

12-13-2005

Occupancy Agreement (Form PM-2), December 13, 2005

Maine Department of Transportation

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OCCUPANCY AGREEMENT

This Occupancy Agreement (the "Agreement") is made and entered into this _____ day of October, 2005, by and between the **STATE OF MAINE**, by and through its **Department of Transportation**, with an address of 16 State House Station, Augusta, Maine 04333 (hereinafter referred to as "MaineDOT") and _____, with an address of _____ (hereinafter referred to as "Occupant").

BACKGROUND

By Notice of Layout and Taking dated _____, 2005, MaineDOT acquired a certain property in _____ Maine, as more particularly described below (the "Property"), in connection with a highway project involving the- relocation of the approach to the _____ on Route _____ (the "Taking"). The Property was owned by _____

_____ ("_____") which operates a _____ at that location. On the date of taking, MaineDOT paid to _____ an award of \$ _____ (the "Award") in full compensation for the Property and all of _____ rights therein. Construction of the said highway project (the "Project") is scheduled to commence on or about _____, 20____. _____ has requested that it be allowed to postpone the relocation of its _____ and remain on the Property while a new building is being constructed at another location. MaineDOT agrees that _____ may continue its operations at the Property under the terms and conditions set out in this Agreement as part of a full settlement of all of _____ claims and damages arising from the Taking and the Project. Concurrent with the execution of this Agreement, MaineDOT and _____ shall enter into a settlement agreement (the "Settlement Agreement") setting out the terms and conditions of said settlement.

AGREEMENT

In consideration of the above and as part of a full settlement of any and all claims that Occupant may have in connection with the Taking, MaineDOT and _____ agree that _____ may occupy the Property as described below and continue the operation of its _____ under the terms and conditions set forth below.

I. PROPERTY

Insert description

II TERM

The term of this Agreement shall commence on _____, 2005, and expire on _____, 2005 (the "Term"). With the consent of MaineDOT, this Agreement may be extended on a month to month basis after the expiration of the Term until such time as MaineDOT gives written notice to Occupant of its intention to terminate this Agreement fifteen (15) days in advance of such termination.

III. CONSIDERATION

As consideration for MaineDOT's entering into this Agreement, Occupant he terms of the Settlement Agreement between the parties, attached hereto and executed concurrently with this Agreement.

IV. COVENANTS

The parties hereto, for and in consideration of the mutual promises and agreements herein contained, covenant and agree as follows:

1. OCCUPANCY

Occupant agrees that the Property shall be used and occupied by Occupant only as a savings bank. Neither the Property nor any part thereof shall be used at any time during the Term of this Agreement by Occupant for any other purpose.

2. REQUIREMENTS OF LAW

Occupant shall comply with all laws, orders, ordinances and regulations of federal, state, county and municipal authorities, and with any direction of any public officer or officials, pursuant to law, which shall impose any duty or obligation with regard to Occupant's use or occupation of the Property. Occupant shall do or keep nothing, nor allow anything to be done or kept, on or about the Property which may be deemed extra hazardous as to insurance by fire insurance companies or which may increase MaineDOT's fire insurance rate or which may cause any of MaineDOT's insurance to be adversely affected.

3. INSURANCE

Occupant shall carry personal property and equipment insurance sufficient to cover the value of all personal property and equipment on the Property. Occupant shall carry insurance in an amount not less than one million U.S. dollars (\$ 1,000,000) for both personal injury and property damage occurring as a result of Occupant's activities and presence on, and its use, alteration or occupation of the Property; said coverage to apply to any and all claims or causes of action resulting in death, bodily injury or property damage; said amount being applicable to all such claims brought by any person or arising out of any single occurrence. Such policy shall name the State of Maine Department of Transportation as an additional insured, but for each such policy coverage and limits applicable to the Maine Department of Transportation shall only be in the amount of Four Hundred Thousand U.S. dollars (\$400,000) which amount shall include court costs, interest, and all other costs, and shall extend only to those acts and omissions for which the Maine Department of Transportation is liable under 14 M.R.S.A. § 8104-A of the Maine Tort Claims Act, as amended. And Furthermore, the coverage specified by this clause shall not' extend to any act or omission of the Maine Department of Transportation for which governmental immunity has been granted pursuant to 14 M.R.S.A. § 8103, as amended. Nothing contained herein shall affect, eliminate, remove or alter the protections afforded the Maine Department of Transportation by any section of said Maine Tort Claims Act. Occupant shall provide proof of insurance to MaineDOT at the time of execution of this Agreement.

4. SURRENDER OF PREMISES

Upon the expiration or other termination of the Term of this Agreement or any extension or renewal thereof, whether by reason of lapse of time or Occupant's default or otherwise, Occupant immediately shall quit and surrender the Property to MaineDOT, in as good order and condition as it is now, ordinary wear excepted. Occupant shall remove all personal property of Occupant as directed by MaineDOT.

5. USE OF PROPERTY

MaineDOT expressly makes no representation as to the fitness or condition of the Property for any particular use.

6. APPEARANCE OF PROPERTY

Occupant agrees to keep interior and exterior areas of the Property reasonably clean and neat, consistent with the operation intended by Occupant.

