper, offensive, contrary to law or ordinance; and (iv) Team shall observe and comply with all codes, ordinances, laws, regulations and other governmental or quasi-governmental orders or inspections affecting Team, the Premises and/or Team's use and all reasonable rules and security regulations now or hereafter made by City. Team agrees to keep the Premises equipped with all safety appliances or installations, and/or accommodations in Team's use thereof required by law or any public authority as a result of Team's use or occupancy of the Premises or Team's alterations or additions thereto, which installations shall be subject to City's consent as provided in this Sublease.

**9.5.** Team shall be responsible at its sole cost and expense to fulfill all requirements and mandates of the USPHL and/or affiliation agreements and/or franchise agreements the Team may enter.

**9.6.** The shall not operate another junior or professional hockey team within a fifty (50) mile radius of Auburn, except at the Arena.

**9.7.** Team will not operate a youth hockey program within a 50-mile radius of Auburn. The Team shall be free to conduct limited clinics, support programs, and limited instructional and fan appreciation and marketing programs with youth hockey teams based in Lewiston or Auburn. This Section 9.7 does not prohibit an individual owner or Member of the Team from operating a youth hockey program in Augusta, Maine, so long as such program is not directly affiliated with the Team.

**9.8.** Complimentary tickets issued by Team shall comply with any rules or policies as to ticket surcharges that are made applicable by City from time to time.

## **10. Master Lease.**

This Sublease is subject to all the provisions, terms, covenants, and conditions of the Master Lease. Team shall have no right to exercise any of the rights and options available to City under the Master Lease as all the same are retained by City and may be exercised or waived in City's sole and absolute discretion. In the event of the termination of the Master Lease during the term of this Sublease for reasons other than City's exercise of its option to purchase the Arena, at the Landlord's election this Sublease may become a direct lease between the Landlord and the Team, or in the event City exercises its option to purchase, this Sublease shall remain in place as a direct lease and not as a sublease.

## **11. Arena Control; City Commercial Rights; Team Signage; Team Ad Space.**

### **11.1. City Control.**

Team acknowledges and agrees that in renting space in the Arena, its rights are limited and that City reserves the right to control the management and operation of the Arena in all respects; and that the City Council, the Arena General Manager and management of the City may enter the

same, and all of the Premises, at any time and on any occasion. City expressly and additionally reserves the right to control all operations of the Arena, including without limitation the right to eject any objectionable person or persons from the Arena at any time and to otherwise promulgate rules and regulations as to the control, safety and security of the Arena, and its operations and systems and use of same by all parties, including ticket holders, tenants, invitees and other users or contractors within the Arena.

**11.2. City Commercial Rights.**

In furtherance of the above, and in order to fulfill its responsibilities to the public and to facilitate the image, accessibility and atmosphere of the Arena for all events, operations and programs that take place therein to the extent not expressly delegated hereunder, City retains exclusive and absolute control of and rights and title to all commercial rights, advertising rights, naming rights, sub-naming rights, signage, tables, displays, advertising space, video and media boards and screens, scoreboard, and the like and all and every commercial opportunity and right located in, upon, or wheresoever else located and otherwise related to the Arena and the City's business and purposes (all such rights, etc., the "City Commercial Rights"). The content and suitability of all advertising and/or promotional materials or media in, on or about, or related to the Arena (including without limit Team Ad Spaces) shall be in the sole discretion and control of City. City may from time to time promulgate policies, rules and regulations and standards as to content, suitability, location and other matters relating to advertising, which policies, rules and regulations shall be binding upon Team and any and all of Team's advertisers, promoters, sponsors and the like; provided that City acknowledges that Team is required to comply with all USPHL rules and requirements for presenting USPHL hockey games and related activities.

**11.3. Team Signage.**

During the Term of this Sublease and so long as no uncured Event of Default has been committed by the Team, Team is hereby licensed the opportunity and rights, subject to the conditions set out in this Sublease, to advertise the Team at the locations in the Arena designated by the City on **Exhibit B** (the "Team Signage"). Team shall be responsible for the City's vendor to produce and install the Team Signage, and all Team Signage remains subject to the prior written approval of the Arena's General Manager.

**11.4. Team Ad Space.**

For so long as this Sublease is in effect and Team shall not have committed an Event of Default which remains uncured, the City will pay the Team a commission equal to 50% of the advertising revenues received by the City and generated by the Arena locations identified on **Exhibit C** the ("Team Ad Space"), net of all costs of ad production and other expenses of sign placement. The Team may introduce prospective advertisers interested in placing signage at the Team Ad Space, but may not bind the City or the Arena to any third parties. All placement of advertising in the Team Ad Space shall remain subject to the approval and discretion of the City, and shall be produced and installed by the sign vendors of the City's choice.

## **12. Insurance and Subrogation.**

**12.1.** Required Coverage. At all times after the execution of this Sublease, Team will take out and keep in force, at its expense:

**12.1.1.** Public Liability Insurance, including insurance against assumed or contractual liability, with respect to the Leased Premises, to afford protection to the limit, for each occurrence, of not less than One Million and 00/100 Dollars (\$1,000,000.00 with respect to personal injury or death or property damage, and an aggregate limit of not less than Two Million and 00/100 Dollars (\$2,000,000.00), which public liability insurance policy shall name City as an additional insured;

**12.1.2.** All-Risk Casualty Insurance, covering all of Team's personal property in the Subleased Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture and other property removable by Team under the provisions of this Sublease), and all leasehold improvements installed in the Subleased Premises by Team; and

**12.1.3.** Workers' Compensation and Employers' Liability Insurance, as required by Maine law for Team and all employees of Team.

**12.2.** Any insurance policies required to be carried pursuant to this paragraph shall name City and Landlord as additional insureds, and Team shall furnish City evidence of such insurance coverage. Such insurance policies may not be modified or terminated without thirty (30) days' advance written notice to City.

**12.3.** The company or companies writing any insurance which Team is required to take out and maintain or cause to be taken out or maintained pursuant hereto, as well as the form of such insurance shall at all times be subject to City's approval, and any such company or companies shall be licensed to do business in Maine. Each policy evidencing such insurance shall name City and Landlord as additional insureds and shall also contain a provision by which the insurer agrees that such policy shall not be canceled except after thirty (30) days' written notice to City and Landlord. For each such policy, Team shall deposit with City, a certificate of insurance in a form acceptable to City, a copy of the coverage declarations page, and a copy of the endorsement listing City and Landlord as additional insureds. If Team shall fail to perform any of its obligations hereunder, City may perform the same, and the cost of same shall be deemed additional rent and shall be payable upon City's demand. In addition, Team agrees to pay to City interest on amounts so paid by Landlord at the rate of 1½% per month.

**12.4.** Solely to the extent the following waiver does not invalidate or diminish any insurance coverage, Team and City hereby waive any right of recovery against the other and release the other from any and all claims, actions, damages, liability and expense, including attorneys' and other professional fees, in connection with damage to property, loss of income, or losses under workers' compensation laws and benefits, whether or not such loss, injury, or damage arises from or out of, directly or indirectly, the negligence of either party, or its officers, visitors, agents, contractors, servants, or employees. Each policy shall include a waiver of the insurer's right of subrogation.

**12.5.** Team will not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Subleased Premises which will contravene City's policies of hazard or liability insurance or which will prevent City from procuring such policies with companies acceptable to City. If anything done, omitted to be done or suffered by Team to be kept in, upon or about the Subleased Premises (beyond the regular and ordinary operation of the Team) shall cause the rate of fire or other insurance on the Arena to be increased beyond the minimum rate from time to time applicable to the Arena or to any such property for the use or uses made thereof, Team will pay, as additional rental, the amount of any such increase upon City's demand.

