

Findings of Fact and Conclusions of Law:

The Board's authority to review an interpretation of the building authority is pursuant to Section 14-472 of the land use code.

Applicant owns a retail business at 137 Preble Street that sells outdoor play sets. The applicant wishes to be able to display the play sets outdoors. The City determined that outdoor display of goods is a violation of the City's Land Use Code and is therefore not permitted. Specifically, the City determined it is a violation of Sections 14-299(a) and (i), which state:

Sec. 14-299. Performance standards.

All uses in the B-7 mixed development district zone shall comply with the following standards:

- (a) *Storage:* Any storage of new materials, finished products, or related equipment must be suitably screened from the public way and from abutting properties by a solid fence at least six feet in height. All waste shall be stored in covered containers that do not leak or otherwise permit liquids or solids to escape from the container. All food processing waste shall be stored within a completely enclosed structure and if not refrigerated shall be removed from the site in an enclosed container within forty-eight (48) hours of its generation. All enclosed and exterior areas shall be cleaned and sanitized on a regular basis. Outdoor storage of refuse or debris shall be in an appropriate container or located within a designated, screened area. All dumpsters shall be screened on all four (4) sides by a minimum six (6) foot high solid fence or shall otherwise be fully enclosed as approved by the planning board or the planning department.
- (i) *Enclosure of uses:* All uses shall be operated within a fully enclosed structure, except for those customarily operated in open air.

Finding:

Appellant has demonstrated that the Interpretation of the Zoning Administrator was incorrect or improper.

Satisfied Not Satisfied

Reason and supporting facts:

Present 5/28/10

Sara Moppin, Jill Hunter, Gordon Smith, William Getz

Retail is a broad interpretation of the ordinance. There is an exception which allows "customarily" operated in open air. Exceptions given were auto, lawn equipment as examples. The

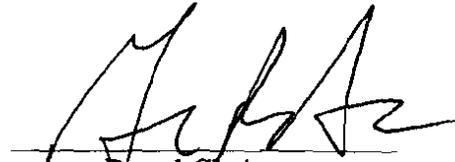
Mr. Smith motion to grant the appeal because the ordinance allows for the exception to operate that which is customarily operated in the open air.

Decision: (check one)

Option 1: The Board finds that the Appellant has satisfactorily demonstrated that the Interpretation of the City's Zoning Administrator was incorrect or improper, and therefore GRANTS the application. 4-0

Option 2: The Board finds that the Appellant has NOT satisfactorily demonstrated that the Interpretation of the City's Zoning Administrator was incorrect or improper, and therefore DENIES the application.

Dated: 5.20.10


Board Chair

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

ZONING BOARD APPEAL DECISION

To: City Clerk

From: Marge Schmuckal, Zoning Administrator

Date: May 24, 2010

RE: Action taken by the Zoning Board of Appeals on May 20, 2010.

Members Present: Gordon Smith (acting chair), William Getz (acting secretary), Sara Moppin, and Jill Hunter

Members Absent: Phil Saucier

1. New Business:

A. Interpretation Appeal:

137 Preble Street, AJ Jones, lessee, Tax Map 034, Block D, Lot 004, B-7 Mixed Development District Zone: The appellant is seeking an interpretation of sections 14-299(a) & (i) of the land use ordinance as they relate to him being able to display the outdoor play sets he sells outside of the building in the open air. Representing the appeal is the lessee. **The Board voted 4-0 to grant the interpretation appeal allowing the applicant to display the outdoor play sets outside of the building.**

Enclosure:

Decision for Agenda from May 20, 2010

Original Zoning Board Decision

One dvd

CC: Joseph Gray, City Manager

Penny St. Louis Littell, Director, Planning & Urban Development

Alex Jaegerman, Planning Division

members present: Gordon Smith (Acty Chair) Jill Huston, SARA Moppin

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

members Absent: Phil Saucier

William Getz
Acty Secretary

APPEAL AGENDA
note Trish McAlister is conflicted off the Board

The Board of Appeals will hold a public hearing on Thursday, May 20, 2010 at 6:30 p.m. on the second floor in room 209 at Portland City Hall, 389 Congress Street, Portland, Maine, to hear the following Appeal:

Granted
4-0

1. New Business:

A. Interpretation Appeal:

137 Preble Street, AJ Jones, lessee, Tax Map 034, Block D, Lot 004, B-7 Mixed Development District Zone: The appellant is seeking an interpretation of sections 14-299(a) & (i) of the land use ordinance as they relate to him being able to display the outdoor play sets he sells outside of the building in the open air. Representing the appeal is the lessee.

2. Adjournment: 7:00 pm

RECEIVED

APR 21 2010

City of Portland
Zoning Board of Appeals
389 Congress St. Room 315
Portland, ME 04101

Dept. of Building Inspections
City of Portland Maine

04/21/10 Subject: INTERPRETATION APPEAL FOR 137 PREBLE ST.

To Whom it May Concern

Skillful Home Recreation has been displaying and selling outdoor play sets for the past several years. On March, 23 we were setting up our display of play sets outside of our new location of 137 Preble st. A representative of the City of Portland was in the area and came in to inform us that we were in violation of the ordinance Section 14-229(i) which states "all uses should be operated within a fully enclosed structure, except for those customarily operated in open air". The sale of outdoor play sets is a vital component of our business. We are of the opinion that because play sets, similar to cars on display at a dealership, are designed to be used and remain outdoors these would be a product that would be customarily operated and sold in open air. As a result, we believe that we are in compliance with the zoning ordinance and would like to appeal the decision of the zoning specialist.

Sincerely,



AJ Jones
Skillful Home Recreation

SKILLFUL
1978
Home Recreation

03/25/2010 15:08 2078748716



City of Portland, Maine
Planning and Development Department
Zoning Board of Appeals
Interpretation Appeal Application

Applicant Information:

AJ JONES
Name
SKILLFUL HOME RECREATION
Business Name
137 PREBLE ST.
Address
PORTLAND, ME 04101
775-3000 774-6600
Telephone Fax

Subject Property Information:

137 PREBLE ST
Property Address
034 D 004
Assessor's Reference (Chart-Block-Lot)

Property Owner (if different):

ROSS FURMAN
Name
PO-BOX 2
Address
PORTLAND, ME 04112
773-7000
Telephone Fax

Applicant's Right, Title or Interest in Subject Property:

LEASE
(e.g. owner, purchaser, etc.):

Current Zoning Designation: B-7

Existing Use of Property:

RETAIL SALES OF
HOME RECREATION EQUIPMENT
AND OUTDOOR PLAY SETS

Disputed Provisions from Section 14 - 299 (i)

Order, decision, determination, or interpretation under dispute:

"ALL USES SHOULD BE OPERATED
WITHIN A FULLY ENCLOSED STRUCTURE,
EXCEPT FOR THOSE CUSTOMARILY
OPERATED IN OPEN AIR."

