



288 CENTRAL AVENUE  
DOVER, NH 03820  
WWW.DOVER.NH.GOV  
603.516.6000

## SUB-LEASE AGREEMENT

This Sub-Lease Agreement is entered into this <sup>December</sup> 16<sup>th</sup> day of November, 2019, by and between **Gregg Schweitzer, Mgr. Mbr, Bubby's Delicatessen, LLC d/b/a Bubby's Bagel and Deli**, 411 Cutts Avenue, Portsmouth, NH 03801 corporation (hereinafter called "Lessee") and the **City of Dover**, New Hampshire, of 288 Central Avenue, Dover, County of Strafford and State of New Hampshire (hereinafter referred to as "City") (hereinafter "Lessee" and "City" collectively "the Parties")

### 1. DESCRIPTION.

The City hereby sub-leases to the Lessee a portion of the Dover Transportation Center building leased by the City of Dover, including access to the two (2) bathrooms, utility / maintenance closet, as shown on the attached **Exhibit A** (hereinafter the "Premises") and located at 33 Chestnut Street, Dover, New Hampshire (hereinafter the "Property"). In conjunction with the use of the Premises, Lessee shall be granted 3 parking permits for use solely by Lessee's employees within the larger parking lot on the Property. The City shall also provide six (6) 15-minute free parking spaces near the Transportation Center which will be open to the public. The cost for the permits shall be contained within the lease rental rate set forth in paragraph 4. The City shall be solely responsible for relocating the so-called "Santa Shack" so that it is at least 100 feet away from the Premises.

Lessee shall have the exclusive right during the Term (hereinafter defined) to sell or otherwise provide food or beverages to consumers within the Dover Transportation Center and platform/track area. The Lessee shall keep the building unlocked and open to the public during its business hours which are typically Monday through Friday between 6:00 a.m. and 2:00 p.m. in addition to any other hours the Lessee is open for business. Operating times do not include State or City holidays, serious weather events, and/or acts of God which may interfere with the daily operation of the Lessee's business and as to which Lessee shall have the sole discretion on days and hours of operation for same. The City may maintain/staff a Dover Transportation Center volunteer booth in the seating area of the Premises in a location shown on Exhibit A. Said volunteers may be available to the general public within the Premises. The City will provide the Lessee with information regarding the City and its transportation services with both parties agreeing that this will be to their mutual benefit. There is no requirement that the volunteer booth be staffed during any particular operational hours during the period the Lessee has the building open. In addition, the City and volunteers will have control of the office/storage and mechanical space shown on Exhibit A as needed, and said space shall only be reconfigured per the City. The Lessee shall be allowed to share space in the storage room for employees' personal items and Lessee's cash safe and/or desk, per Exhibit A.

Acknowledging that the Premises and Property is primarily a Transportation Center, and users of the Premises and Property include transient users, Lessee and the City shall



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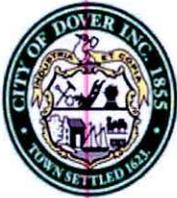
cooperate, if and only to the extent allowed by law, to move along or remove, as the case is required, loiterers in any portion of the Premises in that both parties agree it is in both their respective interest to prevent individuals from staying in the Premises for extended periods of time, including but not limited to the seating or bathroom area, without utilizing the café or obtaining information from the City in regard to its transportation or other services Lessee shall attend a one-day training on the public transportation systems that are available at the Dover Transportation Center including, but not limited to COAST bus, Wildcat bus, Amtrak Downeaster, and Dover Community Trail, which will be scheduled by the City. The Lessee shall ensure its employees are generally familiar with the operations of these public transportation systems at the Dover Transportation Center.

Lessee shall have the right at its expense to install one (1) sign on the wire fence on the upper platform for the train and one (1) on the opposite side facing the parking lot for which commuters for the buses congregate. Said signs on the fence shall be directional signs with an arrow pointing to the café and be no greater than 2' long and 1' high. Lessee shall also have the right, on all four sides of the building, to place one (1) sign identifying the café. The look and design of said special and display materials shall be in keeping with the general appearance of the Premises, and shall be professionally created and managed. The Lessee may, at its own expense, purchase and use a temporary A-Frame chalk board sign to display specials on the track/platform area. Lessee shall also have the opportunity to utilize the top panel on the street side of the freestanding sign at the Chestnut Street entrance of the Property with said sign being created at the sole expense of the Lessee. All the above said signs, including the parking signs referred above, shall comply with all municipal ordinances by right and require permits. Banners, and electronic message centers shall not be included in any sign package. The City will support and assist with the expeditious processing of the sign applications.

