

GROUND LEASE AGREEMENT

THIS LEASE made this _____ day of _____, 2014____, by and between the TOWN OF FALMOUTH, a body politic and corporate and having an office at 271 Falmouth Road, Falmouth, Maine, 04105 (hereinafter sometimes referred to as “Landlord”), and CASCO BAY ARENA, INC., a not-for-profit Maine corporation having a mailing address at P.O. Box 4600, Portland, Maine 04112-4600 (hereinafter referred to as “Tenant”),

WITNESSETH:

In consideration of the mutual covenants and agreements contained herein and intending to be legally bound hereby, Landlord and Tenant hereby agree with each other as follows:

SECTION 1. Premises: Landlord hereby leases and lets to Tenant, and Tenant hereby takes and hires from Landlord, upon and subject to the terms, conditions, covenants and provisions hereof, all of that parcel of land, situated at and near Hat Trick Drive and Depot Road_____, in the Town of Falmouth, Cumberland County, Maine, more particularly described in Exhibit “A” attached hereto and made a part hereof, together with any and all appurtenances, rights, privileges and easements benefitting, belonging or pertaining thereto (all of the foregoing hereinafter sometimes referred to as the “demised premises” and sometimes referred to as the “premises”).

SECTION 2. Term: Landlord’s Right to Terminate:

- (a) The original term of this Lease shall consist of an initial term and a base term. The initial term shall consist of a period which shall begin on the date hereof (the “Commencement Date”) and terminate on the date upon which the buildings and improvements to be constructed by Tenant on the demised premises, as described in Section 7 hereof, are substantially completed; the base term shall be for a period of forty (40) years beginning immediately upon expiration of the initial term, provided that if the initial term shall expire on a day other than the last day of a month, then the period of time between such expiration of the initial term and the first day of the month next following shall be added to the base term of this Lease.
- (b) In the event that Tenant fails to obtain all permits and approvals for the construction of the buildings and improvements, as described in Section 7 hereof, within nine (9) months from the date of this Lease, or in the event that said buildings and improvements are not substantially completed within eighteen (18) months from the date of this Lease, Landlord shall have the right to terminate this Lease by giving Tenant written notice.

SECTION 3. Rent:

- (a) Tenant shall pay rent at the rate of One Dollar (\$1.00) per year, payable in advance, with the first such payment to be made on the Commencement Date, and the subsequent payments to be made on the same day of each following year.

- (b) As used in this Lease, the term “lease year” shall mean each successive twelve (12) month period during the base term of this Lease, with the first such “lease year” to begin with the first day of the first full calendar month included within the base term of the Lease.

SECTION 4. Utilities and Services: Tenant’s obligations hereunder are conditioned upon the demised premises having direct access to electric, telephone, public water, public sewer and storm water drainage lines. In the event that such lines do not have direct access, Tenant shall have the right to terminate this Lease by giving notice of its election to Landlord.

SECTION 5. Use of Premises: The demised premises shall be used solely for a seasonal, ~~unconditioned, open air~~ open air ice hockey arena, with artificial ice; seasonal open air recreation facility; and related purposes. Any substantive change in use of the premises shall be subject to approval of the Town Council.

SECTION 6. Taxes: Tenant’s obligation to proceed with construction of the project is conditioned upon the Tenant being satisfied that for so long as Tenant (or any successor or assign of Tenant which is a not-for-profit corporation) is the Tenant under this Lease the demised premises shall be exempt from all real estate taxes. In the event that the Tenant is not so satisfied, Tenant shall have the right to terminate this Lease by giving notice of its election to Landlord. Tenant understands and agrees that the property tax status of the project is determined by the Town Assessor in the first instance and that the Town’s approval of this Lease in no way binds the Assessor or the Board of Assessment Review to determine that the project is exempt from property taxation.