Type of Relief Requested:

REVERSAL OF DECISION

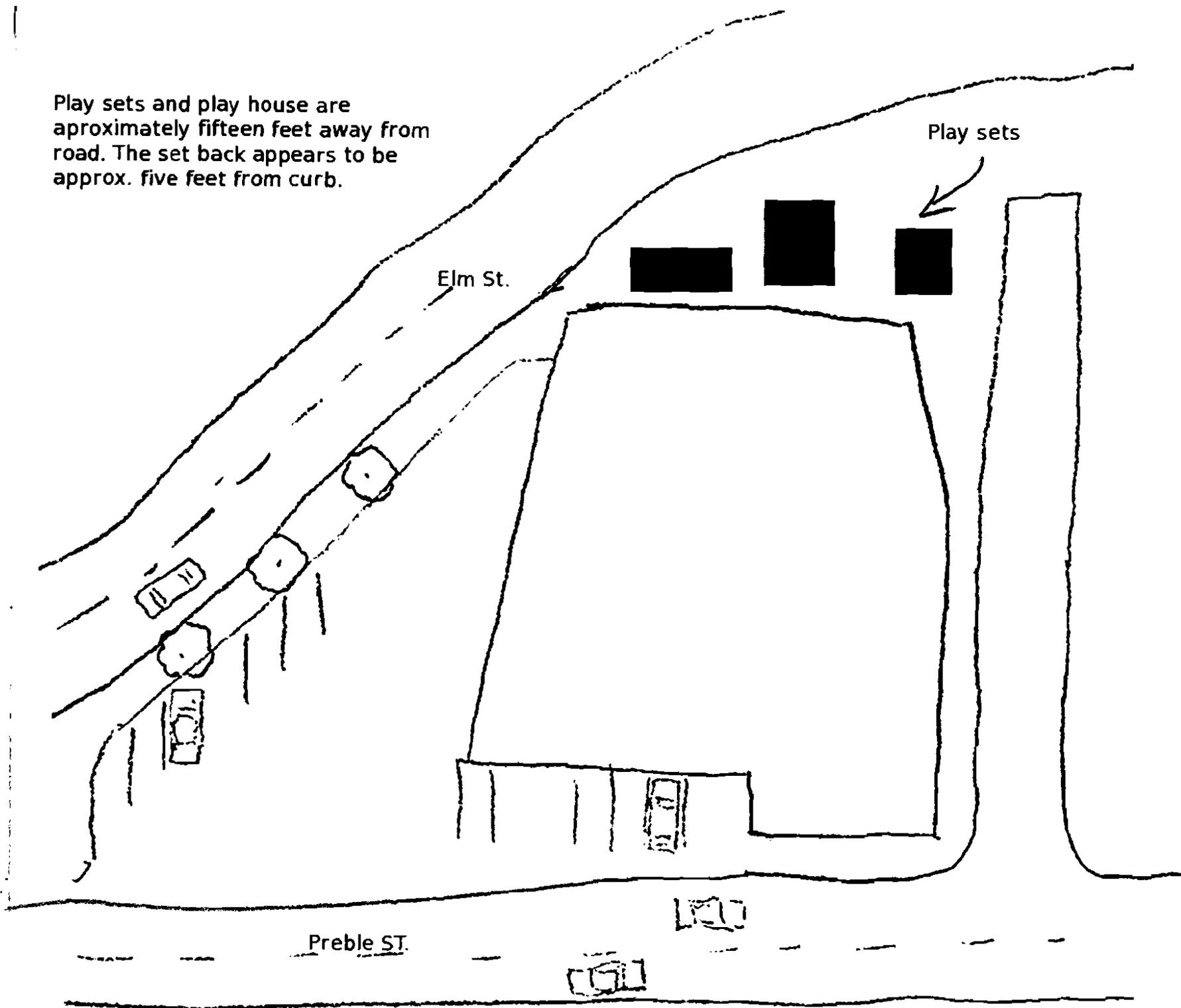
NOTE: If site plan approval is required, attach preliminary or final site plan.

I, the undersigned hereby makes application for the relief above described, and certified that all information herein supplied by his/her is true and correct to the best of his/her knowledge and belief.

[Signature]
Signature of Applicant

4/20/10
Date

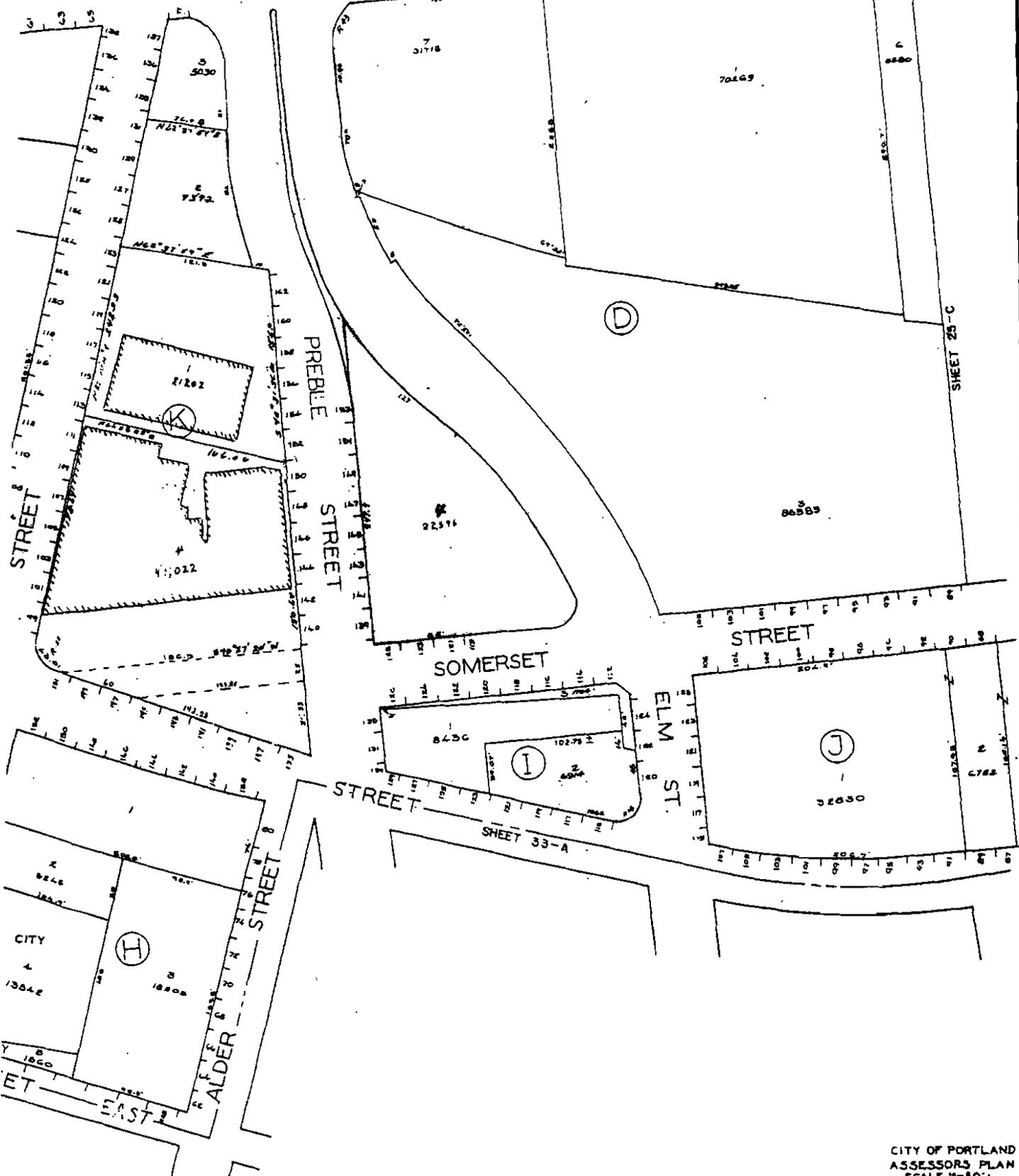
Play sets and play house are approximately fifteen feet away from road. The set back appears to be approx. five feet from curb.



No 34

SHEET 34A-B

WAY



CITY OF PORTLAND
ASSESSORS PLAN
SCALE 1"=50'

Revised 9/22/06

April, 15, 2010

Ross Furman
Po Box 2
Portland, ME 04112
(207)773-7000

City of Portland
Zoning Board of Appeals
389 Congress St., Room 315
Portland, ME 04101

Re: Interpretation appeal for 137 Preble St.

