

Tuesday, May 22, 20



Reviewed for Code Compliance
Permitting and Inspections Department
Approved with Conditions

10/12/2018

Cover Letter for Permit Application
The Fresnel Theater Inc.

Location: 17 Free St. Portland, ME
Parcel: 027 F011001 (Basement of 1 Monument Way)

Type of Permit: Commercial Interior Alteration
Purpose: Tenant Fit-Up
Zone: B3 (DEOZ)
Current Usage: Gym
Proposed Usage: Use L: Theaters and performance and exhibition halls

Included in Documents:

Commercial Interior Alteration Checklist
State Fire Marshal permit application receipt
Lease agreement

Hello,

This is a permit application for a change of use for 17 Free St. on behalf of The Fresnel Theater, a 501(c)3 improvisation theater.

There is no construction needed, just a change of use.

We have filed for a state fire marshal permit as a theater and will be concurrently filing for an entertainment permit with the City of Portland.

Please let me know if there are any questions,

Krista Simonis, Managing Director
krista@fresneltheater.org
c: 209-352-5284

10/12/2018

THE FRESNEL THEATER - Descriptions of use of space and personal.

4 messages

Matt Russell <matt@fresneltheater.org>

Fri, Oct 12, 2018 at 11:11 AM

To: jrioux@portlandmaine.gov, bstephens@portlandmaine.gov

Cc: Krista Simonis <krista@fresneltheater.org>

Hello, per your request, and for eliminating confusion, here is what we do in our theater.

The Fresnel Theater is a 40 seat theater, with a self enforced occupancy of 49 individuals. We perform shows on Friday and Saturday nights from 7:00 pm - 8:45 pm, and 9:15 pm - 10:30 pm. Along with classes sporadically throughout the year on two weekday evenings from 6:30 pm - 8:30 pm.

Our Friday and Saturday shows include a total of 9 performers/staff, listed below.

- 7 Performers on stage
- One person running lights and sound
- One person running box office/concessions

Our ticket sales are limited to 40 seats per show.

There is a one half hour turn around from one show to the other with people exiting the theater from 8:45 to 9, and entrance for the second show doesn't begin until 9:00 pm. There is always some carry over from one show to the next, so those who are attending both may not exit.

On evenings we hold classes, the class size is limited to 16 students max, with one or two instructors.

We offer private trainings and corporate shows at the client's premises.

Overall our theater is only open to the public less than 16 hours a week.

For show descriptions, and class descriptions visit www.thefresneltheater.org/shows

Cheers.

Matthew Russell
Creative Director and Head Coach
The Fresnel Theater & CSz Maine
c: 207-619-1418
www.thefresneltheater.org

Brian Stephens <bstephens@portlandmaine.gov>

Fri, Oct 12, 2018 at 11:17 AM

To: Jeanie Bourke <jmb@portlandmaine.gov>, Jason Grant <jgrant@portlandmaine.gov>

[Quoted text hidden]

--

Brian Stephens
Code Enforcement Officer/Plan Reviewer

City of Portland
Permitting and Inspections Department
389 Congress Street - Room 315
Portland, Maine 04101

bstephens@portlandmaine.gov

(207) 874-8704



Brian Stephens <bstephens@portlandmaine.gov>
To: matt@fresneltheater.org
Cc: Jonathan Rioux <jrioux@portlandmaine.gov>, Krista Simonis <krista@fresneltheater.org>

Fri, Oct 12, 2018 at 11:54 AM
Reviewed for Code Compliance
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Hello Matthew,

In your description please indicate how ticket sales are to be limited (I believe you mentioned this to us in our meeting earlier today).

If you have already sold tickets to events at this venue, please share the ticket numbers per event.

Thanks, Brian
[Quoted text hidden]
[Quoted text hidden]

Matt Russell <matt@fresneltheater.org>
To: Brian Stephens <bstephens@portlandmaine.gov>
Cc: Jonathan Rioux <jrioux@portlandmaine.gov>, Krista Simonis <krista@fresneltheater.org>

Fri, Oct 12, 2018 at 12:05 PM

I have amending the statement above and am resending it below.

The Fresnel Theater is a 40 seat theater, with a self enforced occupancy of 49 individuals. We perform shows on Friday and Saturday nights from 7:00 pm - 8:45 pm, and 9:15 pm - 10:30 pm. Along with classes sporadically throughout the year on two weekday evenings from 6:30 pm - 8:30 pm.

Our Friday and Saturday shows include a total of 9 performers/staff, listed below.

- 7 Performers on stage
- One person running lights and sound
- One person running box office/concessions

Our ticket sales are limited to 40 seats per show.

There is a one half hour turn around from one show to the other with people exiting the theater from 8:45 to 9, and entrance for the second show doesn't begin until 9:00 pm. There is always some carry over from one show to the next, so those who are attending both may not exit. Our ticketing software, ThunderTix, allows us to cap the number of tickets available to any number we choose and we have it set to forty currently. On average each live performance we sell 20 tickets. Our box office staff, which is myself and managing director Krista Simonis at the moment, keep track of any walk up tickets on a tally sheet as to not sell more than 40 tickets per event.

On evenings we hold classes, the class size is limited to 16 students max, with one or two instructors.

We offer private trainings and corporate shows at the client's premises.

Overall our theater is only open to the public less than 16 hours a week.

For show descriptions, and class descriptions visit www.thefresneltheater.org/shows

Matthew Russell
Creative Director and Head Coach
The Fresnel Theater & CSz Maine
c: 207-619-1418
www.thefresneltheater.org
[Quoted text hidden]

[Quoted text hidden]

Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.



Permitting and Inspections Department
Michael A. Russell, MS, Director

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Commercial Interior Alteration Checklist

(Including change of use, tenant fit-up*, amendment and/or interior demolition)

All applications shall be submitted online via the Citizen Self Service portal. Refer to the attached documents for complete instructions. The following items shall be submitted (please check and submit all items):

- Commercial Interior Alterations Checklist** (this form)
- Plot plan/site plan** showing lot lines, shape and location of all structures, off-street parking areas and noting any dedicated parking for the proposed business
- Proof of Ownership or Tenancy** (If tenant, provide lease or letter of permission from landlord. If owner, provide deed or purchase and sale agreement if the property was purchased within the last 6 months.)
- Key plan** showing the location of the area(s) of renovation within the total building footprint and adjacent tenant uses
- Life Safety Plan** drawn to scale, showing egress capacity, any egress windows, occupancy load, travel distances, common path distance, dead end corridor length, separation of exits, illumination and marking of exits, portables fire extinguishers, fire separations and any fire alarm or fire sprinklers systems
- Existing floor plans/layouts** drawn to scale, including area layout, removals, exits and stairs
- Proposed floor plans/layouts** drawn to scale, including dimensions, individual room uses and plumbing fixtures

Please note: All plans shall be drawn to a measurable scale (e.g., 1/4 inch = 1 foot) and include dimensions. Construction documents prepared and stamped by a licensed architect or engineer shall be required for certain projects in accordance with the stated [Policy on Requirements for Stamped or Sealed Drawings](#).