7. WASTE CLAUSE; INSPECTION

Occupant will not make or suffer any waste of the Property, and MaineDOT may enter during reasonable business hours to examine and inspect Property provided that such actions shall not unreasonably interfere with the conduct of Occupant's business.

8. UTILITIES

Occupant will pay when due all utility expenses associated with its occupancy and use of the Property including but not limited to charges for heat, gas, telephone service, water, sewer and electricity.

9. PERSONAL PROPERTY TAXES

Occupant will pay all personal property taxes levied or assessed in respect of the personal property and trade fixtures on the Property belonging to Occupant.

10. REPAIRS AND MAINTENANCE

While Occupant is occupying the Property, it shall maintain in good condition and repair the structural and exterior portions of the Property and repair any damage thereto. Additionally, Occupant will be responsible for rubbish removal, snow plowing, snow removal, landscaping, mowing and any other services required for maintenance and upkeep of the Property. Maintenance of all personal property and equipment located at the Property, including but not limited to computer systems, alarm systems, ATMs, vaults and telephone systems, shall be the sole responsibility of Occupant and at the Occupant's sole expense.

11. LIENS

Occupant shall not do or suffer anything to be done whereby the Property may be encumbered by a mechanic's lien by reason of work, labor, services or materials supplied or claimed to have been

supplied to Occupant. If any such mechanic's lien shall at any time be filed against the Property, Occupant shall, within thirty (30) days after actual notice of the filing, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction, or otherwise. Notice is hereby given that MaineDOT shall not be liable for any labor or materials furnished or to be **furnished to Occupant upon credit, and** that no mechanic's or other lien for any such labor or materials shall attach to the Property.

12. DAMAGE TO PERSONAL PROPERTY

All merchandise, trade fixtures, effects and property of every kind, nature and description belonging to Occupant or other persons on or about the Property shall be at the sole risk and hazard of Occupant, and if the whole or any part thereof shall be stolen or damaged or destroyed by fire, air, water or steam or by breakage or bursting of water pipes, steam pipes or other pipes,, or by leaking roofs, or by any other cause whatsoever, no part of any loss resulting, is to be charged to or borne by MaineDOT unless caused by the negligence of the MaineDOT, its agents or employees.

13. INDEMNIFICATION

To the fullest extent permitted by law, Occupant shall at its own expense defend, indemnify, and hold harmless the State of Maine, its agents, and employees from and against any and all liability, claims, damages, Penalties, losses, expenses, or judgments, just or unjust, arising from or in any way related to the occupation and use of the Property by Occupant, its officers, agents, servants, employees, invitees, or persons in privity with Occupant, including without limitation and all claims related to injury, death or property loss except to the extent that such injury, death, or property damage results from any negligent act or omission of the State of Maine, its agents, employees, or servants. Occupant shall, at its own cost and expense, defend any and all suits or actions, just or unjust, which may be brought against the State of Maine or in which the State of Maine may be impleaded with others including claims of contractors, employees, laborers, materialmen, and suppliers. In cases in which the State of Maine is a party, the State of Maine shall have the right to participate at its own discretion and expense and no such suit or action shall be settled without prior written consent of the State of Maine. Such obligation of indemnity and defense shall not be construed to negate or abridge any other right of indemnification or contribution running to State of Maine which would otherwise exist. Occupant waives all present and future claims against the State of Maine that might be considered exceptions to the immunity otherwise provided to MaineDOT by the Maine Tort Claims Immunity Act.

14. DEFAULT

If (i) the Property shall be abandoned by Occupant; (ii) Occupant shall default in the faithful observance or performance of any other covenant to be performed or observed by Occupant under this Agreement for thirty (30) or more days after MaineDOT shall give to Occupant notice in writing of such default and a demand to cure the same; (iii) a Receiver shall be appointed for Occupant or any substantial part of its property; then, and in any one or more of such events MaineDOT may, at its sole election, enter the Property and expel Occupant and remove its effects, and/or notify Occupant that its right to occupy the Property under this Agreement has terminated upon such entry or the giving of such notice, whichever shall first occur, and Occupant shall thereupon quit and surrender the Property to MaineDOT. Upon such termination, MaineDOT shall be entitled to recover damages as for breach of contract, and its reasonable attorneys' fees and any other expenses incurred in connection with the

retaking of possession of the Property and the removal and storage of Occupant's effects and the recovery of damages of the exercise of other rights and remedies.

IN WITNESS WHEREOF, the said STATE OF MAINE,, has hereunto caused this instrument to be executed and its corporate seal affixed by _____ its, _____ and the said _____ has executed this Lease on the day and year first above written.

SIGNED, SEALED AND DELIVERED
in the presence of

WITNESS

THE STATE OF MAINE

By: Its:

By: Its:

STATE OF MAINE

Date:

SS.

Personally appeared the above-named _____ its
of the STATE OF MAINE, and acknowledged the foregoing
instrument to be his free act and deed in his said capacity, and the free act and deed of
said corporation, before me,

Notary Public/Attorney at Law

STATE OF MAINE

Date:

, SS.

Personally appeared the above-named _____ and
acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and
deed of said corporation, before me,

Notary Public/Attorney at Law