

August 20, 2013

Zoning Board of Appeals

Room 315

Portland City Hall

389 Congress Street

Portland, ME 04101

RECEIVED

AUG 22 2013

Dept. of Building Inspections  
City of Portland Maine

RE: Conditional Use Appeal for 197 Pleasant Avenue (463 Stevens Avenue)

To Whom It May Concern:

The Coffee Cat, LLC d/b/a Black Cat Coffee ("Black Cat Coffee") encloses in support of its Conditional Use Appeal Application, the following:

1. Conditional Use Appeal Application;
2. Cover Letter Memorandum in Support of its Appeal, with exhibits:
  - a. Exhibit A: Tax Map for location with property highlighted;
  - b. Exhibit B: Enlarged Screenshot of Tax Map, showing distance from entrance of Black Cat Coffee to proposed parking (*see Miscellaneous Appeal*);
  - c. Exhibit C: Letter from Landlord, Geoffrey Rice, giving Black Cat Coffee permission to make this appeal;
  - d. Exhibit D: Plot Plan showing existing off street parking;
  - e. Exhibit E: Lease with Deering Center Community Church for five (5) additional off street parking spaces (*see Miscellaneous Appeal*); and
  - f. Exhibit F: Lease for Premises from Landlord, Geoffrey Rice;
3. Photos of location; and
4. Plan of Interior Space to scale showing proposed seating with separate sheet showing square footage computations.

This application is site plan exempt.

Thank you.



Keith Dunlap

The Coffee Cat, LLC d/b/a Black Cat Coffee

Department of Planning & Urban Development

Marge Schmuckal  
Zoning Administrator

Jeff Levine  
Director, Planning Department

RECEIVED



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AUG 22 2013

CITY OF PORTLAND

Dept. of Building Inspections  
City of Portland Maine  
ZONING BOARD OF APPEALS  
Conditional Use Appeal Application

Applicant Information:

Keith Dunlap  
NAME

The Coffee Cat, LLC & 1/4 Black Cat Coffee  
BUSINESS NAME

463 Stevens Avenue  
ADDRESS  
Portland, ME 04103  
207-650-7170  
TELEPHONE #

Owner Lessee  
APPLICANT'S RIGHT, TITLE OR INTEREST  
(eg; owner, purchaser, etc)

B-1 Neighborhood Business  
CURRENT ZONING DESIGNATION

EXISTING USE OF PROPERTY:

Retail Food Establishment

Subject Property Information

197 Pleasant Avenue  
PROPERTY ADDRESS

132/ Joo 1  
CHART/BLOCK/LOT (CBL)

PROPERTY OWNER (if different)  
Geoffrey Rice  
NAME  
568 Congress  
ADDRESS

Portland, ME 04101

CONDITIONAL USE AUTHORIZED BY  
SECTION 14 - 163(a)(1)

TYPE OF CONDITIONAL USE  
PROPOSED:  
Restaurant (23 seats)

STANDARDS: Upon a showing that a proposed use is a conditional use under this article, a conditional use permit shall be granted unless the Board determines that:

1. There are unique or distinctive characteristics or effects associated with the proposed conditional use;
2. There will be an adverse impact upon the health, safety, or welfare of the public or the surrounding area; and
3. Such impact differs substantially from the impact which would normally occur from such a use in that zone.

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

The undersigned hereby makes application for a conditional use permit as described above, and certifies that the information herein is true and correct to the best of his OR her knowledge and belief.

SIGNATURE OF APPLICANT

8/19/13  
DATE

August 19, 2013

Zoning Board of Appeals

Room 315

Portland City Hall

389 Congress Street

Portland, ME 04101

RE: Conditional Use Appeal for 197 Pleasant Avenue (463 Stevens Avenue)

To Whom It May Concern:

The Coffee Cat, LLC d/b/a Black Cat Coffee ("Black Cat Coffee") respectfully requests a conditional use permit to increase its indoor seating from 9 seats to 23 seats. Pursuant to Portland zoning ordinances, the proposed use (restaurant) is a permitted conditional use at the B-1 Neighborhood Business zone in which Black Cat Coffee is located. City of Portland, Code of Ordinances, Land Use, Section 14-163(a)(1) (hereinafter "Sec. 14-\_\_"). Furthermore, 1) there are no "unique or distinctive characteristics or effects associated with the proposed conditional use; 2) there will be no "adverse impact on the health, safety, or welfare of the public or the surrounding area;" and 3) the impact of increasing seating at Black Cat Coffee from 9 to 23 seats "will not differ substantially from the impact which would normally occur from such a use" in a B-1 Neighborhood Business zone. *See* Sec. 14-474(c)(2). This application is site plan exempt.

#### Background

Black Cat Coffee operates a retail food establishment located in the building listed in the Portland tax records as 197 Pleasant Avenue (with a street/ mailing address of 463 Stevens Avenue). 197 Pleasant Avenue is located in a B-1 Neighborhood Business zone. *See* tax map and enlarged screenshot of tax map attached as Exhibits A and B respectively. Black Cat Coffee leases the premises from Geoffrey Rice who has an office at 658 Congress Street, Portland, telephone 773-1814. *See* Letter from Geoffrey Rice giving Black Cat Coffee permission to apply for conditional use attached as Exhibit C. A retail establishment is a permitted use in a B-1 Neighborhood Business zone. Sec. 14-162(2)(e). The Portland Land Use Code defines a retail establishment as (among other things) "any food service establishment as defined by section 11-16 of this Code,<sup>1</sup> with indoor seating capacity for nine (9) or fewer patrons . . .".

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<sup>1</sup> In fact, there is no section 11-16 of the Portland, Maine Code of Ordinances, but section 11 refers to the adoption of the Maine Food Code, which generally defines a food service establishment as "an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption." Maine Food Code 201.10(32)(A); *see* Sec. 11-1.

Sec. 14-47. In contrast, the Land Use Code defines a "restaurant" as "any food service establishment . . . with indoor seating capacity for ten (10) or more patrons." Sec. 14-47. A restaurant is a permitted conditional use in a B-1 neighborhood provided that:

- 1) Maximum total floor area for use of the public shall be one thousand (1,000) square feet;
- 2) The hours of operation shall be limited to between 6:00 a.m. and 11:00 p.m. each day;
- 3) Food service and consumption are the primary function of the restaurant; and
- 4) There shall be no drive-through service. Sec. 14-163(a)(1).

Black Cat Coffee meets all these conditions.

- 1) The floor space for public use is 728.31 square feet.
- 2) The hours of operation are 6:30 a.m. to 6 p.m. Monday through Saturday and 7:30 to 3:00 p.m. on Sundays;
- 3) Food service and consumption is the only purpose of Black Cat Coffee; and
- 4) There is no drive-through service.

Because Black Cat Coffee meets the applicable standards for conditional use and has made arrangements through a simultaneous Miscellaneous Appeal for adequate off-street parking, it respectfully requests that the Board approve its conditional use permit application.

There are no unique or distinctive characteristics or effects associated with the proposed conditional use of a restaurant at 197 Pleasant Avenue.

Black Cat Coffee is one of a small cluster of businesses in Deering Center on a two and one half block stretch of Stevens Avenue. The business cluster includes a video store that serves ice cream, two beauty salons, a post office, a tailor, a specialty food shop, two restaurants, (one fine dining and one casual,) a meat market, and a convenience market, among other things. With five schools, a church, and a library also within a one mile of each other, this area of Stevens Avenue is designed to encourage pedestrian traffic, safety, and access with a traffic light at the corner of Pleasant Avenue, and numerous crosswalks, signage and speed bumps. Black Cat Coffee is specifically designed to fit into the character of the neighborhood. Black Cat Coffee is a ground floor establishment with excellent window frontage. The addition of a small coffee shop of twenty-three seats will not only compliment but enhance the character of this mixed small business commercial and residential neighborhood. Black Cat Coffee will provide a convenient place for rest and refreshment for pedestrian traffic, people who live in the neighborhood, and others coming to shop at the nearby businesses.

Black Cat Coffee will not create an adverse impact upon the health, safety or welfare of the public or the surrounding area.

Black Cat Coffee has no kitchen or production facilities. It purchases its baked goods from local wholesale providers daily. The change in seating it seeks is not significant, from nine to twenty-three seats; it is expected that its customer base will remain the same, depending mostly on neighborhood pedestrian traffic. Black Cat Coffee is environmentally conscious, produces very little actual waste: almost all of its waste is commercially recycled and its grounds are commercially composted. Black Cat

Coffee is a small, quiet place for neighbors to gather and converse over coffee and tea, with board games and puzzles for kids, and books for adults.

The increase from nine to twenty-three seats will not differ substantially from the impact of its current permitted use much less the normal impact of the conditional use.

The increase in seating requested is modest, an additional 14 seats. Other than putting in the additional requested seats, Black Cat Coffee will not change its business in any way, and does not expect that the volume of its business will increase dramatically as a result. Black Cat Coffee will remain a quiet, comfortable place for the community to gather over a good cup of coffee. Black Cat Coffee will add to the welfare of the neighborhood by providing a neighborhood gathering place, and will not increase traffic, noise, or engage in any potentially hazardous activity.

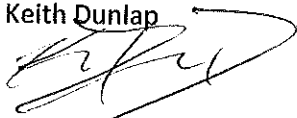
Black Cat Coffee has filed a simultaneous Miscellaneous Appeal to arrange for adequate parking.