Additional plans may also require the following (As each project has varying degrees of complexity and scope of work for repairs, alterations and renovations, some information may not be applicable. Please check and submit only those items that are applicable to the proposed project.):

- Code information** including use classifications, occupant loads, construction type, existing/proposed fire alarm, smoke and sprinkler protection systems, egress (exits and windows), fire separation areas and fire stopping
- Demolition plans and details for each story** including removal of walls and materials
- Construction and framing details** including structural load design criteria and/or non-structural details
- New stairs** showing the direction of travel, tread and rise dimensions, handrails and guardrails
- Wall and floor/ceiling partition types** including listed fire rated assemblies
- Sections and details** showing all construction materials, floor to ceiling heights, and stair headroom
- New door and window schedules** (include window U-factors)
- Accessibility features and design details** including the Certificate of Accessible Building Compliance
- Project specifications manual**
- A copy of the State Fire Marshal construction and barrier free permits.** For these requirements visit:

http://www.maine.gov/dps/fmo/plans/about_permits.html

Food service occupancies require additional plans and details for review, such as occupant load per square foot area for tables and chairs, number of fixed bar, banquet and booth seating, equipment and plumbing fixture plans with schedule, hood location and interior finish materials. Accessible seating and counter details shall be included, please refer to this site: http://www.alphaonenow.org/userfiles/resto_access_sheet.pdf

Separate permits are required for internal and external plumbing, electrical installations, heating, ventilating and air conditioning (HVAC) systems, appliances and commercial kitchen hoods.

*Tenant fit-up: construction necessary within the demising walls of a leased space, including partitions, finishes, fixtures, lighting, power, equipment, etc. making the interior space suitable for the intended occupation.



Permitting and Inspections Department
Michael A. Russell, MS, Director

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Certificate of Accessible Building Compliance

All facilities for the use of a public entity shall be readily accessible by individuals with disabilities.

Project Name: _____ Project Address: _____

Classification: Title II (State/Local Government) Title III (Public Accommodation/Commercial Facility)

New Building

- Americans with Disabilities Act (ADA)
- Maine Human Rights Act (MHRA)
 - Barrier Free Certification (\$75,000+ scope of work)
 - State Fire Marshal Plan Review Approval

Alteration/Addition

- Existing Building Completion date:
 - Original Building: _____
 - Addition(s)/Alteration(s): _____
- Americans with Disabilities Act (ADA)
 - Path of Travel Yes No
- Maine Human Rights Act (MHRA)
 - Exceeds 75% of existing building replacement cost
 - Barrier Free Certification (\$75,000+ scope of work)
 - State Fire Marshal Plan Review Approval

Occupancy Change/Existing Facility

- New Ownership – Readily Achievable Barrier Removal: _____

Residential

- Americans with Disabilities Act (ADA)
- Fair Housing Act (4+ units, first occupancy)
- Maine Human Rights Act (MHRA)
 - Covered Multifamily Dwelling (4+ units)
 - Public Housing (20+ units)
- Uniform Federal Accessibility Standards (UFAS)
- None, explain: _____

Contact Information:

Design Professional:

Owner:

Signature
(This is a legal document and your electronic signature is considered a legal signature per Maine state law.)

Signature
(This is a legal document and your electronic signature is considered a legal signature per Maine state law.)

Name: _____

Name: _____

Address: _____

Address: _____

Phone: _____

Phone: _____

Maine Registration #: _____



Regulatory Licensing & Permitting



FIRE MARSHAL'S OFFICE ENTERTAINMENT LICENSING 52 STATE HOUSE STATION, AUGUSTA, ME 04333-0052

Transaction Type: **New Theater License** | License: **THEATER AND MOTION PICTURE HOUSE**

Transaction Receipt

Transaction Details

- Date of Transaction: **05/22/2018 12:50 PM**
- Transaction Number: **1988791-2100858**
- Transaction Type: **New Theater License**
- License Type: **THEATER AND MOTION PICTURE HOUSE**
- License: **THE**
- Regulator:

**FIRE MARSHAL'S OFFICE ENTERTAINMENT LICENSING
52 STATE HOUSE STATION, AUGUSTA, ME 04333-0052**

- Fee Paid:
Fees are nonrefundable.

**THEATER PERMIT FEE: \$106.00
Total: \$106.00**

Fees are nonrefundable.

Application Instructions

To apply for a license, please complete this online application and submit online with your credit card payment. If you do not wish to pay by credit card, you may download a [application form](#) here, then print, complete, and mail the application with your check.

Facility Information

Status: **New**
Facility Name: **THE FRESNEL THEATER INC.**

Facility Contact Information

Address

If any Street Location address exists or is added, it will be displayed on the State's Web Site.

Address: **17 FREE ST, PORTLAND, ME 04101-3907 US (New)**
Address Type: **Mailing, Street Location**

Phone

If you provide phone(s), please indicate which is the Location phone.

Number: **+1 (207) 619-1418 (New)**
Type: **Location**

Email

Email Address: **krista@fresneltheater.org (New)**
Email Type: **Primary**



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Other Contact Information

Business Owner

Status: **New**
Name: THE FRESNEL THEATER INC.
Attention: KRISTA SIMONIS
Address: 17 FREE ST, PORTLAND, ME 04101-3907 US
Phone: +1 (207) 619-1418
Email: krista@fresneltheater.org

Building Owner

Status: **New**
Name: EAST END CORP.
Attention:
Address: PO BOX 10291, PORTLAND, ME 04104-0291 US
Phone: +1 (207) 838-6781
Email: stevewhittier@eastendcorp.com

Key Holder

Provide contact information for the person having a key to the premises to allow for inspection

Status: **New**
Name: THE FRESNEL THEATER INC.
Attention: KRISTA SIMONIS
Address: 17 FREE ST, PORTLAND, ME 04101-3907 US
Phone: +1 (207) 619-1418
Email: krista@fresneltheater.org

Viewing Rooms

Please provide the number of viewing rooms in the facility.

Status: **New**
Count: 1

Attest & Agree

You cannot submit this request unless you attest to the accuracy of the information provided within this application.

I hereby certify that the information provided on this application is true and accurate to the best of my knowledge and belief.

Questions about this service? Contact FIRE MARSHAL'S OFFICE ENTERTAINMENT LICENSING at: (207) 626-3880 or email: entertainmentfmo.mdps@maine.gov

Credits



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Information

[Maine.gov](#)
[Site Policies](#)
[Contact technical support.](#)

Transaction Security





10/12/2018

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made as of the 17th day of May, 2018 (the "Effective Date") by and between **East End Corp.**, a Maine corporation with a mailing address of Post Office Box 10291, Portland, Maine 04104 ("Lessor") and **The Fresnel Theater Inc.**, a Maine nonprofit corporation with a mailing address of 17 Free Street, Portland, Maine 04101 ("Lessee").

ARTICLE I – PREMISES; LANDLORD'S WORK; RENT COMMENCEMENT DATE

1.01 Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, a portion of the building located at 17 Free Street, Portland, Maine (the "Building"), as follows:

2,495 square feet of space located at the lowest (basement) level of the Building, as depicted on the sketch plan attached to this Lease as Exhibit A (the "Premises"). The Premises also includes a portion of stairway, hallway, and patio area as depicted on Exhibit A.

1.02 The Premises shall be used by Lessee only for use as a live theater, theater/acting classes, associated office space, and ticket booth, service of beer, wine, non-alcoholic beverages, and prepared foods, and for no other purpose (all of the foregoing, collectively, "Lessee's Permitted Use"). Lessee shall not use the Premises for beer, wine, or food service unless and until Lessee has obtained all applicable licenses, permits, and approvals for the same (all of the foregoing, collectively, the "Use Permits"). Lessor agrees to cooperate reasonably with Lessee (at no additional cost, liability, or expense to Lessor) in connection with Lessee's pursuit and procurement of the Use Permits, including providing documentation necessary (such as but not limited to plot plan/site plan, key plan, and existing floor plans drawn to scale). If building owner signature is required as part of the application process to acknowledge consent, Lessor shall execute any applications that are reasonably acceptable to Lessor, but in no event shall Lessor be named as an applicant or listed as a permittee on any Use Permits, and in no event shall Lessor bear any liability whatsoever for any violation of any Use Permit.