To whom it may concern,

I am the current property owner of 137 Preble st. I am writing to give permission for AJ Jones of Skillful Home Recreation to represent my property in an appeal to the City of Portland Zoning Board of Appeals.

Sincerely,


Ross Furman

LEASE AGREEMENT
ARTICLE I - PREMISES

1.01 **HARD SALES, LLC** (hereinafter called "Lessor"), hereby leases unto **SKILLFUL HOME, LLC** hereinafter called "Lessee"), and the Lessee hereby leases from Lessor, the following premises:

The portion (3,623 +/- approximately s.f.) of the building located at 137 Preble St, **Portland, Maine**. Said premises shall be used by Lessee only for: Skillful Home Recreation/retail that is duly authorized to operate and which meets all applicable licensing and zoning ordinances, and shall not be used for any other business without the written consent of Lessor.

ARTICLE II - TERM

2.01 TO HAVE AND TO HOLD said premises for a term of (5) Years commencing **September 21, 2009** and ending on **September 30, 2014**.

ARTICLE III - RENT AND SECURITY DEPOSIT

3.01 Lessee covenants and agrees to pay to Lessor at the address set forth below base rent at the annual rate of **\$30,000** for the first year. Rent will be adjusted annually by 2.5%. The rent shall be payable in equal monthly installments of **\$2,800.00.00** in advance of the first (1st) day of each month during 12 month period beginning September 21, 2009 hereof, after a 9 MONTH free rent period without demand or prior notice and without setoff or deduction. The rent shall be prorated for portions of a calendar month at the beginning or end of said term.

Lessee agrees to pay the base rent plus Triple Net for all utilities and Expenses, including but not limited to Portland Water and Sewer, Portland Real Estate Taxes, Grounds maintenance, building insurance, etc. at a rate of 100% of actual cost based on Lessees approximate square footage of the Leased space and the actual cost incurred.

All payments are to be made to Lessor or to such agent and at such place as Lessor shall from time to time in writing designate, the following address being now so designated:

Box Two, Portland, ME 04112-0002.

3.02 Lessee agrees that it is responsible and shall contract directly with the suppliers and contractors for all electrical and fuel charges, cleaning services and trash removal for the premises, including without limitation, the cost of electricity for operating lights, office machinery, air conditioning, if any, and heating equipment serving the premises.

3.03 Lessee shall reimburse Lessor on demand for the amount by which Lessee's particular use of the premises causes Less or's insurance premiums to be higher than they would otherwise be if the premises were used for normal office or retail purposes.

3.04 A late charge of four percent (4%) will be charged for rents not paid within ten (10) days after they are due. In addition, Lessee shall pay interest on any rents not paid within fifteen (15) days after they are due, at the rate of eighteen percent (18%) per annum. These charges are in addition to other remedies available to Lessor under the terms of this lease for Tenant's failure to pay rent when due.

3.05 Upon the execution of this Lease, Lessee shall pay to Lessor **\$0.00 (However tenant will still be responsible to perform in full and faithful performance all the covenants of this lease)** to be held by Lessor in a non interest bearing account 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 and all extensions and renewals thereof. If Lessee defaults in respect of any of the terms, provisions, covenants and conditions of this Lease, 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 for the payment of any rent in default or for any other sum which Lessor may expend or be required to expend by reason of Lessee's default, including any damages or deficiency in the reletting of the premises, whether such damages or deficiency accrue before or after summary proceedings or other re-entry by Lessor. If Lessee shall fully and faithfully comply with all the terms, provisions, covenants and conditions of this Lease, the security, or any balance thereof, shall be returned to Lessee after the time fixed as the expiration of the original term hereof, or such term as extended or renewed, and after the removal of Lessee and surrender of possession of the premises to Lessor. Whenever and as often as the amount of the security held by Lessor shall be diminished by Less or's application thereof, Lessee shall, within ten (10) days after Less or's request therefore, deposit additional money with Lessor sufficient to restore the security to its original amount. Lessee shall not be entitled to any interest on the aforesaid security. In the absence of evidence satisfactory to Lessor of an assignment of the right to receive the security, or the remaining balance thereof, Lessor may return the security 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 any cessation of Less or's interest therein, whether in whole or in part, Lessor may pay over any unapplied part of said security to the succeeding owner of the premises and from and after such payment Lessor shall be relieved of all liability with respect hereto. The provisions of the preceding sentence shall apply to every subsequent sale or transfer of the fee of the premises, and any successor of Lessor may, upon a sale, transfer, or other cessation of interest of such successor in the premises, whether in whole or in part, pay over any unapplied part of said security to the successor owner of the premises and shall thereupon be relieved of all liability with respect thereto.

3.06 Lease Buyout. Lessee will have the right to end the lease at any point during the lease term with a 90 day written notice. In order for the termination/buy out to be effective, the Notice of termination must be accompanied by a lump sum payment of the total remaining TI payments that would have been required for the remainder of the lease term if the lease had not been terminated. The Tenant Improvements are outlined in Schedule A, which is part hereof of the complete lease

ARTICLE IV - LESSEE COVENANTS

4.01 Lessee shall be deemed to acknowledge by entry thereupon that the premises are at such time in good and satisfactory order, repair and condition, and covenants during the term hereof:

(a) To pay, when due, all rent and other charges set forth herein; all charges for electricity, heat, air conditioning, telephone, and other communication systems used at, and supplied to, the premises, and other utilities not provided by Lessor.

(b) To keep and maintain said premises, including interior nonstructural partitions and all lighting, electrical, plumbing, heating and air conditioning equipment, fixtures and facilities in as good order, repair and condition as the same are in at the commencement of said term, or may be put in thereafter, damage by fire or unavoidable casualty and reasonable use and wear excepted. Tenant will be responsible for routine cleaning and maintenance of mechanical systems and, at the termination of this lease, peaceably to yield up said 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 caused by such removal, and leaving the premises clean and tenantable. If Lessor in writing permits Lessee to leave any such goods and chattels at the premises, and the Lessee does so, Lessee shall have no further claims and rights in such goods and chattels as against the Lessor or those claiming by, through or under the Lessor; notwithstanding anything to the contrary contained in paragraph 4.01 herein, if Lessee has leased ground floor space, to keep all glass windows in good repair and condition and to carry adequate insurance to provide for the replacement of any such glass which is damaged or destroyed. **Lessee shall be responsible for routine maintenance of all heating and air conditioning units on premise.**

(c) Not to injure or deface said premises or building; not to permit on said premises any auction sale, inflammable fluids, chemicals, nuisance, objectionable noise or odor; not to permit the use of said premises for any purpose other than set forth herein or any use thereof 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) Lessee shall have the right, at Lessee's expense, to place signage on the exterior of the premises, with prior written consent of the Lessor, Lessee shall also have the right, at Lessee's expense to place free standing signs in the grassy area adjacent to their leased premises, with prior written consent of the Lessor. Such consent not to be unreasonably withheld. All signage must meet local sign ordinances.

(e) Not to make any alterations or additions without the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed.

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

(g) Not to install any vending machines or food service equipment in the demised premises without first obtaining Less or's written approval.

(h) To save Lessor harmless and indemnified from any injury, loss, claim or damage to any person or property while on or about the premises, except to the extent it is the result of the negligence of Lessor, and from any claim, demand or liability anywhere occasioned by any act, omission or default of Lessee or of employees, agents or visitors of Lessee, including but not limited to claims for cleanup costs, response costs, penalties or sanctions, asserted (either during the term of the Lease or after its expiration) by any person or entity, arising from the presence on the premises, or release from or to the premises of hazardous substances, or arising from the application of any governmental environmental law, regulation or requirement, whether or not such law, regulation or requirement was in effect at the time of the act, omission or default. Lessee shall, at its own cost and expense, defend any and all suits or actions (just or unjust) which may be brought against Lessor or in which Lessor may be included with others upon any such above-mentioned matter, claim or claims.