With 728 square feet of area open to public use, Black Cat Coffee requires 5 parking spaces to meet its requirements for a conditional use permit. See Sec. 14-332(i) ("Restaurants or establishments constructed and intended for the dispensing of food and drink as the principal activity: One (1) parking space for each one hundred fifty (150) square feet, or major fraction thereof, of floor area not used for bulk storage or food preparation."). Black Cat Coffee has three available parking spaces on the lot of 197 Pleasant Avenue. See Sketch of Lot Showing Parking Spaces attached as Exhibit D. See Sec. 14-334 (Parking to be located on lot with principal use in nonresidential zones; exceptions). Nonetheless, in an exercise of extreme caution, Black Cat Coffee has arranged to lease five additional spaces from the Deering Center Community Church across the street and makes a simultaneous Miscellaneous Appeal. See Miscellaneous Appeal. These spaces are within 1500 feet of the entrance to Black Cat Coffee. See Parking Lease, Exhibit D; Exhibit B, Screenshot of enlarged tax map showing that church parking lot is less than 1500 feet from the entrance of Black Cat Coffee; and Sec. 14-334(a) (parking spaces between 100 and 1,500 feet from entrance allowed). The parking lease with the Church is for five years with an option to renew for an additional two years, a length of term that mirrors the lease for its premises, and as required by Sec. 14-334(b). See Parking Lease and Premises Lease attached as Exhibits E and F respectively. Because Black Cat Coffee has leased five parking spaces within 1500 feet of its entrance, Black Cat Coffee has adequate parking for its proposed conditional use.

#### Conclusion

For all the foregoing reasons, Black Cat Coffee respectfully requests that the Zoning Board of Appeals approve its application for a conditional use permit allowing it to expand its seating from nine to twenty-three seats.

Keith Dunlap



The Coffee Cat, LLC d/b/a Black Cat Coffee

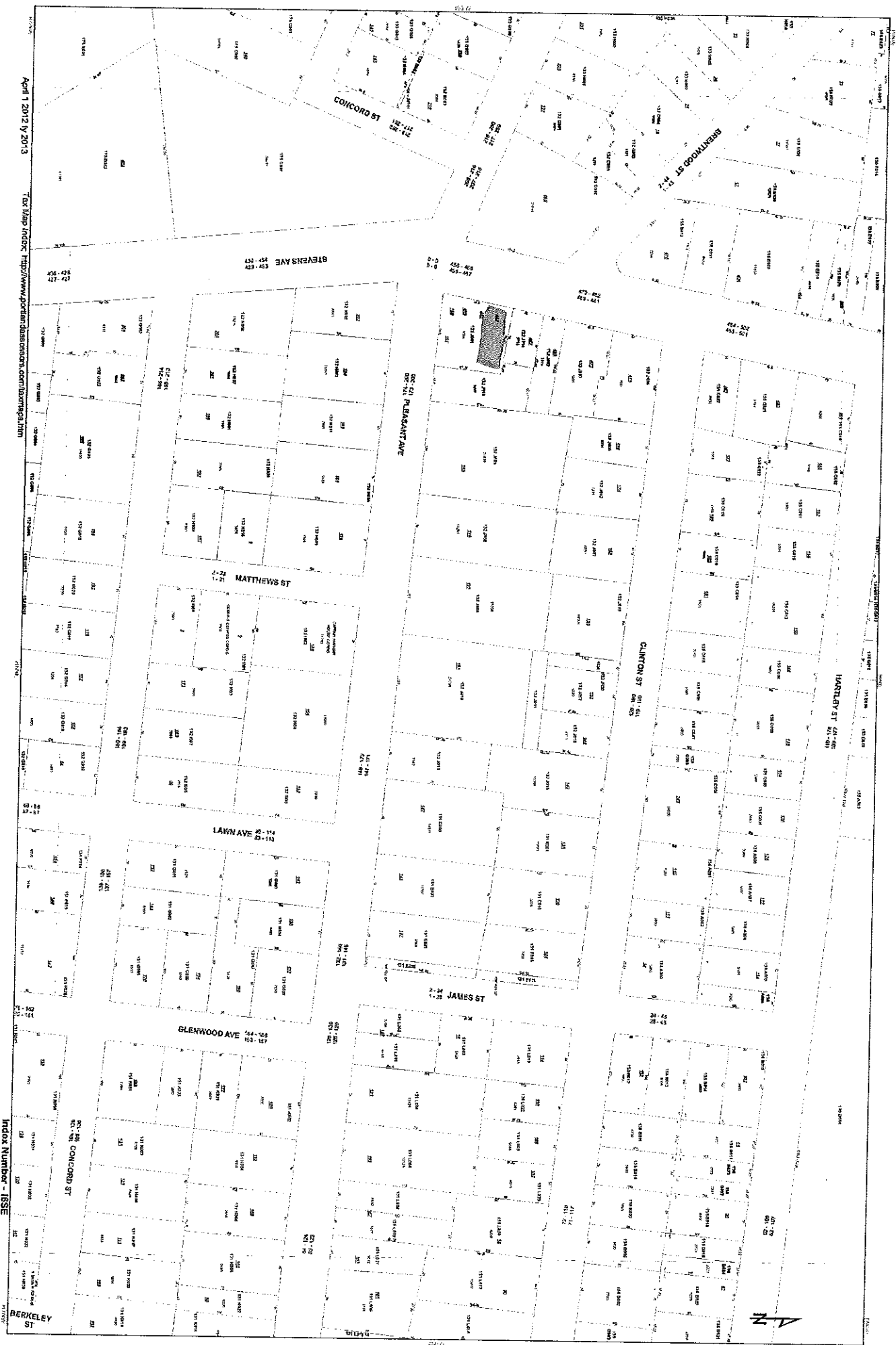
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389 Congress Street  
Portland, ME 04101

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Dept. of Building Inspections  
Portland, Maine

Peak Hour Vehicle Traffic Addendum for Conditional Use Appeal for 197 Pleasant Avenue (463 Stevens Avenue)

Pursuant to Sec. 14-163, Conditional Uses, a conditional use which generates in excess of a ratio of 100 peak hour vehicle trips per 2000 sq. ft. of space, and generates in excess of 100 peak hour vehicle trips is prohibited. Black Cat Coffee will not generate in excess of 100 peak hour vehicle trips at peak. The Institute of Transportation Engineers estimates a morning average total of 73 vehicle trips at peak and 28 vehicle trips at peak in the afternoon per 1000 sq. ft. for a coffee shop without a drive-in window. At 728 sq. ft. Black Cat Coffee would only generate 53 and 20 vehicle trips at morning and afternoon peak respectively. In fact, the actual numbers are much lower. Most of Black Cat's business is pedestrian and, at morning peak, Black Cat averages around ten transactions per hour, fewer in the afternoon.

Exhibit A: Tax Map for Property Location with Property Highlighted



April 1 2012 to 2013

Tax Map Index <http://www.portlandmaine.gov/assessor/index.htm>

Index Number - ISSE

Berkeley St

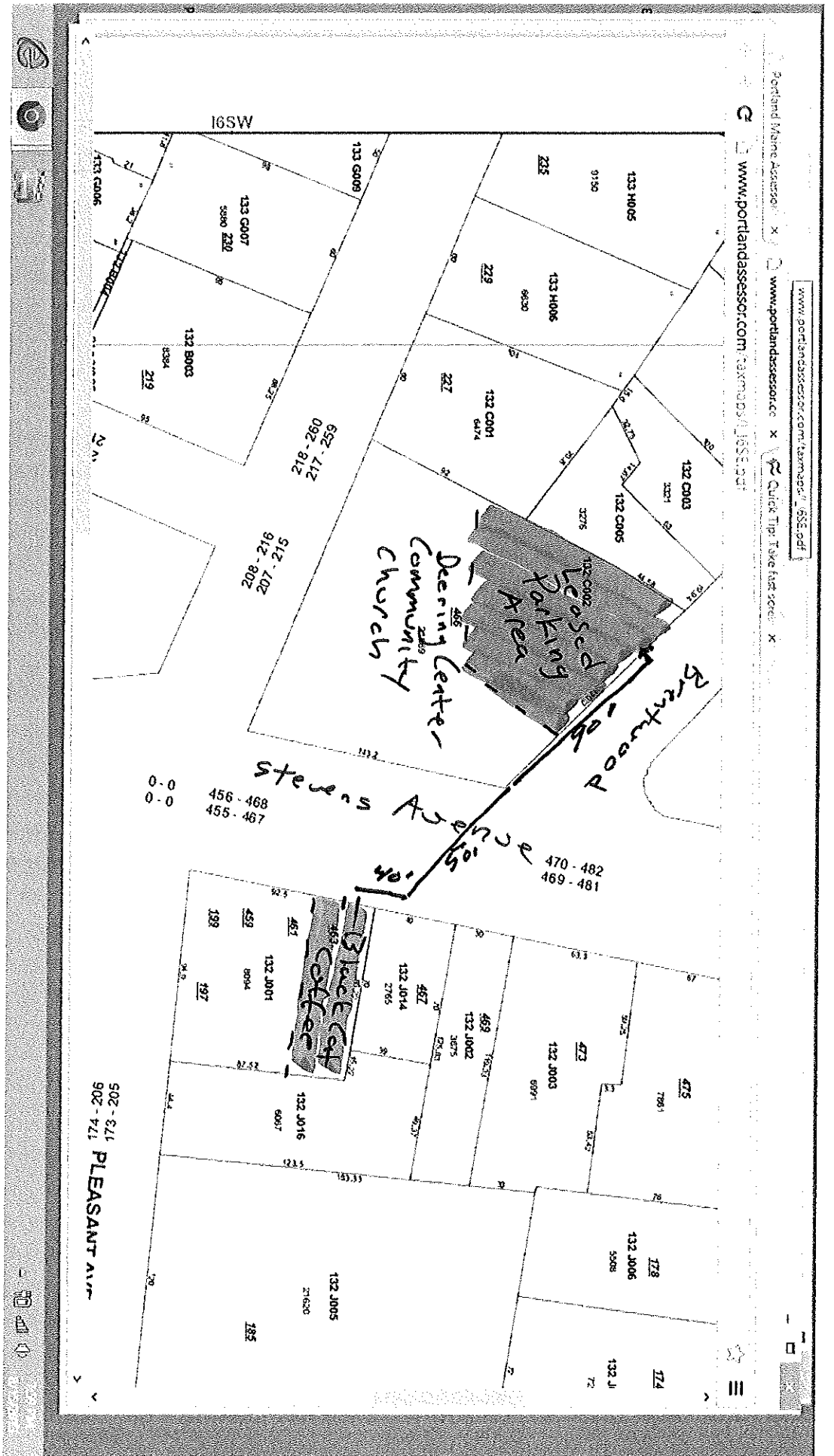


Exhibit B: Enlarged Screenshot of Tax Map showing distance of leased parking from entrance of Black Cat's coffee (less than 1500 ft.). 180-200' Total