1.03 Lessor agrees to improve the Premises as follows ("Lessor's Work"):

- A. Repair hanging air duct.
- B. Block, close, or seal off abandoned staircase.
- C. Replace existing carpet with reconditioned concrete floor.
- D. Repaint main room.
- E. Remove shower from men's bathroom and replace with a toilet.
- F. Replace existing toilets.



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Landlord shall complete Lessor's Work in a good, workmanlike and timely manner using standard quality materials mutually agreed-upon by Lessor and Lessee, and in compliance with all applicable codes and regulations. In addition to completing Lessor's Work in accordance with the requirements of all applicable local government building authorities, Lessor shall remove all personal property and signage of previous tenants and shall deliver the Premises to Tenant (a) in broom clean condition; (b) free and clear of any other tenant or occupant; (c) with operational HVAC, electrical power, water and sewer; and (d) in a secured (i.e., locked or lockable with no broken windows or doors) condition. Lessee's occupancy of the Premises shall begin on the day after the day on which Lessor completes Lessor's Work to Lessee's reasonable satisfaction in accordance with the above requirements (the "Rent Commencement Date"). Lessee shall have no obligation to pay Rent hereunder until the Rent Commencement Date.

ARTICLE II - TERM

2.01 The term of this Lease (the "Term") will begin on the Effective Date and will end at 5:00 P.M. local time on the fifth (5th) anniversary of the Rent Commencement Date (the "Expiration Date"). Lessee shall have the option to renew this Lease for up to two (2) periods of two (2) years each by giving written notice of renewal to Lessor no less than sixty (60) days prior to the then-current Expiration Date, provided that Lessee is not then in default of any obligation, requirement, obligation, or covenant under this Lease beyond the expiration of all applicable notice, grace and cure periods. Notwithstanding the foregoing, if on the day of the written notice of renewal or on the last day of the then-current Term (prior to the renewal), Lessee is in default, but the applicable notice, grace, or cure period has not expired as of such date, then the notice of renewal, or actual renewal, as the case may be, will be conditioned upon the cure of such default within the applicable notice, grace, or cure period; and a failure to cure within said period shall result in the notice of renewal and/or renewal term being null and void, and this Lease shall be deemed to expire on the original Expiration Date as if no notice of renewal or renewal term had been issued or taken effect. If Lessee exercises its option to extend this Lease, the new Expiration Date shall be the second (2nd) anniversary of the then-current Expiration Date. There shall be no further options to extend or renew this Lease following the second 2-year renewal.

ARTICLE III - RENT AND SECURITY DEPOSIT

3.01 Beginning on the Rent Commencement Date and continuing thereafter on the first (1st) day of each month for Years 1 and 2 of the Term, Lessee covenants and agrees to pay to Lessor, in advance, monthly base rent in the amount of Three Thousand Dollars (\$3,000.00) per month (the "Base Rent"), for a total annual Base Rent of \$36,000.00, without notice, setoff, or demand. All payments are to be made to Lessor or Lessor's designated agent at such place as Lessor may designate in writing from time to time. Lessee agrees that unless instructed otherwise by Lessor, all payments of Base Rent and any other amounts due under this Lease shall made by



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ACH payment as directed by Lessor. In addition to the Base Rent, beginning on the Rent Commencement Date, Lessee shall pay its proportional share (4.65%) of all Building security costs (the "Security Costs"). It is estimated that in Lease Year 1, Lessee's proportional share of all Building security costs shall be approximately \$550.00. It is understood that this is an estimate, only, the actual Security Costs may be different, and the actual Security Costs shall be used to calculate Lessee's proportional share. Beginning on the first anniversary of the Rent Commencement Date, Lessee also shall pay its proportionate share (4.65%) of the increase in common-area maintenance costs (the "CAM Costs") over the base year of 2018. CAM Costs include all real estate taxes, insurance, common area maintenance, heating, ventilation and air conditioning, electric, water and sewer charges, and other costs of operation, repair, and maintenance associated with the Building. It is estimated that in Lease Year 2, Lessee's proportional share of the increase in CAM Costs shall be \$650.00. It is understood that this is an estimate, only, the actual increase in CAM Costs may be different, and the actual increase in CAM Costs shall be used to calculate Lessee's proportional share. The increase in CAM Costs and the Security Costs are collectively referred to as the "Additional Rent". Lessor shall certify such charges, if any, by written notice to Lessee. All payments of Additional Rent are to be made without notice, setoff, or demand, within thirty (30) days after receipt of written certification of the same. Base Rent and Additional Rent are collectively called "Rent". The CAM Costs do not include Lessee's own utility costs for utilities furnished directly to the Premises, janitorial costs, or other items provided directly to or for the benefit of the Premises. All such costs shall be paid for by Lessee.

3.02

(a) Commencing on the second (2nd) anniversary of the Rent Commencement Date and continuing thereafter on the first (1st) day of each month for Years 3, 4 and 5 of the Term, the monthly Base Rent payable by Lessee hereunder shall be increased to Three Thousand Five Hundred Dollars (\$3,500.00) per month, for a total annual Base Rent of \$42,000.00.

(b) If Lessee shall exercise its first renewal option, then commencing on the fifth (5th) anniversary of the Rent Commencement Date and continuing thereafter on the first (1st) day of each month for Years 6 and 7 of the Term, the monthly Base Rent payable by Lessee hereunder shall be increased to \$3,587.50 per month, for a total annual Base Rent of \$43,050.00.

(c) If Lessee shall exercise its second renewal option, then commencing on the seventh (7th) anniversary of the Rent Commencement Date and continuing thereafter on the first (1st) day of each month for Years 8 and 9 of the Term, the monthly Base Rent payable by Lessee hereunder shall be increased to \$3,677.19 per month, for a total annual Base Rent of \$44,126.28.

3.03 A late charge of four percent (4%) per month will be charged for any portion of Rent not paid within five (5) days after the due date.



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3.04 On the Effective Date, Lessee shall deposit with Lessor a security deposit in the amount of Three Thousand Dollars (\$ 3,000.00) (the "Security Deposit") as security for the full and faithful performance and observance by Lessee of all covenants and conditions on Lessee's part to be performed and observed in accordance with this Lease. If Lessee defaults with respect to any of the terms, provisions, or covenants of this Lease beyond the expiration of all applicable notice, grace and cure periods, including but not limited to payment of Rent, Lessor may, but shall not be required to, use, apply, or retain the whole or any part of the Security Deposit for the payment of any Rent in default or for any other sum which Lessor may rightfully expend or be required to expend by reason of Lessee's default, including any damages or deficiency in the re-letting of the Premises, whether such damages or deficiency accrue before or after summary proceedings or other re-entry by Lessor. If Lessee fully and faithfully complies with all the terms, provisions, covenants, and conditions of this Lease, the Security Deposit, or any balance remaining in the Security Deposit, shall be returned to Lessee within thirty days after the latter of the expiration of this Lease, or, except as might otherwise be agreed to pursuant to the provisions of this Lease, the removal by Lessee of its personal property, and the surrender of the Premises to Lessor. Whenever and as often as the amount of the Security Deposit is diminished by Lessor's application of the Security Deposit as provided in this Lease, Lessee shall, within ten (10) days after Lessor's request, deposit additional money with Lessor sufficient to restore the Security Deposit to its original amount. Lessee shall not be entitled to any interest on the Security Deposit, which shall be held by Lessor in a banking account of Lessor's choosing, and which may be commingled with any funds belonging to Lessor. In the absence of evidence satisfactory to Lessor of an assignment of the right to receive the Security Deposit, Lessor may return the Security Deposit (or the remaining funds in the Security Deposit) to the original Lessee, regardless of one or more assignments of the Lease itself. In case of a sale or transfer of the fee of the Premises or Building, or any cessation of Lessor's interest therein, whether in whole or in part, Lessor may pay over any unapplied Security Deposit to the succeeding owner of the Premises or Building, and from and after such payment Lessor shall be relieved of all liability with respect to the Security Deposit. The provisions of the preceding sentence shall apply to every subsequent sale or transfer of Premises or Building, or any part thereof, and any successor Lessor may, upon a sale, transfer, or other cessation of the interest of such successor in the Premises or Building, whether in whole or in part, pay over any unapplied part of the Security Deposit to the successor owner of the Premises or the Building, and shall thereupon be relieved of all liability with respect thereto.