**12.6.** Indemnity. To the extent not prohibited by applicable law, Team shall indemnify, defend, and hold harmless City and Landlord from and against any and all claims, demands, liabilities, losses, costs, expenses, and damages for anything whatsoever, arising from or out of the Team's use or occupancy of the Subleased Premises or the use and occupancy of the Subleased Premises by Team's agents, employees, servants, customers, or invitees. City shall not be liable to Team or to its agents, servants, employees, customers, or invitees for any damage to person or property within the Subleased Premises caused by any act, omission, or neglect. The foregoing shall not be construed as an agreement by Team to indemnify City against or from the negligence of City or City's agents, servants, employees, customers, or invitees.

### **13. Relationship between City and Team**

It is understood and agreed that City and Team shall in no event be construed or held to be a partner or associate of the other in the conduct of the other's business, that no partnership or joint venture is created by this Sublease, nor shall City or Team be liable for any debts incurred by the other in the conduct, of the other's business. It is understood and agreed that the relationship is and at all times shall remain that of Sublandlord and Subtenant.

### **14. No Warranty.**

SUBLESSEE ACCEPTS THE SUBLEASED PREMISES WITHOUT ANY WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, REGARDING ITS CONDITION, SUITABILITY, HABITABILITY, FITNESS FOR PURPOSE OR ITS COMPLIANCE WITH ANY LAWS, REGULATIONS OR ORDINANCES, INCLUDING, WITHOUT LIMITATION, THE AMERICANS WITH DISABILITIES ACT OF 1991, AS AMENDED. NOTHING HEREIN SHALL BE DEEMED TO ABROGATE OR TERMINATE THE CITY'S MAINTENANCE OBLIGATIONS SET FORTH IN THIS SUBLEASE.

### **15. No Assignment or Sublease.**

Team shall not assign, mortgage, pledge, hypothecate, or otherwise encumber this Sublease, or any interest herein or any right or privilege appurtenance thereto, without the express prior written consent of City. Team may not sublet all or any portion of the Subleased Premises without the prior written consent of City. Team shall not be relieved of any of its obligations hereunder by reason of any sublease of all or part of the Subleased Premises. Any assignment or sublease made in violation of this paragraph shall be void.

### **16. Default by Team.**

**16.1.** Any one of the following shall constitute a default by Team (each an "Event of Default"):

- 16.1.1.** If Team fails to pay any Base Rent or additional rent within five (5) days after the same is due or fails to pay any other sum payable under this Sublease when due, or with the exception of a payment default for which no additional time shall be allowed, if the Team fails to perform or observe any other covenant, term, provision, or condition of this Sublease or the Master Lease, which failure continues for 15 days after written notice from City to Team describing such failure;
- 16.1.2.** If the estate hereby created shall be taken on execution or other process of law;
- 16.1.3.** If Team shall be declared bankrupt or insolvent according to law;
- 16.1.4.** If Team shall make an assignment for the benefit of its creditors;
- 16.1.5.** If Team shall commit any act of bankruptcy, or if a receiver, trustee or other officer shall be appointed to take charge of Team's assets by any court;
- 16.1.6.** If Team shall hold over at the termination of this Sublease as hereinabove provided;
- 16.1.7.** If Team shall commence dissolution or liquidation.

**16.2.** Upon the occurrence of any Event of Default, City shall be entitled to all the rights and remedies available to Landlord under the Master Lease following an event of default by City thereunder and to any other rights and remedies available to a landlord under applicable law. Upon any Event of Default by Team under this Sublease and the expiration of any and all applicable notice and cure periods, City, without being under any obligation to do so and without thereby waiving such default, may make such payment or remedy such other default for the account of Team, and thereupon Team agrees to and shall pay to City, immediately upon demand, all reasonable costs, expenses, and disbursements incurred by City in taking such remedial action, together with interest on such amount at the rate of one and one-half percent (1 ½%) per month.

**16.3.** Upon any termination of this Sublease based on an Event of Default by the Team which has not been timely cured, the Team shall immediately pay and be liable to the City for liquidated damages in the amount of One Hundred Thousand Dollars (\$100,000.00) or the total amount of Base Rent remaining on the Sublease, whichever is greater ("Liquidated Damages"), it being agreed by the parties that actual losses and damages to the City in the event of such breach are impractical to ascertain and the foregoing amount is a reasonable estimate thereof. Nothing herein shall be deemed to release or limit any liability of the Team under any indemnity and/or hold harmless provisions herein or from any claims for physical damage or harm to the Arena caused by the Team or related to the Team's use of the Arena, or to limit or cap the claims of the City as to any insurance maintained by the Team. The parties acknowledge that the Liquidated Damages have been agreed upon after negotiation, and shall serve as a substitute and replacement for Base Rent and Additional Rent and other income losses that are not subject to easy estimation and is a reasonable compensation to the City under the circumstances. The parties acknowledge that the payment of the Liquidated Damages is not intended as a forfeiture or penalty, but is intended to constitute liquidated damages to the City.

**16.4.** Default by City. Any provision in this Sublease or the Master Lease to the contrary notwithstanding, if City fails to perform its obligations under this Sublease and such failure interferes substantially with the normal use of the Subleased Premises as allowed in this Sublease,

Team shall provide written notice thereof to City. If City fails to perform its obligations under this Sublease and the interference resulting therefrom continues for a period of thirty (30) or more consecutive business days, then Team shall have the right and option to cancel the Sublease by giving written notice to City within fifteen (15) days after the end of such thirty (30) day period.

### **17. City's Reserved Rights**

The City reserves the following rights:

**17.1.** To decorate, remodel, repair, alter or otherwise prepare the Subleased Premises for reoccupancy during the last days of the Initial Term or Renewal Term, whichever the case may be, provided that the Team has physically vacated the Premises, without affecting the Team's obligation to pay rental for the Premises. Said last days of the Initial Term or Renewal Term shall be no greater than ninety (90) days from the end of the Initial Sublease Term or Renewal Sublease Term, whichever the case may be.

**17.2.** To terminate or renegotiate the Tavern, Food Concessions, and Pepsi Agreements in their entirety.

**17.3.** To retain and use in appropriate instances keys to all doors within and into the Subleased Premises and to change the locks to the Subleased Premises if City deems it advisable. No lock shall be changed by the Team. If Team desires to have the locks changed, Team will notify City and pay to City it's the reasonable costs for such service, and City will change the locks. The City recognizes that certain events relating to personnel of the Team may require that locks be changed immediately for the protection of Team's property or the Furnished Equipment within the Subleased Premises. If locks are changed for this reason, Team will notify the City in a timely manner, and will insure that the lock change is of materials, brands, etc. acceptable to the City and compatible with City's master key.

**17.4.** On reasonable prior notice to the Team, to exhibit the Subleased Premises to prospective tenants during the last ninety (90) days of the Initial Sublease Term or Renewal Sublease Term, whichever the case may be, to the City, and to any prospective purchaser, mortgagee, or assignee of any mortgage on the Arena and to others having legitimate interest at any time during the Initial Sublease Term or Renewal Sublease Term (if applicable).

**17.5.** To enter upon the Subleased Premises and exercise any and all City's rights without being deemed guilty of an eviction or disturbance of Team's use or possession and without being liable in any manner to Team, provided that City makes reasonable efforts to minimize the disruption to Team's business and provides advance notice of any entry whenever practicable.

### **18. Successors and Assigns.**

This Sublease shall be binding upon and shall inure to the benefit of City, Team and their respective successors and assigns, subject to the limitations set forth in paragraph 15 above.

### **19. City's Access.**

City shall have the right, at all reasonable times during the Sublease Term, after reasonable notice to Team, unless Team is in default under this Sublease (in which event no notice is required), to enter the Subleased Premises to inspect the condition thereof, to determine if Team is



performing its obligations under this Sublease, and to cure any defaults of Team hereunder that City elects to cure. No such entry by City will constitute an assumption of any of Team's obligations hereunder.

**20. Guaranty.**

The Team's obligations under this Sublease are unconditionally guaranteed by Benjamin Gray and Daniel Hodge, each of whom shall execute a form of guaranty in substantially the format attached hereto as **Exhibit D**.

**21. Parking.**

During the Sublease Term, Team shall be entitled to use and enjoy any parking rights available to the City under the Master Lease.

