Marge Schmuckal Zoning Administrator

Jeff Levine Director Planning & Urban Development



RECEIVED

CITY OF PORTLAND

ZONING BOARD OF APPEALS

Conditional Use Appeal Application

JUN 3 0 2014

Dept. of Building Inspections City of Portland Maine

Continonal Ose Appe	eal Application	City of Portland Maine
Applicant Information:	Subject Prop	erty Information
Daniel Brouillette	159 Sto	ate Street
The Children's Nursery School BUSINESS NAME	O45 CHART/BLOCK/	AO 26 TOT (CBL)
161A Grant Street		
Portland, ME, 04101	state Street	
207-807-6234 TELEPHONE # lessue	Church - I	United Church of Chris
hair Board of Trustees APPLICANT'S RIGHT, TITLE OR INTEREST	159 Sto	ate Street, 04101
(eg; owner, purchaser, etc)	CONDITIONAL (USE AUTHORIZED BY
CURRENT ZONING DESIGNATION	SECTION 14	37,4
EXISTING USE OF PROPERTY:	TYPE OF CONDI PROPOSED:	TIONAL USE
Church and	PROPOSED:	
church-related activities	Nurser	y School
STANDARDS: Upon a showing that a proposed use is a	conditional use under thi	is article, a conditional
use permit shall be granted unless the Board determines the 1. There are unique or distinctive characteristics or use;	nat:	
2. There will be an adverse impact upon the health, s	safety, or welfare of the p	public or the
surrounding area; and 3. Such impact differs substantially from the impact	which would normally o	ccur from such a use in
that zone. NOTE: If site plan approval is required, attach preliminar	y or final site plan.	
The undersigned hereby makes application for a conditional uinformation herein is true and correct to the best of his OR her	se permit as described abo	ove, and certifies that the
DRH	~ 65	30-2014
	DATE	<u> </u>



COVER LETTER

Dear Members of the City of Portland's Zoning Board of Appeals,

We, The Children's Nursery School, are asking for the conditional use of a second floor space within the State Street Congregational Church/United Church of Christ at 159 State Street in which to run our preschool program.

Our program, after thirty-six years on Thomas Street, relocated to 159 State Street in 2012 after the Thomas Street property was sold. We remain at 159 State Street where we have been re-licensed by Maine's Child Care Licensing Unit. Unbeknownst to us – as well as the State Street Congregational Church's administration – the State Street property was not zoned for such use. We and the church have been active in remedying this oversight since learning of it earlier this spring, culminating in the current appeal.

Classes have been halted for the summer (as usual) and we hope to be up and running again on September 8, 2014. Our program runs Mondays through Thursdays from 9:00am to 12:30pm. We are also present in the building one night a month for our cooperative's meetings. The fenced-in courtyard of the church is used by our students in the mornings from 9:00am-9:30am and again at the end of our days from 12:00pm-12:30pm. Our maximum enrollment is eighteen children.

The Children's Nursery School is a state-licensed, 501 (c)(3) non-profit, parent-led cooperative preschool that was founded in 1975. We have a rich thirty-eight years of history behind us, including wonderful relationships with our host churches and neighbors. We thank you for helping us continue that tradition.

Sincerely,

Dan Brouillette

Co-chair, Board of Trustees The Children's Nursery School 207-807-6234 brouillette.d@gmail.com