SECTION 7. Improvements, Repairs, Additions:

- (a) Subject to the Tenant being able to obtain all necessary zoning amendments, land use permits and approvals, and subject to the Tenant being able to obtain satisfactory financing, Tenant shall, at its own cost and expense, construct on the demised premises, the buildings, and improvements (including parking lots and site improvements) shown in the approved Site Plan attached hereto as Exhibit “B,” which include an artificial ice arena of a size and in a location shown on Exhibit “B.” The design and location of all buildings and improvements shall be subject to approval of the Town Council, in addition to other required approvals. All construction shall be in conformance with approved plans and specifications.
- (b) Tenant shall, at all times during the term of this Lease, be responsible for any and all repairs to the buildings and improvements at any time erected on the demised premises. Tenant shall maintain such buildings and improvements in good repair and condition, reasonable wear and tear and damage by fire and other casualty excepted. Tenant shall be responsible for ice and snow removal from parking areas and sidewalks associated with the demised premises.. Landlord shall not be required to furnish any services or facilities or to make any improvements, repairs or alterations in or to the demised premises during the term of this Lease.

- (c) Tenant may, at its own cost and expense, at any time and from time to time throughout the term of this Lease, make such alterations, changes, improvements and additions in and to the buildings and improvements on the demised premises, subject to all applicable codes and ordinances, as it may deem desirable. All substantive alterations, improvements and additions shall be subject to approval of the Town Council.
- (d) From and after the Commencement Date, title to any building or buildings or improvements situated or erected on the demised premises and the building equipment and other items installed thereon and any alteration, change or addition thereto shall remain solely in Tenant.
- (e) On the last day or sooner termination of the term of this Lease, Tenant shall quit and surrender to Landlord the demised premises, and all buildings and improvements constructed on the demised premises will, at the Landlord's option, be retained by the Landlord or promptly removed by Tenant, following which the demised premises will be restored by Tenant as nearly as practicable to its preconstruction condition. If the landlord elects to retain such buildings and improvements, Tenant will convey such buildings and improvements to Landlord by quitclaim bill of sale, free and clear of all mortgages and encumbrances.

SECTION 8. Requirements of Public Authority:

- (a) During the term of this Lease, Tenant shall, at its own cost and expense, promptly observe and comply with all present and future laws, ordinances, requirements, orders, directives, rules and regulations of the federal, state, county, and city governments and of all other governmental authorities affecting the demised premises or appurtenances thereto or any part thereof whether the same are in force at the commencement of the term of this Lease or may in the future be passed, enacted or directed.
- (b) Tenant shall have the right to contest by appropriate legal proceedings diligently conducted in good faith, without cost or expense to Landlord, the validity or application of any law, ordinance, rule, regulation or requirement of the nature referred to in paragraph (a) of this Section and, if by the terms of any such law, ordinance, order, rule, regulation or requirement, compliance therewith may legally be delayed pending the prosecution of any such proceedings, Tenant may delay such compliance therewith until the final determination of such proceeding.
- (c) Landlord agrees to execute and deliver any appropriate papers or other instruments which may be necessary or proper to permit Tenant so to contest the validity or application of any such law, ordinance, order, rule, regulation or requirement.

SECTION 9. Covenant Against Liens: If, because of any work performed upon the demised premises by or at the expense of Tenant, any mechanic's lien or other lien shall be filed against Landlord or any portion of the demised premises, Tenant shall, at its own cost and expense, cause the same to be discharged of record or bonded within sixty (60) days after written notice from Landlord to Tenant of the filing thereof, and Tenant shall indemnify and save harmless Landlord against and from all costs, liabilities, suits, penalties, claim and demands, including reasonable attorneys' fees, resulting therefrom.

SECTION 10. Access to Premises: During the term of this Lease Landlord or Landlord's agents shall have the right, after giving tenant reasonable advance notice, to enter upon the demised premises at reasonable times to examine the same.

SECTION 11. Assignment And Subletting: Tenant shall not have the right to assign this Lease or to sublet all or any part of the demised premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld; provided, however, that Tenant shall have the right, without the consent of Landlord, to sublease portions of the space within the facility for uses incidental thereto.