Exhibit C

Geoffrey Rice

658 Congress Street

Portland, Maine 04101

August 14 2013

Zoning Board of Appeals

City of Portland

389 Congress Street

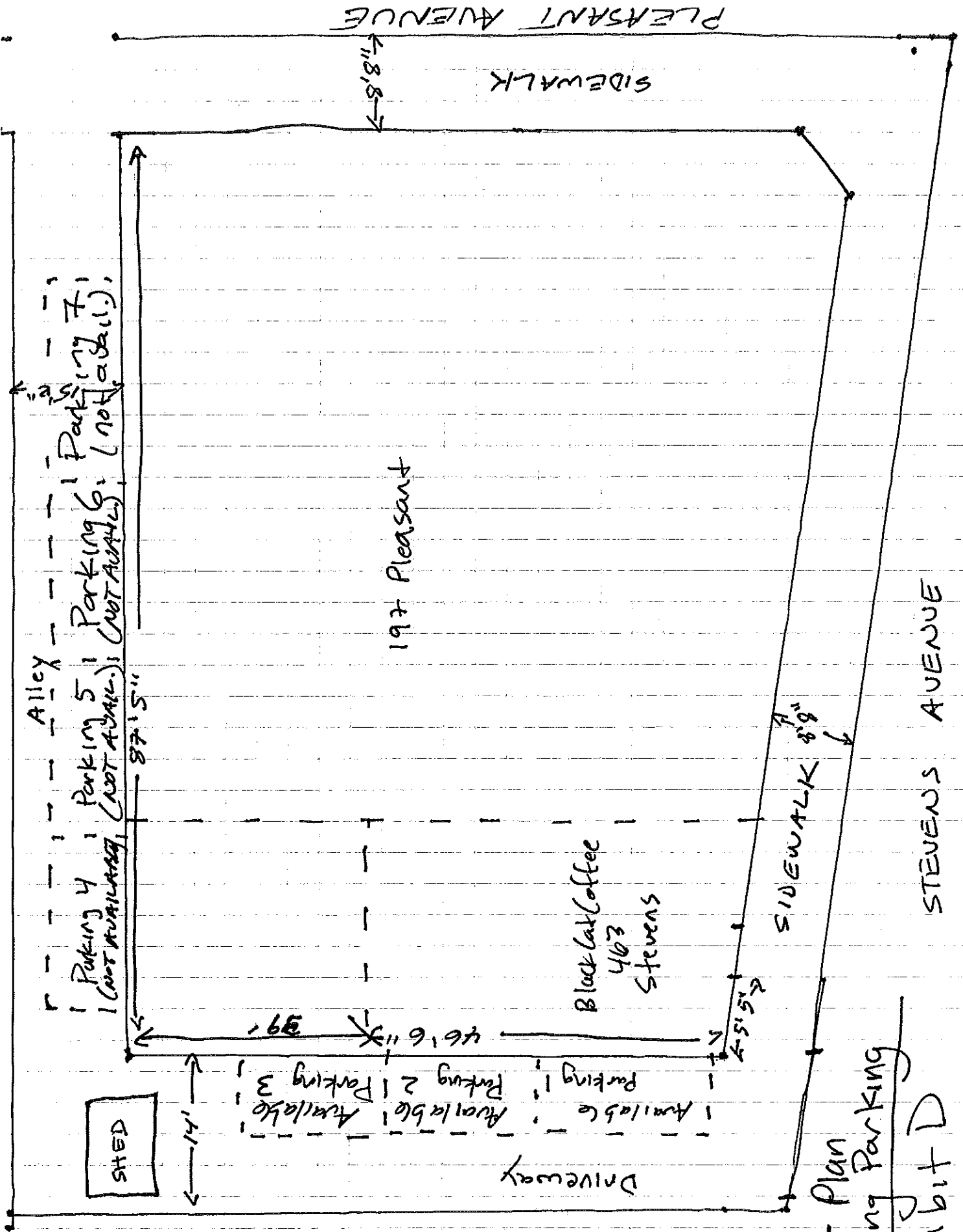
Portland, Maine 04101

To Whom It May Concern:

I am the landlord of the premises located at 197 Pleasant Avenue (with a mailing address of 463 Stevens Avenue) occupied by The Coffee Cat, LLC d/b/a Black Cat Coffee. Black Cat Coffee has my permission to apply for a conditional use (restaurant) permit for the premises.

Sincerely,

  
Geoffrey Rice



Pilot Plan  
 Showing Parking  
 Exhibit D

PARKING SPACE LICENSE AGREEMENT


Beginning August 1, 2013, Central Square Community Church ("Licensor") grants a license for the use of up to five parking spaces in its parking lot located at 4 Brentwood Street, Portland, Maine (the "Premises") to The Coffee Cat, LLC d/b/a Black Cat Coffee with an address of 463 Stevens Avenue, Portland, Maine ("Licensee"). In consideration of Licensor's agreement to allow up to but no more than five of Licensee's patrons at any one time to park at the Premises during Licensee's normal hours of operation from 6:30 a.m. to 6:00 p.m. daily, Licensee agrees to provide a monthly credit of \$25.00 to Licensor in the form of gift certificate or gift card or other suitable form (the "Credit") which Licensor or anyone whom Licensor authorizes to use the Credit, whether through gift or otherwise, may redeem at Black Cat Coffee for food and drinks sold at retail. Licensor understands that sales tax will be deducted from the Credit for any purchase made on Licensor's credit account.

The term of this License shall be for five years (the "Initial Term"), with a termination date of July 31, 2018. At the end of the Initial Term, Licensee has the option to renew this License on the same terms for an additional two years (the "Second Term"), with a termination date of July 31, 2020. After the end of the Second Term, Licensee has the option to continue to renew this License on the same terms for additional two years (the "Additional Terms").

Licensee's occupation of and conduct of business at 463 Stevens Avenue, Portland, Maine are conditions precedent of this License agreement. If, for any reason, Licensee ceases operations or moves its business to another location, this License agreement is null and void. Licensor agrees that if it should sell the Premises, Licensee's right, license, and options to use the Premises will continue on the same terms with the new owner to the end of the Second Term and not Additional Terms, and Licensor may transfer or otherwise assign its right to the Credit accordingly. In any case, any Credit must be used within one year of the date of its issuance.

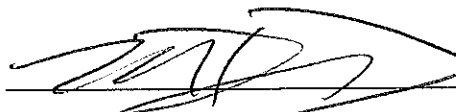
Licensor and Licensee agree that Licensee has no liability for any damage to Licensor or any third party resulting from or in any way connected to this License, and Licensor agrees to indemnify and hold Licensee harmless from any damage to Licensor or any third party on the Premises unless caused by the willful act of Licensee or which is the proximate result of Licensee's negligence.

Seen and agreed to on this 15 day of August, 2013.

  
\_\_\_\_\_

Deering Center Community Church, by

Don Drake, its Pastor

  
\_\_\_\_\_

The Coffee Cat, LLC, d/b/a Black Cat Coffee by

Keith Dunlap, its Managing Member

LEASE

AGREEMENT OF LEASE made this 16<sup>th</sup> day of May, 2013, between Geoffrey I. Rice of 657 Congress Street, First Floor, Portland, Maine (hereinafter referred to as LANDLORD), and The Coffee Cat, LLC., Federal Identification No. 46-2661622, by its Manager, Jenny Siler, Social Security No. [REDACTED] of 54 Vannah Avenue, Portland, Maine 04103 (hereinafter referred to as TENANT). This Lease agreement is hereinafter referred to as BASE LEASE.

WITNESSETH

That LANDLORD for and in consideration of the rent stated hereinafter, covenants and agreements hereinafter set forth to be kept, observed and performed by TENANT, has demised and leased, and does hereby demise and let unto TENANT and TENANT does agree to Lease from LANDLORD upon the covenants and agreements hereinafter set forth, the Premises hereinafter described.