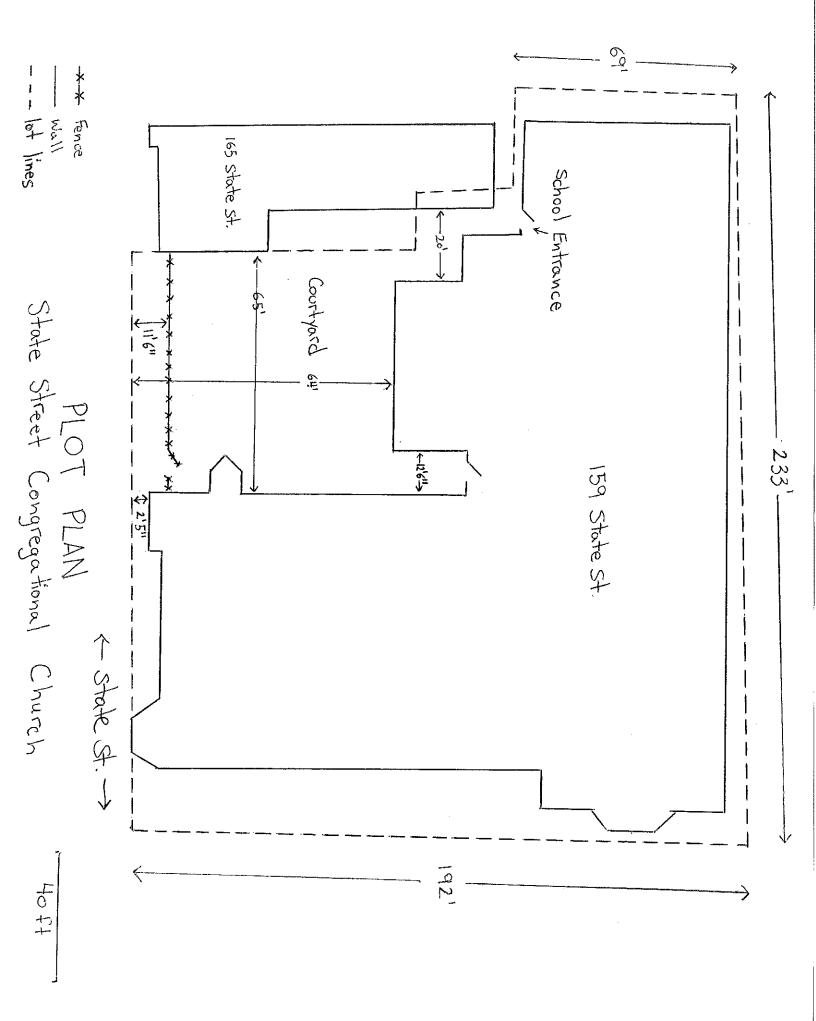


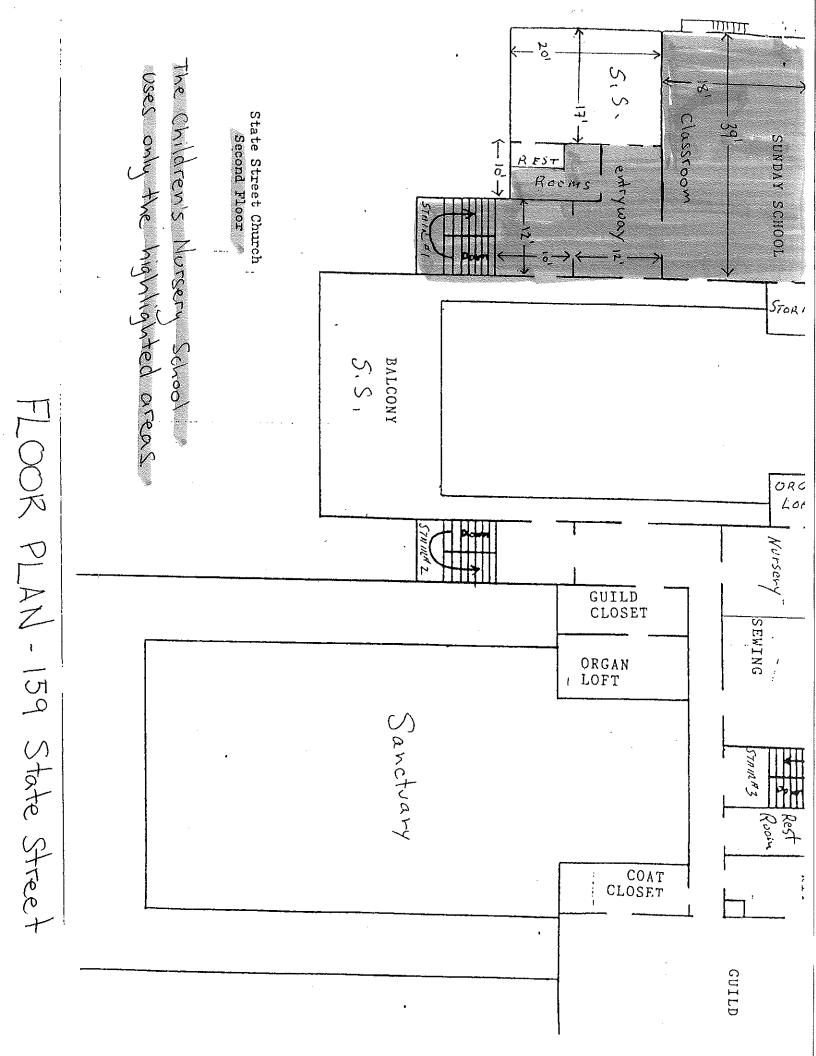


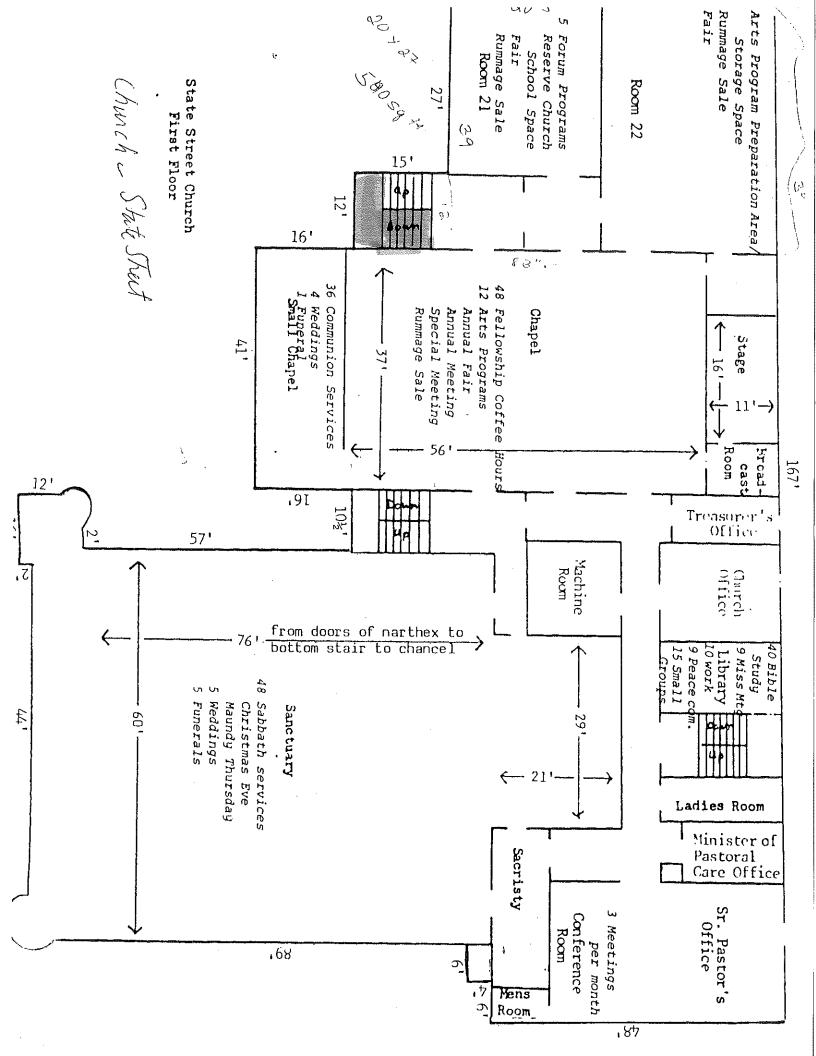
Addendum: Conditional use standards

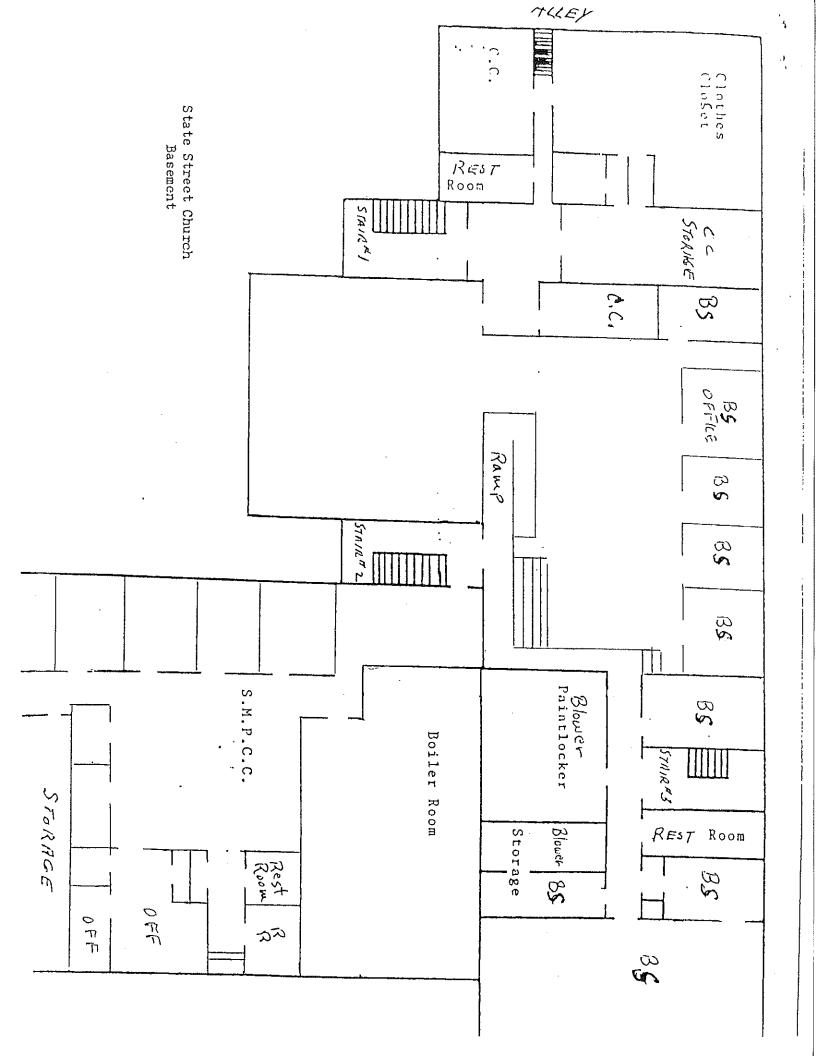
- 1. The volume and type of vehicle traffic to be generated, hours of operation, expanse of pavement, and the number of parking spaces required are not substantially greater than would normally occur at surrounding uses or other allowable uses in the same zone;
 - a. The volume of traffic the school generates is minimal compared to the robust rush-hour traffic passing on State Street in the mornings. We have a maximum of eighteen families in our program, several of which walk their children to school. There is an abundance of on-street, metered parking that parents usually use for approximately 10-minutes while they drop off their children between 9:00am and 9:30am. Pick-up times range between 12:00pm and 12:30pm and it has been our experience that there is no trouble finding a parking space during this period. Our use of public parking spaces is minimal compared to regular events that occur in the neighboring churches and is of a shorter duration.
- 2. The proposed use will not create unsanitary or harmful conditions by reason of noise, glare, dust, sewage disposal, emissions to the air, odor, lighting, or litter;
 - a. The school creates no outdoor waste. We do play in the courtyard in the mornings and at the end of our days, but our noise levels are well below that of the traffic traveling on State Street. Four adults are always present to monitor the play. Additionally, play is occurring inside the recessed courtyard that buffers sound in three of four directions.
- 3. The design and operation of the proposed use, including but not limited to landscaping, screening, signs, loading deliveries, trash or waste generation, arrangement of structures, and materials storage will not have a substantially greater effect/impact on surrounding properties than those associated with surrounding uses of other allowable uses in the zone.
 - a. The school receives no deliveries and we have a P.O. Box elsewhere in the city. We do not significantly impact the landscaping of the State Street Church's courtyard. As for waste, parents share the responsibility of taking home what small trash is created in the school to be disposed of in their residential garbage and recycling programs. We have no structures or materials that impede the surrounding uses in the area.