SECTION 12. Tenant Covenants: Tenant hereby covenants and represents to Landlord that during the term of the Lease:

- a. During the first five (5) years of operation of the ice arena, any existing Town of Falmouth or Falmouth School Department program or team will be charged a rate of not more than One Hundred Ninety Dollars (\$190.00) per hour for use of the ice arena by such program or team. At all times, any existing Town of Falmouth or Falmouth School Department program or team shall not be charged an hourly rate greater than the rate charged to Casco Bay Hockey Association teams.
- b. Tenant shall make available to the residents of the Town of Falmouth at no charge, a minimum of one (1) hour of hockey-related ice time on each week day, except Thanksgiving Day, and President's Day, and any days on which Falmouth Schools are cancelled due to inclement weather, between the hours of 12 noon—3:00 pm, as well as a minimum of one (1) hour of hockey-related ice time each Sunday evening for adults starting between the hours of 6:00pm and 8:00pm. Tenant shall maintain the ice surface in satisfactory condition during such hockey-related public skate times according to industry standards for artificial ice outdoor facilities.
- c. Tenant shall not offer skate rentals.
- d. Tenant shall not offer nor run organized adult league hockey games open to the general public such as those held by the Greater Portland Industrial Hockey League.

- e. Tenant shall not rent ice time to any individuals, classes clinics, groups, camps, organizations or special events for non-hockey related programs such as but not limited to non-hockey related public skating, figure skating and non-hockey related learn-to-skate programs, nor shall Tenant run any such programs directly.
- f. The Town of Falmouth shall be provided with complete use of the facility on Mondays between the hours of 4:00 p.m.—8:00 pm from the second Monday in April to the first Monday in October of each calendar year without charge. In addition, the Town of Falmouth will be allowed up to an additional 50 hours rental time without charge. Any rental time to the Town of Falmouth after 50 hours will be charged at a 50% reduction of rates charged to other users.
- ~~f. The Town of Falmouth shall have the right to manage the facility in the off season, which is defined as April 1–October 1 by notifying Casco Bay Arena, Inc. in writing of its intention to do so by January 1st of the year. If the Town chooses to manage the facility, the Town shall be responsible for payment of all utilities and maintenance. The Town shall be entitled to all revenues realized during the off season period. Casco Bay Hockey Association and its related programs shall have the right to rent the facility from the Town at the same rate it is being rented to residents of the Town of Falmouth and programs sponsored by the Town of Falmouth.~~
- g. Tenant shall make available to the Town of Falmouth, Parks & Community Program, one (1) day during the first or second week of December each year the use of the, lobby and surrounding area for the Town’s annual community holiday tree lighting. This use shall be without charge to the Town. The date for this use shall be chosen by the Town after consultation with the Tenant not less than ninety (90) days prior to the event.
- h. The Town of Falmouth, residents of the Town of Falmouth and Casco Bay Hockey Association and its affiliated programs and members shall have the right to rent the facility at the same rate, which rate shall reflect the actual costs of operating the facility in the off-season plus the estimated cost of debt service during the off-season on a *pro rata* hourly basis but in no event shall the rate charged exceed 50% of the rate charged other users. Any rentals by Falmouth residents shall be processed through the Town of Falmouth. If any net surplus revenue is realized from off-season operation of the facility, after *pro rata* deductions for payment of principal and interest, costs and expenses, that net surplus revenue shall be paid to the Town of Falmouth to support community programs.
- ~~g.~~
- ~~h. If the Town of Falmouth does not exercise its right to manage the facility during the off season, Casco Bay Arena, Inc., or its sub-contractor, shall manage the facility. The Town of Falmouth, residents of the Town of Falmouth, and Casco Bay Hockey~~

~~Association and its affiliated programs and members shall have the right to rent the facility at the same rate, which shall reflect the actual costs of operating the facility in the off season plus estimated costs of debt service during the off season months on a pro rata hourly basis. The rental rate for the Town of Falmouth, residents of the Town of Falmouth, and Caseo Bay Hockey Association shall be at least 50 % less than the rental rate for other users. If any surplus revenue is realized from off season operation of the facility, that surplus revenue shall be paid to the Town of Falmouth.~~

SECTION 13. Indemnity: Tenant shall defend, save harmless, protect and indemnify Landlord from and against any and all losses, liabilities, damages, claims, suits, demands, actions, judgments, costs and expenses, relating to any injury to, or death of, any person or persons, or any damage to any property occurring on the demised premises or damage to any property outside the demised premises which is determined to be caused by Tenant's activities on the demised premises after the Commencement Date which may arise from, grow out of, or be attributable to, any negligence, act or default of Tenant or its agents, servants, employees, guests or contractors. Tenant shall, at its own cost and expense, defend any and all suits or actions which may be brought against Landlord or in which Landlord may be impleaded with others upon any such above-mentioned matter. Landlord shall not settle, stipulate or otherwise agree to be liable for any claim, by agreement or otherwise, without the prior written approval of Tenant. Nothing herein shall be deemed to waive or diminish any immunity or defense available to the Town of Falmouth pursuant to the Maine Tort Claims Act.