3.05 If the Rent Commencement Date is on a day other than the first day of the month, Rent shall be prorated for the first month based on the number of days in the month.

ARTICLE IV - LESSOR COVENANTS

4.01 So long as Lessee is not in default beyond the expiration of all applicable notice, grace and cure periods, Lessor shall furnish the following



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services during the Term, which services shall be included in Lessee's CAM

Costs:

- (a) Snow removal and ice treatment from all entryways and immediately adjacent sidewalks no more frequently than once per day, when reasonably required, to be supplemented by more frequent efforts by lessees of the Building who have direct sidewalk access from their leased premises (such as Lessee) as required by paragraph 5.01(d) of this Lease.
- (b) Water for ordinary drinking, cleaning, lavatory, and toilet facilities.
- (c) Cleaning and Janitor service in any common areas, but not within the Premises itself.
- (d) Waste, refuse, and/or recycling removal services.
- (e) Maintenance and repair of the roof (including roof membrane), exterior walls, exterior windows (except for damage to ground floor or below-grade windows originating from within the Premises), structure, those portions of the heating, plumbing and electrical systems which are not reasonably accessible from within the Premises or that do not exclusively service the Premises, and common areas and common facilities of the Building as necessary to maintain them in good order and condition; provided, however, that any such maintenance or repairs made necessary by fault or neglect of Lessee, its employees, guests, invitees, customers, patrons, or anyone acting under the direction or on behalf of Lessee (collective, "Lessee's Affiliated Parties") shall be at the cost and expense of Lessee, which costs and expenses may be charged to Lessee and collected in addition to the Rent. If damage to windows on ground or below-grade floors occurs from the exterior (e.g. a brick thrown) Lessee will not be liable for damages. Lessee is liable only for damages to windows caused from the interior of Lessee's space, except if caused by Lessee or any of Lessee's Affiliated Parties.
- (f) All costs of furnishing electricity, heat, air-conditioning, and other utility services and facilities to common areas of the Building; (ii) all costs of any insurance carried by Lessor related to the Building; (iv) all costs of landscaping and grounds care; and (v) all other reasonable costs relating directly to the ownership, operation, maintenance and management of the Building by Lessor.

4.02 Notwithstanding anything herein to the contrary, it is hereby agreed and acknowledged that the following shall not be included in CAM Costs: (a) ground or master lease payments, or other amounts paid by Lessor in consideration of its interest in the Building or the Premises, or any fees, penalties, or other expenses or costs related thereto; (b) interest or principal on any mortgage or other indebtedness secured by the building or the Premises, or any other indebtedness of Lessor, or any fees, penalties, or other expenses or costs related thereto; (c) any depreciation, amortization, or other expense not paid in cash; (d) any reserve, whether actually funded or not, for future expenditures, or for any contingency; (e) any portion of CAM Costs which is payable by lessee(s) other than Lessee (whether actually paid by such other lessee(s))



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or not); (f) any portion of CAM Costs for which Lessor is otherwise entitled to reimbursement (whether such reimbursement is actually received or not); (g) any portion of CAM Costs which represents consideration for goods or services which solely benefit lessee(s) other than Lessee; (h) rentals and other related expenses incurred in leasing air conditioning systems, or other equipment ordinarily considered to be of a capital nature; and (i) advertising and promotional fees. Costs and expenses for capital items and repairs (collectively, "Capital Repairs") may be included in CAM Costs at the discretion of Lessor, provided that Lessee's proportionate share of such costs shall be calculated only against an amount equal to the total cost of the Capital Repairs divided by the expected useful life of the Capital Repairs (in months, as determined using Generally Accepted Accounting Principles) times the number of months remaining in the Term.

4.03 Lessor shall not be liable to anyone for interruption in or cessation of any service rendered to the Premises or Building or agreed to by the terms of this Lease, due to any accident, the making of repairs, alterations or improvements, labor difficulties, trouble in obtaining fuel, electricity, service or supplies from the sources from which they are usually obtained for the Building, or any other cause; except to the extent that liability of Lessor is insured by virtue of a general comprehensive Lessor public liability insurance policy, which Lessor agrees to maintain on the Building, in which case Lessee shall be entitled to a pro rata share of net proceeds actually recovered by Lessor for interruption of services as described in this paragraph 4.03. Notwithstanding the foregoing, Lessor agrees that in the event of any interruption in or cessation of any service rendered to the Premises or the Building, Lessor shall use commercially reasonable efforts to restore or cause to be restored such service as soon as commercially practicable.

4.04 So long as Lessee observes and performs the covenants and agreements binding on it under this Lease, Lessee shall at all times during the Term enjoy quiet possession of the Premises without any encumbrance or hindrance by, from, or through Lessor, subject to the terms and provisions of this Lease.

ARTICLE V - LESSEE COVENANTS

5.01 By accepting the Premises at the start of the Term, and subject to the completion of Lessor's Work to Lessee's satisfaction as set forth in Section 1.03, Lessee is deemed to agree that the Premises are in good and satisfactory order, repair and condition, and covenants during the Term and further time as Lessee holds any part of the Premises:

(a) To pay, when due, all Rent and other charges set forth in this Lease; all charges for telephone and cable used at, and supplied to, the Premises, and other utilities not provided by Lessor.



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(b) To keep the Premises, including interior nonstructural partitions and all lighting, electrical, plumbing, sewage, heating and air-conditioning equipment, fixtures and facilities located in or reasonably accessible from within the Premises or directly serving the Premises, in as good order, repair, and condition as the same are in on the Rent Commencement Date, or may be put in thereafter, damage by fire or unavoidable casualty and reasonable use and wear excepted; and at the termination of this Lease, peaceably to yield up the Premises and all additions, alterations, and improvements thereto in such good order, repair, and condition, first removing all goods and effects not attached to the Premises, repairing all damage cause by such removal, and leaving the Premises clean and tenantable. If Lessor in writing permits Lessee to leave any goods and chattels at the Premises, and Lessee does so, Lessee shall have no further claims and rights in such goods and chattels as against Lessor or those claiming by, through, or under Lessor; notwithstanding anything to the contrary contained in paragraph 4.01, if Lessee has leased ground floor or below-grade space, to keep all plate glass windows in good repair and condition and to carry adequate insurance to provide for the replacement of any such plate glass which is damaged or destroyed.