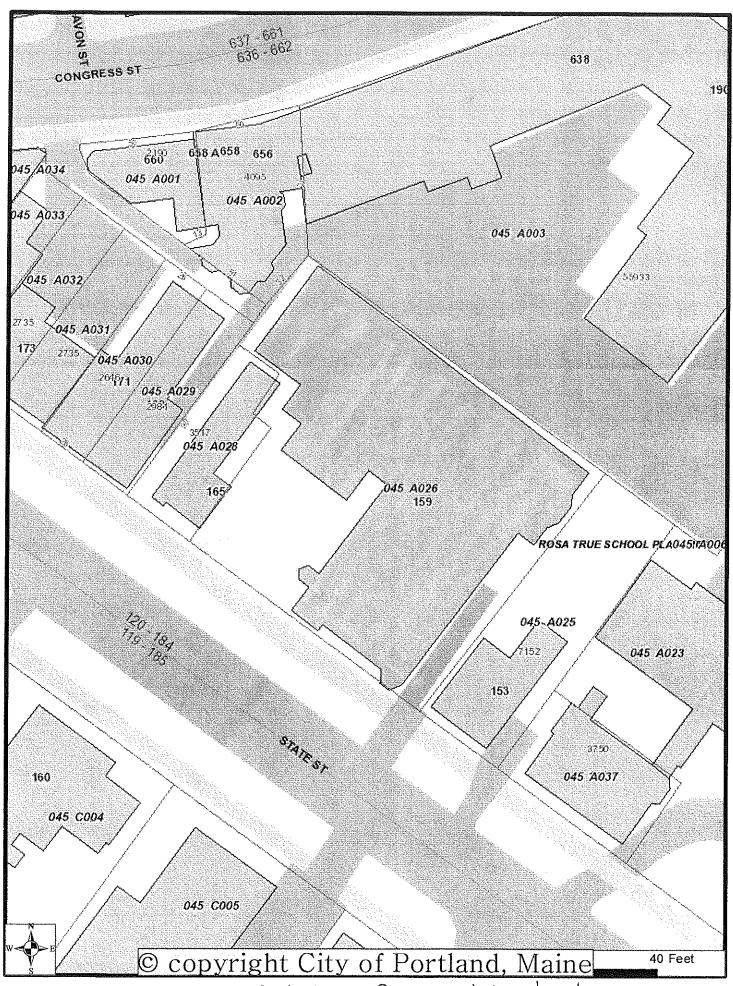












TAX MAP. 159 State Street

PHOTOS: 159 State Street



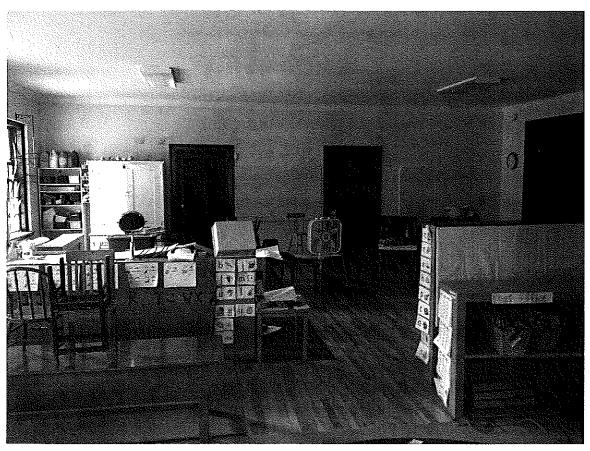
A view of 159 State St from across the street. The trees to the left of the church cover the courtyard.