1. Description of Leased Premises. LANDLORD does hereby lease and rent unto TENANT and TENANT does hereby lease and rent from LANDLORD that portion of the land and building (hereinafter referred to as BUILDING) owned by LANDLORD, located at 463 Stevens Avenue, Portland, Maine, formerly leased to Jill Dewitt, doing business as Good Eats, deemed to contain 900 square feet more or less, (hereinafter referred to as the LEASED PREMISES). The parties hereby agree that this is a commercial lease.
2. Term. The term of this Lease shall be for a period of three (3) years, commencing on June 1, 2013, and terminating at 4:00 pm on May 31, 2016.
3. Rental. The TENANT shall pay to the LANDLORD monthly payments of Base Rent in the following amounts, in advance on the first day of every month starting on the June 1, 2013.

Period

Monthly Rent

1. June 1, 2013 through  
May 31, 2014.

\$1,000.00 per month

2. June 1, 2014, through  
4:00 pm May 31, 2016.

see below in Paragraph 3.A  
for rental.

<u>Period</u>	<u>Monthly Rent</u>
3. Option No. 1; 4:01 pm May 31, 2016, through 4:00 pm May 31, 2019.	see below in Paragraph 4.A for rental.
4. Option No. 2; 4:01 pm May 31, 2019, through 4:00 pm May 31, 2022.	see below in Paragraph 4.B for rental.

If TENANT does not pay rent and other fees and charges when due, pursuant to the terms of this Lease, within five (5) days of the first day of each calendar month, then LANDLORD may impose a late charge in an amount equal to ten percent (10%) of the unpaid rent and Additional Rent.

3.A) Rental for twenty-four (24) months from June 1, 2014, through 4:00 pm, May 31, 2016. The monthly rental for the twenty-four (24) months from June 1, 2014, through 4:00 pm, May 31, 2016, shall be the amount as stated hereafter based on the Consumer Price Index - United States, All - Items and Major Figures for Urban Wage Earners and Clerical Workers (including single workers) published by the Bureau of Labor Statistics of the United States Department of Labor, using the period 1982 - 1984 = 100 as the base period. The minimum rental per month is One Thousand Dollars (\$1,000.00). If the computation hereinafter stated results in a monthly rental below this Base Minimum amount, then the rental shall be the Base Minimum amount. Despite the following in no case shall the monthly rent for the two-year period increase more than 3% over the monthly rent for the previous yearly period. The monthly rental during this twenty-four (24) months from June 1, 2014, through 4:00 pm, May 31, 2016, shall be computed monthly by dividing the sum of One Thousand Dollars (\$1,000.00), by the index number of May, 2013, and then multiplying that amount by the index number of the following:

1. March, 2014, for the period June 1, 2014 through 11:59 pm May 31, 2015.
2. March, 2015, for the period June 1, 2015 through 4:00 pm May 31, 2016.

This monthly rental shall be paid in twelve (12 ) consecutive monthly payments per period due in advance on the first day of each month. LANDLORD will make yearly computations, document the same, and deliver by hand to TENANT or mail this information to the TENANT by either first-class mail or certified mail, return receipt requested. In the event that the Bureau of Labor Statistics shall change the base period (now 1982 - 1984 = 100) the new index number for May, 2013 shall be substituted for the index number originally used as the division of the rental.

4. The TENANT shall have the option to extend the Lease for two (2), thirty-six (36) month terms following the initial Lease term as defined herein on the rental terms set forth in Paragraphs numbered 4.A and 4.B.

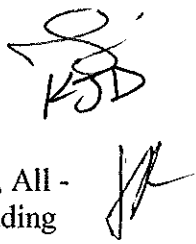
TSD  
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4.A) Extension Number One. Unless TENANT shall have given LANDLORD written notice by certified or registered mail, return receipt requested, on or before 4:00 pm, June 1, 2015, that it will not extend this BASE LEASE at its expiration, which is 4:00 pm, May 31, 2016, it shall be considered as having elected to extend this BASE LEASE for thirty-six (36) months from 4:01 pm, May 31, 2016, to 4:00 pm, May 31, 2019, without further notice to the other party. All covenants, conditions, provisions and agreements herein agreed to be paid, kept or performed by the TENANT will continue throughout this thirty-six (36) month extension, except as to the monthly rental which shall be the amount as stated hereafter based on the Consumer Price Index- United States, All - Items and Major Figures for Urban Wage Earners and Clerical Workers (including single workers) published by the Bureau of Labor Statistics of the United States Department of Labor, using the period 1982 - 1984 = 100 as the base period. The minimum rental per month is the greater of One Thousand Dollars (\$1,000.00) or the rental charge for January, 2016. If the computation hereinafter stated results in a monthly rental below this Base Minimum amount, then the rental shall be the Base Minimum. The rental during this thirty-six (36) month period from 4:01 pm May 31, 2016, to 4:00 pm May 31, 2019, shall be computed monthly by dividing the sum of One Thousand Dollars (\$1,000.00), by the index number of May, 2013, and then multiplying that amount by the index number of the following:

1. March, 2016, for the period 4:01 pm May 31, 2016 through 11:59 pm May 31, 2017.
2. March, 2017, for the period June 1, 2017 through 11:59 pm May 31, 2018.
3. March, 2018, for the period June 1, 2018 through 4:00 pm May 31, 2019.

This monthly rental shall be paid in twelve (12) consecutive monthly payments per period due in advance on the first day of each month. LANDLORD will make the yearly computations, document the same, and deliver by hand to TENANT or mail this information to the TENANT by either first-class mail or certified mail, return receipt requested. In the event that the Bureau of Labor Statistics shall change the base period (now 1982- 1984 = 100) the new index number for May, 2013 shall be substituted for the index number originally used as the division of the rental.

4.B. Extension Number Two. Extension Number Two is automatically voided if Extension Number One is not executed. Unless either party (meaning LANDLORD or TENANT) shall have given the other party written notice by certified or registered mail, return receipt requested, on or before 4:00 pm, June 1, 2018, that it will not extend this BASE LEASE at its expiration, which is 4:00 pm, May 31, 2019, it shall be considered as having elected to extend this BASE LEASE for thirty-six (36) months from 4:01 pm May 31, 2019 to 4:00 pm May 31, 2022, without further notice to the other party. All the covenants, conditions, provisions and agreements herein agreed to be paid, kept or performed by the TENANT will continue throughout this thirty-six (36) month extension, except as to the monthly rental which shall be the



amount as stated hereafter based on the Consumer Price Index - United States, All - Items and Major Figures for Urban Wage Earners and Clerical Workers (including single workers) published by the Bureau of Labor Statistics of the United States Department of Labor, using the period 1982 - 1984 = 100 as the base period. The minimum rental per month is the greater of One Thousand Dollars (\$1,000.00) or the rental charged on January, 2019. If the computation hereinafter stated results in a monthly rental below this Base Minimum amount, then the rental shall be the Base Minimum. The rental during this thirty-six (36) month period from 4:01 pm, May 31, 2019 through 4:00 pm, May 31, 2022, shall be computed monthly by dividing the sum of One Thousand Dollars (\$1,000.00) by the index number of May, 2013, and then multiplying that amount by the index number of the following:

1. March, 2019 for the period 4:01 pm May 31, 2019, through 11:59 pm May 31, 2020.
2. March, 2020 for the period June 1, 2020, through 11:59 pm May 31, 2021.
3. March, 2021 for the period June 1, 2021, through 4:00 pm May 31, 2022.

This monthly rental shall be paid in twelve (12) consecutive monthly payments due in advance on the first day of each month. LANDLORD will make the yearly computations, document the same, and either deliver by hand to TENANT or mail this information to the TENANT by either first-class mail or certified mail, return receipt requested. In the event that the Bureau of Labor Statistics shall change the base period (now 1982 - 1984 = 100) the new index number for May, 2013 shall be substituted for the index number originally used as the division of the rental.

5. Permitted Use. The LEASED PREMISES shall be used for a coffee shop and for bakery sales. No baking or use of stove, oven, or appliance with open flame or frying shall be allowed on the premises. Bakery goods will be made and baked off premises. No smoking or sales or use of alcoholic beverage(s) shall be allowed on the premises.
6. Security Deposit. Upon the execution of this Lease, TENANT shall pay to LANDLORD the sum of One Thousand Dollars (\$1,000.00) which may be held by LANDLORD throughout the term of this Lease, without interest, as a Security Deposit for the faithful performance by TENANT of all of the terms, covenants and conditions herein. LANDLORD shall have the option to apply any part or the whole of said Security Deposit to the curing of any default by TENANT that may exist from time to time without prejudice to any other remedy which LANDLORD may have on account thereof. TENANT shall, upon written demand, forthwith remit to LANDLORD a sufficient amount to restore said Security Deposit to the original sum deposited hereunder. In no instance shall the amount of the Security Deposit be considered a measure of liquidated damages. Should the BUILDING be conveyed by the LANDLORD, such Security Deposit or the balance thereof may be turned over by LANDLORD to LANDLORD'S transferee and if such is done, TENANT hereby releases LANDLORD from any and all liability with respect to the Security Deposit, its application or return, and TENANT

*[Handwritten initials/signature]*

agrees to look only to such transferee therefor. LANDLORD shall have the right to commingle Security Deposit with other funds. If TENANT shall have fully and promptly complied with all of the terms of this Lease during the entire term hereof, the said Security Deposit shall be paid over to TENANT within thirty-one (31) days after the expiration of the term hereof and the surrender of LEASED PREMISES by TENANT. TENANT will not assign or encumber or attempt to assign or encumber the Security Deposit and neither LANDLORD nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance. The Security Deposit of One Thousand Dollars (\$1,000.00), and the first full month of monthly rental is due upon signage; the total of this sum is Two Thousand Dollars, (\$2,000.00).