(c) Not to injure or deface the Premises or the Building; not to permit on the Premises any auction sale, inflammable fluids, chemicals, nuisance, or objectionable noise or odor; not to permit the use of the Premises for any purpose other than set forth in this Lease or any use of the Premises or the Building which is improper, offensive, contrary to law or ordinance, or liable to invalidate any insurance on the Building or its contents, or liable to render necessary any alterations or additions to the Building.

(d) Not to obstruct in any manner any portion of the Building not hereby demised or the sidewalks or approaches to the Building or any inside or outside windows or doors; and if the Premises include ground floor space to supplement Lessor's snow removal and ice treatment (as required of Lessor under Section 4.01(a)) as necessary to keep the sidewalks and entryways reasonably free and clear of snow and ice; and to conform to all reasonable rules and regulations now or hereafter made by Lessor for the care and use of the Premises, the Building, its facilities and approaches, provided that such rules and regulations are enforced uniformly against all lessees of the Building.

(e) Not to make any alterations or additions, nor to permit the making of any holes in the walls of the Building (other than for purposes of hanging pictures, art work, and similar decorations inside the Premises), or any holes in any other part of the Building, nor to paint or place any drapes, curtains, shades, awnings, aerals or flagpoles, or the like, visible from outside of the Premises, that is, from outdoors or from any corridor or other common area within the Building, nor to permit anyone except Lessee to use any part of the Premises for desk space or for mailing privileges without on each occasion obtaining prior written consent of Lessor. All permitted and consented-to alterations, additions, improvements and changes in the Premises shall be at Lessee's expense and shall comply with all insurance requirements and with applicable governmental laws, statutes, ordinances, rules and regulations, as well as with any reasonable rules and regulations established from time to time by the Lessor.



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Notwithstanding anything in this Section 5.01(e) to the contrary, Lessor agrees that Lessee may make such alterations to the Premises that are necessary in order to make the Premises ADA-compliant (including, without limitation, the installation of a wheelchair lift adjacent to the common area of the Building) and/or otherwise comply with building code, zoning, and other legal requirements, provided that Lessee obtains Lessor's prior written consent. Lessee acknowledges that Lessor may permit the first floor lessees from time to time to erect and maintain signs on or about the Building which are visible from outdoors and from the interior corridors and common areas adjacent to those portions of the Building occupied by the first floor lessees and that Lessor may from time to time erect and maintain signs to identify the Building; provided, however, that no such signs shall obstruct any window of the Premises. And signs approved by Lessor shall be installed and maintained at Lessee's sole expense. Any ground floor store-front windows must be used for attractive displays of store merchandise. Lessee has the permission to have signs and displays in Lessee's windows, provided the same comply with all laws, ordinances and regulations.

(f) Not to move any safe, heavy equipment, freight, bulky matter, or heavy fixtures in or out of the Building except at such times and in such manner as Lessor shall designate after written request from Lessee; and to place and maintain business machines and mechanical equipment in such settings as will most effectively reduce noise and vibration.

(g) Not to place a load upon any floor of the Premises in excess of 50 pounds live load per square foot or in violation of what is allowed by law.

(h) Not to install any vending machines or food service equipment in the demised Premises without first obtaining Lessor's written approval, which approval shall not be unreasonably delayed, conditioned or withheld.

(i) To indemnify, defend, and hold Lessor harmless from and against any injury, loss, claim, expense, liability, cost, or damage to any person or property while on or about the Premises, except to the extent it is the result of the gross negligence of Lessor, and to any persons or property anywhere occasioned by an omission, neglect or default of Lessee or of Lessee's Affiliated Parties.

(j) To insure Lessor and Lessee, as their interests appear, against loss of the contents and improvements of the Premises under standard Maine form policies, against fire and standard extended coverage risks, in such amounts and with such companies as Lessor may reasonably require and approve, with waiver of subrogation if such waiver can be obtained without charge.

(k) To keep in full force and effect a policy of general public liability insurance covering the Premises. The policy shall: (i) contain limits of liability not less than \$1,000,000.00 per person and \$2,000,000.00 per occurrence for bodily injury or death and \$500,000.00 for damage to property; (ii) be with such insurance company or companies as Lessor may reasonably approve; (iii) contain a provision requiring that written notice be given to Lessor not less than ten (10) days prior to the cancellation,



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expiration or alteration of the policy; and (iv) name Lessor and Lessee as Insured, as their interests appear. Lessee agrees to deliver certificates of such insurance to Lessor at the beginning of the Term and thereafter not less ten (10) days prior to the expiration of any such policy.

(l) That, without limitation of any other provision in this Lease, Lessor and its employees shall not be liable for any injuries to any person or damages to property due to the Building or any part of the Building, or any appurtenance thereof, being in need of repair or due to the happening of any accident in or about the Building or the Premises or due to any act or neglect of any tenant of the Building or of any employee or visitor of Lessee. Without limitation, this provision shall apply to injuries and damage caused by nature, rain, snow, ice, wind, frost, water, steam, gas or odors in any form or by the bursting or leaking of windows, doors, walls, ceilings, floors, pipes, gutters, or other fixtures; and to damage caused to fixtures, furniture, equipment and the like situated at the Premises, whether owned by Lessee or others; provided, however, that Lessor shall be liable for its gross negligence and the gross negligence of its employees to the extent that the liability of Lessor is insured by virtue of a general comprehensive Lessor's public liability insurance policy, which Lessor agrees to maintain on the Building, in which case, Lessee shall be entitled to a pro rata share of the amount actually paid by such insurance policy.

(m) To hold all property of Lessee, including fixtures, furniture, equipment and the like of Lessee, or of any owner situated at the Premises, at Lessee's own risk, and hereby releases Lessor from any liability, and to pay when due all taxes assessed during the Term against any leasehold interest or personal property of any kind owned or placed in, upon, or about the Premises by Lessee.

(n) To permit Lessor or its agents to examine the Premises at reasonable times and, if Lessor elects, to make any repairs, renovations, or additions Lessor may deem reasonably necessary and, at Lessee's expense, to remove any alterations, additions, signs, drapes, curtains, shades, awnings, or the like, not consented to in writing, provided, however, that the foregoing shall at all times be performed upon at least twenty-four (24) advance written notice to Lessee (except in cases of emergency, in which event no notice shall be required) and otherwise at such times and in such a manner as shall not unreasonably interrupt Lessee's use of the Premises or the operation of Lessee's business in the Premises.

(o) That Lessor may enter the Premises to install, maintain, use, repair, and replace pipes, ducts, wires, meters, and any other equipment, machinery, apparatus, and fixtures in the Premises to serve the Premises and to serve other parts of the Building, provided, however, that the foregoing shall at all times be performed upon at least twenty-four (24) advance written notice (except in cases of emergency, in which event no notice shall be required) to Lessee and otherwise at such times and in such a manner as shall not unreasonably interrupt Lessee's use of the Premises or the operation of Lessee's business in the Premises.



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(p) To permit Lessor at any time or times to decorate and to make, at its own expense, repairs, alterations, renovations, additions, and improvements, structural or otherwise, in or to the Building or any part thereof, and during such operations to take into and through the Premises or any part of the Building all materials required and to close or temporarily suspend operation of entrances, doors, corridors, elevators, or other facilities, Lessor agreeing, however, that it will carry out such work in a manner which will cause Lessee minimum inconvenience.