## 2. TERM

This Sub-Lease shall commence when Lessor gives Lessee keys to and possession of the Premises. Thereafter, the initial term of this Sub-Lease shall endure until March 1st, 2023, (the "initial three (3) year Term"), with two (2) 5-year renewal option periods with each option by the Lessee to be exercised in writing within 90 days of the end of the preceding initial three (3) year Term, all of which collectively shall be referred to as "the Term." The Parties acknowledge the City's right and obligation to sub-lease the Premises to Lessee for the Term is subject to and contingent upon the existence of a primary lease between Cocheco Mills Holdings LLC and the City which, as amended, ends on May 31, 2021 ("Cocheco Lease"), which primary lease is subject to the City's option, at its discretion, to renew for an additional 20-year period. Should the City's lease with Cocheco Mills Holdings, LLC, terminate or be terminated for any reason during the Term, the City reserves the right to terminate this lease after a 360 day written notice.

## 3. UTILITIES



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Once given keys to and possession of the Premises as specified in paragraph 2 above, the Lessee shall be solely responsible for payment of utilities, including gas, electricity, water, and sewer utilized inside the Premises. The Lessee shall pay the utilities in the amount of the difference between the previous monthly average before tenant took occupancy and any future utilities costs on the property. The Lessee shall reimburse the City on a monthly basis for its share within 30 days of receipt of those charges with the meter readings from the City.

#### **4. RENT**

Pursuant to paragraph 3 above, Lessee shall be responsible during the Term of this Lease, including any renewal option periods, to pay the utilities for the Premises.

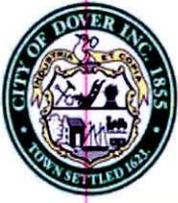
For the initial 3-year Term of the Lease, reimbursement to the City of those said utilities for the interior of building shall be the sole rent paid by Lessee. Commencing in year 4 (the first of two (2) 5- year renewal periods) of the Term of this Lease rent shall be \$800.00 per month ("Base Rent"), in addition to utility reimbursement pursuant to paragraph 3 above. Each year thereafter Base Rent shall increase by \$100.00, in addition to utility reimbursement consistent with paragraph 3 above. By way of example, in year 5 of the Lease Term Base Rent per month shall be \$900.00 plus utilities, in year 6 of the Lease Term Base Rent shall be \$1000.00 per month plus utilities, and so forth.

#### **5. IMPROVEMENTS AND REPAIR**

The Lessee shall make improvements to the Premises, subject to the written approval from the City, at its sole cost as additional consideration for its rental of same. Both single-occupant bathrooms shall be rendered unisex

Improvements may include:

- installation of water and utility lines for café
- installation of cabinetry/counters/demising walls/access doors to prep area including walk-in refrigeration unit
- floor repairs as needed
- painting interior as mutually determined
- necessary IT/security infrastructure to operate business
- equipping the Premises for the operation of the café for benefit of customers and Lessee's employees
- make space marketable for future tenants should lessee not renew
- relocating electrical equipment/panels
- building of secondary office/storage for lessee's use if Lessee chooses to build
- If any building code / life safety equipment and installation requirements for same



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are necessary for the leased premises change of use prior to Lessee taking possession and obtaining a Certificate of Occupancy, Lessee shall have the sole option to deem this Lease null and void, thereby terminating same;

Attached as **Exhibit B** is an initial plan of the layout of the currently proposed improvements in the café area of the Premises. The City shall cooperate with Lessee's efforts to expeditiously obtain the permits necessary for these improvements all subject to compliance with municipal ordinances. The Parties acknowledge that time is of the essence to get these improvements put into place for the operation of the café and for the Lessee's financing.

The Parties further acknowledge that in consideration of the economic terms of this Lease including rent provisions above, the Lessee is not requesting the City to pay for any of these improvements for the build-out of the Café, yet it is considered as part of the consideration of the overall Lease Terms including the rent to be paid by the Lessee. The City is in no way responsible for the costs of the improvements, modifications, or alterations.

The Lessor will be responsible for the repair of the HVAC, exterior walls, water and sewer lines to the extent they are outside the Premises, structural portions of the building, exterior walls (excluding the Lessee's signs), roof, and parking areas and sidewalks including, but not limited to, snow removal and ice removal as necessary. Nothing within this Lease shall be construed as a creating a joint venture between Lessee and the City regarding the operation of that business.