SECTION 14. Insurance:

- (a) Tenant shall maintain with respect to the demised premises public liability insurance in such amounts as the Landlord shall reasonably deem appropriate, which shall as of the Commencement Date be with base limits of not less than One Million Dollars (\$1,000,000.00) for injury to, or death of, one person, and not less than One Million Dollars (\$1,000,000.00) for injury to, or death of, more than one person in a single accident or occurrence, and property damage insurance adequate to cover Tenant's property, in companies qualified to do business in the State of Maine, with excess coverage, in each case, of not less than Three Million Dollars (\$3,000,000.00), insuring Landlord, Tenant and any designee of Tenant having an interest in the demised premises, against the matters indemnified against Tenant pursuant to the preceding Section.
- (b) Tenant shall deposit with Landlord certificates of such insurance naming the Landlord as an insured prior to the commencement of the term, and thereafter within ten (10) days prior to the expiration of such policy. Such policy shall, to the extent obtainable, provide that the policy may not be canceled without at least ten (10) days' prior written notice to each insured.

- (c) During the term of this Lease, Tenant shall keep all buildings and improvements located on or erected by Tenant on the demised premises at any time insured for the benefit of Tenant and the holders of any leasehold mortgages permitted pursuant to Section 18 hereof as additional insureds, as their respective interests may appear, against loss or damage by fire, and those casualties covered by so-called "all-risk" policies, in a minimum amount necessary to avoid the effect of coinsurance provisions of the applicable policies. All proceeds payable at any time and from time to time by any insurance company under such policies shall be payable to and shall be the property of Tenant, and Landlord shall not be entitled to, and shall have no interest in, the proceeds of such insurance or any part thereof.

SECTION 15. Damage or Destruction: In the event that, at any time during the term of this Lease, the buildings on the demised premise shall be destroyed or substantially damaged in whole or in part by fire or other cause, Tenant shall within a reasonable time, at its own cost and expense, either repair and restore said damaged buildings to complete architectural units, or demolish and remove said damaged buildings from the demised premises, fill any cellar holes and remove all rubble, in which case, this Lease shall terminate. In the event that less than a substantial portion of the buildings are damaged, Tenant shall take reasonable steps to restore the damaged portion of said buildings.

SECTION 16. Eminent Domain:

- (a) If, during the term of this Lease, the whole of the demised premises shall be taken for any public or quasi-public use under any statute or by right of eminent domain or by private purchase in lieu thereof, then this Lease shall automatically terminate as of the date that possession has been taken. In the event of a partial taking (or purchase) of the demised premises during the term of this Lease, as a result of which the demised premises are no longer reasonably usable, in whole or in substantial part, for the use then being made thereof, or if as a result of a taking (or purchase in lieu thereof) the demised premises are deprived of direct, reasonable and adequate access to the public streets and highways, Tenant shall have the right, but not the obligation, to terminate this Lease by giving written notice of such termination to Landlord on or prior to the date which is ninety (90) days after the date of such taking (or purchase), and upon the giving of such notice of termination the term of this Lease shall expire and come to an end on the last day of the calendar month in which such notice shall be given with the same force and effect as if said day had been originally fixed herein as the expiration date of the term of this Lease. In the event this Lease shall terminate or be terminated, neither party shall have any further rights or liabilities hereunder.
- (b) In the event of a taking or purchase resulting in the termination of this Lease pursuant to the provisions of paragraph (a) of this Section 16 the parties hereto agree to cooperate in applying for and in prosecuting any claim for such taking and further agree, that the aggregate net award pertaining to the demised premises, after

deducting all expenses and costs, including reasonable attorneys' fees, incurred in connection therewith, payable to both Landlord and Tenant (herein called the "Fund") shall be paid and distributed as follows:

1. There shall first be paid to the holder of any leasehold mortgages, the unpaid balance of said mortgages, together with any interest thereon accrued to the date of such payment, in the order of their priority.
 2. (A) Out of any part of the Fund remaining after the payment specified in subparagraph (1) above, there shall be paid and allocated to Tenant an amount equal to the fair market value of the remaining leasehold estate created by this Lease and of any building(s) or other improvements then located on the demised premises, valued at their highest and best use, less the amount paid under subparagraph (1) of this Section 16(b), and (B) out of any part of the Fund then remaining after the payments specified in subparagraph (1) above and clause (A) of this subparagraph (2), to Landlord.
- (c) In the event that Tenant elects after a partial taking (or purchase in lieu thereof) to make repairs to any of the building(s) and improvements on the demised premises affected by such taking (or purchase in lieu thereof) to the extent feasible, taking into account the amount of land remaining after such taking or purchase or to replace any of such building(s) or improvements, all compensation available upon such a partial taking (or purchase) shall be paid to Tenant for the purpose of paying towards the cost of such restoration or replacement.
- (d) All compensation available upon such a partial taking (or purchase in lieu thereof) in excess of the amount thereof needed by Tenant to repair and restore the buildings and improvements shall be distributed in the same manner as is provided in subparagraphs (1) and (2) of paragraph (b) of this Section, except that all compensation for any temporary taking shall be distributed to Tenant.
- (e) Despite anything herein to the contrary contained, Tenant shall not be prevented from making a claim in its own name against any such condemning authority with respect to any furniture, trade fixtures, trade equipment, merchandise or personal property of any kind belonging to Tenant and not forming part of the real estate or for the cost of moving all of the same, and any such award made directly to the Tenant shall belong entirely to Tenant.

SECTION 17. Utility Easements: Tenant shall have the right to enter into agreements with utility companies, and/or public authorities which provide necessary utilities, creating easements in favor of such companies and/or authorities as are required in order to service the buildings on the demised premises, and Landlord covenants and agrees to consent thereto and to execute any and all documents, agreements and instruments, and to take all other actions, in order to effectuate the same, all at Tenant's cost and expense.

SECTION 18. Leasehold Mortgages: Tenant is hereby given the right by Landlord, without Landlord's prior written consent, to mortgage its interests in this Lease under one or more leasehold mortgages, and to assign, this Lease and any subleases as collateral security for such leasehold mortgages, upon the condition that all rights acquired under such leasehold mortgages shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights and interests of Landlord herein. The term "leasehold mortgage" as used in this Section 18 and other provisions of this Lease shall include leasehold mortgages, collateral or conditional assignments of Tenant's interest in this Lease and like instruments and all modifications, extensions, renewals and replacements thereto. No leasehold mortgage given by Tenant under the provisions of this Section shall be deemed to be an assignment of this Lease so as to require the assumption of said obligations and liabilities by the holder of such mortgage. If Tenant shall grant a leasehold mortgage with respect to this leasehold and if the holder of such leasehold mortgage shall send to Landlord written notice of such leasehold mortgage specifying the name and address for the leasehold mortgage, Landlord agrees that so long as any such leasehold mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by the holder to Landlord, the following provisions shall apply:

- (a) There shall be no cancellation, surrender or modification of this Lease by joint action of Landlord and Tenant without the prior consent in writing of each leasehold mortgagee.
- (b) Landlord shall, upon serving Tenant with any notice of default, also serve a copy of such notice upon the holder of each such leasehold mortgage, and no such notice of default to Tenant shall be effective unless and until a copy of such notice is served upon each such holder. The leasehold mortgagee shall thereupon have the same period, after service of such notice upon it, to remedy or cause to be remedied the defaults complained of, and Landlord shall accept such performance by or at the instigation of such leasehold mortgagee as if the same had been done by Tenant.
- (c) Anything herein contained notwithstanding, while any such leasehold mortgage remains unsatisfied of record, or until written notice of satisfaction is given by the holder to Landlord, if any default shall occur which, pursuant to any provisions of this Lease, entitles Landlord to terminate this Lease, and if before the expiration of ten (10) days from the date of service of notice of termination upon such leasehold mortgagee such leasehold mortgagee shall have notified Landlord of its desire to nullify such notice and shall have paid to Landlord all rent and additional rent and other payments therein provided for, and then in default, and shall have complied or shall commence the work of complying with all of the other requirements of this Lease, if any are then in default, and shall prosecute the same to completion with reasonable diligence, then in such event Landlord shall not be entitled to terminate this Lease and any notice of termination theretofore given shall be voided and of no effect.