(q) Not to suffer or permit any lien of any nature to be placed against the Building, the Premises or any portion thereof, and in the case of any such lien attaching by reason of the conduct of Lessee to immediately pay and remove the same, but only provided such liens do not arise out of any payment due from Lessor as a result of any work conducted by or at the direction of Lessor; this provision shall not be interpreted as meaning that Lessee has any authority or power to permit any lien of any nature or description to attach to or to be placed upon Lessor's title or interest in the Building, the Premises, or any portion thereof.

(r) That Lessee shall not remove any of its fixtures or personal property from the Premises at any time that Lessee is in default under any of the terms of this Lease.

(s) To keep the Premises equipped with all safety appliances required by law or any public authority or by Lessor's insurance carrier because of the use made by Lessee of the Premises.

(t) Not to permit any of Lessee's Affiliated Parties to violate any covenant or obligation of Lessee hereunder.

(u) To pay Lessor's expenses, including reasonable attorney's fees, incurred in enforcing any obligation of this Lease.

(v) That the rights and remedies to which Lessor may be entitled under the terms of this Lease are cumulative and are not intended to be exclusive of any other rights or remedies to which Lessor may be properly entitled in case of any breach or threatened breach by Lessee of any portion of this Lease. In addition to the other remedies in this Lease, Lessor shall be entitled to the restraint by injunction of the violation or attempted violation of any of the covenants, agreements, or conditions of this Lease.

(w) That without limitation of anything elsewhere herein, Lessor may:

(i) designate and change the name and street address of the Building; provided, however, that Lessor shall first give reasonable notice to Lessee;

(ii) retain and use in appropriate instances keys to all doors within and into the Premises and to change the locks to the Premises if Lessor deems it advisable. No lock shall be changed by Lessee without the prior written consent of Lessor;



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(iii) during the last thirty (30) days of the Term, if during or prior to that time Lessee vacates the Premises, to decorate, remodel, repair, alter or otherwise prepare the Premises for re-occupancy, without affecting Lessee's obligation to pay Rent for the Premises;

(iv) on reasonable prior notice to Lessee, to show the Premises to prospective tenants and to any prospective purchaser, Mortgagee, or assignee of any mortgage on the Building, and to others having a legitimate interest at any time during the Term; and

(v) to enter upon the Premises and exercise any and all of Lessor's rights without being deemed guilty of an eviction or disturbance of Lessee's use or possession and without being liable in any manner to Lessee.

ARTICLE VI - ASSIGNMENT AND SUBLETTING

6.01 Lessee shall not, without Lessor's prior written consent, such consent not to be unreasonably delayed, conditioned or withheld, (a) assign, convey, mortgage, pledge, encumber or otherwise transfer (whether voluntarily or otherwise) this Lease or any interest under it; (b) allow any transfer thereof or any lien upon Lessee's interest by operation of law; (c) sublet the Premises or any part thereof; (d) permit the use or occupancy of the Premises or any part thereof by anyone other than Lessee or Lessee's Affiliated Parties; or (e) vacate the Premises or cease business operations at the Premises.

6.02 If Lessee requests to assign the Lease or to sublet the Premises, or if the Premises are vacated, Lessor shall be entitled to recapture the Premises as of a date which shall be specified by Lessor and which shall be not more than thirty (30) days from the date of Lessor's election to recapture the Premises, and upon the effective date of Landlord's recapture of the Premises this Lease shall terminate and Lessee shall have no further obligations hereunder.

6.03 Upon receiving Lessor's written consent to a proposed assignment or subletting, a duly executed copy of the assignment or sublease shall be delivered to Lessor within ten (10) days after execution thereof. Any sublease shall provide that the sublessee shall comply with all applicable terms and conditions of this Lease to be performed by Lessee. Any assignment of this Lease shall contain an assumption by the assignee of all of the terms, covenants and conditions of this Lease to be performed by Lessee.

6.04 In no event shall any permitted assignee or sublessee further convey its interest without Lessor's prior written consent.



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6.05 It is further agreed and understood that Lessee must receive from its assignee or subtenant at least the Base Rent and Additional Rent to which Lessor was entitled under this Lease; and if the base rent or other amounts payable under the sublease or assignment is higher than the present Base Rent being paid by Lessee to Lessor, then Lessee will pass through to Lessor the excess amount.

6.06 In the event of an assignment or sublease, the Security Deposit will continue to be held by Lessor, and the assignee or sublessee shall pay to Lessee an amount equal to the Security Deposit.

6.07 Any sale, transfer, issuance or redemption after the Effective Date, whether to one or more persons or entities and whether at one or more different times, of a total of more than fifty (50%) percent of the shares of capital stock of any corporation, or of the partnership interests in any partnership, which is then the legal lessee under this Lease shall be deemed an assignment of this Lease within the meaning of this Article.

6.08 Lessee agrees to pay to Lessor, on demand, Lessor's reasonable out of pocket costs actually incurred by Lessor in connection with any request by Lessee for Lessor to consent to any assignment or subletting by Lessee. No assignment or sublease shall be permitted without Lessor's prior written consent, which consent shall not be unreasonably delayed, conditioned or withheld).

6.09 Notwithstanding anything in this Article VI to the contrary, Lessee shall be permitted to rent the Premises to performance groups and other organizations (each group or organization, a "Third Party User") for rehearsals, events, and other special occasions without the necessity to obtain Lessor's prior written consent, provided that:

- (a) All Third Party Users must be legally formed corporations, limited liability companies, partnerships, or other legal entity authorized to do business in and in good standing with the State of Maine;
- (b) Lessee must obtain from each Third Party User a signed waiver and release in the form attached to this Lease as Exhibit B (or in such other form as may be required by Lessor from time to time) before any use by a Third Party User;
- (c) Lessee has notified Lessee's insurance carrier of such use by a Third Party User;
- (d) The Third Party User must enter into a use agreement, occupancy agreement, or other written contract with Lessee whereby the Third Party User agrees not to violate any of the covenants of Lessee under this Lease and to comply with all applicable laws and regulations;
- (e) Lessee shall be for any and all damages, costs, losses, expense, claims, and liabilities of any kind arising from the use of the Premises by any Third Party User;
- (f) All use by a Third Party User must be short term, with no period of use extending beyond three days, unless approved by Lessor; and



(g) Lessee shall provide no less than 48 hours notice (together with evidence that the above requirements are satisfied) prior to use by any Third Party User.

ARTICLE VII - SUBORDINATION

7.01 Promptly at the request of Lessor or the holder of any mortgage on the Premises or any lessor under any ground or underlying lease (hereinafter referred to as a "Mortgagee"), instruments evidencing such subordination as Lessor or such Mortgagee shall deem necessary or desirable, and, upon request of such Mortgagee, attorn to such Mortgagee and recognize such Mortgagee as Lessor under all the terms and provisions of this Lease except as such Mortgagee shall not be (i) liable for any act or omission of any prior lessor, or (ii) subject to any offsets or defense that Lessee might have against any prior lessor, or (iii) bound by any rent or other sums payable hereunder that Lessee might have paid for more than one month in advance to any prior lessor, or (iv) bound by any amendment or modification of this Lease made without the consent of such Mortgagee.