#### **6. PERSONAL PROPERTY REMAINING FOLLOWING LEASE TERMINATION**

The demising walls and countertops and bathroom improvements shall be considered permanent improvements of the Premises, yet removable tables and seating, as well as all equipment including walk-in refrigeration, shall not be part of the Premises ("Personal Property or Business Trade Fixtures"). To the extent Lessee or its lender does not remove said Personal Property or Business Trade Fixtures from the Premises within 60 days of the termination of the Lease, unless other written arrangements are made between the City and the Lessee, the City may take possession of the personal property subject to the security interest of the Lessee's lender.

Lessee agrees that any and all improvements, modifications, alterations to the Premises, other than Lessee's Personal Property or Business Trade Fixtures, shall, at City's option, be deemed real property and a part of the Premises and property belonging to the City. If City elects to treat any such improvements, modifications, or alterations as City's property, then the City has no obligation to reimburse Lessee for all or any portion of the cost or value of any such modifications, alterations or improvements so surrendered to the City. Upon termination of the Lease for any reason, Lessee shall ensure the Premises are safe, functional, code-compliant, and not in disrepair or in any need of further repair. Lessor shall have the right to inspect the Premises upon such termination to review and determine



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compliance. For purposes of this paragraph, all lighting, plumbing, electrical, heating, ventilating and air conditioning fixtures, partitioning, window coverings, wall coverings, and floor coverings previously or hereinafter installed shall be deemed improvements to the Premises and not trade fixtures of the lessee.

Upon termination of the Lease for any reason, Lessee shall ensure the Premises are tendered back to Lessor broom clean and in a state that is safe, functional, code-compliant, and not in disrepair or in any need of further repair. Lessor shall have the right to inspect the Premises upon such termination to review and determine compliance.

## 7. OPERATION AND MAINTENANCE

The Premises of this Lease is for the purpose of the operation of a food and beverage service establishment and Lessee, at its own expense, shall maintain and keep the Premises in a sanitary and good working order and condition and remove all waste from the Premises as needed. Food waste shall be placed in a secure container prior to disposal by Lessee. Further, Lessee shall be responsible for placing of all solid waste and recyclables generated on the Premises in outside dumpster on the Property, and shall provide for the emptying of said dumpsters at its cost. The dumpster shall be provided by the City with a lock that the City and Lessee shall have a key. The Lessee shall help keep the surrounding area free from trash and acknowledges keeping the surrounding around outside the premises behooves the business and transportation patrons and therefore is a joint effort between the City, Train Volunteers, and Lessee. The parties will separately negotiate a maintenance agreement or joint memorandum of understanding to address general maintenance obligations of the respective parties.

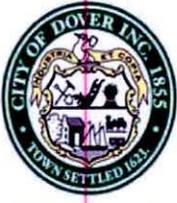
Lessee shall keep the building including bathrooms open and clean for the public while the Café is open for business. In any event, Lessee shall have access to the building 7 days a week, 24 hours a day.

City shall be responsible for the maintenance, upkeep and liability insurance for the two (2) public bathrooms and provide the Lessee with an indemnification and hold harmless agreement in this regard. Public bathrooms shall be cleaned by the City on a weekly basis and provide paper products as needed.

Lessee shall keep the Premises at no less than 62 degrees Fahrenheit year round and no warmer than 85 degrees Fahrenheit in the summer months.

Lessee shall be responsible for any applicable taxes related to the operation of its business and related to the income generated by the operation of its business.

## 8. ACCESS TO PREMISES



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The City shall have right to enter the Premises during operating hours as well as non-operational hours for emergencies and shall also have access at all times to communication equipment located in one of the currently so-called office/storage closet.

The City and public have right to enter the Premises during non-operational hours. The public will have access to the premises if the City staff or train volunteers are present or if the Lessee is open for business. If no one is on the Premises, then the building will remain locked and secured.

9. **UNAVOIDABLE CASUALTY**

In the event of an unavoidable casualty where the Premises or portion of it is destroyed, damages, or deemed unfit for use or occupancy, either Party may terminate this Lease.

10. **SUBLETTING OR ASSIGNMENT**

Lessee shall neither sublet nor assign the Premises or any portion thereof or parking spaces without prior written consent by the City, which shall not be unreasonable withheld.