- (d) If the Landlord shall elect to terminate this Lease by reason of any default of Tenant, the leasehold mortgagee shall not only have the right to nullify any notice of termination by curing such default, as aforesaid, but shall also have the right to postpone and extend the specified date for the termination of this Lease as fixed by Landlord in its notice of termination, for a period of not more than six (6) months, provided that such leasehold mortgagee shall cure or cause to be cured any then existing money defaults and meanwhile pay the rent, additional rent and comply with and perform all of the other terms, conditions and provisions of this Lease on Tenant's part to be complied with and performed, other than past non-monetary defaults, and provided further, that the leasehold mortgagee shall forthwith take steps to acquire or sell tenant's interest in this Lease by foreclosure of the mortgage or otherwise and shall prosecute the same to completion with all due diligence. If at the end of said six (6) month period the leasehold mortgagee shall be actively engaged in steps to acquire or sell Tenant's interest herein, the time of said leasehold mortgagee to comply with the provisions of this Section shall be extended for such period as shall be reasonably necessary to complete such steps with reasonable diligence and continuity.
- (e) The proceeds from any insurance policies or arising from a condemnation are to be held by any leasehold mortgagee and distributed pursuant to the provisions of this Lease, but the leasehold mortgagee may reserve its rights to apply to the mortgage debt all, or any part, of Tenant's share of such proceeds pursuant to such leasehold mortgage.
- (f) Landlord shall upon request, execute, acknowledge and deliver to each leasehold mortgagee, an agreement prepared at the sole cost and expense of Tenant in form satisfactory to such leasehold mortgagee between Landlord, Tenant and the leasehold mortgagee, agreeing to all of the provisions of this Section 18.

SECTION 19. Contingencies.

- (a) Prior to constructing the buildings and improvements on the demised premises as provided herein, the Tenant must provide written evidence, in form and content satisfactory to Landlord, of (i) cash, equipment, -and/or marketable securities in an amount not less than Two Hundred Thousand Dollars (\$ 200,000) ~~and pledges in an amount not less than _____ Thousand Dollars (\$ _____)~~ the proceeds of which will be applied toward the cost of construction of said improvements and/or equipment which shall be incorporated into the building and (ii) a commitment from a lending institution which shall provide a construction loan to finance such improvements.

(b) The Tenant shall provide the Landlord with assurances satisfactory to the Landlord that construction of the buildings and improvements, once commenced, will be completed in accordance with approved plans therefor.

(c) This Lease shall be contingent upon a written determination from the State of Maine, Department of Agriculture, Conservation & Forestry that nothing in this Lease and the activities authorized by this Lease will violate the terms of a certain grant to the Town of Falmouth through the Land and Water Conservation Fund, LWCF Project 23-00163.

SECTION 20. Quiet Enjoyment: Landlord covenants and agrees with Tenant that upon Tenant paying the rent and observing and performing all the terms, covenants and conditions, on Tenant's part to be observed and performed, Tenant shall and may peaceably and quietly have, hold, occupy and enjoy the demised premises and all appurtenances thereto without hindrance or molestation. Landlord shall deliver possession of the demised premises to Tenant upon the Commencement Date of this Lease.