A view from inside of the courtyard at 159 State Street looking out to State Street.

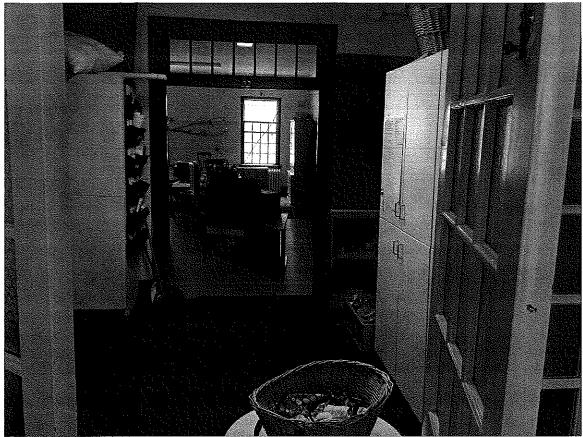


The entrance to 159 State Street that the Children's Nursery School uses.



Inside the second-floor classroom at 159 State Street.

PHOTOS: 159 State Street



The entryway to the classroom on the second floor at 159 State Street.



Second-floor bathroom.



Staircase used by the school.

LEASE AGREEMENT

WITNESSETH:

- Leased Premises. For the rent and term and upon the terms, conditions, limitations and provisions
 hereinafter set forth, Landlord leases to Tenant and Tenant hires from Landlord a portion of the property
 owned by the Landlord located at 159 State Street in Portland, Maine, which portion is more particularly
 described on <u>Schedule A</u> attached hereto and made a part hereof.
- 2. Term and Duration. The term of this lease shall be twenty-four (24) months, commencing on July 1, 2013, and ending on June 30, 2015. Prior to the expiration date of the Lease, Tenant may extend the Lease for an additional two-year period, commencing on July 1, 2015, and extending to June 30, 2017, by providing the Landlord with prior written notice of its intention to extend said lease at least 90 days prior to expiration, at a rental rate to be determined by mutual agreement of the parties, but not less than the rate established in the second year of this lease.
- 3. Rent and Additional Rent. The Rent is payable in advance on the first day of each month to the Landlord at 159 State Street, Portland, ME 04101. Tenant agrees to pay the Landlord rent as follows.
 - Year one July 1, 2013 to June 30, 2014, the Rent shall be Nine Hundred Dollars (\$900) per month.
 - Year two July 1, 2014 to June 30, 2015, the Rent shall be Nine Hundred Twenty-five Dollars (\$925) per month.
- 4. <u>Taxes, Utilities, and Operating Expenses.</u> During the term of the lease, the Landlord agrees to pay:
 - a. The cost of all utilities, except telephone, used or consumed on the Premises, including, but not limited to, electricity, water, sewerage, and heat. The Landlord shall, at its expense, regularly maintain the heating, plumbing, and electrical systems so as to maintain the same in the condition they are in at the commencement of this Lease, reasonable wear and tear excepted. In the event that the heating, plumbing, or electrical systems need to be repaired or replaced, Landlord shall do so at its expense.
 - b. All operating expenses, which, for the purposes of this Lease, shall mean the following expenses: (1) premium expense for fire, casualty and liability coverage to cover the Landlord's property; (2) all costs of utility services; (3) all costs for common area cleaning; (4) all costs of maintaining the Building (as defined on Schedule A) including the operation and repair of heating equipment and any other common building equipment, roof repairs and all other repairs, improvements and replacements that are required by law or necessary to keep the building in a well maintained condition; (5) all cost of snow and ice removal and grounds care; (6) and all other costs of the management of the building.