**22. Exercise of Option.**

In the event City exercises its option to purchase the Demised Premises at any time during the Term of this Sublease, causing the Master Lease to terminate upon transfer of the Demised Premises to City, this Sublease shall become a direct lease between the City and the Team.

**23. Subordination.**

This Sublease automatically shall be subject and subordinate to any and all mortgages, deeds of trust and other instruments in the nature of a mortgage, that is now or at any time hereafter a lien or liens on the Arena and property of which the Premises are a part and Team shall, within ten (10) days after they are requested, promptly execute and deliver such written instruments as shall be necessary to show the subordination of this Sublease to said mortgages, deeds of trust or other such instruments in the nature of a mortgage. Team agrees to sign within ten (10) days after they are requested, such estoppel certificates as are requested by City.

**24. Miscellaneous**

**24.1. Notices.**

Any notice or other communication to any party required or permitted to be given under this Sublease must be in writing and shall be effectively given if hand delivered or if sent by United States Mail, postage prepaid, certified or registered, return receipt requested, to the following addresses:

If to City:

Norway Savings Bank Arena  
Attention: General Manager  
985 Turner Street  
Auburn, Maine 04210

With copies to:

City of Auburn

60 Court Street  
Auburn, ME 04210  
Attn: City Manager

And to:

The Malloy Firm  
P.O. Box 3171  
Auburn, ME 04212-3171  
Attn: Michael S. Malloy, Esq.

If to Team:

Maine Hockey Management Group, LLC  
[Address]

Attn: Benjamin Gray and Daniel Hodge, Managers

With a copy to:

Brian Condon, Jr., Esq.  
P.O. Box 169  
Winthrop, ME 04364

Notice shall be deemed to have been given when received or when delivery is refused if sent by First Class Mail, postage prepaid. In addition, notice may be given to Team by leaving the same at the Subleased Premises. Any party shall have the right to change its address to which notices shall thereafter be sent by giving the other parties notice thereof.

**24.2.** Memorandum of Sublease.

The parties shall execute a Memorandum of Sublease in the form attached as **Exhibit E**, for recording the Androscoggin County Registry of Deeds at Team's expense.

**24.3.** No Waiver.

The waiver by City of any provision herein contained shall not be deemed to be a waiver of such provision on any subsequent occasion. The subsequent acceptance of rent or other consideration by City shall not be deemed to be a waiver of any preceding breach by Team of any provision of this Sublease.

**24.4.** Governing Law.

This Sublease shall be governed by and construed in accordance with the internal laws of Maine, without regard to the conflicts of laws principles thereof. To the extent they may lawfully do so, City and Team agree that dispute related to this Sublease shall be resolved by binding

arbitration to be held in Androscoggin County, Maine according to the JAMS Streamlined Arbitration Rules and Procedures, with the exception of arbitration proceedings convened solely for the purpose of determining rent under Sections 2 and 3.1 above, which costs the parties shall share equally. The prevailing party shall be awarded its costs and reasonable attorney's and paralegal fees, and the arbitrator shall decide questions of arbitrability.

**24.5. Authority.**

City and Team each covenant to the other that (i) each has the power and capacity to execute this Sublease; (ii) that the execution and delivery of this Sublease and any documents associated therewith have been duly authorized by appropriate entity actions; (iii) the person or persons executing this Sublease is/are the duly authorized officer or agent therefor; and (iv) this Sublease, upon such execution and delivery, shall constitute its valid and binding obligation, enforceable according to its terms.

**24.6. Force Majeure.**

Neither City nor Team shall be liable for failure to perform any obligation under this Sublease, except for the payment of money, in the event it is prevented from so performing by strike, lockout, breakdown, accident, order or regulation of or by any governmental authority or failure to supply or inability by the exercise of reasonable diligence to obtain supplies, parts or employees necessary to furnish such services or because of war or other emergency or for any other cause beyond its reasonable control, but financial inability shall never be deemed to be a cause beyond a party's reasonable control, and in no event shall either party be excused or delayed in the payment of any money due under this Sublease by reason of any of the foregoing.

**24.7. Entire Agreement.**

This Sublease contains the entire agreement of the parties and shall not be modified except by an instrument in writing which is signed by both parties.

**24.8. Immunity.**

Notwithstanding anything to the contrary in this Sublease, nothing herein shall be considered to expand or create liability on the part of City to any person for claims from which City is released, exempted and/or protected by Maine Law, including without limit, the Maine Tort Claims Act, as it is currently in effect or is in the future from time to time modified or amended. Any and all obligations and/or exposure of the City under any indemnification obligations contained herein (if any), and any damages related thereto, are subject to the foregoing limitations, and are further subject to, limited by, and shall not exceed the greater of (i) the legal limits of its liability, and (ii) applicable insurance policy coverage limits under any insurance policy the City is maintaining at the time of as to such claim.

**24.9. Ambiguities.**

Both parties acknowledge that they have read this Sublease, that each has had the opportunity to review it with the counsel of their choice and to contribute equally to its drafting, and that both parties have agreed to all of the terms of this Sublease. Accordingly, they agree that the rule of construction that an ambiguous contract term should be construed against the drafter,

to the extent applicable in Maine, shall not apply in interpreting this Sublease.

**24.10. No Partnership.**

It is further understood and agreed that City shall in no event be construed or held to be a partner, joint venturer or business associate of Team in the conduct of the Team's or City's business, nor shall City be liable for any debts incurred by Team in the conduct of the Team's business; and it is understood and agreed that the relationship is and at all times shall remain that of landlord and tenant.

**24.11. Severability.**

If any provision of this Sublease or its application to any person or circumstances shall to any extent be held invalid or unenforceable, the remainder of this Sublease shall be considered valid and enforceable, and effect shall be given to the intent manifested by the portion held invalid or unenforceable.

**25. Headings and Captions.**

The headings and captions herein contained are for convenience only, and shall not be considered a part of this Sublease.

The parties make this Sublease as of the Effective Date.

CITY OF AUBURN

MAINE HOCKEY  
MANAGEMENT GROUP,  
LLC

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By: Peter Crichton  
Its City Manager

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By: Dan Hodge  
Its Manager

Slapshot, LLC hereby joins in this Sublease for purposes of consenting to the same and agreeing to the provisions thereof.

SLAPSHOT, LLC

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By: George P. Schott  
Its Member

INDEX TO EXHIBITS

EXHIBIT A	Master Lease
EXHIBIT B	Team Signage
EXHIBIT C	Team Ad Space
EXHIBIT D	Form of Guaranty
EXHIBIT E	Memorandum of Sublease

James Pross, Ward One  
Robert Stone, Ward Two  
Andy Titus, Ward Three  
Adam R. Lee, Ward Four



Leroy Walker, Ward Five  
Grady R. Burns, At Large  
David C. Young, At Large

Jonathan P. LaBonte, Mayor

IN CITY COUNCIL

ORDER 114-11272017

ORDERED, that the City Council hereby authorizes the City Manager or Assistant City Manager to finalize terms for and to sign a contract with the USPHL Hockey Team with the Norway Savings Bank Arena.



City of Auburn  
City Council Information Sheet

**Council Workshop or Meeting Date:** November 27, 2017      **Order:** 115:11272017

**Author:** Peter Crichton

**Subject:** Norway Savings Bank Arena: Concessions Services

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**Information:** The City of Auburn has issued an RFP to contract out the Norway Savings Bank Arena Concessions & Tavern Services. The City has received one proposal and is in the process of discussing the terms for a contract to Michael P. Violette, d/b/a Upper Level Pizza & Grille. The proposal will be for operating the restaurant portion of the arena, and not the tavern portion.

Michael has "extensive customer service background, 20 years in the restaurant industry and involvement with hockey in the Auburn community", as stated in his proposal. The contract being worked on is in preparation for a Special Council Meeting on November 27, 2017. Negotiations for the City are being led by Assistant City Manager Denise Clavette with the terms including a 5 year contract, monthly rental, and additional revenue on the anticipated junior hockey league team games. Concessions will be open consistently throughout the winter hockey season and during scheduled events as well. This will provide an essential service for the patrons of the Norway Savings Bank Arena and the greater community of Auburn.