7. Additional Rent. TENANT agrees to pay to LANDLORD Additional Rent as follows:
- A) See Paragraph No. 10 herein regarding sewer and water charges.
  - B) See Paragraph No. 9 herein regarding increase in Building insurance charge.
  - C) See Paragraph No. 19 herein regarding increase in real estate charge.

LANDLORD shall deliver to TENANT a statement showing the increase in the above three Expenses together with TENANT'S pro rata share of such increase. Such statement shall be deemed accurate in the event that TENANT does not provide LANDLORD with specific written objection thereto within ten (10) days of receipt by TENANT of such statement. TENANT'S expenses shall be paid with the first rental payment due following receipt of such statement. For these purposes, BASE YEAR real estate taxes are City of Portland fiscal year 2013 which is July 1, 2012 through June 30, 2013 and which amount is Fifteen Thousand Four Hundred Forty-five Dollars and Fifty-eight Cents (\$15, 445.58) and BASE YEAR insurances (commercial liability and umbrella coverage) which are policy year July 15, 2012 through July 14, 2013 and which amount is Three Thousand Six Hundred Sixty-three Dollars and Thirty-eight Cents \$3,663.38.

8. Tenants' Covenants.

(a) TENANT acknowledges by entry thereupon that said Leased Premises are in good and satisfactory order, repair and condition and covenants and agrees as follows: TENANT agrees that from and after the date that possession of the Leased Premises is delivered to TENANT, and until the end of the term of this Lease, TENANT will at TENANT'S expense keep neat and clean and maintain in good order, condition and repair: all interior nonstructural portions of the Leased Premises including, but not limited to, the exterior and interior portions of all doors and windows; all plumbing and sewerage facilities within the Leased Premises; lighting (lamps, ballasts, bulbs, etc.); fixtures; interior walls; floors; ceilings; signs (including exterior signs where permitted); and all wiring, electrical systems, all appliances, heating, air conditioning and ventilation systems and equipment. TENANT shall, at TENANT'S expense, repaint and refurbish the Leased Premises and any part and portion thereof from time to time in order to assure that the same are kept in a first-class, tenantable, and attractive condition throughout the term of this Lease. If TENANT refuses or neglects to keep the Leased Premises in good order and repair as required hereunder to the reasonable satisfaction of LANDLORD, LANDLORD may, at its option, make such repairs, and complete such activities and TENANT



*KDD*  
*gr*

shall pay LANDLORD'S costs for making same. In doing same, LANDLORD shall use its reasonable efforts not to interfere with TENANT'S business, but in no event shall LANDLORD be liable to TENANT for any loss or damage to TENANT'S business by reason thereof. At the termination of this Lease, TENANT shall peaceably yield up said Leased Premises in good order, repair and condition, and shall yield up all additions, alterations, fixtures and improvements which may be installed by TENANT upon the Leased Premises and which in any manner are attached to the floors, walls or ceilings, including without limitation any linoleum or other floor covering which may be cemented or otherwise affixed to the floor. TENANT shall remove all personal property and leave the Leased Premises clean and tenantable. If LANDLORD in writing permits TENANT to leave personal property at the Leased Premises, and the TENANT does so; TENANT shall have no further claims and rights in said personal property as against the LANDLORD or those claiming by, through or under the LANDLORD. TENANT'S obligations hereunder shall survive the expiration or earlier termination of this Lease. Notwithstanding the foregoing, TENANT shall, at TENANTS' sole cost, remove all fixtures, improvements, alterations, and modifications made to the Leased Premises by TENANT promptly upon written request of Landlord provided that such request is received by TENANT on or before thirty (30) days of the expiration or earlier termination of this Lease.

(b) TENANT agrees not to injure or deface said Leased Premises or BUILDING; not to permit on said Leased Premises any auction sale, inflammable fluids, chemicals, nuisance, objectionable noise or odor; or any use thereof which is improper, offensive, contrary to law or ordinance, or invalidates or increases the premium(s) for any insurance on the BUILDING or its contents. TENANT may not use or store in the Leased Premises any chemicals or substances deemed to be toxic or hazardous under federal, state or local laws or regulations.

(c) TENANT agrees to conform to all reasonable rules and regulations now or hereinafter established by LANDLORD for the care and use of said Leased Premises and the BUILDING.

(d) TENANT shall not by operation of law or otherwise, assign, mortgage or encumber this Lease or sublet or permit the Leased Premises or any part thereof to be used by others, without in each instance obtaining LANDLORD'S prior express written consent. In any case where LANDLORD shall consent to such subletting, TENANT named herein shall remain fully liable for the obligations of TENANT hereunder, including, without limitation, the obligation to pay the rent and other amounts provided under this Lease. For purpose of this Lease, the sale of stock of a corporate TENANT, the change of a general partner of a partnership TENANT or the change of a Member of a Limited Liability Company TENANT shall constitute an assignment of this Lease.

(e) TENANT shall not make any alterations or additions, or permit the making of any holes in any part of said BUILDING, or paint or place any signs, drapes, curtains, shades, awnings, aerials or flagpoles or the like, visible from the outside of the Leased Premises, without LANDLORD'S written consent which consent LANDLORD shall not unreasonably withhold. TENANT shall not suffer or permit any lien of any nature or description to be placed against the BUILDING, the Leased Premises or any portion thereof, and in the case of such lien

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attaching by reason of the conduct of the TENANT, to immediately pay and remove the same. This provision shall not be interpreted as meaning that the TENANT has any authority or power to permit any lien of any nature or description to attach or to be placed upon the LANDLORD'S title or interest in the BUILDING, the Leased Premises or any portion thereof.

(f) TENANT agrees that the LANDLORD may enter the Leased Premises at any time to install, maintain, use, repair and replace pipes, ducts, wires, meters, and any other equipment, machinery, apparatus and fixtures in said Leased Premises to serve said Leased Premises and to serve the BUILDING.

(g) TENANT will defend and, except to the extent caused by the negligence or willful conduct of LANDLORD, will indemnify LANDLORD and its employees, agents and management company, and save them harmless from any and all injury, loss, claim, damage, liability and expense (including reasonable attorney's fees) in connection with the loss of life, personal injury or damage to property or business, arising from, related to, or in connection with the occupancy or use by TENANT of the Leased Premises or any part of LANDLORD'S property or the BUILDING, or occasioned wholly or in part by any act or omission of TENANT, its contractors, subcontractors, subtenants, licensees or concessionaires, or its or their respective agents, servants or employees and any person or property while on or about the Leased Premises. The provisions of this paragraph shall survive the termination or early expiration of the term of this Lease. Without limitation of any other provision herein, neither the LANDLORD, its employees, agents nor management company shall be liable for, and TENANT hereby releases them from all claims for, any injuries to any person or damage to property or business sustained by TENANT or any person claiming through TENANT, except to the extent caused by the direct negligence of LANDLORD or its agents, due to the BUILDING or any part thereof (including the Leased Premises), or any appurtenances thereof, being in need of repair or due to the happening of any accident in or about the BUILDING or Leased Premises. LANDLORD in no event is ever liable for any injury or loss due to any act of neglect of any tenant of the BUILDING or of any employee or visitor of TENANT. Without limitation this provision shall apply to injuries and damage caused by nature, rain, snow, ice, wind, frost, water, steam, gas or odors in any form, or by the bursting or leaking of windows, doors, walls, ceilings, floors, pipes, gutters, or other fixtures; and to damage caused to fixtures, furniture, equipment, and the like situated at the Leased Premises, whether owned by the TENANT or others.

(h) TENANT will carry at its own cost and expense insurance coverage on all exterior windows and door glass at their full replacement value and TENANT shall be liable for cost of replacement of door glass and plate glass during the Lease Term. TENANT shall insure TENANT and LANDLORD as their interests appear, with commercial general liability insurance including Broad Form Comprehensive General Liability coverage on the Leased Premises in such amounts and with such companies and against such risk as the LANDLORD shall reasonably require and approve but in amounts no less than one million dollars (\$1,000,000.00) combined single limit with a deductible of no greater than one thousand dollars (\$1,000.00) and on an occurrence basis. Further, LANDLORD shall be named "additional insured" by the insuring insurance company and said policy shall not be cancelable by the insuring insurance company upon less than thirty (30) days prior written notice to

LANDLORD. TENANT shall insure LANDLORD and TENANT, as their interest appear, against loss of personal property of the Leased Premises under standard Maine form policies, against fire and standard extended coverage risk, in such amounts and with such companies as the LANDLORD shall reasonably require and approve, with waiver of subrogation if such waiver can be obtained without charge. TENANT shall provide LANDLORD with a binding certificate evidencing the insurance obligations imposed by this paragraph prior to occupancy of the Leased Premises by TENANT, and thereafter prior to the policy renewal dates.

(i) TENANT agrees that LANDLORD or its agents may examine the Leased Premises at any time and, if LANDLORD shall so elect, to make any repairs or additions (structural or otherwise) LANDLORD may deem necessary. At TENANT'S expense LANDLORD or its agents may remove any alterations, additions, signs, awnings, or flagpoles, or the like, not consented to in writing. LANDLORD may show the Leased Premises to prospective tenants during the six (6) months preceding the expiration of this Lease and to prospective purchaser and mortgagees at any time.

(j) TENANT agrees that acceptance by LANDLORD of a lesser sum than the rent, or other fees or charges due shall not be deemed to be other than on account of the earliest installment of such rent or other fees or charges due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent or other payments be deemed an accord and satisfaction. LANDLORD may accept such check or payment without prejudice to LANDLORD'S right to recover the balance of such installment or pursue any other remedy available to LANDLORD.