SECTION 21. Defaults:

- (a) Upon the expiration of this Lease or termination of this Lease, by default or otherwise, Tenant shall quit and peacefully surrender the demised premises to Landlord, and Landlord, upon or at any such expiration or termination, may (i) without further notice, enter upon and reenter the demised premises and possess and repossess itself thereof, by summary proceedings or otherwise, and may dispossess Tenant and remove Tenant and all other persons and property from the demised premises and may have, hold and enjoy the demised premises; or (ii) require that Tenant promptly remove all buildings and improvements on the demised premises and restore the demised premises as nearly as practicable to its pre-construction condition. If the landlord elects to enter upon the demised premises and possess and repossess the same, Tenant will convey such buildings and improvements to Landlord by quitclaim bill of sale.
- (b) If default shall be made by Tenant in the performance or compliance with any of the agreements, terms, covenants or conditions in this Lease provided, and such default shall continue for a period of thirty (30) days after written notice from Landlord to Tenant specifying the items in default, or in case of a default or contingency which cannot with due diligence be cured within said thirty (30) day period, Tenant fails to proceed within said thirty (30) day period to commence to cure the same and thereafter to prosecute the curing of such default with due diligence and within a period of time which, under all prevailing circumstances, shall be reasonable, then Landlord, at any time while such default shall continue after the expiration of such thirty (30) day period, may give written notice to Tenant specifying such event of default or events of default and stating that this Lease and the term hereby demised shall expire and terminate on the date specified in such notice which date shall be at least ten (10) days after the giving

of such notice, and upon the date specified in such notice, this Lease and the term hereby demised and all rights of Tenant under this Lease shall expire and terminate.

- (c) Simultaneously with the sending of the notice described in paragraph (b) of this Section 21 to Tenant, Landlord shall send a copy of such notice to any leasehold mortgagee and to any persons or parties having an interest in the demised premises that Tenant may select in writing from time to time. The curing of any default within the above time limits, or within the time limits provided in Section 18 hereof with respect to cure by a leasehold mortgagee, by any of the aforesaid parties or combination thereof, shall constitute a curing of any default hereunder with like effect as if Tenant had cured same hereunder.

SECTION 22. Disputes: It is agreed that if at any time a dispute shall arise between the parties hereto as to any work to be performed by Tenant under the provisions hereof, Tenant may perform such work and pay the cost thereof “under protest” and the performance of such work shall in no event be regarded as a voluntary performance and there shall survive the right on the part of Tenant to institute suit for the recovery of the cost of such work, and if it shall be adjudged that there was no legal obligation on the part of Tenant to perform such work or any portion thereof, Tenant shall be entitled to recover the cost of such work or the cost of so much thereof as Tenant was not legally required to perform under the provisions of this Lease.

SECTION 23. Waivers: Failure of Landlord or Tenant to complain of any act or omission on the part of the other party no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by Landlord or Tenant at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver by said party of any of its rights hereunder. No waiver by Landlord or Tenant at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. If any action by either party shall require the consent or approval of the other party, the other party’s consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion or a consent to or approval of any other action on the same or any subsequent occasion. Any and all rights and remedies which either party may have under this Lease or by operation of law, either at law or in equity, upon any breach, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other; and no one of them, whether exercised by said party or not, shall be deemed to be in exclusion of any other; and any two or more of all of such rights and remedies may be exercised at the same time.

SECTION 24. Permits: Landlord covenants and agrees, throughout the term of this Lease, to cooperate fully with Tenant in any and all applications and proceedings and appeals made or prosecuted by Tenant in connection with obtaining any necessary permits, licenses, zoning changes, approvals, consents, or the like (hereinafter “Permits”) under the zoning, land use, environmental and/or building regulations, ordinances, codes,

laws and directives of all of the federal or state and other authorities (exclusive of the Town of Falmouth) having jurisdiction over the development and use of the demised premises and the building or improvements. Landlord shall, if requested by Tenant, execute and join in the execution of any and all applications, documents, instruments, consents and authorizations requested by Tenant which shall be necessary or desirable with respect thereto, including any appeals therefrom, if such joinder by Landlord is necessary to permit Tenant to proceed with such matter.

SECTION 25. Force Majeure: In any case where Tenant is required to do any act, the time for the performance thereof shall be extended by a period equal to any delay caused by or resulting from act of God, war, civil commotion, fire or other casualty, labor difficulties, shortages of energy, labor, materials or equipment, government regulations, delays caused by either party to the other, or other causes beyond such party’s reasonable control, whether such time be designated by a fixed date, a fixed time or a “reasonable time.”