The proposed contract will be made available to the Mayor and Council as soon as possible in advance of the Special Council Meeting on November 27<sup>th</sup>.

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**City Budgetary Impacts:** Positive revenue estimates: Rental revenue anticipated to be \$14,000 years one and two, and \$17,000 years 3—5, with other details still to be determined.

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**Staff Recommended Action:** Approval of the proposed contract.

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**Previous Meetings and History:** Executive session and City Council Workshop

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**City Manager Comments:**

I concur with the recommendation. Signature: \_\_\_\_\_

**Attachments:**

None

## SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT ("Sublease") is made and entered effective as of the 1st day of December 2017 (the "Effective Date"), by and between the City of Auburn, a Maine municipal corporation located in Androscoggin County, Maine ("Sublessor" or the "City") and Michael Violette, an individual resident of Maine with an address of 24 Horizon Drive, Auburn, Maine 04210, doing business at "Upper Level Pizza & Grille" ("Sublessee").

### **BACKGROUND**

Slap Shot, LLC, as Landlord ("Landlord") and the City as Tenant, entered into a Lease Agreement dated October 25, 2012, as the same may be amended or replaced from time to time ("Master Lease"), covering and describing the premises known as the "Ice Arena" and subsequently renamed "Norway Savings Bank Arena," consisting of a dual ice surface recreational facility and surrounding parking lots located at 985 Turner Street, Auburn, Maine (the "Demised Premises" or the "Arena"), a true and correct copy of the Master Lease being attached hereto as **Exhibit A** and made a part hereof for all purposes; and

The Master Lease authorizes the City to sublet the Demised Premises, subject to the reasonable consent of the Landlord; and

On October 23, 2017, the Sublessor issued a Request for Proposals entitled "Norway Savings Bank Arena Concessions and Tavern Services Bid # 2018-017," a true and complete copy of which is attached hereto as **Exhibit B** (the "RFP"); and

Sublessee submitted a Proposal Form to the City in response to the RFP, a true copy of which is attached hereto as **Exhibit C** and incorporated herein by reference; and

The City wishes to retain Sublessee, and Sublessee wishes to occupy portions of the Demised Premises more specifically referenced below, for the limited purpose of operating a food and non-alcoholic beverage concession at the Arena upon the terms and conditions stated below (the "Concessions");

THEREFORE, Sublessor and Sublessee agree as follows:

#### **1. Subleased Premises.**

Sublessor hereby subleases to Sublessee the portions of the Demised Premises indicated in the attached **Exhibit D** ("Subleased Premises") and consisting of the following numbered rooms within the Arena:

Storage Room 215, consisting of approximately 135 square feet;

Kitchen Room 214, consisting of approximately 470 square feet; and



Satellite Concession area located within the Arena in Rink 2 and consisting of not more than 350 square feet.

## **2. Term.**

Subject to and upon the terms and conditions hereinafter set forth, this Sublease shall be in force for a term ("Initial Sublease Term") commencing on the Effective Date and expiring on June 30, 2023. At the conclusion of the Initial Sublease Term, the Sublessee shall have the right to renew this Sublease for a single 5-year term, if Sublessee gives Sublessor not more than 180 days' and not less than 90 days' advance written notice of renewal (the "Sublease Renewal Term"), and further subject to the Sublessor's and the Sublessee's agreement on the terms and conditions for a Sublease Renewal Term including without limitation, agreement on the Base Rent and any additional rent for the Sublease Renewal Term. If the Sublessee and Sublessor fail to reach an agreement on the terms and conditions for the Sublease Renewal Term before the expiration of the Initial Sublease Term, the Sublessee's rights hereunder shall terminate, and the City may enter an agreement for a third party to provide the Concessions.

## **3. Option on Tavern Concession.**

In the event the Sublessor does not enter a sublease for the operation of a tavern serving alcoholic beverages in the Arena (the "Tavern Concession") before July 1, 2018, Sublessee shall have the right of first refusal to operate the Tavern Concession, subject to the parties reaching a mutually acceptable agreement for the same. If the Sublessee desires to exercise this option, it shall send notice to the City in the manner prescribed below, on or before August 1, 2018 and the parties shall have until September 1, 2018 to reach agreement on the Tavern Concession sublease or the City may entertain competing offers and may negotiated with third parties for operation of the Tavern Concession.

## **4. Furnished Equipment.**

Throughout the term of this Sublease, Sublessee shall have full and exclusive use of the equipment listed on **Exhibit E**, attached (the "Furnished Equipment"). The Sublessee shall maintain the Furnished Equipment in a condition suitable for use in a commercial food establishment and kept clean and otherwise compliant with all applicable public health and safety codes, replacing such of the Furnished Equipment at Sublessee's sole expense, to the extent Sublessee deems necessary to operate the Concessions. Sublessor disclaims all warranties as to the condition or suitability of the Furnished Equipment for operation of the Concessions.

## **5. Sublessee's Work.**

All additional restaurant required for operation of the Concessions, shall be installed by Sublessee at its expense ("Sublessee's Work"), which shall be performed at Sublessee's expense in a workmanlike manner in accordance with all applicable laws, regulations, and insurance requirements, and to the reasonable satisfaction of Sublessor's General Manager.

## **6. Rent**

**6.1. Base Rent.** The Sublessee shall pay Sublessor a monthly rent as prescribed below (the "Base Rent"), paid in advance and due on or before the first day of each month. The Base Rent for

shall be less in the months of July and August (the "Off Season Base Rent") with higher amounts for the months of September-May of each year (the "Peak Season Base Rent"). Sublessee agrees to pay all Base Rent and additional sums due under this Sublease to Sublessor without demand, counterclaim, or set-off, in presently available funds, on or before the first of the month when due. With the exception for the month of December 2017, for which Sublessee shall pay a reduced Peak Season Base Rent of \$625.00, with no pro-rations, Sublessee shall pay the following Base Rent during the Initial Sublease Term:

**6.1.1.** January-June 2018: **\$1,500.00**

**6.1.2.** July-August 2018: **\$750**

**6.1.3.** July 2018-June 2020:

Off Season Base Rent: \$750

Peak Season Base Rent \$1,500

**6.1.4.** July 2020-June 2023:

Off Season Base Rent: \$1,000

Peak Season Base Rent: \$1,750

**6.2. Holdover.** If the Sublessee retains possession of the Subleased Premises or any part thereof after the termination of the Initial Sublease Term or any Sublease Renewal Term, the Sublessee shall pay the Landlord Base Rent at one hundred fifty percent (150%) of the applicable Base Rent specified in Section 6.1, in addition to any other rent due hereunder, for the time the Sublessee remains in possession of the Subleased Premises. In addition, Sublessee shall pay for all damages, consequential as well as direct, after the termination of the Initial Sublease Term or any Sublease Renewal Term (as applicable). Such holding over shall, at the election of the Sublessor expressed in a written notice to the Sublessee, and not otherwise, constitute a renewal of this Sublease from month to month. The provisions of this Section do not exclude the Sublessor's rights of re-entry or any other right hereunder.

**6.3. Commission for Junior Hockey League Games.**

In the event the Sublessor contracts with a junior hockey team to use the Arena as its home ice surface for at least 20 home games per year, the Sublessee shall pay as additional rent and without reduction, setoff or counterclaim, the additional sum of \$250 per game for each game for which ticket sales exceed the following percentage of available seats in Rink 1:

Effective Date through June 30, 2019: 50% of Rink 1 seats sold;

July 1, 2019-June 30, 2020: 65% of Rink 1 seats sold; and

July 1, 2020-June 30, 2023 80% of Rink 1 seats sold

(the "League Game Commission"). The Sublessor shall invoice the Sublessee for all League Game Commissions owed for the previous month. All League Game Commission shall be paid within 5 days of the date of invoice.