11. **DEFAULT/EARLY TERMINATION**

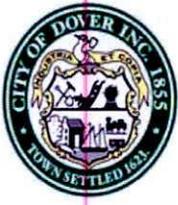
In the event the Lessee fails to perform any of its obligations under this Lease (including not cooperating with the Train Rider Volunteers or the City), and fails to cure any said failure to perform within 30 days after written notice, the City, at its option, may deem the Lessee to be in default and terminate this lease, in addition to any other remedies allowable by law.

12. **INDEMNIFICATION**

Lessee agrees to defend (with counsel acceptable to the City), indemnify and save harmless the City regarding all actions or inactions of Lessee or its agents, employees, contractors, subcontractors, invitees, licensees or other such persons or entities that take place within the leased Premises and the City agrees to indemnify and save harmless the Lessee from all actions or inactions of the City or its agents or volunteers, and/or third parties that take part outside of the leased Premises and/or in the two (2) public restrooms.

13. **INSURANCE**

Lessee shall procure and maintain in force, at its expense and throughout the duration of this lease and any extension, liability and property damage insurance for the Premises to be considered primary coverage. Said insurance to provide at least One Million Dollars per occurrence and Two Million Dollars in the aggregate in liability coverage, and at least Five Hundred Thousand Dollars per occurrence and in the aggregate in property damage coverage. City has no obligation for any loss to Lessee's personal property. Proof of



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Insurance shall be supplied to the City at the time of occupancy. City shall be named as an additional insured on the Lessee's insurance policy, which coverage shall apply on a primary and noncontributory basis, and, subject to the dollar amounts specified above, cover City with the same scope of coverage provided to the Lessee under the policy without subjecting City to any different or additional terms, conditions, limitations or exclusions. A condition of the insurance coverage shall be thirty (30) days' notice to City upon cancellation of the policy. The Lessee shall also provide City certificates of renewal for any applicable insurance policy no later than ten (10) business days prior to the expiration of said policy. Additionally, Lessee shall procure and maintain in force, at its expense, during the term workman's compensation insurance for employees, as required under New Hampshire law.

**14. LIENS AND ENCUMBRANCES**

Lessee shall not create or allow any lien, encumbrance or charge on the Premises or on the rents or income therefrom which may be superior to the City's rights hereunder.

**15. PARTIES BOUND**

This Lease and any addendums are binding upon the heirs, executors, administrators and assigns of the parties hereto and constitutes the entire Lease between the parties.

**16. NOTICE**

Any notice required to be given under this Lease shall be in writing, and shall be deemed properly served if delivered in person, or by overnight mail by a commercially recognized carrier, or on the third (3<sup>rd</sup>) day after deposit in the United States mail, as certified or registered mail, return receipt requested, postage prepaid, and sent as follows:

If to Lessee, at:                   **Gregg Schweitzer**  
411 Cutts Avenue  
Portsmouth, NH 03801

And if to the City, at:           City of Dover  
288 Central Avenue  
Dover, NH 03820  
Attention: City Manager

**17. MODIFICATION OF LEASE**

This Lease contains the entire Lease between the parties and shall not be modified in any manner except by an instrument in writing executed by the both parties.



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**18. SECTION HEADINGS**

The section headings throughout this instrument are for convenience and reference only, and the words contained herein shall in no way be held to explain, modify or amplify, or aid in the interpretation, construction or meaning of the provisions of the Lease.

**19. SEVERABILITY**

Any determination that any provision of this Lease or any application thereof is invalid, illegal or unenforceable in any respect in any instance shall not affect the validity, legality or enforceability of such provision in any other instance or the validity, legality or enforceability of any other provision of this Lease.

**20. LAWS GOVERNING**

The parties agree that this Lease has been entered into in the State of New Hampshire and that the laws of the State of New Hampshire will govern all disputes under this Lease and determine all rights hereunder.

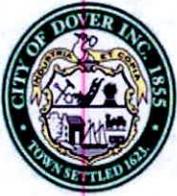
**21. TAXES**

Pursuant to RSA 72:23, I, lessee agrees to pay all properly assessed current and potential real and personal property taxes on the Premises no later than the due date. Lessee is obligated by the foregoing to pay real and personal property taxes on structures or improvements added by the lessee. Failure of the lessee to pay the duly assessed personal and real estate taxes when due shall be cause to terminate said lease by the lessor.