(k) TENANT agrees that without limitation of anything elsewhere herein contained, the LANDLORD may,

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

(ii) enter upon the Leased Premises and exercise any and all of the LANDLORD'S rights without being deemed guilty of an eviction, trespass or disturbance of TENANT'S use or possession and without being liable in any manner to TENANT.

(l) TENANT agrees to refrain from smoking in the Leased Premises or anywhere else within the BUILDING, and to prohibit others from doing the same.

(m) TENANT shall reimburse LANDLORD on demand for the amount by which TENANT'S particular use of the Leased Premises causes LANDLORD'S insurance premiums to be higher than they would otherwise be if the Leased Premises were used for office or retail purposes.

*[Handwritten initials/signature]*

(n) TENANT, at its expense, shall store and dispose of trash and refuse in such a manner as to ensure compliance with all municipal and state fire, safety and health ordinances and to prevent trash or refuse from itself and its customers being a nuisance to the other occupants of said BUILDING and their customers, guests, invitees or employees. TENANT shall have its Leased Premises serviced monthly for insects and rodent protection by a licensed exterminator.

(o) TENANT shall be responsible for compliance with any applicable life safety and handicapped accessibility laws with respect to the Leased Premises. TENANT shall also be responsible for compliance with any applicable handicapped laws within the common areas if a change in the common area is necessary due to TENANT'S occupancy in the BUILDING, including compliance with the Americans with Disabilities Act or the Maine Human Rights Act.

(p) TENANT agrees to pay LANDLORD'S expenses, including reasonable attorney's fees, incurred in enforcing any obligation of this Lease.

9. TENANT shall pay to LANDLORD commencing with the building insurance premium period July 15, 2013 to July 15, 2014 as additional rent hereunder in this agreement, 15% of all increases in the building insurance expenses above the amount charged in the Base Year for building insurance expenses. The base year for the building insurance premium is the period July 15, 2012 to July 15, 2013, and the Base year insurance amount is Three Thousand Six Hundred Sixty-three Dollars Thirty Eight Cents (\$3,663.38). This increase shall be prorated should this Lease be in effect with respect to only a portion of any calendar year.

LANDLORD shall make the computation and give them to TENANT. The payment, if any, is due on the first day of the month following notice.

10. Utilities. TENANT shall at its expense provide for rubbish removal, heat, hot and cold water, sewer usage charges, snow and ice removal from the sidewalk in front of the Leased Premises. TENANT shall, at its expense, provide for all separately metered utilities used or consumed in/at the Leased Premises including but not limited to gas, electricity, cable, internet services and telephone. In no event shall LANDLORD be liable for an interruption or failure in the supply of any such utilities to the Leased Premises, or be liable for consequential damages resulting from such interruption or failure. LANDLORD shall have no obligation to install utilities other than those serving the Leased Premises as of the date hereof.

LANDLORD shall pay the charge for water consumed and sewage expended at and from the BUILDING of which the Leased Premises are a part. LANDLORD will install a sub-meter on the water lines to measure TENANT'S consumption. TENANT shall pay the charge for water consumed and sewage expended at and from the Leased Premises at the same monthly rate as that charged to the LANDLORD by the City of Portland, Maine, and the Portland Water District. LANDLORD will bill TENANT for usages, and TENANT will pay LANDLORD monthly for this charge within ten (10) days from the date of billing. After the first thirty (30) day period from TENANT'S store opening date, LANDLORD will compute the average monthly consumption and its costs. TENANT will pay with the next and consecutive thereafter monthly rental checks this cost at the same time the monthly rent is tendered. At least once a

year thereafter, the meter will be read and LANDLORD will provide TENANT with an accounting. Any balances owed or overpaid at that time will be adjusted and a new monthly amount will be recalculated. LANDLORD, at the beginning of the Lease term, will ascertain that the existing hot water heater is in working condition for TENANT'S usage. TENANT will thereafter maintain the hot water heater, and if anything happens to this unit and it becomes unworkable, then TENANT, within the Lease term will install and maintain at its own expense either a gas or an electric hot water heater, which shall provide hot water solely for TENANT'S use.



11. Holdover. If TENANT remains in possession of the Leased Premises after the expiration of the term of this Lease, such holding over shall not be deemed to create any tenancy, but TENANT shall be a TENANT at sufferance only subject to all of the TENANT obligations set forth herein, but at a daily rate equal to two (2) times the BASE RENT and other charges provided for under this Lease. The acceptance of a purported rent check following termination shall not constitute the creation of a tenancy at will, it being agreed that TENANT'S status shall remain that of a tenant at sufferance at the aforesaid daily rate.

12. Casualty Damage and Eminent Domain. Should a twenty (20%) percent or greater in value of the Leased Premises, or of the property of which they are a part, be damaged by fire or other casualty, or be taken by eminent domain, the LANDLORD may elect to terminate this Lease. When such fire, casualty or taking renders the Leased Premises unfit for use and occupation and the LANDLORD does not so elect to terminate this Lease, a just and proportionate abatement of rent shall be made until the Leased Premises, or in the case of a partial taking which may remain thereof, shall have been put in a proper condition for use and occupation. LANDLORD reserves and excepts all rights to damages to the Leased 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, TENANT grants to LANDLORD all TENANT'S rights to such damages and covenants to execute and deliver such further instruments of assignment thereof as LANDLORD may from time to time request. LANDLORD shall give TENANT notice of its decision to terminate this Lease or restore the Leased Premises within ninety (90) days after any occurrence giving rise to LANDLORD'S right to so terminate or restore. Notwithstanding anything to the contrary, LANDLORD'S obligation to put the Leased 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 LANDLORD for such use, after deducting the costs incurred by LANDLORD to collect the same.

13. Default. In the event that:

(a) TENANT shall default in the payment of any installment of rent or other monetary sum herein specified when due; or

(b) TENANT shall default in the observance or performance of any of the TENANT'S non-monetary covenants, agreements or obligations hereunder and such default shall not be

corrected within ten (10) days after written notice thereof (except with respect to TENANT'S insurance obligations hereunder, for which TENANT shall have one (1) business day to cure); or

(c) The leasehold hereby created shall be taken on execution or by other process of law; or

(d) Any assignment shall be made of TENANT'S property for the benefit of creditors, or 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 TENANT'S property, or a petition is filed by or against TENANT or any Guarantor under any bankruptcy, insolvency or other debtor relief law.

Then and in any such cases, LANDLORD shall be entitled to all remedies available to LANDLORD at law and equity including, without limitation, the remedy of Forcible Entry and Detainer, and LANDLORD lawfully may, immediately or at any time thereafter, and without demand or notice, mail a notice of termination to TENANT or, if permitted by law, enter into and upon the Leased Premises or any part thereof in the name of the whole and repossess the same as of its former estate, and expel TENANT and those claiming by, through or under it and remove it or their effects without being deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant, and upon such mailing or entry as aforesaid, this Lease shall terminate; and TENANT covenants and agrees, notwithstanding any entry or re-entry by LANDLORD, whether by summary proceedings, termination, or otherwise, that TENANT shall, as of the date of such termination, immediately be liable for and pay to LANDLORD the entire unpaid rental and all other balances due under this Lease for the remainder of the term. In addition, TENANT agrees to pay to LANDLORD, as damages for any above described breach, all costs of re-letting the Leased Premises including real estate commissions, attorney expenses and fees in drafting, negotiating and executing a new lease, and costs of renovating the Leased Premises to suit any new tenant.

In addition to and not in derogation of any and all remedies of LANDLORD hereunder or at law or in equity, if TENANT shall default in the performance of any agreement, covenant or condition in this Lease contained on its part to be performed or observed, and shall not cure such default within applicable cure periods, LANDLORD may, at its sole option, without waiving any claim for damages or for breach of this Lease or any of LANDLORD'S other remedies hereunder, at any time thereafter, cure such default for the account of TENANT, and TENANT agrees to reimburse LANDLORD for any amount paid by LANDLORD in so doing (including without limit reasonable attorney's fees) as Additional Rent and save LANDLORD harmless from any liability incurred thereby. Any such reimbursement shall be due immediately upon demand therefor.

14. Limitation of Liability. Notwithstanding anything to the contrary contained in this Lease, TENANT agrees and understands that TENANT shall look solely at LANDLORD'S

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interest in the BUILDING and any insurance carried by LANDLORD in the Leased Premises for the enforcement of a judgment (or other judicial decree) requiring the payment of money by LANDLORD to TENANT by reason of default, breach or event of default of LANDLORD in performance of its obligations under this Lease or LANDLORD'S negligence, it is being intended that there will be absolutely no personal liability on the part of the LANDLORD, its principals, officers, directors, employees or agents, and no other assets of LANDLORD shall be subject to levy, execution, attachment or any other legal process for the enforcement of the remedies pursued by TENANT in the event of such default, this exculpation of liability to be absolute and without exception whatsoever. In no event shall LANDLORD ever be liable to TENANT for any consequential, indirect or punitive damages.

The LANDLORD shall in no way be responsible for any damage or injury to TENANT'S personal property or fixtures or those of others for which TENANT act as bailers from any cause whatsoever, and TENANT, in execution of this Lease, understands that said personal property is placed in or upon the leased premises entirely at TENANT'S own risk. TENANT will obtain Personal Property Insurance coverage.