#### **7. Taxes.**

Sublessor shall be responsible for all real property taxes assessed against the Subleased Premises, if any. Taxes assessed against the Subleased Premises shall mean all real estate taxes, betterments, assessments (special or general, ordinary or extraordinary), water and sewer taxes, and any other charges made by public authority which upon assessment or upon failure of payment become a lien upon the Subleased Premises, or the personal liability of Sublessor or Landlord. Sublessee shall pay all personal property taxes assessed against any personal property or other equipment used by Sublessee in the operation of the Concessions and located at the Subleased Premises. Sublessee shall collect and remit any sales taxes assessed on the sale of food and beverages in the Concessions, and shall indemnify Sublessor against any sales tax obligations pertaining to the Concessions.

#### **8. Master Lease.**

This Sublease is subject to all the provisions, terms, covenants, and conditions of the Master Lease. Sublessee shall have no right to exercise any of the rights and options available to Sublessor under the Master Lease as all the same are retained by Sublessor and may be exercised or waived in Sublessor's sole and absolute discretion. In the event of the termination of the Master Lease during the term of this Sublease for reasons other than Sublessor's exercise of its option to purchase the Arena, at the Landlord's election this Sublease may become a direct Lease between the Landlord and the Sublessee, or in the event Sublessee exercises its option to purchase, this Sublease shall remain in place as a direct lease and not as a sublease.

#### **9. Condition of Subleased Premises.**

Sublessee accepts the Subleased Premises and the Furnished Equipment and any leasehold improvements thereto in their then existing condition, on an "AS IS" basis. Sublessor shall not be required to make for the benefit of Sublessee any additional improvements to or repairs of any kind or character in or to the Subleased Premises, the Furnished Equipment, or the Arena, unless such improvements or repairs are needed due to the negligence of the Sublessor, but this sentence shall not relieve Sublessor of its obligations to Landlord under the Master Lease. To the extent Landlord has obligations to Sublessor pursuant to the Master Lease regarding repair, maintenance, or condition of the Subleased Premises or Arena, Sublessor agrees to use reasonable diligence to cause Landlord to perform the same for the benefit of Sublessee, when applicable.

#### **10. Use and Operations.**

Sublessee agrees to use the Subleased Premises for the sole purpose of operating the Concessions. Sublessee covenants and agrees to operate the Concessions:

##### **10.1. Hours of Service**

The Concessions shall be open for business during the following minimum hours:

September 1-March 31  
Mondays-Fridays: 4:00 PM - 8:00 PM  
Saturdays-Sundays: 7:00 AM – 8:00 PM

April 1 - August 31

The Concession shall be open during Arena events, hockey camps, and scheduled ice time that warrants operational concessions.

In addition, the Concessions shall be open for business during all junior hockey games, high school interscholastic games, youth hockey tournaments, and other special events designated by the Arena's General Manager or his or her designee.

Sublessee's failure to maintain adequate personnel, inventory, and any other resources necessary to the operation of the Concessions, and Sublessee's failure to be open for business during the hours identified above shall constitute an Event of Default by Sublessee, subject to the provisions of Section 21.

**10.2. Partial Assignment and Assumption of Pepsi Agreement.**

Sublessee acknowledges that Sublessor has entered into a Beverages Agreement with Pepsi Beverages Company, a copy of which is attached hereto as **Exhibit F** and which is incorporated herein by reference (the "Pepsi Agreement"). Subject to the consent of Pepsi and with the exception of sales generated by vending machines located throughout the Arena and not placed within the Subleased Premises, Sublessee shall be entitled to revenue from beverage sales arising out of the Pepsi Agreement generated through operation of the Concessions and shall have the use of all coolers, fountain and other equipment located within the Subleased Premises, as well as any periodic maintenance services provided by Pepsi Beverages Company under the Pepsi Agreement. With the exception of revenue generated by the sale of beverages and allocated to Sublessee in this Section 10.2, Sublessor shall retain all Arena sponsorship revenue arising out of the Pepsi Agreement.

**10.3. Distribution and Supply Contracts.**

With the exception of the Pepsi Agreement partially assigned and assumed above, all food supply and distribution agreements shall be controlled by the Sublessee. Sublessee shall indemnify, defend, and hold the Sublessor harmless from any and all claims by food or beverage suppliers arising out of the Sublessee's operation of the Concessions.

**10.4. Catering for Private Events.**

Private events held at the Arena, including without limitation, any private events held by Norway Savings Bank, may be catered by outside vendors; provided, however, that no such private events shall unreasonably interfere with the operation of the Sublessee's business, and no such private events shall be conducted simultaneous with any scheduled hockey tournaments or high school hockey games.

**11. Recordkeeping and Reporting.**

Sublessee shall keep a full and true account of all receipts and disbursements in a form acceptable to Sublessor and Pepsi for that purpose, and shall furnish to Sublessor at time of monthly payments, a statement of the gross income derived from the Concessions for the duration of this Sublease. All books, accounts, records and operation of the Concessions shall be open to inspection by Sublessor at all reasonable times, provided that any such inspection shall be conducted at the Demised Premises.

## **12. Maintenance.**

### **12.1. General Maintenance Obligations.**

Sublessee shall keep the Subleased Premises and shall maintain all Furnished Equipment in a neat, clean and sanitary condition and in good order and repair and all electric, plumbing or other fixtures installed by Sublessor or currently in place at the outset of the Term hereof or subsequently installed by Sublessor or Sublessee in the Subleased Premises, reasonable wear and tear excepted. Sublessee shall not do anything to cause the Subleased Premises or the activities therein to violate any municipal, county, state or federal ordinance or requirement, shall obtain all licenses and permits necessary to its activities and operation, and shall promptly act upon any direction of any officer of competent authority. Sublessee shall permit no waste with regard to the Subleased Premises or the Furnished Equipment. Sublessee shall make no permanent improvements to the Subleased Premises or install fixtures on or within the Subleased Premises without the prior written approval of Sublessor, which shall not be unreasonably withheld, conditioned or delayed. Any such permanent improvements and fixtures (other than trade fixtures and other items that can be removed without damage to the Subleased Premises) shall become the property of Sublessor upon termination of this Sublease for any reason. No work which Sublessor permits Sublessee to do pursuant to this Sublease, whether in the nature of erection, construction, alteration or repair, shall be deemed to be for the immediate use and benefit of Sublessor or Landlord, and no mechanic's or other lien shall be allowed against the estate of Landlord or Sublessor by reason of any consent given by Sublessor to Sublessee to improve the Subleased Premises. Sublessee shall pay promptly all persons furnishing labor or materials with respect to any work performed by Sublessee or its contractor on or about the Subleased Premises. In the event any mechanic's or other lien shall at any time be filed against the Arena or any portion thereof by reason of work, labor, services or materials performed or furnished, or alleged to be performed or furnished, to Sublessee or to anyone holding the Subleased Premises through or under Sublessee, Sublessee shall forthwith cause the same to be discharged or bonded after being notified of the filing thereof; then, in addition to any other right or remedy of Sublessor, Sublessor may discharge the same by paying the amount claimed to be due, and the amount so paid by Sublessor including reasonable attorney's fees incurred by Sublessor in procuring the discharge of such lien, together with interest thereon at 1½% per month, shall be due and payable immediately by Sublessee to Sublessor as additional rent.

## **13. Yielding Up.**

Upon the expiration or termination of this Sublease, Sublessee will remove its goods and effects (except as elsewhere provided in this Lease) and will peaceably yield up to Sublessor the Subleased Premises in good order and condition, excepting ordinary wear and tear, and excepting

damage, destruction or loss by fire or other casualty provided Sublessee delivers to Sublessor all insurance proceeds paid to Sublessee in connection therewith to the extent of Sublessor's interest in the Subleased Premises; and repair all damage to the Subleased Premises and the fixtures, appurtenances and equipment of Landlord or Sublessor therein and thereon, caused by Sublessee's removal of its furniture, equipment, machinery, and the like.