**22. MERGER**

This Lease contains all terms and conditions agreed upon by the parties hereto and no other agreements or representations, oral or otherwise, regarding the subject matter of this Lease shall be deemed to exist, provided, however, that any subsequent modifications or agreements affecting this Lease shall be in writing and signed by the parties hereto.

**IN WITNESS WHEREOF**, the parties have hereunto executed this Lease this 16<sup>th</sup>  
day of ~~November~~, 2019.  
*December*



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**Name**

Ronna Benton  
Witness

By: [Signature]  
Gregg Schweitzer, Mgr. Mbr.  
Bubby's Delicatessen, LLC d/b/a  
Bubby's Bagel and Deli

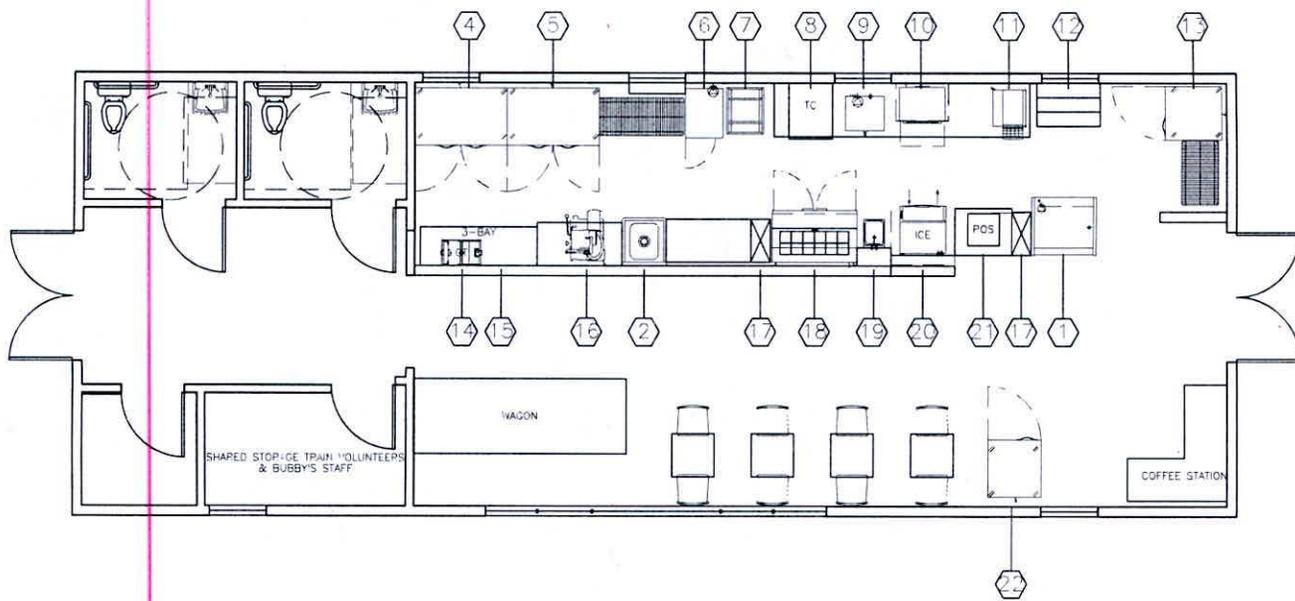
[Signature]  
Witness

**The City of Dover**  
By: [Signature]  
J. Michael Joyal, Jr., City Manager

[Signature]  
Witness

**Acknowledged and Assented to By**  
By: [Signature]  
Cocheco Mills Holdings, LLC

# Exhibit A & B



NOT FOR CONSTRUCTION  
EXHIBIT A

ITEM NO.	QTY	EQUIPMENT CATEGORY
1	1	DELI CASE
2	1	PREP SINK
3		SPARE
4	1	REACH-IN FREEZER
5	1	REACH-IN REFRIGERATOR
6	1	CONVECTION OVEN
7	1	SHEET RACK
8	1	TURBO CHEF
9	1	COFFEE MAKER
10	1	MICROWAVE OVEN
11	1	CONVEYOR TOASTER
12	1	BAGEL DISPLAY
13	1	1 DR REACH-IN REFRIGERATOR
14	1	GREASE INTERCEPTOR
15	1	3-BAY POT SINK
16	1	SLICER
17	AS REQ	TRASH
18	1	SANDWICH/SALAD PREP
19	1	HAND SINK
20	1	UNDER BAR ICE MAKER
21	2	POS
22	1	BOTTLE MERCH FRIDGE
23		SPARE