(i) **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 \$500,000.00 per person and \$1,000,000.00 per occurrence for bodily injury or death and \$250,000.00 for damage to property; (ii) be with such insurance company or companies as the Lessor may reasonably approve; (iii) contain a provision requiring that written notice be given to Lessor not less than (10) days prior to the cancellation, 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 of this Lease and thereafter not less than ten (10) days prior to the expiration of any such policy.

(j) That, without limitation of any other provision herein, the 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 thereof, 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, 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 the Lessee or others; provided, however that the Lessor shall be liable for its negligence and the negligence of its employees to the extent that the liability of the Lessor is insured by virtue of a general liability insurance policy, which the Lessor agrees to maintain on the building.

(k) To hold all property of Lessee, including fixtures, furniture, equipment and the like of the Lessee, or of any other owner situated at the premises, at Lessee's own risk, and to pay when due all taxes assessed during the term of this Lease against any leasehold interest or personal property of any kind owned or placed in, upon or about said premises by Lessee.

(l) To permit Lessor or its agents to examine the premises at reasonable times and, if Lessor shall so elect, to make any repairs, renovations or additions Lessor may deem necessary and, at Lessee's expense, to remove any alterations, additions, signs, drapes, curtains, shades, awnings, aerals or flagpoles, or the like, not consented to in writing.

(m) That the 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 said premises to serve said premises and to serve other parts of said building.

(n) To permit Lessor at any time or times to decorate and to make, at its own expense, repairs, alterations, renovations, additions and improvement, structural or otherwise, in or to said building or any part thereof, and during such operations to take into and through said 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.

(o) Not to suffer or permit any lien of any nature or description 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 the Lessee to immediately pay and remove the same; this provision shall not be interpreted as meaning that the Lessee has any authority or power to permit any lien of any nature or description to attach to or to be placed upon the Less or's title or interest in the building, the premises, or any portion thereof.

(p) That Lessee shall not remove any of its fixtures from the premises at any time that Lessee is in default under any of the terms of this Lease.

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

(r) Not to permit any employee of Lessee to violate any covenant or obligation of Lessee hereunder.

(s) To pay Lessor's expenses, including reasonable attorney's fees, incurred in enforcing any obligation of this Lease which has not been complied with.

(t) That the rights and remedies to which the 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 the Lessor may be properly entitled in case of any breach or threatened breach by Lessee of any portion of the Lease. In addition to the other remedies in this Lease provided, 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.

(u) That without limitation of anything elsewhere herein contained, the Lessor may,

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

(ii) during the last ninety (90) days of the term, if during or prior to that time the Lessee vacates the Premises, to decorate, remodel, repair, alter or otherwise prepare the Premises for reoccupancy, without affecting Lessee's obligation to pay rent for the Premises;

(iii) on reasonable prior notice to the Lessee, to show the Premises to prospective tenants during normal business hours and to place "for lease" signs on the land upon which the building is located and exterior of the building the last six (6) months of the term, and to any prospective purchaser, mortgager, or assignee of any mortgage on the building and to others having a legitimate interest at any time during the term.

(v) enter upon the premises and exercise any and all 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 V - ASSIGNMENT AND SUBLETTING

5.01 The Lessee shall not, without the Lessor's prior written consent, (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 the 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 the Lessee.

5.02 If, with the consent of the Lessor, this Lease be assigned or if the Premises or any part thereof be sublet or occupied by anybody other than Lessee, Lessor may, after default by Lessee, collect rent from the assignee, subtenant or occupant, and apply the net amount collected to the Rent herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of any of Lessee's covenants contained in this Lease or the acceptance of the assignee, subtenant or occupant as Lessee, or a release of Lessee from further performance by Lessee of covenants on the part of Lessee herein contained. Lessee further agrees that it shall not be released from its obligations under this lease by any extensions of time or other indulgences granted by Lessor to any assignee or sub lessee or by failure of Lessee to receive notice thereof, and hereby waives all suretyship defenses.

ARTICLE VI - SUBORDINATION

6.01 This Lease and the lien hereof is hereby made subordinate to any mortgage placed upon the premises or the building or property where the premises are located and, if required by the mortgager, Lessee shall agree not to prepay rent more than ten (10) days in advance, to provide said mortgager with notice of and reasonable opportunity to cure any defaults by Lessor, and not to amend, modify or cancel this Lease without mortgager'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 the Lessee in its possession of the premises so long as Lessee continues to perform its

obligations hereunder and, in the event of acquisition of the 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, and Lessee agrees to recognize such holder or any other person acquiring title to the premises as having the rights of the 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.

ARTICLE VII - CASUALTY DAMAGE AND EMINENT DOMAIN

7.01 If the premises, the building, or any substantial part of either, shall be taken by any exercise of the right of eminent domain or shall be destroyed or damaged by fire or unavoidable casualty or by action of any public or other authority, or shall suffer any direct consequential damage for which Lessor and Lessee, or either of them, shall be 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 the Lessor or Lessee which election may be made whether or not Lessor or Lessee's entire interest has been divested; and if neither 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 and excepts all rights to damages to said 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. Either shall give the other party of its decision to terminate this Lease or Lessor to restore 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 VIII - LESSEE DEFAULT

8.01 If Lessee shall neglect or fail to make any rental payment within five (5) days after written notice of failure to pay when due or if Lessee shall fail to cure (or to commence to cure) a default in the performance of any of the other of the Lessee's covenants within thirty (30) days after date of notice of such default by Lessor, or if the Lessee, having commenced to cure a default within the thirty (30) day period but said thirty (30) day period, shall fail to complete the curing of the default without unreasonable delay, or if the leasehold hereby created shall be taken on execution, or by other process of law, or if any assignment shall be made of Lessee's property for the benefit of creditors, or if a receiver, guardian, conservator, trustee in bankruptcy or similar officer shall be 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, or if a petition is filed by Lessee under any 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 shall not be dismissed within thirty (30) days from the date upon which it is filed, then and in any such event Lessor, at any time thereafter, may give written notice to Lessee specifying such event of default or events of default and stating that this Lease and the term hereby demised shall expire and terminate on a date specified in such notice, and upon the date specified in such notice this Lease and the term hereby demised and all rights of Lessee under this Lease, including any renewal or extension privileges whether or not exercised shall expire and terminate.

Upon any such expiration or termination of this Lease, Lessee shall quit and peacefully surrender the premises to Lessor, and Lessor, upon or at any such expiration or termination, may without further notice, enter upon and reenter the premises and possess and repossess itself thereof, by summary proceedings or otherwise, and may dispossess Lessee and remove Lessee and all other persons and property from the premises and may have, hold and enjoy the premises and the rights to receive all rental income of and from the same.

No such expiration or termination of this Lease, or summary proceedings, abandonment or vacancy, shall relieve Lessee of its liability and obligation under this Lease, whether or not the premises shall be relet, and Lessee covenants and agrees, in the event of any such expiration or termination of this Lease, or summary proceedings, abandonment or vacancy, to pay and be liable for, on the days originally fixed herein for the payment thereof, amounts equal to the several installments of Rent and other charges reserved as would, under the terms of this Lease, become due and payable if this Lease had not so expired or been terminated, or if Lessor had not entered or reentered as aforesaid, and whether the premises be relet or remain vacant in whole or in part or for a period less than the remainder of the term, and for the whole thereof, up to but not exceeding the amount of any deficiency then existing after giving due credit for any net proceeds including attorneys' fees, and any suit brought to collect the amount of the deficiency for any month shall not prejudice in any way the rights of Lessor to collect the amount of the deficiency for any subsequent month by similar proceeding, OR AT THE ELECTION OF LESSOR, Lessee will upon such expiration or termination pay to Lessor as liquidated damages such a sum as at the time of such expiration or termination represents the difference between the Rent and other charges reserved in this lease from the date of such expiration or termination to the date of the expiration of the term of this Lease, and the then fair and reasonable rental value of the premises for the same period.