7.02 This Lease and Lessee's rights hereunder are and shall be subordinate to any mortgage placed upon the Premises by Lessor. Lessee agrees, if required by the Mortgagee, to agree not to prepay Rent more than ten (10) days in advance, to provide said Mortgagee with notice of and reasonable opportunity to cure any defaults by Lessor, and not to amend, modify, or cancel this Lease without Mortgagee's written consent, provided that the holder of such mortgage enters into an agreement with Lessee by the terms of which such holder agrees not to disturb Lessee in its possession of the Premises so long as Lessee continues to perform its obligations hereunder and, in the event of acquisition of title by said holder through foreclosure proceedings or otherwise, to accept Lessee as Lessee of the Premises under the terms and conditions of this Lease. Lessee agrees, upon request, to recognize such holder or any other person acquiring title to the Premises as having the rights of Lessor and to attorn to said holder or other person if requested. Lessee and Lessor agree to execute and deliver any appropriate instruments necessary to carry out the foregoing provisions.

7.03 At any time, and from time to time, upon the written request of Lessor or any Mortgagee, Lessee, within twenty (20) days of the date of such written request, agrees to execute and deliver to Lessor and/or such Mortgagee, without charge and in a form satisfactory to Lessor and/or such Mortgagee, a written statement: (i) ratifying this Lease; (ii) confirming the Effective Date, Rent Commencement Date, and Expiration Date; (iii) certifying that Lessee is in occupancy of the Premises, and that the Lease is in full force and effect and has not been modified, assigned, supplemented, or amended except by such writings as shall be stated, and agreeing not to amend, modify, or cancel this Lease without Mortgagee's written consent; (iv) certifying that all conditions and agreements under this Lease to be satisfied or performed by Lessor have been satisfied and performed except as shall be stated; (v) certifying that Lessor is not in default under the Lease and there are no defenses or offsets against the enforcement of



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the Lease by Lessor, or stating the defaults and/or defenses claimed by Lessee, (vi) reciting the amount of advanced Rent, if any, paid by Lessee and the date to which such Rent has been paid, and agreeing not to prepay Rent more than (10) days in advance; (vii) reciting the amount of the Security Deposit, if any; and (viii) any other information which Lessor or the Mortgagee shall require. The failure of Lessee to execute, acknowledge, and deliver to Lessor and/or any mortgage a statement in accordance with the provisions of this paragraph within the period set forth shall constitute an acknowledgment by Lessee which may be relied upon by any person holding or intending to acquire any interest whatsoever in the Premises and Building that this Lease has not been assigned, amended, changed, or modified, is in full force and effect, and that the Rent, operating and maintenance expenses and utility charges have been duly and fully paid not beyond the respective due dates immediately preceding the date of the request for such statement and shall constitute, as to any persons entitled to rely on such statements, a waiver of any defaults by Lessor defenses or offsets against the enforcement of this Lease by Lessor which may exist prior to the date of the written request, and Lessor, at its option, may treat such failure as an event of default.

7.04 After receiving written notice from any Mortgagee, Lessee shall be required to give to such Mortgagee the same notices as are required to be given to Lessor under the terms of this Lease, but such notices may be given by Lessee to Lessor and such Mortgagee concurrently. It is further agreed that such Mortgagee shall have the right, but not the obligation, within 30 days after receipt of such notice (or within such additional time as is reasonably required to correct any such default) to correct or remedy, or cause to be corrected or remedied, each such default before Lessee may take any action under this Lease by reason of such default and if necessary to cure such default, such Mortgagee shall have access to the Premises. Notice to such Mortgagee shall be sent to the address specified in the written notice from such Mortgagee to Lessee, or to such other address as may be designated in writing from time to time from such Mortgagee.

ARTICLE VIII - CASUALTY DAMAGE AND EMINENT DOMAIN

8.01 If the Premises, the Building, or any substantial part of either, are taken by any exercise of the right of eminent domain or are destroyed or damaged by fire or unavoidable casualty or by action of any public or other authority, or suffer any direct consequential damage for which Lessor and Lessee, or either of them, are entitled to compensation by reason of anything done in pursuance of any public or other authority during this Lease or any extension thereof, then this Lease shall terminate at the election of Lessor which election may be made whether or not Lessor's entire interest has been divested; and if Lessor shall not so elect, then in case of such taking, destruction or damage rendering the Premises unfit for use and occupation, a just proportion of said Rent according to the nature and extent of the injury shall be abated until the Premises, or in the case of a partial taking, what may remain thereof, shall have been put in proper condition for use and occupation. Lessor reserves the right to



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refuse abatement of Rent if an act or omission of Lessee prevents Lessor from collecting insurance proceeds. Lessor reserves and excepts all rights to damages to the Premises and Building and the leasehold hereby created, accrued or subsequently accruing by reason of anything lawfully done in pursuance of any public, or other, authority; and by way of confirmation, Lessee grants to Lessor all Lessee's rights to such damages and covenants to execute and deliver such further instruments of assignment thereof as Lessor may from time to time request. Lessor shall give Lessee notice of its decision to terminate this request. Lessor shall give Lessee notice of its decision to terminate this Lease or restore the Premises within ninety (90) days after any occurrence giving rise to Lessor's right to so terminate or restore. Notwithstanding anything to the contrary, Lessor's obligation to put the Premises or the Building in proper condition for use and occupation shall be limited to the amount of the proceeds from any insurance policy or policies or of damages which accrue by reason of any taking by a public or other authority, which are available to Lessor for such use.

ARTICLE IX - LESSEE DEFAULT

9.01 If Lessee neglects or fails to make any payment of Rent or any other amount due within five (5) days after its due date, or if Lessee fails to cure (or to commence to cure) a default in the performance of any of the other of Lessee's covenants within thirty (30) days after the date of notice of such default by Lessor or shorter period if emergency or if violation of negative covenant, or if Lessee, having commenced to cure a default within the thirty (30) day period but said default could not reasonably have been cured within said thirty (30) day period but can be cured, fails to complete the curing of the default without unreasonable delay, or if the leasehold hereby created is taken on execution, or by other process of law, or if any assignment is made of Lessee's property for the benefit of creditors, or if a receiver, guardian, conservator, trustee in bankruptcy or similar officer is appointed by a court of competent jurisdiction to take charge of all or any part of Lessee's property, or if a Lessee commits any act of bankruptcy, insolvency or other debtor relief law, or if a petition is filed against Lessee under any bankruptcy, insolvency or other debtor relief law and the same is not dismissed within sixty (60) days from the date upon which it is filed, then, and in any of said cases, Lessor may immediately or at any time thereafter serve a written notice on Lessee that Lessor elects to terminate this Lease, or Lessor lawfully may, without further demand or notice, re-enter and take possession of the Premises or any part of the Premises, without terminating this Lease, and expel Lessee and those claiming through or under Lessee, and remove the effects of any and all such persons (forcibly, if necessary) without being deemed guilty of any manner of trespass and without prejudice to any other remedies, and Lessee shall remain liable for its obligations under this Lease. Should Lessor elect to re-enter as provided in this Section, or should Lessor take possession pursuant to legal proceedings or pursuant to any notice provided for by law, Lessor, may, from time to time, without terminating this Lease, relet the Premises or any part thereof for such term or terms and at such rent or rentals and upon such other conditions as Lessor may deem advisable, with the right to make alterations or repairs to the Premises. No such re-entry or repossession of the Premises by Lessor



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shall be construed as an election of Lessor's part to terminate this Lease unless a written notice of termination is given to Lessee by Lessor. No such re-entry or repossession of the Premises shall relieve Lessee of its liability and obligation under this Lease, all of which shall survive such re-entry or repossession. Upon the occurrence of such re-entry or repossession, Lessor shall be entitled to the amount of the monthly Rent and any other sums, which would be payable hereunder if such re-entry or repossession had not occurred, less the net proceeds, if any, of reletting of the Premises after deducting all of Lessor's expenses in connection with such reletting. Lessee shall pay such amount to Lessor on the days on which the Rent or other sums due under this Lease would have been payable if possession had not been retaken. In no event shall Lessee be entitled to receive the excess, if any, of net rent collected by Lessor as a result of such reletting of the sums payable by Lessee to Lessor hereunder. Lessor shall make reasonable effort to secure a rental equal to the prevailing local rate for the Premises concerned; provided, however, that Lessor shall have no obligation to favor the Premises over other portions of the Building. In addition, Lessee agrees to pay to Lessor, as damages for any above described breach, all reasonable costs of reletting the Premises including real estate commissions, advertising costs, reasonable attorney's fees, and costs of renovating the Premises to suit the new tenant. Notwithstanding anything herein to the contrary, Lessor shall at all times use reasonable commercial efforts to mitigate damages resulting from any Lessee default.

