Reviewed for Code Compliance
Inspections Division
Approved with Conditions
Date: 05/25/16

LEASE AGREEMENT

This Lease is made as of the ___ day of April, 2016, by and between T LLC, a Maine limited liability company having a mailing address of 1 Promenade, Portland, Maine 04101 (hereinafter referred to as "Tenant"), an PORTLAND, a Maine Municipality having its principal place of business at 389 Congress St., Portland, Maine 04101 (hereinafter sometimes referred to as "Landlord" and sometimes as "City").

WHEREAS, Landlord owns real property known as Deering Oaks Park (the "Park") along with the building known as the "Castle" in the park and an adjacent parking lot (the "Parking Lot"), all of which are located at 356 State Street, Portland, Maine; and

WHEREAS, Landlord solicited proposals to operate a restaurant in the Castle and received several proposals, including Tenant's proposal (the "Proposal"), which is attached hereto as Exhibit A and incorporated herein by reference; and

WHEREAS, upon due consideration of all of the proposals, and having concluded that Tenant has the requisite knowledge, ability and resources to operate a restaurant in the Castle, Landlord has decided to lease to Tenant the Castle and 6 parking spaces in the Parking Lot (the "Demised Premises" or "Premises"); and

WHEREAS, Landlord has sufficient right, title and interest in and to the Demised Premises, together with the facilities, easements, rights, licenses, and privileges hereinafter granted, and has full power and authority to enter into this Agreement in respect thereof;

NOW, THEREFORE, in consideration of the mutual covenants and considerations herein contained, the sufficiency of which is hereby acknowledged, Landlord and Tenant agree as follows:

1. Demised Premises; "As Is" Condition.

Landlord does hereby lease, demise and let unto Tenant the Castle and 6 parking spaces in the Parking Lot, as depicted in the diagram that is attached hereto as Exhibit B and incorporated herein by reference. Tenant agrees to accept the Premises in "as is" condition without representation or warranty by Landlord as to its condition or fitness for a particular purpose. The Demised Premises does not include any outdoor space in the Park. To the extent that Tenant desires to use such space, it must obtain an outdoor dining permit pursuant to Portland City Code §§ 25 – 26 to 30 or other permits or licenses for the use of such space.

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2. Term.

a. The initial term of this Lease shall be five years and shall comme 2016 and end on April 30, 2021. Provided that Unless Tenar notified of a default and failed to cure such default within any app period, Tenant shall have the right to extend this Lease for up to two additional renewal terms of five (5) years each upon the same terms and conditions set forth in this Lease except for the rent set forth in Section 3.a. below. Rent for each renewal period shall increase by the CPI (Northeast) or 2% per year, whichever is greater. Tenant shall provide written notice to Landlord of its desire to renew the lease no less than ninety (90) days before the end of the initial term or the first renewal term of this Lease.

b. Any holding over by Tenant at the expiration of this Lease and any renewals thereof shall not constitute a renewal of the Lease, but at Landlord's election such holding over shall result in a tenancy-at-will from month to month at the same rent in effect at the expiration of the Lease.

c. In the event that Tenant applies for and is denied an outdoor dining permit pursuant to Portland City Code §§ 25 – 26 to 30, a certificate of occupancy a license permitting the service of food and liquor, an entertainment license or a license for recreational activities in the park or Tenant's outdoor dining area, Tenant shall have the right to terminate this Lease upon 30 days written notice to Landlord. Tenant acknowledges and agrees that the City of Portland is acting as landlord, and not in its regulatory capacity, in connection with this Lease.

3. Rent; Utilities.

a. Commencing on the date that all of the permits and licenses enumerated in Section 2.c. above are received, or July 1, 2016, whichever is earlier, and continuing on the first day of each month of the term thereafter, the Tenant shall pay to the Landlord, in advance, monthly rent of Seven Hundred Fifty Dollars ($750.00); provided, however, that for each month that Tenant has obtained and paid for an outdoor dining permit for outdoor dining space adjacent to the Castle pursuant to Portland City Code §§ 25 – 26 to 30 (as may be amended), Tenant's monthly rent shall be reduced by one twelfth of the annual cost of such permit, provided that in no event shall the monthly rent be less than Two Hundred Fifty Dollars ($250.00).

b. Upon full execution of this Lease Agreement, Tenant will deposit with Landlord the sum of One Thousand Five Hundred Dollars ($1,500.00). This sum represents the security deposit due under the lease. Said deposit will be returned to Tenant at the end of the lease term, provided the premises are left in good repair, "broom clean," and provided Tenant has not been in default of lease. Interest will not be paid on said deposit.

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c. The rent does not include utility expenses. Tenant is directly responsible for all expenses for electricity, water, sewer, natural g oil, HVAC, telephone, internet and any other utility or comm services.