5. Repairs and Maintenance.

- a. The Tenant shall keep and maintain the Classroom (as defined on Schedule A) in the same good order, condition and repair as at the commencement of the Lease (reasonable wear and tear and damage by fire, casualty, taking and other causes beyond the Tenant's control and damage caused by the Landlord excepted). Tenant shall maintain the Second Floor Bathroom (as defined on Schedule A) from Monday through Friday and shall supply such bathroom with a reasonable supply of toilet paper and paper towels. Tenant shall not store supplies in the common areas of the Building.
- b. The Landlord shall keep and maintain the Second Floor Bathroom during the weekends. The Landlord shall keep and maintain the Kitchen and Play Yard Area (as those terms are defined on Schedule A) and all hallways and common areas in the Building in the same good order, condition, and repair as at the commencement of the Lease (reasonable wear and tear and damage by fire, casualty, taking and other causes beyond the Landlord's control and damage caused by Tenant excepted). Except for the maintenance required by the Tenant as set forth above, the Landlord shall be responsible, at its costs and expense, for all maintenance and repairs to the Building and the structural components of the floors, walls, and roof of the Leased Premises. The Landlord shall maintain the Building in the same good order, condition, and repair as at the commencement of the Lease (reasonable wear and tear and damage by fire, casualty, taking and other causes beyond the Landlord's control and damage caused by the Tenant excepted).
- c. Tenant may not make any material alterations to the Leased Premises without the prior written consent of the Landlord, which consent shall not be unreasonably withheld, delayed or conditioned.
- d. In the event that the State of Maine requires modifications or repairs to the Building to maintain Tenant's license to operate a nursery school, the parties agree to work together in good faith to make reasonable modifications and repairs required by the State. If such modifications or repairs cannot be made at a reasonable cost, either the Tenant or the Landlord may terminate the Lease by giving the other party at least 30 days notice in writing of its intent to terminate the Lease.
- 6. Access of Landlord. The Landlord shall have access to the Leased Premises for the purpose of inspecting the same, or to perform any repairs or maintenance deemed necessary by the Landlord upon reasonable prior notice which, for purposes of the Lease, shall be deemed to be twenty-four (24) hours prior notice. The Landlord shall use its best efforts during any inspection or repair of the Leased Premises to minimize any disturbance to Tenant's us of the Premises. The Landlord reserves the right to enter the Leased Premises without the aforementioned prior notice in the case of necessary emergency repairs or inspection.
- 7. Assignment and Subletting. The Tenant agrees not to assign this Lease, in whole or in part, or sublet the Leased Premises, in whole or in part, or permit the same or any portion thereof to be used or occupied by others, nor shall this Lease be assigned or transferred by operation of law, without the prior written consent of the Landlord.

8. Insurance.

- a. The Landlord shall keep in full force and effect the following insurance policies: (1) a policy of general public liability insurance covering the building and the Play Yard Area containing limits of liability reasonable for the intended use of the Building, and (2) a policy against loss or damage by fire or other cause under one or more so-called "all risk" insurance policies. The Landlord agrees to deliver certificates of such insurance to Tenant at the beginning of the term of this Lease and thereafter at each renewal period of the insurance policies.
- b. The Tenant shall provide, at its expense, and throughout the term of this Lease, (1) a policy of general public liability covering all portions of the Building and Play Yard Area as shall be accessible to Tenant's employees, business invitees and guests, with liability limits of no less than \$1 Million per occurrence, (2) fire and extended coverage insurance in amounts sufficient to cover any and all losses which might be incurred through the damage or destruction of furniture, equipment and personal property not owned by the Landlord kept on the Leased Premises, and (3) such insurance policies as Tenant may be required to maintain in accordance with any licenses or permits necessary to operate a nursery school in the Lease Premises. The Landlord shall be named as an additional insured under such policies. Tenant agrees to deliver certificates of such insurance to the Landlord at the beginning of the term of this Lease and thereafter at each renewal of the insurance policies.
- 9. Conduct of Business by Tenant. The Tenant shall use the Leased Premises solely for the operation of a preschool facility and all associated uses, including but not limited to meetings, social gatherings related to the school, fund raising events, and the like.
- 10. Governmental Regulations. The Tenant shall faithfully observe in the use of the Leased Premises all municipal and county ordinances and state and federal statutes, rules and regulations now in force or which may hereafter be in force governing Tenant's use of the Premises. Should new regulations or statutes come into force related to the Tenant's use of the Premises, the Landlord shall make every reasonable attempt to be in compliance with said rules.

11. Fire and Casualty.

- a. If the Leased Premises or any part thereof shall be damaged or destroyed by fire or other casualty, either the Tenant or the Landlord may terminate the Lease by giving the other party at least 30 days notice in writing of its intent to terminate the Lease. In the event that the Lease is terminated in either manner as aforesaid, then the term hereby created shall be deemed to have been terminated as of the date of said damage.
- b. In the event that said Leased Premises are rendered untenantable or partially untenantable by reason of said fire or other casualty, then the rent herein reserved or a just proportionate part thereof according to the extent of the damage shall be abated until the premises shall have been put in proper condition.