ARTICLE IX - HOLDING OVER

9.01 If the Lessee retains possession of the Premises or any part thereof after the termination of the term, the Lessee shall pay the Lessor rent at the last monthly rate specified in paragraph 3.01 for the time the Lessee thus remains in possession and, in addition thereto, shall pay the Lessor for all damages, consequential as well as direct, sustained by reason of the Lessee's retention of possession. If the Lessee remains in possession of the Premises, or any part thereof, after the termination of the term, such holding shall, at the election of the Lessor expressed in a written notice to the Lessee and not otherwise, constitute a renewal of this lease for one (1) year. The provisions of this Article do not exclude the Lessor's rights of re-entry for any other right hereunder.

ARTICLE X - SELF-HELP

10.01 If Lessee or Lessor shall default in the performance or observance of any agreement, condition, or other provision in this Lease contained on its part to be performed or observed, and shall not cure such default within fifteen (15) days after notice in writing from the other party specifying the default (or shall not within said period commence to cure such default and thereafter prosecute the curing of such default to completion with due diligence), the non-defaulting party may, at its option, without waiving any claims for breach of agreement, at any time thereafter cure such default for the account of the other party, and the defaulting party shall reimburse the non-defaulting party for any amount paid and any expense or contractual liability so incurred, and any amounts due hereunder from Lessee shall be deemed additional Rent due and payable with the next installment of Rent; provided, however, that Lessor may cure any such default as aforesaid prior to the expiration of said waiting period, but after notice to Lessee, if it is necessary to protect the premises, the building, the land on which the building is located or its interest therein, or to prevent injury or damage to persons or property. Without limiting the generality of this Section 11.01 of this Lease, Lessee shall have no right of abatement, deduction or set off of Rent by reason of any amounts owed by Lessor to Lessee pursuant to this Section 11.01.

ARTICLE XI - LIMITATION OF LIABILITY

11.01 Lessee agrees to look solely to Lessor's interest in the building 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 in interest, or any other action not involving the personal liability of Lessor.

ARTICLE XII - LESSOR DEFAULT

12.01 The Lessor shall in no event be in default in the performance of any of his obligations hereunder unless and until the Lessor shall have failed to perform such obligations within thirty (30) days or such additional time as is reasonably required to correct any such default after notice by the Lessee to the Lessor properly specifying wherein the Lessor has failed to perform any such obligation. Further, if the holder of the mortgage on the building of which the premises are a part notifies Lessee that such holder has taken over the Lessor's rights under this Lease, Lessee shall not assert any right to deduct the cost of repairs or any accruing, but shall look solely to the Lessor for satisfaction of such claim.

ARTICLE XIII - WAIVER OF RIGHTS

13.01 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 shall require the consent or approval of the other party, the other party's consent to or approval of said action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion or a consent to or approval of any other action on 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, 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.

ARTICLE XIV - NOTICES

14.01 Any notice from Lessor to Lessee or from Lessee to Lessor shall be deemed duly served if mailed by certified mail if to Lessee, at said premises, or if to Lessor, at the place from time to time established for the payment of rent.

ARTICLE XV - SUCCESSORS AND ASSIGNS

15.01 Except as otherwise expressly provided in this Lease, the terms and provisions of this Lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors or assigns, respectively, of Lessor and Lessee, respectively, and their respective heirs, executors, administrators, successors and assigns.

ARTICLE XVI - MISCELLANEOUS

16.01 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.

16.02 Lessor and Lessee agree that this Lease shall not be recorded, provided, however, Lessor and Lessee will, at any time, upon the request of either party, promptly execute duplicate originals of an instrument in recordable form which will constitute a memorandum of this Lease, setting forth the names of the parties, a description of the premises, the term of this Lease and any other portions of this Lease, excepting the rental provisions, as either party may request.

16.03 If any provision of this Lease or its application to any person or circumstances shall to any extent be 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.

16.04 The Index, headings and Summary page herein contained are for convenience only, and shall not be considered a part of the Lease.

16.05 No acceptance by Lessor of a lesser sum than the Rent and additional rent then due shall be deemed to be other than an 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.

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

16.07 This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Maine.

16.08 Notice to exercise said option, or renewal to be given prior to 130 days before termination of lease.

16.09 Any and all Rental Real Estate Commissions will be the sole (100%) obligation of _____, Not _____, LLC or Ross Y. Furman

Executed this _____ day of _____,

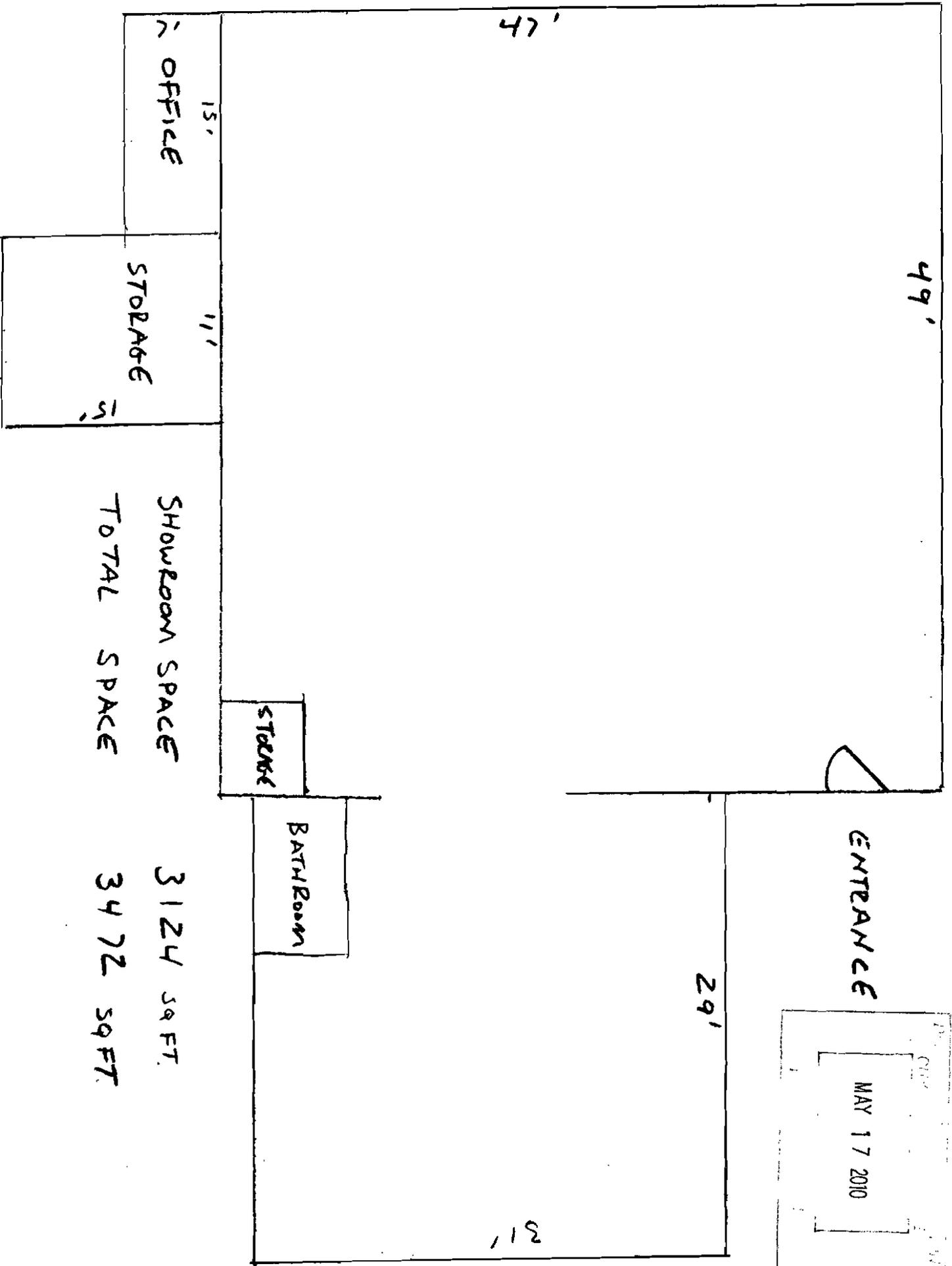
Witness:

By: _____
Ross Y. Furman, Sole Member
HARD SALES, LLC

Witness:

By: _____ Lessee
Its: _____

By: _____ Lessee
Its: _____



SHOWROOM SPACE 3124 SQFT.

TOTAL SPACE 3472 SQFT.



Image U.S. Geological Survey
© 2010, 2009

© 2009
GOC

PLAY SETS
↙

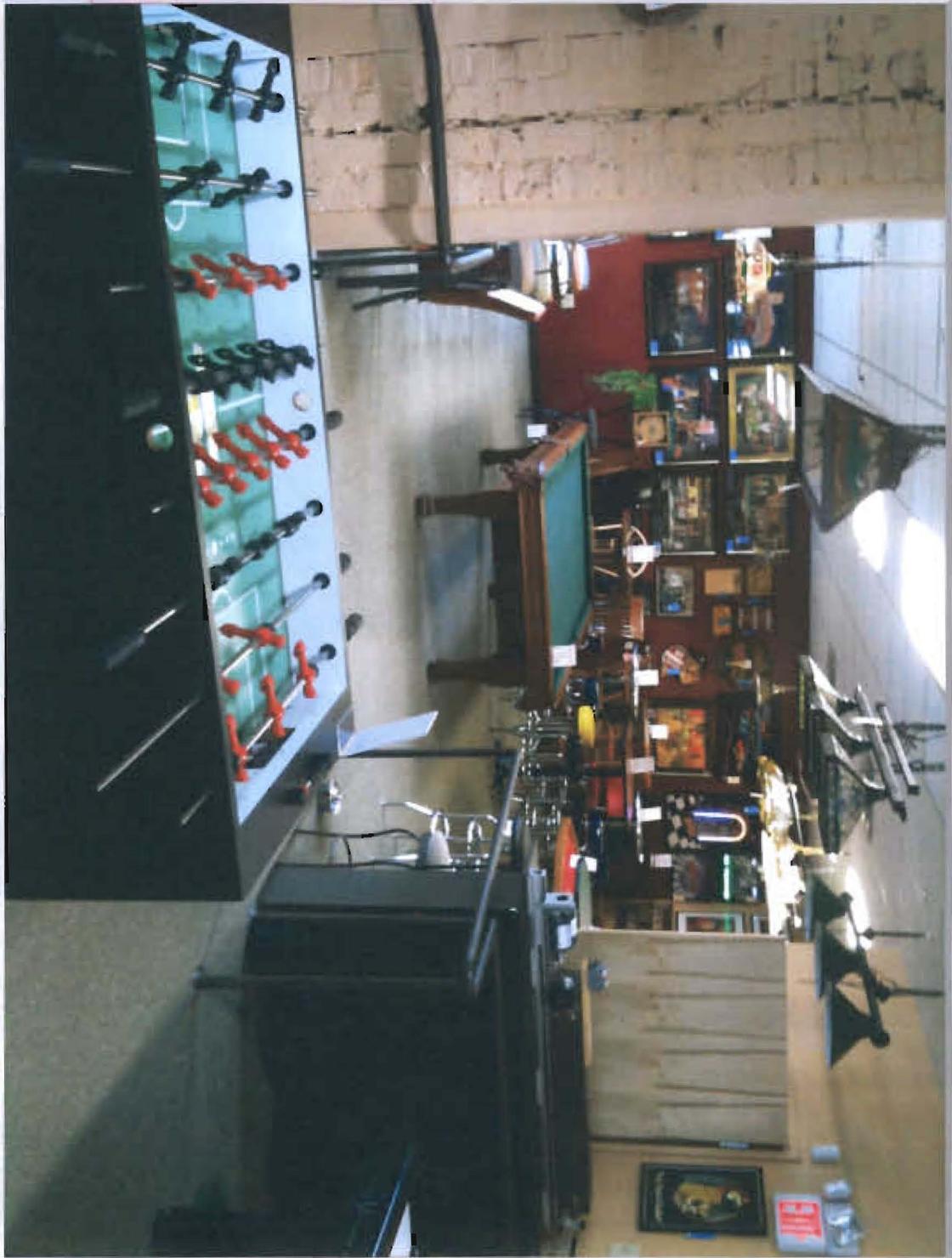




DEPT. OF PUBLIC SAFETY
CITY OF MEMPHIS

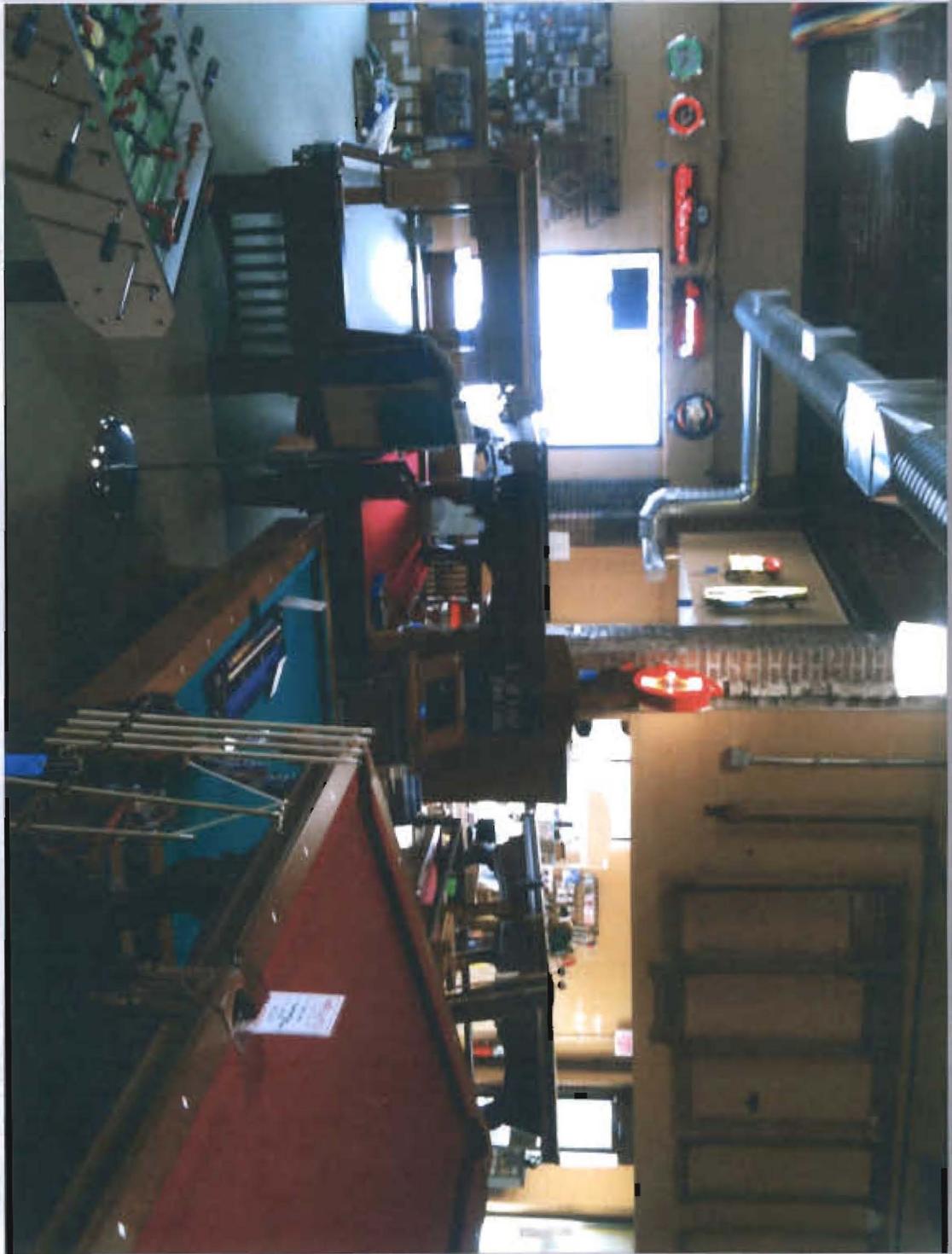
MAY 17 2010

10-50-3



DEPARTMENT OF PUBLIC SAFETY
CITY OF PORTLAND, OREGON

MAY 17 2010



provided for by the bayside height overlay map for up to twenty percent (20%) of the building footprint beyond fifty (50) feet of the street as measured above the adjacent grade of the abutting street.

This provision shall not apply to:

1. Accessory building components such as truck loading docks, mechanical equipment enclosures and refrigeration units.
2. Information kiosks and ticketing booths.
3. Parking garages.
4. Public transportation facilities.
5. Additions to buildings existing as of (March 9, 2005) provided that the cumulative additions since (March 9, 2005) does not exceed ten percent (10%) of the building footprint on (March 9, 2005) except that such restriction shall not apply to those portions of the building addition that are constructed closer to the street line than the building footprint existing as of (March 9, 2005).
6. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures.
7. Additions to and/or relocation of designated historic structures or structures determined by the historic preservation committee to be eligible for such designation.

(Ord No. 201-05/06, 4-19-06)

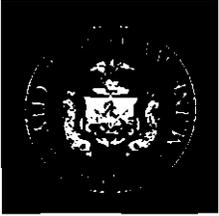
Sec. 14-299. Performance standards.

All uses in the B-7 mixed development district zone shall comply with the following standards:

- (a) **Storage:** Any storage of new materials, finished

flood hazard zone shall be subject to the requirements of division 26 and/or division 26.5

- (h) *Glare, radiation or fumes:* Glare, radiation or fumes shall not be emitted to an obnoxious or dangerous degree beyond lot boundaries.
- (i) *Enclosure of uses:* All uses shall be operated within a fully enclosed structure, except for those customarily operated in open air.
- (j) *Materials or wastes:* Any permitted outdoor storage of materials shall be done in such a manner as to prevent the breeding and harboring of insects or vermin, to prevent the transfer of such materials from the site by natural causes or forces and to contain fumes, dust, or other materials which constitute a fire hazard. This storage shall be accomplished within enclosed containers or by one (1) or more of the following methods: raising materials above ground, separating materials, preventing stagnant water, or by some other means. Any areas used for permitted outdoor storage of materials shall be screened from view of any adjoining properties and public rights-of-way. NO outdoor storage shall be permitted between the front of any building on the site and the street.
- (k) *Odor:* Uses in the B-7 zone shall adhere to the odor regulations of the IL zone.
- (l) *Smoke:* Discharges of smoke shall not exceed opacity percentage of forty percent (40%) or number two (2) on the ringelman chart.
- (m) *Discharge into sewers:* No discharge shall be permitted at any point into any private sewage disposal system, or surface drain, or into the ground, of any materials in such a way or of such nature or temperature as to contaminate any water supply, or the harbor, or otherwise cause the emission of dangerous or objectionable elements, except in accordance with standards approved by the health authority or by the public works authority.