4. Parking

The Tenant shall be entitled to the exclusive use of six parking spaces in the Parking Lot identified in Exhibit B for employee parking only, provided, however, that Landlord reserves the right at any time during the term of this Lease to assign different parking spaces to Tenant.

5. Obligations of Landlord.

The Landlord shall provide, at Landlord's expense, only the following services: Maintenance and repair of the roof, exterior walls, and structure of the Castle building, reasonable wear and tear, damage by fire and other casualty excepted. To the extent that the heating system existing in the Premises at the time this lease is signed fails and cannot be repaired by Tenant as required by section 6, Landlord shall replace it. In addition, in the event of a break in the sewer line, Landlord shall repair or replace such line. Provided, however, that if any maintenance, repair, or replacement is made necessary by fault or neglect of the Tenant or Tenant's employees, contractors, customers, agents, or anyone else on the Premises with Tenant's permission, such maintenance, repair, or replacement shall be at the expense of the Tenant, and Tenant shall pay all costs therefor. The Landlord shall repair or replace the fireplace in the Castle by September 30, 2016, provided that sufficient funds for such repair or replacement are budgeted for in the City's 2016-17 budget. Thereafter, Tenant shall be responsible for the maintenance, repair, and replacement of the fireplace. Except as set forth herein, the Landlord shall have no obligation to maintain, repair, or replace any part of the Premises.

6. Obligations of Tenant.

The Tenant, at the Tenant's sole expense shall:

a. Determine all zoning information and secure all necessary or required permits and approvals for its proposed use of the Demised Premises. Landlord makes no representations or warranties as to the suitability of, or the ability to obtain regulatory approval for the Demised Premises for Tenant use.

b. Incur the cost of any fit-up improvements.

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c. Use and improve the Demised Premises in substantially the form described and depicted in Tenant's Proposal. Provided, h before making any modifications or improvements to th Premises, including, without limitation, any interior or exteri Tenant shall obtain Landlord's prior written approval, whi shall not be unreasonably withheld, delayed or conditioned. Tenant agrees that all work shall be completed in compliance with all applicable state and municipal building codes and ordinances. To the extent that any disagreement is found between the terms of this Lease and the Proposal, the terms of this Lease shall govern.

d. Except as set forth in Section 5 above, maintain in good repair the entire Demised Premises including, without limitation, the HVAC system, plumbing, electrical, and communication lines as well as any portions of such utility systems located outside the premises. Tenant shall also maintain all windows in good repair, and any casualty damage to windows shall be the responsibility of the Tenant.

e. Properly bag and remove all trash and garbage and maintain the Demised Premises in a clean and sanitary condition.

f. Provide and be responsible for all cleaning and janitorial services including the cleaning of exterior windows for the Demised Premises.

g. Pay and be responsible for all utilities pertaining to the Premises including but not limited to all expenses relating to its use of telephone/communication services, internet, electricity, gas, heat, cooling, water, sewer and storm water.

h. At all times that Tenant is open for business, Tenant shall allow the general public to access and use the Castle restrooms. Such access and use shall be available to the general public free of charge and without requiring that a purchase be made.

7. Use of Demised Premises.

The Demised Premises shall be used by Tenant and its successors in interest for a cafe during the initial and any renewal terms of this Lease as generally described in the Proposal. Tenant's failure to operate a café in the Demised Premises for more than four consecutive months during the term of this Lease shall result in termination of this lease, unless such failure is caused by casualty loss or the Landlord not fulfilling its repair obligations set forth in Article 5. above. Tenant also intends to apply for a permit for entertainment without dance. Tenant may offer entertainment consistent with such a permit at the Premises, provided, however, that Tenant shall not provide such entertainment at times that musical events or festivals are occurring in the Park. Tenant's operating hours shall be

limited to the hours that the Park is open. Tenant may not use the F any purposes not described herein. Tenant must at all times comp applicable federal, state, and local laws, ordinances, codes, regulatior requirements in its use of the Demised Premises. To the exter disagreement is found between the terms of this Lease and the Propos of this Lease shall govern.

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8. Assignment/Subletting.

Tenant shall not be permitted to assign this lease or sublet space without the express written consent of Landlord.