15. Subordination and Estoppel.

(a) This Lease shall be automatically subject and subordinate to any and all mortgages, deeds of trust and other instruments in the nature of a mortgage, now or at any time hereafter a lien or liens on the property of which the Leased Premises are a part and TENANT agrees to attorn to and recognize any holder of such mortgage or instrument or any purchaser of the Leased Premises as LANDLORD for the balance of the Lease term, the foregoing agreement being self-operating. TENANT agrees, within ten (10) days of a request by LANDLORD therefor, to execute an instrument subordinating this Lease to any mortgage now or hereinafter placed upon the Premises by LANDLORD and, if required by the mortgagee, to agree not to repay rent more than ten (10) days in advance, to provide said mortgagee with notice of and reasonable opportunity to cure any defaults by LANDLORD, and not to amend, modify or cancel this Lease without mortgagee's written consent. TENANT agrees to recognize the holder of such mortgage or any other person if requested. TENANT agrees to execute and deliver any appropriate instruments necessary to carry out the foregoing provisions.

(b) The TENANT within three (3) days upon request in person or within five (5) days upon request by mail, shall furnish to the LANDLORD and/or mortgagee a written statement, duly acknowledged, setting forth the rental amounts due under this Lease agreement, the terms of payment and expiration date or renewal option of the Lease, the date to which rent has been paid, an acknowledgement that rent has not been prepaid, whether any offset or defenses exist against their rent due, and if any are alleged to exist, the nature thereof shall be set forth in detail, and any other information reasonably requested in connection with this Lease. The failure of TENANT to execute, acknowledge, and deliver to LANDLORD a statement in accordance with the provisions of this paragraph within the period set forth shall constitute acknowledgement by TENANT, which may be relied upon by LANDLORD and third parties that this Lease has not been assigned, amended, changed or modified, is in full force and effect and that the Rent, and other additional charges, if any, have been duly and fully paid not beyond the respective due dates immediately preceding the date of the request for such statements, in addition it constitutes

a waiver of any defaults by LANDLORD or defenses or offsets against the enforcement of this Lease by LANDLORD which may exist prior to the date of the written request, and finally, LANDLORD, at its option, may treat such failure as an event of default.

16. Successors and Assigns. The provisions of this Lease shall inure to and be binding upon the respective successors, heirs, executors, administrators and assigns of LANDLORD and TENANT (to the extent LANDLORD shall, at its sole discretion, elect to consent to such assignment). In the event of any transfer of LANDLORD'S interest in the Leased Premises, LANDLORD shall cease to be liable for and shall be released from all liability for the performance or observation of any agreements or conditions on the part of LANDLORD to be performed or observed subsequent to the time of said transfer, it being understood and agreed that from and after said transfer, the transferee shall be liable.

17. Waiver. Failure of LANDLORD to complain of any act or omission on part of TENANT, no matter how long the same may continue, shall not be deemed to be a waiver by LANDLORD of any of its rights hereunder. No waiver by LANDLORD, expresses or implies, 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 parties consent to or approval of said action on any one occasion shall not be deemed a consent to or approval of any other action on any occasion.

18. General. This Lease is made in and shall be governed by and construed in accordance with the laws of the State of Maine. The captions and headings contained in this Lease are for convenience only and shall not be taken into account in construing the meaning of this Lease or any part thereof. As to the obligations of each party hereunder to perform his or its undertakings, promises, covenants and obligations hereunder, time is of the essence. If any term or provision of this Lease, or the application thereof to any person or circumstance shall, 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 to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law. TENANT agrees not to record the Lease. TENANT AGREES TO WAIVE ITS RIGHT TO A JURY TRIAL SHOULD LITIGATION ARISE BETWEEN LANDLORD AND TENANT. This Lease constitutes the entire agreement between LANDLORD and TENANT with respect to the subject matter contained herein and there are no understandings agreements or representations between LANDLORD and TENANT which are not contained herein. This Lease cannot be amended except be written instrument executed by LANDLORD and TENANT. The rights and remedies to which the LANDLORD 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 LANDLORD may be properly entitled in case of any breach or threatened breach by TENANT of any portion of this Lease.



19. Real Estate and Personal Property Tax. TENANT shall be responsible for all personal property taxes assessed against personal property owned by TENANT and located at the demised premises and for all taxes assessed against improvements made by the TENANT at the demised premises plus if in any tax year commencing with the City of Portland fiscal tax year 2014 (July 1, 2013 through June 30, 2014) the real estate taxes and a Improvement District tax or similar tax, hereinafter called real estate tax on the land and buildings, of which the leased premises are part, are in excess of the amount of real estate taxes thereon for the fiscal year 2013 (July 1, 2012 through June 30, 2013) hereinafter called the "Base Year". TENANT will pay to LANDLORD as additional rent hereunder, fifteen percent (15%) of such excess that may occur in each year of the term this Lease or any extension or renewal thereof and proportionately for any part of a fiscal year in which the Lease commences or ends. The real estate tax in Base Year is Fifteen Thousand Four Hundred Forty-five Dollars Fifty Eight Cents (\$15,445.58). If the LANDLORD obtains an abatement of any such excess real estate tax, a proportionate share of such abatement, less the reasonable fees and costs incurred in obtaining the same, if any, shall be refunded to the TENANT. LANDLORD shall make the computation and give them to TENANT. The payment, if any, is due on the first day of the month following notice.

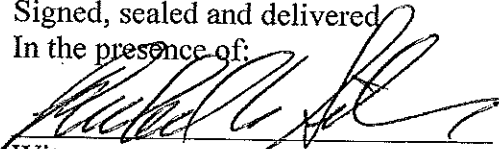
20. Notices. Whenever by the terms of this Lease, notice shall or may be given either to the LANDLORD or to the TENANT, such notice shall be in writing and may be delivered personally or shall be sent by certified mail, return receipt requested, postage prepaid, to the address set forth above, or a subsequent address designated by either LANDLORD or TENANT. Notices from LANDLORD to TENANT shall be deemed to have been given when mailed or when delivered personally.

21. Tenant Buildout. TENANT will make all improvements necessary for operation of the retail store and coffee shop.

22. Miscellaneous. The submission of this Lease or a summary of some or all of its provisions for examination by TENANT does not constitute a reservation of or option for the premises or an offer to Lease said premises. This Lease does not come into existence until executed by both LANDLORD and TENANT.


IN WITNESS WHEREOF, LANDLORD and TENANT have caused this Lease to be executed in duplicate under seal the day and year first above written.


Signed, sealed and delivered  
In the presence of:

  
Witness

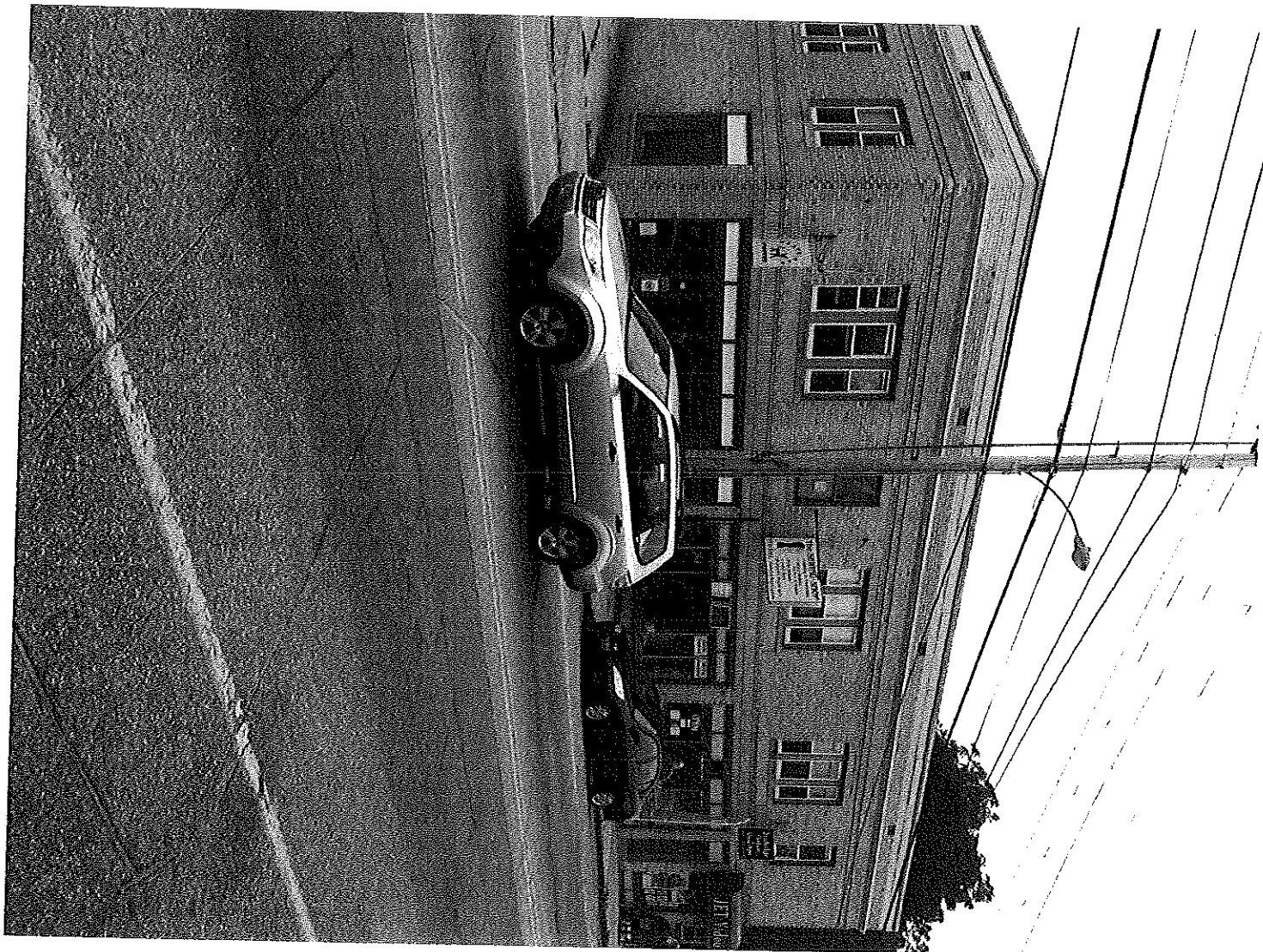
  
Geoffrey I. Rice, Landlord

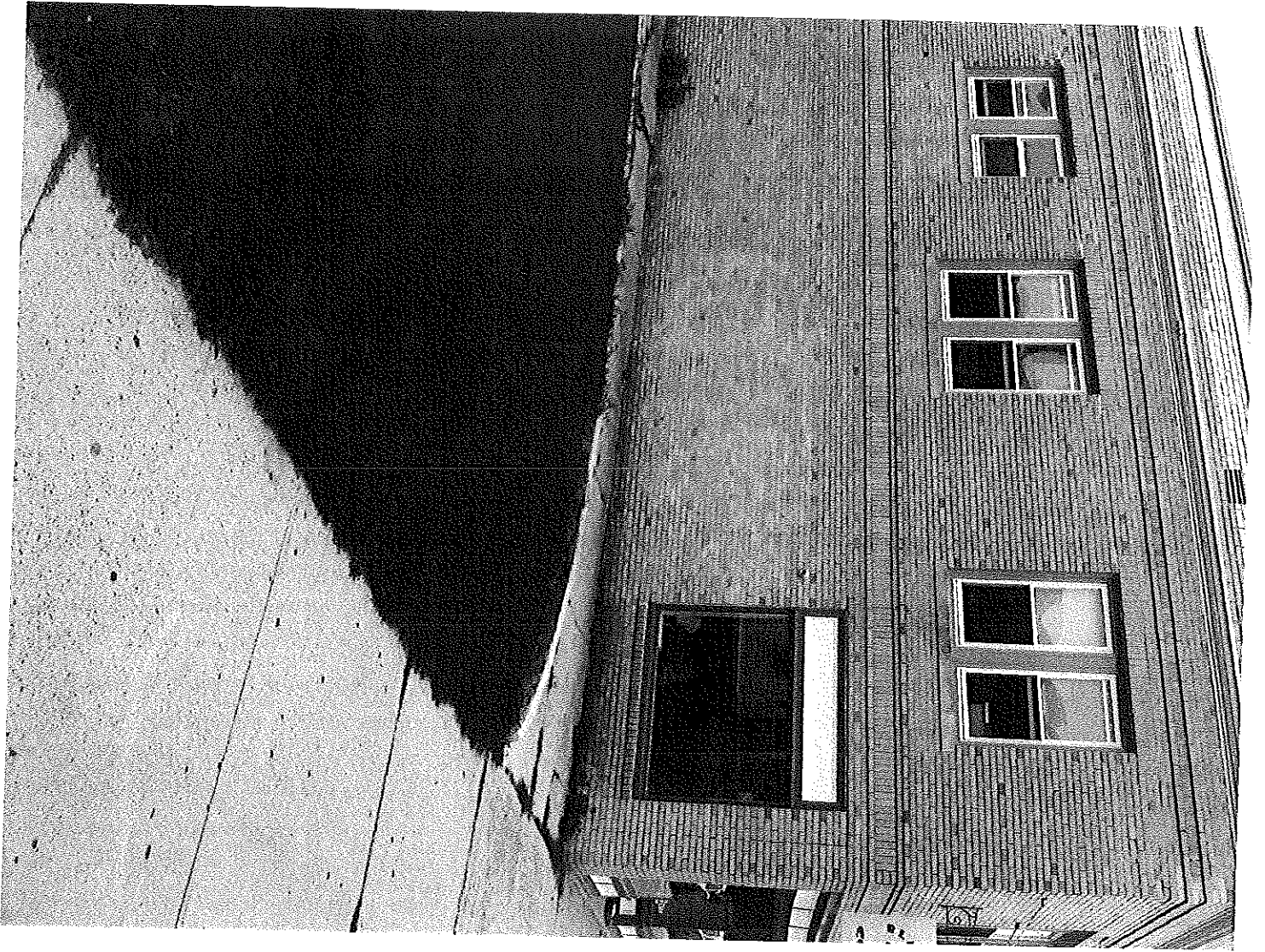
THE COFFEE CAT, LLC.

  
~~Witness~~

By: , Its Manager  
Jenny Siler, Tenant







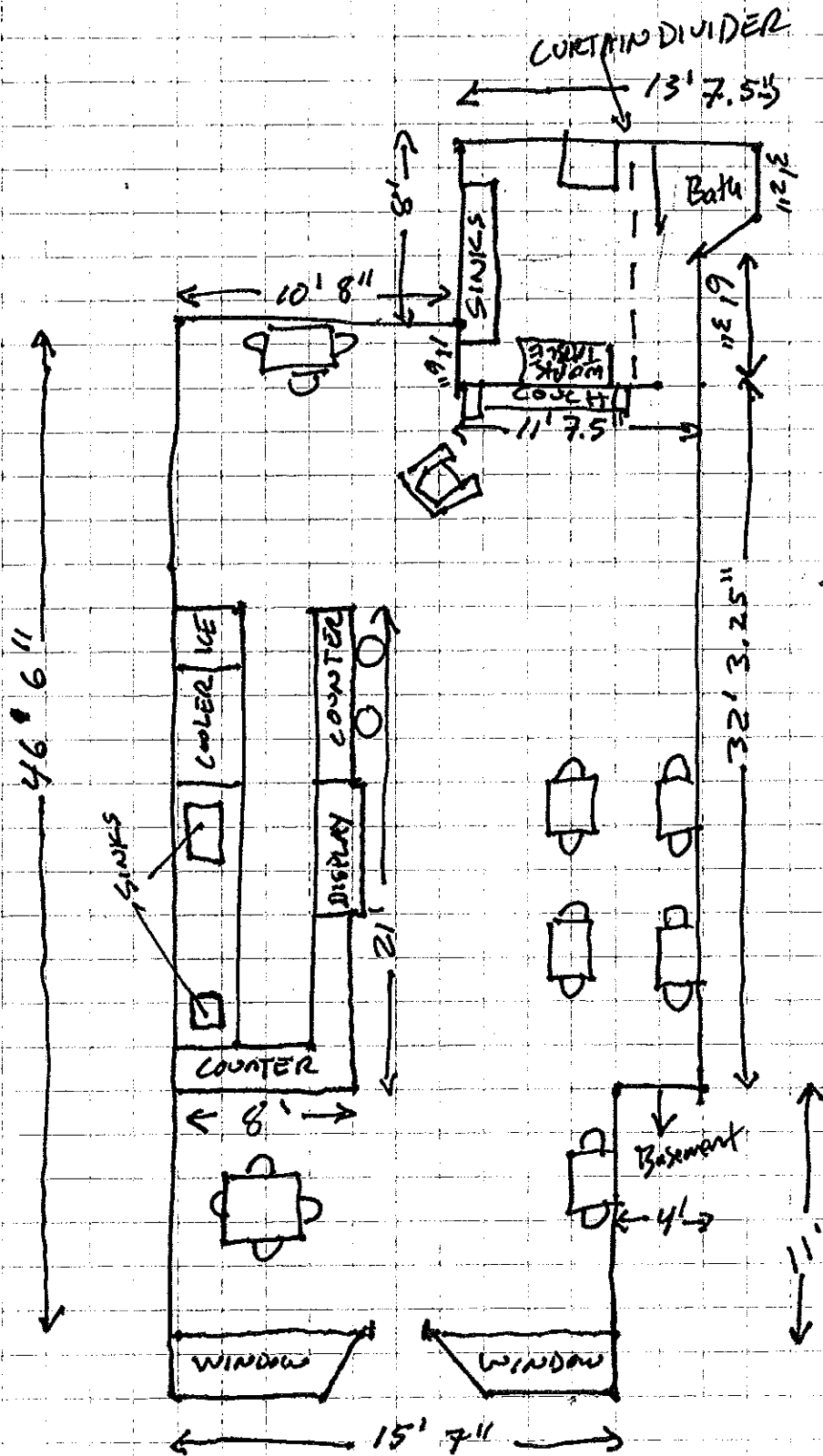


# Floor Plan to Scale

Total Area 960.31 sq. ft.

Work Area 232 sq. ft.

Area in Use  
by Customers 728.31 sq. ft.



# SQUARE FOOTAGE CALCULATIONS

$$19' 8'' \times 11' = 236 \times 122 = 28,792 = 199.94$$

$$+ \\ 23' 8'' \times 26' 10.5'' = 284 \times 322.5 = 91,590 = 636.04$$

$$+ \\ 3' \times 10' 8'' = 36 \times 128 = 4,608 = 32$$

$$+ \\ 8' \times 11' 7.5'' = 96 \times 129.5 = 12,432 = 86.3$$

$$+ \\ 3' 2'' \times 2 = 38 \times 24 = 864 = 6$$

$$\text{TOTAL SQ FT. } \underline{960.31}$$

$$21 \times 8 \quad \text{COUNTER AREA } 168$$

$$\underline{792.37}$$

$$\text{WORK SPACE } 64$$

$$\text{TOTAL SQ FT OPEN TO PUBLIC } \underline{\underline{728}} / 750$$

1' 3 1/4''

5 parking spaces

23 seats