**14. Utilities.**

Sublessor shall provide and pay for gas, electricity, heat, hot and cold water, and sewerage services serving the Subleased Premises. Sublessor shall not be liable to Sublessee if any utility or service shall become unavailable from any public utility company, public authority or any other person or entity (including Landlord and Sublessor) supplying or distributing such utility, or of for any interruption in any utility or other service (including without limitation, any heating) caused by the making of any necessary repairs or improvements or by any cause beyond Sublessor's reasonable control, and the same shall not constitute a termination of this Sublease or an eviction of Sublessee.

**15. Sublessee's Signage Rights.**

Sublessee shall have the right to install signage promoting the Concessions, such signage to be located within or immediately adjacent to the Subleased Premises, or such other locations as are mutually acceptable to Sublessee and Sublessor. Nothing in this Sublease Agreement shall be construed as giving Sublessee any rights to the proceeds of Arena sponsorships obtained by Sublessor. Sublessee may not solicit, sell, or rent any portion of the Subleased Premises for advertising or sponsorship use other than for Sublessee's own business operated under this Sublease. All Sublessee signage shall be submitted to Sublessor's General Manager prior to installation.

**16. Personnel.**

**16.1. Qualified Personnel.**

Sublessee will employ only such personnel as will assure a high standard of service to the public and cooperation with the Sublessor. All such personnel while on or about the Subleased Premises, shall be neat in appearance and courteous at all times, and shall be appropriately attired, with badges or other suitable means of identification. No person employed by Sublessee, while at the Arena, shall be under the influence of illegal drugs, narcotics and other controlled substances or alcohol, or use inappropriate language, or engage in otherwise inappropriate conduct for a family recreational environment. In the event an employee fails to conduct himself or herself in accordance with the foregoing provisions, Sublessor's General Manager shall notify the Sublessee of its dissatisfaction and request remediation to the reasonable satisfaction of Sublessor within three (3) days, failing which the Sublessor's General Manager may direct Sublessee to remove that person from the Arena.

**16.2. Health and Safety.**

In regard to the use and occupancy of the Subleased Premises, Sublessee will not:

- 16.2.1.** Place or maintain any merchandise, trash, refuse or other articles in any vestibule or entry of building located within the Arena, on the footwalks or corridors adjacent thereto or elsewhere within the Arena so as to obstruct any driveway, corridor, footwalk, or throw or discard or deposit any paper, glass or extraneous matter of any kind, or create litter or hazards of any kind, provided that Sublessee shall be permitted to arrange cordons to permit orderly queuing of customers in a space not greater than is reasonably necessary to afford proper crowd control, provided that Sublessee shall manage such activities in a manner that, in the reasonable discretion of Sublessor's General Manager, is safe, orderly, and minimally disruptive to Sublessor's business operations;
- 16.2.2.** Use or permit the use of any objectionable advertising medium such as, without limitation, loudspeakers, phonographs, public address systems, sound amplifiers, reception of radio or television broadcasts within the Subleased Premises in such manner that any sounds reproduced, transmitted or produced shall be directed beyond the Subleased Premises; or
- 16.2.3.** Fail to comply with all local and state health and safety codes and regulations. Sublessee shall maintain the Subleased Premises in a clean, orderly, and sanitary condition. Sublessee shall keep any garbage, trash, rubbish or other refuse in appropriate containers and shall regularly dispose of the same (not less than daily) in dumpsters provided by Sublessor. Any violation of health and safety codes shall be the sole responsibility of the Sublessee. Sublessee shall provide Sublessor's General Manager with copies of any public health inspection notices and findings within 48 hours of receipt by Sublessee. Sublessee's failure to cure any such violation, or, in the event that the violation cannot be cured within Five (5) days, Sublessee's failure to commence to cure such violation within Five (5) days of receiving such notice, shall be an Event of Default.

## **17. Insurance and Subrogation.**

**17.1.** Required Coverage. At all times after the execution of this Sublease, Sublessee will take out and keep in force, at its expense:

- 17.1.1.** Public Liability Insurance, including insurance against assumed or contractual liability, with respect to the Leased Premises, to afford protection to the limit, for each occurrence, of not less than One Million and 00/100 Dollars (\$1,000,000.00 with respect to personal injury or death or property damage, and an aggregate limit of not less than Two Million and 00/100 Dollars (\$2,000,000.00), which public liability insurance policy shall name Sublessor as an additional insured;
- 17.1.2.** All-Risk Casualty Insurance, covering all of Sublessee's personal property in the Subleased Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture and other property removable by Sublessee under the provisions of this Sublease), and all leasehold improvements installed in the Subleased Premises by Sublessee; and

**17.1.3.** Workers' Compensation and Employers' Liability Insurance, as required by Maine law for Sublessee and all employees of Sublessee.

**17.2.** Any insurance policies required to be carried pursuant to this paragraph shall name Sublessor and Landlord as additional insureds, and Sublessee shall furnish Sublessor evidence of such insurance coverage. Such insurance policies may not be modified or terminated without thirty (30) days' advance written notice to Sublessor.

**17.3.** The company or companies writing any insurance which Sublessee is required to take out and maintain or cause to be taken out or maintained pursuant hereto, as well as the form of such insurance shall at all times be subject to Sublessor's approval, and any such company or companies shall be licensed to do business in Maine. Each policy evidencing such insurance shall name Sublessor and Landlord as additional insureds and shall also contain a provision by which the insurer agrees that such policy shall not be canceled except after thirty (30) days' written notice to Sublessor and Landlord. For each such policy, Sublessee shall deposit with Sublessor, a certificate of insurance in a form acceptable to Sublessor, a copy of the coverage declarations page, and a copy of the endorsement listing Sublessor and Landlord as additional insureds. If Sublessee shall fail to perform any of its obligations hereunder, Sublessor may perform the same, and the cost of same shall be deemed additional rent and shall be payable upon Sublessor's demand. In addition, Sublessee agrees to pay to Sublessor interest on amounts so paid by Landlord at the rate of 1½% per month.

**17.4.** Solely to the extent the following waiver does not invalidate or diminish any insurance coverage, Sublessee and Sublessor hereby waive any right of recovery against the other and release the other from any and all claims, actions, damages, liability and expense, including attorneys' and other professional fees, in connection with damage to property, loss of income, or losses under workers' compensation laws and benefits, whether or not such loss, injury, or damage arises from or out of, directly or indirectly, the negligence of either party, or its officers, visitors, agents, contractors, servants, or employees. Each policy shall include a waiver of the insurer's right of subrogation.

**17.5.** Sublessee will not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Subleased Premises which will contravene Sublessor's policies of hazard or liability insurance or which will prevent Sublessor from procuring such policies with companies acceptable to Sublessor. If anything done, omitted to be done or suffered by Sublessee to be kept in, upon or about the Subleased Premises (beyond the regular and ordinary operation of the Concessions) shall cause the rate of fire or other insurance on the Arena to be increased beyond the minimum rate from time to time applicable to the Arena or to any such property for the use or uses made thereof, Sublessee will pay, as additional rental, the amount of any such increase upon Sublessor's demand.

**17.6.** Indemnity. To the extent not prohibited by applicable law, Sublessee shall indemnify, defend, and hold harmless Sublessor and Landlord from and against any and all claims, demands, liabilities, losses, costs, expenses, and damages for anything whatsoever, arising from or out of the Sublessee's use or occupancy of the Subleased Premises or the use and occupancy of the Subleased Premises by Sublessee's agents, employees, servants, customers, or invitees. Sublessor



shall not be liable to Sublessee or to its agents, servants, employees, customers, or invitees for any damage to person or property within the Subleased Premises caused by any act, omission, or neglect. The foregoing shall not be construed as an agreement by Sublessee to indemnify Sublessor against or from the negligence of Sublessor or Sublessor's agents, servants, employees, customers, or invitees.