SECTION 26. Notices: All notices and other communications authorized or required hereunder shall be in writing and shall be either delivered in person to the party to whom they are addressed or sent by certified mail or registered mail, return receipt requested, or by overnight carrier, in each case with all postage and mailing charges prepaid and addressed in the manner hereinafter provided. Any such notice or other communications which is required to be given within a certain period or prior to a certain date in order to be effective shall be deemed to have been given by the sending party when personally delivered or mailed in the manner herein provided to the party to whom such notice or other communication shall be addressed. Any such notice or other communication which requires or anticipates a response by the receiving party within a certain period or prior to a certain date shall be deemed to have been given to the receiving party when received or refused by the party to whom such notice or other communication is addressed. Any notice or other communication intended for Landlord shall be mailed to Landlord at:

Town of Falmouth
Attention: Town Manager
271 Falmouth Road
Falmouth, ME 04105

Chair, Town Council
Town of Falmouth
271 Falmouth Road
Falmouth, ME 04105

Town Attorney
Town of Falmouth
271 Falmouth Road
Falmouth, ME 4105

or at such other address or addresses as Landlord may hereafter designate by notice to Tenant; and any notice or other communication intended for Tenant shall be mailed to Tenant at:

Casco Bay Arena, Inc.
P.O. Box 4600
Portland, ME 04112-4600

at such other address or addresses as Tenant may hereafter designate by notice to Landlord.

SECTION 27. Estoppel Certificates: Each party agrees that at any time, and from time to time, upon not less than fourteen (14) days prior notice, at either party's request, it shall execute, acknowledge and deliver to the other party, a statement in writing certifying, if such be the case, that this Lease is unmodified and in full force and effect, or if there are modifications, stating the modifications and that the Lease as modified is still in full force and effect, and that there are no defaults, defenses or offsets thereto then accrued, or stating those claimed, and stating the dates to which the rents or other charges have been paid.

SECTION 28. Governing Law: This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Maine.

SECTION 29. Partial Invalidity: If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

SECTION 30. Holding Over: In the event that Tenant shall continue in occupancy of the demised premises after the expiration of the term hereof, such occupancy shall not be deemed to extend or renew the terms of this Lease, but such occupancy shall continue as a tenancy at will from month to month upon the covenants, provisions and conditions herein contained at a rent equal to the rent in effect during the last lease year of the term, prorated and payable for the period of such occupancy. This Section shall not be construed as giving Tenant any right to hold over after the expiration of the term hereof except as is otherwise expressly provided in this Lease.

SECTION 31. Memorandum of Lease: The parties will at any time, at the request of either one, promptly execute multiple originals of an instrument, in recordable form which will constitute a memorandum or notice of lease, setting forth the names of the parties, a description of the demised premises, the term of this Lease and any other portions thereof, excepting the rental provisions, as either party may request.

SECTION 32. Interpretation: Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

SECTION 33. Entire Agreement: This instrument contains the entire and only agreement between the parties, and no oral statements or representations or prior written matter not contained in this instrument shall have any force or effect. This Lease shall not be modified in any way, except by a writing executed by both parties. It is expressly

agreed by the parties thereto that the terms and provisions of this Lease are intended to apply only with respect to the leasehold estate created with respect to the demised premises.

SECTION 34. Successors and Assigns: The covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective successors and assigns.

SECTION 35. No Broker: Landlord and Tenant agree that no brokers have been involved in this transaction, and each agrees to hold and indemnify the other harmless from and against any losses, damages, costs or expenses (including reasonable attorneys' fee) that either party may suffer as a result of claims made or suits brought by any other broker in connection with this transaction, the obligated party hereunder to be the party whose conduct gives rise to such claim.

SECTION 36. No Third-Party Rights. Nothing in this instrument shall be construed to provide any enforceable rights or benefits under this agreement to third parties. The parties to this agreement expressly agree that this agreement shall not be construed and is not intended to confer any enforceable rights or benefits to non-signatories of this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Lease under seal as of the day and year first above written.

WITNESS:

TOWN OF FALMOUTH

By:
Its Town Manager
"Landlord"

CASCO BAY ARENA, INC.

By:
Its President
"Tenant"