9. Casualty Damage.

a. If the Demised Premises or any part thereof shall be destroyed or damaged by fire or other unavoidable casualty, so that the same shall be thereby rendered unfit for use, then, and in such case, the Rent hereinabove stated or a just and proportional part thereof, according to the nature and extent of injuries sustained, shall be suspended or abated, until the Demised Premises shall have been put in proper condition for use by Landlord. Provided, however, in the event that restoration is not reasonably possible within ninety (90) days after the occurrence of such damage or destruction, then either Landlord or Tenant shall have the right to terminate this Lease by giving the other party written notice of such termination within thirty (30) days after such damage or destruction, and upon the giving of such notice, the term of this Lease shall cease and come to an end as of the date of such damage or destruction and any unearned rent shall be returned to Tenant.

b. Tenant shall be responsible for covering its own equipment and supplies with such property and casualty insurance as it deems necessary and Landlord shall have no responsibility therefor. Tenant assumes all risk of damage, loss or casualty to its property, equipment and/or supplies while located at the Demised Premises, except if the cause of such damage is the result of the negligent act or omission of Landlord, its officers or employees. Except as set forth above, Tenant shall defend, indemnify and hold the Landlord harmless from any claim arising out of or relating to any damage, loss or casualty to Tenant's property, equipment and/or supplies while at the Demised Premises. Any casualty insurance obtained by Tenant for its property, equipment or supplies at the Demised Premises shall include a waiver of subrogation against the Landlord.

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10. Return of Demised Premises; Trade Fixtures.

Tenant, at the expiration of the Lease term or any earlier termin peaceably yield up to Landlord the Demised Premises including any or leasehold improvements installed by Tenant during the term here repair in all respects, reasonably use and wear and damage by fire and all other unavoidable casualties excepted. Tenant shall have the right to remove all trade fixtures, equipment and other personal property installed or placed by it at its expense in, on or about the Demised Premises; provided, however, all damage caused by or as a result of such removal shall be repaired by Tenant to Landlord's reasonable satisfaction, reasonable wear and tear or casualty loss excepted.

11. Signage.

Tenant, at its sole expense, shall have the right to erect a sign on a pole or post, but not on the Castle building. Final design and location of exterior signs shall be subject to the City's approval, as Landlord, which approval shall not be unreasonably delayed, conditioned or withheld. Tenant's sign shall also be in accordance with all local and state governmental laws, ordinances, codes and regulations, including zoning, planning, and historic preservation ordinances, and Tenant is responsible for obtaining and paying for any required sign permits prior to installation. Tenant acknowledges and agrees that the City of Portland is acting as landlord, and not in its regulatory capacity, in connection with this Lease.

12. Insurance.

The Tenant will maintain at all times during its use and occupancy of the Demised Premises adequate insurance coverage of not less than One Million Dollars ($1,000,000) per occurrence for general liability, automobile liability, and liquor liability; workers compensation insurance in the amount required by Maine law; and fire legal liability insurance in the minimum amount of One Hundred Thousand Dollars ($100,000).

Prior to the commencement of any work on or occupancy of the Demised Premises, and annually thereafter, the Tenant shall furnish the Landlord with certificates of insurance indicating compliance with this paragraph in a form satisfactory to Landlord. The certificates shall provide that the coverage may not be cancelled without thirty (30) days advance notice of cancellation to the Landlord, and the Landlord shall be named as an additional insured on all liability policies, which shall be stated on such certificates. Any insurance provided by the Tenant shall be primary to any coverage which the Landlord may provide. Liability insurance coverage shall also extend to damage, destruction, and injury to City-owned or City-leased property and City personnel, to the extent caused by, or resulting from negligent acts, operations, or omissions of Tenant, its officers, agents, employees, and/or contractors. The Workers' Compensation insurance

shall include an endorsement waiving all rights of subrogation against Portland, its officers or employees.

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13. Indemnity.

a. General. To the fullest extent permitted by law, Tenant shall at its own expense defend, indemnify, and hold harmless the Landlord, its officers, agents, and employees from and against any and all liability, claims, damages, penalties, losses, expenses, or judgments, just or unjust, arising from injury or death to any person, or damage to property sustained by anyone (including but not limited to Landlord employees or property), including but not limited to claims based upon violation of any environmental law or regulation arising during the term of this agreement, except to the extent that such claims are caused by a negligent act or omission of the Landlord, its officers, agents, servants or employees.

Tenant shall, at its own cost and expense, defend any and all suits or actions, just or unjust, which may be brought against Landlord or in which Landlord may be impleaded with others upon any such above-mentioned matter, claim or claims, including claims of contractors, employees, laborers, materialmen, and suppliers. In cases in which Landlord is a party, Landlord shall have the right to participate at its own discretion and expense and no such suit or action shall be settled without prior written consent of Landlord, which consent shall not be unreasonably withheld, delayed or conditioned. Such obligation of indemnity and defense shall not be construed to negate nor abridge any other right of indemnification or contribution running to Landlord which would otherwise exist.