- 12. <u>Default of the Tenant.</u> In the event of (1) any failure of the Tenant to pay any Rent due hereunder within fifteen (15) days after receipt of written notice of such default by the Landlord, or (2) any failure to perform any other of the terms, conditions or covenants of this Lease to be observed or performed by the Tenant within thirty (30) days after receipt of written notice of such default by Landlord, or (3) if the Tenant, having commenced to cure a default within the thirty (30) day period which could not reasonably have been cured within said thirty (30) day period, shall fail to complete the curing of the default without reasonable delay (any of the foregoing shall be referred to as an "Event of Default"), the Landlord may, in addition to any other remedies provided at law or in equity or elsewhere provided in this Lease:
 - a. Elect to terminate this Lease, and the tenancy hereby created, by giving notice of such election to Tenant, and may reenter the Leased Premises in accordance with applicable law, and may remove Tenant and all other persons (if Tenant is still in possession) and property from the Leased Premises (subject to Article 13 hereof), all in accordance with applicable law, and may store such property in a public warehouse or elsewhere at the cost of and for the account of the Tenant, all in accordance with applicable law.
 - b. Exercise any other legal or equitable right or remedy which it may have under the laws of the State of Maine. The Landlord is obligated in the event of Tenant's default to mitigate its damages and shall use due diligence to secure a rental equal to the prevailing local rate for the Leased Premises concerned.

13. Indemnity.

- a. The Tenant hereby indemnifies and agrees to hold harmless the Landlord from and against all costs, expenses, claims, suits, proceedings, actions, causes of action, responsibility, liability, demands, judgments and executions incurred or occurring, without misconduct, negligence or bad faith on the part of the Landlord, which arise from or are in connection with any act, omission or obligation of Tenant relating to the use of the Leased Premises by Tenant or breach of a term hereof by Tenant. Tenant shall defend any claims, suits, proceedings, actions causes of action, responsibility, liability, demands, judgments and executions against Landlord with respect to the foregoing or in which Landlord may be impleaded without fault on its part.
- b. The Landlord hereby indemnifies and agrees to hold harmless the Tenant and its officers, directors, staff, invitees, guests and agents from and against all costs, expenses, claims, suits, proceedings, actions, causes of action, responsibility, liability, demands, judgments and executions incurred or occurring, without misconduct, negligence or bad faith on the part of the Tenant, which arise from or are in connection with any act, omission or obligation of Landlord relating to, including those pertaining to Landlord's possession, use (including but not limited to the Landlord's use of the Leased Premises for church related educational programs on Sundays), occupation management, repair, maintenance, ownership of control of the Building and the Leased Premises, or any breach of a terms hereof by the Landlord. Landlord shall defend any claims, suits, proceedings, actions causes of action, responsibility, liability, demands, judgments and executions against Tenant with respect to the foregoing or in which Landlord may be impleaded without fault on its part.
- 14. Quiet Enjoyment The Landlord agrees that as long as the Tenant faithfully performs the agreements, terms, covenants, and conditions of this Lease, Tenant shall peaceably and quietly have, hold, and enjoy the Leased Premises for the term hereby granted without disturbance by or from the Landlord or any one claiming by, through, or under the Landlord.

- 15. Partial Invalidity. If any term, covenant, condition, or provision of this Lease or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which this Lease is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.
- 16. <u>Written Notices.</u> Whenever under the terms of this Lease a written notice is required or whenever a written notice or communication is sent, the same shall be accomplished by Registered Mail, Return Receipt, postage prepaid, addressed to the address of the party set forth on the first page of this Lease Agreement or to such other address(es) as either of the parties above mentioned shall designate by written notice.
- 17. Governing Law and Interpretation. This Lease shall be construed in accordance with the law of the State of Maine. The Landlord and Tenant have both participated in the negotiation of the terms of this Lease and in the drafting of the terms hereof and the terms of this Lease shall not be construed against either party as the drafter thereof in any contest between Landlord and Tenant, or anyone claiming by, through or under them.
- 18. <u>Entire Agreement.</u> This writing is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms thereof, all negotiations, considerations and representations between the parties having been incorporated herein. This Lease can be modified only by a writing signed by the party against whom the modification is enforceable.
- 19. <u>Binding on Successors and Assigns.</u> Except at otherwise provided in this Lease, all covenants, agreements, provisions, and conditions of this Lease shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.
- 20. <u>Holdover.</u> If the Tenant or anyone claiming under the Tenant shall remain in possession of the Premises or any part thereof after the expiration of the term of this Lease without any agreement in writing between the Landlord and Tenant with respect thereto, such person or entity remaining in possession shall be deemed a tenant at will on a month to month basis, subject to the provisions of this Lease insofar as the same may be applicable to a tenancy at will.

21. Personal Property. For purposes of clarification and the avoidance of doubt the parties acknowledge that all personal property, except those delineated on Schedule A as part of the Leased Premises, located within the Classroom on the date of this Lease Agreement are the property of the Tenant and may be removed at the termination of this Lease Agreement provided that Tenant repairs any damage to the Premises caused by such removal.

(Remainder of page blank. Signature page and Schedule A follow.

In Witness Whereof, the Landlord and the Tenant have caused this Lease Agreement to be executed by a duly authorized representative as of the date set forth above.

Witness:

Landlord:

Tenant:

CNS CO-CHAIR

SCHEDULE A

Leased Premises are defined as a portion of the church building ("Building") owned by the Landlord and located at 159 State Street in the City of Portland, together with the right to use the courtyard of the building (the "Play Yard Area"). Tenant has the following rights to use portions of the Building and the Play Yard Area.