ARTICLE X - HOLDING OVER

10.01 If Lessee retains possession of the Premises or any part of the Premises after the termination of the Term, Lessee shall pay Lessor Rent at one and one-half (1 ½) the monthly rate specified in this Lease for the time Lessee remains in possession and, in addition thereto, shall pay Lessor for all damages, consequential as well as direct, sustained by reason of Lessee's retention of possession. The provisions of this Article do not exclude Lessor's right of re-entry or any other right hereunder. This Section shall not be construed as giving Lessee any right to hold over after the expiration of the Term or to limit Lessor's rights to obtain possession of the Premises upon termination by any lawful means available to Lessor if Lessor does not elect to treat the continued possession by Lessee or any party claiming through or under Lessee as a month-to-month tenancy.

ARTICLE XI - LESSOR SELF-HELP

11.01 If Lessee defaults in the performance or observance of any agreement or condition in this Lease, other than an obligation to pay money, and does not cure such default as provided herein, Lessor may, at its option, without waiving any claim for damages for breach of this Lease, at any time thereafter, cure such default for account of Lessee; any reasonable amount paid or any liability actually incurred by Lessor in so doing shall be deemed paid or incurred for the account of Lessee, and Lessee agrees to immediately reimburse Lessor therefor or save Lessor harmless therefrom.



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ARTICLE XII - LIMITATION OF LIABILITY

12.01 Lessee agrees to look solely to Lessor's interest in the Building (including, without limitation, all rents, profits, proceeds, awards or other income derived therefrom) for recovery of any judgment from Lessor; it being agreed that Lessor, and any fiduciary, any shareholder, any partner, or any beneficiary of Lessor, are not personally liable for any such judgment. The provision contained in the foregoing sentence shall not limit any right that Lessee might otherwise have to obtain injunctive relief against Lessor or Lessor's successors interest, or any other action not involving the personal liability of Lessor.

ARTICLE XIII - LESSOR DEFAULT

13.01 Lessor shall in no event be in default in the performance of any of its obligations under this Lease unless and until Lessor has failed to perform such obligations within thirty (30) days or such additional time as is reasonably required to correct any such default after written notice by Lessee to Lessor properly specifying wherein Lessor has failed to perform any such obligation. Further, if a Mortgagee notifies Lessee that the Mortgagee has taken over Lessor's rights under this Lease, Lessee shall not assert any right to deduct the cost of repairs or any monetary claim against Lessor from Rent thereafter due and accruing, but shall look solely to Lessor for satisfaction of such claim.

ARTICLE XIV - WAIVER OF RIGHTS

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



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ARTICLE V - NOTICES

15.01 Any notice from Lessor to Lessee or from Lessee to Lessor shall be deemed duly served if mailed by Certified Mail Return Receipt Requested, addressed, if to Lessee, at the Premises (with a copy of notices to Lessee required under Sections 7.04, 8.01, and 9.01 also being sent to Bernstein, Shur, Sawyer & Nelson, P.A., Attn: Beth A. Smith, Esq., 100 Middle Street, West Tower, Portland, ME 04101), or if to Lessor, at the address stated on the first page of this Lease (or at such other address as may be designated from time to time by Lessor on no less than 30 days prior written notice), and the customary Certified Mail receipt shall be conclusive evidence of such service. Notice also may be made by personal delivery or by Federal Express or other national overnight courier service.

ARTICLE XVI - SUCCESSORS AND ASSIGNS

16.01 The covenants and agreements of Lessor and Lessee shall run with the land and be binding upon and inure to the benefit of them and their respective heirs, executors, administrators, successors, and assigns, but no covenant or agreement of Lessor, express or implied, shall be binding upon any person except for defaults occurring during such person's period of ownership, nor binding individually upon any fiduciary, any partner, any shareholder, or any beneficiary under any trust. This paragraph shall not give Lessee the right to assign this Lease or sublet the Premises, which events shall be governed by Article VI of this Lease.

ARTICLE XVII - MISCELLANEOUS

17.01 The term "Lessor" as used in this Lease, so far as covenants or obligations on the part of Lessor are concerned, shall be limited to mean and include only the owner or owners at the time in question of the Premises. In the event of any sale or other transfer of the Premises by Lessor, whether the original Lessor hereunder or any successor Lessors thereto, Lessor shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission occurring after the consummation of such sale or transaction and Lessee shall look solely to the successor Lessor for the performance of any such covenants or obligations.

17.02 If Lessee is more than one person or party, Lessee's obligations shall be joint and several. Unless repugnant to the context, "Lessor" and "Lessee" mean the person or persons, natural or corporate, named above as Lessor and Lessee respectively, and their respective heirs, executors, administrators, successors and assigns.



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17.03 Lessor and Lessee agree that this Lease shall not be recordable; provided, however, that Lessor and Lessee agree, on request of the other, to execute a Memorandum of Lease in recordable form and mutually satisfactory to the parties, setting forth the actual Effective Date, Rent Commencement Date and Expiration Date of this Lease.

17.04 If any provision of this Lease or its application to any person or circumstances is deemed invalid or unenforceable, the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

17.05 The Index, headings and Summary Page if contained herein are for convenience only, and shall not be considered a part of this Lease.

17.06 No acceptance by Lessor of a lesser sum than the Rent then due shall be deemed to be other than on account of the earliest installment of such Rent due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance of such installment or pursue any other remedy in this Lease provided.

17.07 Lessee and Lessor hereby waive any and all rights which they may have to request a jury trial in any proceeding at law or equity in any Court of competent jurisdiction.

17.08 No oral statement or prior written matter shall have any force or effect. Lessee agrees that it is not relying on any representations or agreements other than those contained in this Lease. This Lease shall not be modified or canceled except by writing subscribed by all parties.

17.09 This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Maine, without application of its conflict of laws principles.

[end of Lease, signatures appear on following page(s)]



Reviewed for Code Compliance
City of Portland Inspections Department
Approved with Conditions


10/12/2018

IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease to be executed by their respective duly authorized representatives as of the Effective Date.

WITNESS

LESSOR
EAST END CORP.



By: 
Name: Stephen Whittier, President

WITNESS

LESSEE
THE FRESNEL THEATER INC.



By: 
Name: Krista Simonis, Managing Director

GUARANTEE

Krista Simonis ("Guarantor") hereby guarantees the performance by Lessee of all obligations, covenants, and requirements under this Lease, and the payment of Rent and all other amounts due under this Lease. Notwithstanding anything herein to the contrary, the liability of Guarantor hereunder shall be limited to a maximum sum of \$247,500.00, which amount represents 125% of the Base Rent due for the initial Term (Years 1-5) of the Lease.

WITNESS





Krista Simonis