b. Without limiting the foregoing, to the fullest extent permitted by law, Tenant hereby agrees to assume all risk of injury, harm or damage to any person or property (including but not limited to all risk of injury, harm or damage to Tenant's officers, agents, employees, contractors, customers or invitees or to their property) arising out of, during, or in connection with the rental or use of the Demised Premises or any portion thereof and the activities hereunder which injury, harm or damage is alleged to be related to the presence of mold at or in the Premises. Tenant shall, at its own cost and expense, defend, indemnify and hold the Landlord harmless from any such liability, claims, damages, losses or expenses, except to the extent caused by a negligent act or omission of the Landlord, its officers, agents, servants or employees.

c. Covenant against liens: Tenant shall not cause or permit any lien against the Landlord's property or any improvements thereto to arise out of or accrue from any action or use thereof by Tenant and shall hold the Landlord harmless therefrom; provided, however, that Tenant may in good faith contest the validity of any alleged lien. Upon request of the

Landlord, Tenant shall post a bond warranting payment of any
the event Tenant contests such lien.

d. Survival. The Terms of this Section shall expressly survive the
or termination of this Agreement.

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14. Covenants of Landlord.

Landlord covenants that it is the owner in fee of the Demised Premises and can and will provide quiet enjoyment of the Demised Premises during the original and any extended terms of the Lease, and that the Lease is signed by a duly authorized individual.

15. Default.

Either party shall be determined to be in default hereunder if it shall fail to perform any obligations or comply with any terms or conditions stated herein within fifteen (15) days after receipt of notice of such failure from the other party or (if the default is of such nature that it cannot be cured within such period) if it shall fail to commence to cure the default within such period and thereafter diligently prosecute the cure to completion within a reasonable time. Upon such default and failure to cure, the other party shall have the right, at its option, and in addition to any other remedies, to terminate this Lease by giving the party in default written notice thereof and upon the giving of such notice, this Lease and the term hereof shall cease. Upon any termination of this Lease, Tenant shall quit and surrender to Landlord the Demised Premises in accordance with the provisions of Article 8 hereof. If this lease is terminated, Tenant shall remain liable to Landlord for all Rent accrued and unpaid up to the date of such termination, as well as all Rent for the remainder of the term as and when it shall come due. Tenant shall pay all reasonable costs, expenses, liabilities, losses, damages, fines, penalties, claims, and demands, including reasonable counsel and consultant fees, that are incurred by Landlord as a result of Tenant's default under this Lease. Landlord and Tenant agree to expedite a cure in the event of an emergency situation

16. Notices.

Any notice required to be given under this Lease shall be in writing and shall be hand-delivered or sent by U.S. certified mail, return receipt requested, postage prepaid, addressed to the parties as stated below or such other address as either party may designate in writing to which its future notices shall be sent.

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To Tenant:	To Landlord:
c/o Deen Haleem and Carol Mitchell 172 Eastern Promenade Portland, ME 04101	City of Portland 389 Congress Street Portland, ME 04101 cc: City Manager, same address

17. Amendment.

Both parties hereto acknowledge and agree that they have not relied upon any statements, representations, agreements or warrantees except such as are expressed herein. The terms of this Lease may be modified or amended by the mutual assent of the parties hereto; provided, however, that no such modification or amendment to this Lease shall be binding until in writing and signed by both parties.

18. Inspection and Entry.

The Landlord and/or its agents, may, with advance reasonable notice, enter to view, show and make any repairs or inspection of the Demised Premises. The Landlord shall have the right of immediate entry without notice in the event of any emergency or if the Tenant fails to pay rent, commits waste, or otherwise fails to comply with terms and conditions hereof.

19. Successors Bound.

The terms, covenants and agreements herein contained shall be for the benefit of and be obligatory upon the heirs, successors and assigns of the respective parties hereto.

20. Governing Law; jurisdiction.

This Lease shall be governed by and construed in accordance with the laws of the State of Maine. All disputes hereunder which are not mutually resolved shall be resolved by trial without a jury in the Courts of Cumberland County, State of Maine.

21. Force Majeure.

Neither Tenant nor Landlord shall be deemed in violation of this Lease if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, acts of God, war, acts of superior governmental authority or other reason over which it has no control; provided, however, that the

suspension of performance shall be no longer than that required b majeure and the party prevented from performance has given wr thereof to the other party.

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22. Non-Waiver.

No waiver of any breach of any one or more of the conditions of this Lease by the Landlord or Tenant shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed as of the day and year first above written.

WITNESS:

TIQA CAFÉ , LLC

_____

By: _____

Name:_____

Its: Manager

CITY OF PORTLAND

_____

By: _____
Jon P. Jennings
Its City Manager

Approved as to form:

_____
Corporation Counsel's Office

Approved as to funds:

_____
Finance Department