- 1. Second Floor Large Classroom. The Tenant shall have exclusive use of the Second Floor Large Classroom (the "Classroom") during the period from Monday through Friday each week. Tenant may use the Classroom on weekends with the prior consent of the church administrator. Tenant acknowledges that the Landlord intends to use the Classroom on Sunday mornings for church related educational programs. Landlord shall clean the Classroom after any such use and return it to the condition that existed prior to such use. Landlord acknowledges that its use of the Classroom for such purposes is at its own risk. Landlord expressly waives any claims against Tenant or its officers, directors, staff,, invitees, guests, or agents for any damages to persons or property arising out of or related to the Landlord's use of the Classroom and the Landlord's use of Tenant's personal property located within the Classroom.
- 2. **Storage Cupboards:** The Tenant shall have exclusive use of the designated and labeled storage cupboards in the hall adjacent to the Classroom for seven days a week.
- 3. Play Yard Area and Play Equipment Storage: The tenant shall have non-exclusive use of the Play Yard Area, due to the fact that this area leads to the two main entrances of the Building. The Tenant acknowledges that persons known and unknown to the Landlord may be present in or pass through that area at any time and agrees to take full responsibility for the supervision of persons related to their tenancy in the Play Yard Area. The Tenant acknowledges that certain church-related activities of the Landlord bring people into the Play Yard Area on a regular basis. The Tenant agrees to hold harmless the Landlord in accordance with Article 13 of this Lease Agreement. The Tenant shall have non-exclusive use of a mutually agreed upon storage area for playground equipment.
- 4. **Second Floor Bathroom and Building Common Areas:** The Tenant shall have non-exclusive use of the Second Floor Bathroom and the Building common areas (hallways and stairs that provide access to leased space).
- 5. **Kitchen and other spaces:** The tenant shall have the right to use the kitchen located on the first floor (the "Kitchen" and other spaces in the building from time to time with the prior consent of the church administrator. The Tenant shall clean the Kitchen or such other spaces as may be used after any use and return each space to the condition that existed prior to such use. The Landlord agrees to work with the Tenant to schedule the use of other spaces in the Building for special activities of the Tenant (including but not limited to fundraising activities and parent meetings). The Tenant acknowledges that the Landlord may set additional charges for such use and the Landlord agrees to make every reasonable effort to make such charges reasonable and to accommodate the requested activities of the Tenant. The Tenant recognizes that the Landlord has traditional periods of use of such spaces and that they may not always be available at times the Tenant requests.
- 6. Landlord's Use of Space Adjacent to Leased Premises: The Landlord, as a church, may at any time schedule an important church related activity in the spaces adjacent to the Leased Premises. In the event of a funeral or other such activity that requires scheduling during Tenant's regular use as a nursery school, the Landlord shall notify the Tenant of such use and Tenant agrees to make reasonable accommodation to such activities in regards to the noise level of the Tenant's activities and the privacy of the Landlord's activity.

- 7. Access: The Landlord agrees to provide a limited number of keys and a numbered door code to personnel of the Tenant to allow the Tenant access to the Leased Premises at any time. Such unlimited access shall be limited to official representatives of the Tenant and not generally made available to all parents as a matter of course. Tenant acknowledges that broad access to the building raises security issues that could be detrimental to both Landlord and Tenant and agrees to work with the Landlord in a reasonable manner to address any security issues that may arise from the Tenant's access to the Building.
- 8. Personal Property of the Landlord: The following represents a complete list of those items of personal property of the Landlord that are included in with the Leased Premises. Changes to this list must be initialed by representatives of both parties and the Tenant agrees to maintain these items in a safe and prudent manner and to hold harmless the Landlord for use of these items in accordance with Article 13 of this Lease Agreement. Landlord expressly waives any claims against Tenant or its officers, directors, staff,, invitees, guests, or agents for any damages to persons or property arising out of or related to the Landlord's use of the Classroom and the Landlord's use of Landlord's personal property located within the Classroom.

Listing of Personal Property of the Landlord

STATE STREET CHURCH

United Church of Christ 159 State Street Portland, Maine 04101

Tel. (207) 774-6396 office@statestreetchurch.org www.statestreetchurch.org Rev. Jeanette A. Good, Ph.D., Pastor

June 14, 2014

Dan Brouillette Children's Nursery School 159 State Street Portland, ME 04101

Dear Mr. Brouillette:

State Street Congregational Church, United Church of Christ, owns the property at 159 State Street in Portland, Maine. As the owner, the Church hereby grants permission to the Children's Nursery School to represent the property in the process of obtaining a conditional use permit from the City of Portland for the nursery school.

The Church is happy to assist you in any way that we can to help the Children's Nursery School obtain this conditional use permit.

Sincerely,

Martha Mater

Co-chair, Board of Trustees

Marken Mater

State Street Church