#### **18. Relationship between Sublessor and Sublessee**

It is understood and agreed that Sublessor and Sublessee shall in no event be construed or held to be a partner or associate of the other in the conduct of the other's business, that no partnership or joint venture is created by this Sublease, nor shall Sublessor or Sublessee be liable for any debts incurred by the other in the conduct, of the other's business. It is understood and agreed that the relationship is and at all times shall remain that of Sublandlord and Subtenant.

#### **19. No Warranty.**

SUBLESSEE ACCEPTS THE SUBLEASED PREMISES WITHOUT ANY WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, REGARDING ITS CONDITION, SUITABILITY, HABITABILITY, FITNESS FOR PURPOSE OR ITS COMPLIANCE WITH ANY LAWS, REGULATIONS OR ORDINANCES, INCLUDING, WITHOUT LIMITATION, THE AMERICANS WITH DISABILITIES ACT OF 1991, AS AMENDED. NOTHING HEREIN SHALL BE DEEMED TO ABROGATE OR TERMINATE THE SUBLESSOR'S MAINTENANCE OBLIGATIONS SET FORTH IN THIS SUBLEASE.

#### **20. No Assignment or Sublease.**

Sublessee shall not assign, mortgage, pledge, hypothecate, or otherwise encumber this Sublease, or any interest herein or any right or privilege appurtenance thereto, without the express prior written consent of Sublessor. Sublessee may not sublet all or any portion of the Subleased Premises without the prior written consent of Sublessor. Sublessee shall not be relieved of any of its obligations hereunder by reason of any sublease of all or part of the Subleased Premises. Any assignment or sublease made in violation of this paragraph shall be void.

#### **21. Default by Sublessee.**

**21.1.** Any one of the following shall constitute a default by Sublessee (each an "Event of Default"):

- 21.1.1.** If Sublessee fails to pay any Base Rent or any League Game Commission within five (5) days after the same is due or fails to pay any other sum payable under this Sublease when due, or fails to perform or observe any other covenant, term, provision, or condition of this Sublease or the Master Lease, which failure continues for 5 days after written notice from Sublessor to Sublessee describing such failure;
- 21.1.2.** If the estate hereby created shall be taken on execution or other process of law;
- 21.1.3.** If Sublessee shall be declared bankrupt or insolvent according to law;
- 21.1.4.** If Sublessee shall make an assignment for the benefit of its creditors;
- 21.1.5.** If Sublessee shall commit any act of bankruptcy, or if a receiver, trustee or other officer shall be appointed to take charge of Sublessee's assets by any court;

- 21.1.6.** If Sublessee shall hold over at the termination of this Sublease as hereinabove provided;
- 21.1.7.** If Sublessee shall fail to comply with any of the General Conditions or the Management and Operational Requirements as stated in the RFP, with the exception of those pertaining to the operation of a Tavern or Lounge;
- 21.1.8.** If Sublessee shall violate the terms of its license to serve alcoholic beverages, if any; or
- 21.1.9.** If Sublessee shall commence dissolution or liquidation.

**21.2.** Upon the occurrence of any Event of Default, Sublessor shall be entitled to all the rights and remedies available to Landlord under the Master Lease following an event of default by Sublessor thereunder and to any other rights and remedies available to a landlord under applicable law. Upon any Event of Default by Sublessee under this Sublease and the expiration of any and all applicable notice and cure periods, Sublessor, without being under any obligation to do so and without thereby waiving such default, may make such payment or remedy such other default for the account of Sublessee, and thereupon Sublessee agrees to and shall pay to Sublessor, immediately upon demand, all reasonable costs, expenses, and disbursements incurred by Sublessor in taking such remedial action, together with interest on such amount at the rate of one and one-half percent (1 ½%) per month.

**21.3.** Default by Sublessor. Any provision in this Sublease or the Master Lease to the contrary notwithstanding, if Sublessor fails to perform its obligations under this Sublease and such failure interferes substantially with the normal use of the Subleased Premises as allowed in this Sublease, Sublessee shall provide written notice thereof to Sublessor. If Sublessor fails to perform its obligations under this Sublease and the interference resulting therefrom continues for a period of thirty (30) or more consecutive business days, then Sublessee shall have the right and option to cancel the Sublease by giving written notice to Sublessor within fifteen (15) days after the end of such thirty (30) day period.

## **22. Sublessor's Rights**

The Sublessor reserves the following rights:

**22.1.** To decorate, remodel, repair, alter or otherwise prepare the Subleased Premises for reoccupancy during the last days of the Initial Term or Renewal Term, whichever the case may be, provided that the Tenant has physically vacated the Premises, without affecting the Tenant's obligation to pay rental for the Premises. Said last days of the Initial Term or Renewal Term shall be no greater than ninety (90) days from the end of the Initial Sublease Term or Renewal Sublease Term, whichever the case may be.

**22.2.** To terminate or renegotiate the Pepsi Agreement in its entirety.

**22.3.** To retain and use in appropriate instances keys to all doors within and into the Subleased Premises and to change the locks to the Subleased Premises if Sublessor deems it advisable. No lock shall be changed by the Sublessee. If Sublessee desires to have the locks changed, Sublessee will notify Sublessor and pay to Sublessor it's the reasonable costs for such

service, and Sublessor will change the locks. The Sublessor recognizes that certain events relating to personnel of the Sublessee may require that locks be changed immediately for the protection of Sublessee's property or the Furnished Equipment within the Subleased Premises. If locks are changed for this reason, Sublessee will notify the Landlord in a timely manner, and will insure that the lock change is of materials, brands, etc. acceptable to the Sublessor and compatible with Sublessor's master key.

**22.4.** On reasonable prior notice to the Sublessee, to exhibit the Subleased Premises to prospective tenants during the last ninety (90) days of the Initial Sublease Term or Renewal Sublease Term, whichever the case may be, to the Landlord, and to any prospective purchaser, mortgagee, or assignee of any mortgage on the Arena and to others having legitimate interest at any time during the Initial Sublease Term or Renewal Sublease Term (if applicable).

**22.5.** To enter upon the Subleased Premises and exercise any and all Sublessor's rights without being deemed guilty of an eviction or disturbance of Sublessee's use or possession and without being liable in any manner to Sublessee, provided that Sublessor makes reasonable efforts to minimize the disruption to Sublessee's business and provides advance notice of any entry whenever practicable.

### **23. Governing Law.**

This Sublease shall be governed by and construed in accordance with the internal laws of Maine, without regard to the conflicts of laws principles thereof. To the extent they may lawfully do so, Sublessor and Sublessee agree that dispute related to this Sublease shall be resolved by binding arbitration to be held in Androscoggin County, Maine according to the JAMS Streamlined Arbitration Rules and Procedures. The prevailing party shall be awarded its costs and reasonable attorney's and paralegal fees, and the arbitrator shall decide questions of arbitrability.

### **24. Notices.**

Any notice or other communication to any party required or permitted to be given under this Sublease must be in writing and shall be effectively given if hand delivered or if sent by United States Mail, postage prepaid, certified or registered, return receipt requested, to the following addresses:

If to Sublessor:

Norway Savings Bank Arena  
Attention: General Manager  
985 Turner Street  
Auburn, Maine 04210

With copies to:

City of Auburn  
60 Court Street  
Auburn, ME 04210

Attn: City Manager

And to:

The Malloy Firm  
P.O. Box 3171  
Auburn, ME 04212-3171  
Attn: Michael S. Malloy, Esq.

If to Sublessee:

Michael Violette  
24 Horizon Drive  
Auburn, Maine 04210

Notice shall be deemed to have been given when received or when delivery is refused if sent by First Class Mail, postage prepaid. In addition, notice may be given to Sublessee by leaving the same at the Subleased Premises. Any party shall have the right to change its address to which notices shall thereafter be sent by giving the other parties notice thereof.

**25. Successors and Assigns.**

This Sublease shall be binding upon and shall inure to the benefit of Sublessor, Sublessee and their respective successors and assigns, subject to the limitations set forth in paragraph 20 above.