- (n) *Lighting:* All lighting shall be designed and



PORTLAND MAINE

Strengthening a Remarkable City, Building a Community for Life • www.portlandmaine.gov

*Penny St. Louis Littell - Director of Planning and Urban Development
Marge Schmuckal, Zoning Administrator*

March 23, 2010

COPY

AJ Jones
Skillfull Home Recreation
137 Preble Street
Portland, ME 04101

Re: 137 Preble Street – 034 D004 – B-7 – outside display of goods

Dear Mr. Jones,

This letter is a follow up to our conversation from March 19, 2010 regarding your outside display of goods (play house, jungle gyms/swing sets) that your company sells.

Your retail business at 137 Preble Street is located in the B-7 Mixed Development District Zone. Section 14-299(i) of the ordinance states that “all uses should be operated within a fully enclosed structure, except for those customarily operated in the open air”. Since retail is not a use that is “customarily operated in the open air,” your property is in violation.

You have thirty days from the date of this letter to remove the goods that are displayed on the outside of the building and bring your property into compliance.

You have the right to appeal my decision. If you wish to exercise your right to appeal, you have thirty days from the date of this letter in which to appeal. If you should fail to do so, my decision is binding and not subject to appeal. Please contact this office for the necessary paperwork that is required to file an appeal.

Please feel free to call me at 874-8709 if you have any questions.

Yours truly,

Ann B. Machado
Zoning Specialist
(207) 874-8709

Cc. file

G&R DiMillo's Bayside

5/20/19

TO THE ZONING BOARD OF APPEALS;

I AM WRITING THIS LETTER IN SUPPORT OF ONE OF THE NEWEST STOREFRONTS TO OPEN IN THE BAYSIDE AREA, THE NEW SKILLFUL HOME RECREATION.

AS A BUSINESS OWNER IN THE UP AND COMING BAYSIDE AREA IT IS GREAT TO SEE A CHANGE IN THE LOOK OF THIS AREA. IT IS NICE TO COME TO WORK IN THE MORNING AND DRIVE UP PREBLE STREET AND FEEL A NEW SENSE OF VIBRANCY IN BAYSIDE. THE PRODUCTS THAT SKILLFUL HAS ON DISPLAY OUT FRONT AND OUT BACK ARE A WELCOME SIGHT AS COMPARED TO THE VACANT AND IGNORED STOREFRONTS IN THE AREA THAT STILL REMAIN.

I HAVE BEEN IN BAYSIDE NOW FOR TWO YEARS AND THE CHANGES I HAVE SEEN TAKE PLACE NEED TO CONTINUE.

PREBLE STREET IS THE NEW ENTRANCE TO DOWNTOWN PORTLAND -- PLEASE LET THE BUSINESS OWNERS WHO KNOW HOW TO PROMOTE THEIR BUSINESS ,AND THE BAYSIDE AREA, DO WHAT THEY CAN TO KEEP THE PROGRESS GOING FORWARD.

THANK YOU,



GENE DIMILLO

141 Preble Street
Portland, Maine

5/20/10

May 17, 2010

In regards to: Skillful Home Recreation

Zoning Board of Appeals

Attention: Zoning Board of Appeals City of Portland

To Whom It May Concern:

Our company, Portland Digital Printing located at 141 Preble St. would like to express our support to our neighbors Skillful Home Recreation in regards to their outdoor swing set display. We are tenants in the same building and share common customer/employee areas inside, as well as outside. As a locally owned company we like to work along side other local companies and the City of Portland to help improve the Bayside Community. Skillful Home Recreation's outdoor swing set display does not interfere with our establishment. We have no problems with their outdoor display and would like it to remain where it is to further the success of Skillful Home Recreation.

Respectfully,
Brooke Stanhope
Division Manager
Portland Digital Printing & Copying / A Division of The Copy Center
141 Preble Street
Portland, Maine 04101



5/20/10



grapheteria.
CUSTOM FRAMING

143 Kennebec Street, Portland, Maine 04101
207.772.3709 • www.TheGrapheteria.com

May 17, 2010

To Whom It May Concern,

I am writing on behalf of our business neighbor Skillful Vending. It has come to our attention that the city has questioned their outdoor display of swing-sets. As a business owner located in Bayside since 2001 I have not found their outdoor display to be any sort of nuisance. For many years the business and it's wares were located on Kennebec and Alder Street where an array of outdoor equipment was on display. There has never been an incident or issue with the play ground equipment being displayed outside. As a matter of fact we like that Skillful Vending is contributing to promoting Bayside as family friendly neighborhood.

I hope you will continue to allow Skillful Vending to display their play ground equipment and swing-sets outdoors.

Sincerely,

Lisa M. Castonia
Co-owner

5/20/19

May 13, 2010

Charlie Mitchell
Justin Alford
Bayside Bowling
58 Alder St.
Portland, Me 04101

City of Portland
Zoning Board of Appeals
389 Congress St., Room 315
Portland, ME 04101

Re: Interpretation appeal for 137 Preble St.

To whom it may concern,

We are writing in support of Skillful Home Recreation in their appeal regarding the display of outdoor play sets at 137 Preble Street . It is our opinion that the display of these play sets is in no way detrimental to the surrounding businesses or the local area as a whole. Furthermore, having successful small businesses in the bayside area is beneficial to neighborhood and the city as a whole. We encourage you to be supportive of small businesses such as Skillful home Recreation and allow them to continue use the area surrounding their business to display the play sets that they have for sale.

Sincerely,

A handwritten signature in black ink, appearing to read 'Charlie Mitchell', with a long horizontal flourish extending to the right.

Charlie Mitchell

Justin Alford

Bayside Bowling

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

Philip Saucier-chair
Sara Moppin
Jill E. Hunter
Gordan Smith-secretary
William Getz

May 24, 2010

A.J. Jones
Skillfull Home Recreation
137 Preble Street
Portland, ME 04101

RE: 137 Preble Street
CBL: 034 D004
ZONE: IR-2

Dear Mr. Jones:

At the May 20, 2010 meeting, the Zoning Board of Appeals voted 4-0 to grant the Interpretation Appeal to allow the display of outdoor play equipment on the exterior of your building. I have enclosed a copy of the Board's decision and the billing for the legal advertisement, notices and processing fee.

Appeals from decisions of the Board may be filed in Superior Court, pursuant to 30-A M.R.S.A. section 2691 (2) (G).

Should you have any questions please feel free to contact me at 207-874-8709.

Yours truly,



Ann B. Machado
Zoning Specialist



City of Portland Zoning Board of Appeals

May 11, 2010

A.J. Jones
Skillfull Home Recreation
137 Preble Street
Portland, ME 04101

Dear Mr. Jones,

Your Interpretation Appeal has been scheduled to be heard before the Zoning Board of Appeals on **Thursday, May 20, 2010 at 6:30 p.m.** in Room 209, located on the second floor of City Hall.

Please remember to bring a copy of your application packet with you to the meeting to answer any questions the Board may have.

I have included an agenda with your appeal highlighted, as well as a handout outlining the meeting process for the Zoning Board of Appeals.

I have also included the bill for the legal ad, notices and processing fee for the appeal. The check should be written as follows:

MAKE CHECK OUT TO: City of Portland
MAILING ADDRESS: Room 315
389 Congress Street
Portland, ME 04101

Please feel free to contact me at 207-874-8709 if you have any questions.

Sincerely,

Ann B. Machado
Zoning Specialist

Cc: File

CBL	OWNER	OWNER MAILING ADDRESS	PROPERTY LOCATION	UNITS
	161 MARGINAL WAY LLC	BOX 7525 PORTLAND, ME 04112	161 MARGINAL WAY	1
	87 MARGINAL WAY LLC	1735 MARKET ST STE A-400 PHILADELPHIA, PA 19103	87 MARGINAL WAY	1
	ATLANTIC BAYSIDE HOLDINGS	50 PORTLAND PIER PORTLAND, ME 04101	171 KENNEBEC ST	1
	ATLANTIC BAYSIDE SQUARE LLC	340 FORE ST PORTLAND, ME 04101	HANOVER ST	0
	ATLANTIC BAYSIDE SQUARE LLC	PO BOX 18169 PORTLAND, ME 04112	54 MARGINAL WAY	1
	ATLANTIC BAYSIDE TRUST LLC	PO BOX 18169 PORTLAND, ME 04112	84 MARGINAL WAY	1
	BACK COVE COMPANY 5 MILK ST	PO BOX 7525 PORTLAND, ME 04112	127 MARGINAL WAY	1
	BAYSIDE II LLC	ONE CANAL PLAZA PORTLAND, ME 04101	92 KENNEBEC ST	0
	BAYSIDE II LLC	ONE CANAL PLAZA PORTLAND, ME 04101	185 LANCASTER ST	1
	BAYSIDE VENTURES LLC	PO BOX 18169 PORTLAND, ME 04112	49 MARGINAL WAY	1
	BAYSIDE VILLAGE STUDENT	247 COMMERCIAL ST ROCKPORT, ME 04856	132 MARGINAL WAY	400
	FIVE LIVER COMPANY	PO BOX 7525 PORTLAND, ME 04101	135 MARGINAL WAY	0
	FIVE LIVER COMPANY	5 MILK ST PORTLAND, ME 04101	145 MARGINAL WAY	1
	FURMAN ROSS Y	P O BOX TWO PORTLAND, ME 04112	138 KENNEBEC ST	0
	FURMAN ROSS Y JR	PO BOX 2 PORTLAND, ME 04112	71 MARGINAL WAY	1
	FURMAN ROSWELL Y	PO BOX 2 PORTLAND, ME 04112	101 HANOVER ST	1
	HARD SALES LLC	PO BOX 2 PORTLAND, ME 04112	137 PREBLE ST	1
	HOWLES CORPORATION	PO BOX 938 PORTLAND, ME 04104	124 ELM ST	0
	HOWLES CORPORATION	PO BOX 938 PORTLAND, ME 04104	53 KENNEBEC ST	0
	HOWLES CORPORATION	PO BOX 938 PORTLAND, ME 04104	71 KENNEBEC ST	1
	J B BROWN & SONS	PO BOX 207 PORTLAND, ME 04112	112 KENNEBEC ST	0
	KENNEBEC STREET	PO BOX 169 PORTLAND, ME 04112	131 PREBLE ST UNIT 2	1
	PORTLAND ARCITECTURAL	131 PREBLE ST PORTLAND, ME 04101	131 PREBLE ST	1
	STATE OF MAINE	18 STATE HOUSE STATION AUGUSTA, ME 04330	75 ALDER ST	0
	STATE OF MAINE	AUGUSTA, ME 04333	MARGINAL WAY	0
	TOMAKS LLC	116 ARMOUR RD MAHWAH, NJ 07430	140 MARGINAL WAY	1

CBL	OWNER	OWNER MAILING ADDRESS	PROPERTY LOCATION	UNITS
	UNIQUE PROPERTIES LLC	PO BOX TWO PORTLAND , ME 04112	160 PREBLE ST	1
	UNITED STATES	PORTLAND , ME 04101	26 MARGINAL WAY	0