**26. Sublessor's Access.**

Sublessor shall have the right, at all reasonable times during the Sublease Term, after reasonable notice to Sublessee, unless Sublessee is in default under this Sublease (in which event no notice is required), to enter the Subleased Premises to inspect the condition thereof, to determine if Sublessee is performing its obligations under this Sublease, and to cure any defaults of Sublessee hereunder that Sublessor elects to cure. No such entry by Sublessor will constitute an assumption of any of Sublessee's obligations hereunder.

**27. Security Deposit.**

Sublessee shall pay Sublessor a security deposit (the "Security Deposit") of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00), at the Sublessee's option either (i) in full on the date this Sublease is executed by Sublessee; or (ii) in up to 6 equal installments, the first of which shall be paid upon execution of this Sublease and the remaining installments to be paid on the first day of the five following months. Upon the occurrence of any default by Sublessee hereunder, Sublessor may, from time to time, without prejudice to any other remedy, use the Security Deposit (after the expiration of any and all applicable notice and grace periods) to the extent necessary to pay sums past due by Sublessee to Sublessor under this Sublease and to repair, restore, or discharge any damage, injury, expense, or liability caused by any default hereunder, and the portion of the Security Deposit expended shall be restored by Sublessee upon demand. The

Security Deposit shall not be considered a measure of Sublessor's damages for any default by Sublessee hereunder. Unless otherwise required by applicable law, no interest shall be paid on the Security Deposit. The amount of the Security Deposit then held by Sublessor shall be returned to Sublessee at the end of the Sublease Term provided no uncured default by Sublessee exists hereunder.

**28. Parking.**

During the Sublease Term, Sublessee shall be entitled to use and enjoy any parking rights available to the Sublessor under the Master Lease.

**29. Memorandum of Sublease.**

The parties shall execute a Memorandum of Sublease in the form attached as **Exhibit G**, for recording the Androscoggin County Registry of Deeds at Sublessee's expense.

**30. Severability.**

If any provision of this Sublease or its application to any person or circumstances shall to any extent be held invalid or unenforceable, the remainder of this Sublease shall be considered valid and enforceable, and effect shall be given to the intent manifested by the portion held invalid or unenforceable.

**31. Headings and Captions.**

The headings and captions herein contained are for convenience only, and shall not be considered a part of this Sublease.

**32. No Waiver.**

The waiver by Sublessor of any provision herein contained shall not be deemed to be a waiver of such provision on any subsequent occasion. The subsequent acceptance of rent or other consideration by Sublessor shall not be deemed to be a waiver of any preceding breach by Sublessee of any provision of this Sublease.

**33. Ambiguities.**

Both parties acknowledge that they have read this Sublease, that each has had the opportunity to review it with the counsel of their choice and to contribute equally to its drafting, and that both parties have agreed to all of the terms of this Sublease. Accordingly, they agree that the rule of construction that an ambiguous contract term should be construed against the drafter, to the extent applicable in Maine, shall not apply in interpreting this Sublease.

**34. Entire Agreement.**

This Sublease, together with the RFP, contains the entire agreement of the parties and shall not be modified except by an instrument in writing which is signed by both parties. To the extent any terms of this Sublease conflict with terms or conditions stated in the RFP, this Sublease shall control.

**35. Exercise of Option.**

In the event Sublessor exercises its option to purchase the Demised Premises at any time during the Term of this Sublease, causing the Master Lease to terminate upon transfer of the Demised Premises to Sublessor, this Sublease shall become a direct lease between the Sublessor and the Sublessee.

[REMAINDER OF THIS PAGE BLANK; SIGNATURE PAGE FOLLOWS]

The parties make this Sublease as of the Effective Date.

CITY OF AUBURN

MICHAEL VIOLETTE, D/B/A  
UPPER LEVEL PIZZA & GRILLE

\_\_\_\_\_  
By: Peter Crichton  
City Manager

\_\_\_\_\_  
Michael Violette, in his  
individual capacity

Slapshot, LLC hereby joins in this Lease for purposes of consenting to the same and agreeing to the provisions thereof.

Slapshot, LLC

\_\_\_\_\_  
By: George P. Schott  
Its Member

INDEX TO EXHIBITS

EXHIBIT A	Master Lease
EXHIBIT B	RFP
EXHIBIT C	Proposal Form
EXHIBIT D	Diagram of Subleased Premises
EXHIBIT E	Furnished Equipment
EXHIBIT F	Pepsi Agreement
EXHIBIT G	Memorandum of Sublease

James Pross, Ward One  
Robert Stone, Ward Two  
Andy Titus, Ward Three  
Adam R. Lee, Ward Four



Leroy Walker, Ward Five  
Grady R. Burns, At Large  
David C. Young, At Large

Jonathan P. LaBonte, Mayor

## IN CITY COUNCIL

**ORDER 115-11272017**

ORDERED, that the City Council hereby authorizes the City Manager or Assistant City Manager to finalize terms for and to sign a contract with Michael Violette, owner of Upper Level Pizza and Grill to operate the concessions/restaurant at the Norway Savings Bank Arena.





**City of Auburn  
City Council Information Sheet**

**Council Workshop or Meeting Date:** November 27, 2017      **Order:** 116-11272017

**Author:** Jill M. Eastman, Finance Director

**Subject:** Waiver of Tax Lien Foreclosure on St. Louis Church

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**Information:** A tax lien was filed on property at 32 Dunn St, Auburn, (the former St. Louis Church), for 2015 unpaid real estate taxes. This tax lien will mature on December 15, 2017, and if the City does not waive the automatic foreclosure, the City will take possession of this property. The City also has a tax lien for the 2016 taxes which will mature in December of 2018. At this time the Council will again have an opportunity to decide whether to take possession or waive foreclosure.

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**City Budgetary Impacts:** If the City takes possession of this property all utilities, insurance and any maintenance issues would be the City's responsibility.

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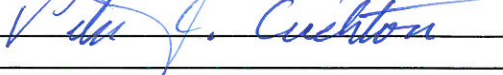
**Staff Recommended Action:** Passage of a waiver of foreclosure for the 2015 Tax Lien.

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**Previous Meetings and History:**

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**City Manager Comments:**

I concur with the recommendation. Signature: 

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**Attachments:**

Order: Waiver of Municipal Real Estate Tax Lien Mortgage Foreclosure  
Copy of Waiver of Municipal Real Estate Tax Lien Mortgage Foreclosure to be filed at the Registry of Deeds.

**Title 36 M.R.S.A. Section 944**

**Waiver of Municipal Real Estate  
Tax Lien Mortgage Foreclosure**

The foreclosure of the tax lien mortgage on real estate for a tax assessed against PILOTAGE L3C of the City of Auburn, dated June 15, 2016 and recorded in the Androscoggin County Registry of Deeds in Book and Page 9384-175 is hereby waived.

Property Location 32 DUNN STREET, AUBURN, ME Map and Lot 221-196-001-000 of the Assessor's tax maps of the City of Auburn, which are on file in the Assessor's Office in the City of Auburn.

Dated: November 21, 2017

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Jill M. Eastman, Treasurer

**ACKNOWLEDGEMENT**

State of Maine  
Androscoggin County, ss.

Personally appeared before me the above named Jill M. Eastman and acknowledged the foregoing to be her free act and deed in her capacity as Treasurer.

---

Nancy Lee Bosse, Notary Public  
My Commission Expires January 29, 2023

James Pross, Ward One  
Robert Stone, Ward Two  
Andy Titus, Ward Three  
Adam R. Lee, Ward Four



Leroy Walker, Ward Five  
Grady R. Burns, At Large  
David C. Young, At Large

Jonathan P. LaBonte, Mayor

## IN CITY COUNCIL

### ORDER 116-11272017

ORDERED, that the City Council hereby authorizes the Finance Director to record a waiver of foreclosure at the Androscoggin County Registry of Deeds pursuant to 36 M.R.S.A. § 944, on real estate taxes assessed against Pilotage L3C for property located at 32 Dunn Street, Auburn, Maine, Map and Lot 221-196-001-000, dated June 15, 2016, and recorded at the Androscoggin County Registry of Deeds in Book and Page 9384-175.