



**CITY OF MARTINEZ**

**CITY COUNCIL**  
**October 16, 2013**

**TO:** Mayor and City Council

**FROM:** Michael Chandler, Senior Management Analyst  
Anna Gwyn Simpson, Deputy Director of Strategic Planning and  
Community Development

**SUBJECT:** Campbell Theater Sublease

**DATE:** October 10, 2013

**RECOMMENDATION:**

Adopt a resolution approving a categorical exemption to the provisions of the California Environmental Quality Act, approving a sublease agreement with Onstage Repertory Theater (“Onstage”) for use of the Premises located at 636 Ward Street and authorizing the City Manager to execute same.

**BACKGROUND**

The Campbell Theater located at 636 Ward Street is an approximately 5,700 square foot, two-story building on a lot of approximately 10,000 square feet with 12 parking spaces (collectively, the “Premises”). The City of Martinez began leasing the property from the Bisio Trust in January 2005, with the current term expiring on December 31, 2014. The City sublet the property to the Willows Theater Group (“Willows”) on an exclusive-use basis, and after undergoing extensive renovations, the property opened as the Campbell Theater in 2007. The Willows began holding a number of live theater productions until August 2012, when it abandoned the facility. The Willows subsequently filed for Chapter 7 bankruptcy protection on November 2, 2012.

The personal property located at the Campbell Theater, consisting of various sound, lighting, stage and concessionaire equipment, was listed as collateral on two loans the Bank of the West had made to the Willows. The City recently acquired title to this personal property at the Campbell Theater through a transaction with The Bank of the West, and is now in a position to sublease the Theater and the personal property to a third party manager.

The City submitted a Request for Qualifications (RFQ) on August 28, 2013 for management of the Campbell Theater. Onstage Repertory Theater (“Onstage”) submitted a qualified response to that RFQ and the City Council on September 18, 2013 directed staff to enter negotiations with Onstage for management and sublease of the property.

The specific terms of the sublease have been negotiated between the City and Onstage, a copy of which is attached as Attachment 1. Key terms of the proposed sublease include:

- 1) Term runs concurrent with the City's lease for the Premises from the Bisio Trust (through December 31, 2014)
- 2) Rent will include two components:
  - a. For performances managed and ticketed through Onstage, the greater of:
    - i. \$50 for the duration of each performance, or
    - ii. 50% of the net profits over operating expenses for the duration of each performance
  - b. For rentals of the Premises to third parties for events or performances:
    - i. 25% of the rental fee charged by Onstage to a third-party user
    - ii. Exemptions include City uses and those coordinated through City on behalf of other organizations (e.g. Martinez non-profits and school districts)
- 3) Uses by or coordinated through the City specified as minimum 14 times during Term (but subject to availability per Onstage's prior scheduling commitments or reservations)
- 4) All utilities and janitorial will be the responsibility of Onstage
- 5) Public liability insurance will be set at the current preferred standard of \$2M per occurrence, \$4M aggregate

The City endeavors to begin discussions regarding the future use of the Campbell Theater beyond the end of the City's lease by May 1, 2014. These discussions would include the City, Onstage, and the Bisio Trust.

#### **FISCAL IMPACT:**

TBD. The City anticipates no additional expenses relative to the sublease. All rent paid by Onstage is dependent upon the regular and successful booking of the Campbell Theater, and will be used to help offset the City's own lease obligation for the Premises of \$4,502/month (\$4,637/mo starting January 2014). Onstage's assumption of all utility and janitorial responsibilities for the Premises is expected to save the City approximately \$8,400 during the term of the sublease.

#### **ENVIRONMENTAL REVIEW:**

Sublease of the Premises is considered to be a Project pursuant to the provisions of the California Environmental Quality Act (CEQA). The conditions of the sublease have been reviewed and have been determined to be categorically exempt from the provisions of CEQA pursuant to California Code of Regulations Title 14, Chapter 3 (CEQA Guidelines) Section 15301 - Existing Facilities, in that the project involves the leasing of a private structure involving no expansion of the existing facility or change of use from the previously existing theater. There exist no unusual circumstances that suggest that any environmental impact would occur from said lease. The Premises is located in an urbanized area of the City which is not an environmental resource of hazardous or critical concern or within a state scenic highway. Additionally, the City has no information to suggest that the Premises is a hazardous waste site as set forth in Section 65962.5 of the Government Code. As the project involves no changes to the structure of the Premises, it can be seen with certainty that the project will not cause a substantial adverse change in the significance of an historical resource.

**ACTION:**

Adopt a resolution approving a categorical exemption to the provisions of the California Environmental Quality Act, approving a sublease agreement with Onstage Repertory Theater (“Onstage”) for use of the Premises located at 636 Ward Street and authorizing the City Manager to execute same.

Attachments:

Resolution

- 1) Sublease with Onstage Repertory Theater for 636 Ward Street
- A) Master Lease
- B) City Personal Property

**APPROVED BY:**

  
City Manager

RESOLUTION NO. -13

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARTINEZ  
APPROVING A CATEGORICAL EXEMPTION TO THE PROVISIONS OF THE  
CALIFORNIA ENVIRONMENTAL QUALITY ACT, APPROVING A LEASE  
AGREEMENT WITH ONSTAGE REPERTORY THEATER FOR USE OF THE PREMISES  
LOCATED AT 636 WARD STREET AND AUTHORIZING THE CITY MANAGER TO  
EXECUTE SAME**

**WHEREAS**, the City of Martinez ("City") entered into a lease on January 1, 2005 ("Master Lease") for a building of approximately 5,700 square feet ("Campbell Theater") on a lot of approximately 10,000 square feet with 12 parking spaces located at 636 Ward Street (collectively, the "Premises") from the Bart and Jane Bisio Revocable Trust ("Lessor"); and

**WHEREAS**, the term of the Master Lease expires on December 31, 2014; and

**WHEREAS**, the City desires to have a performing arts theater available to the public at the Premises; and

**WHEREAS**, the City released a Request for Qualifications ("RFQ") for management of the Campbell Theater on August 28, 2013; and

**WHEREAS**, Onstage's response to the RFQ indicated it is well qualified to sublease the Premises and manage the Campbell Theater in such a way as to provide a broader benefit to the downtown area and Martinez community as a whole; and

**WHEREAS**, the City Council subsequently directed staff to enter negotiations with Onstage for sublease of the Premises on September 18, 2013; and

**WHEREAS**, the City and Onstage have reached terms and desire to enter into a sublease agreement for the Premises; and

**WHEREAS**, the City has shared a copy of said sublease agreement with Lessor as required under the Master Lease.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council hereby finds that the sublease of the Premises is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to California Code of Regulations Title 14, Chapter 3 (CEQA Guidelines) Section 15301 Existing Facilities in that the project involves the leasing of a private structure involving no expansion of the existing facility or change of use from the previously existing theater. There exist no unusual

circumstances that suggest that any environmental impact would occur from said lease. The Premises is located in an urbanized area of the City which is not an environmental resource of hazardous or critical concern or within a state scenic highway. Additionally, the City has no information to suggest that the Premises is a hazardous waste site as set forth in Section 65962.5 of the Government Code. As the project involves no changes to the structure of the Premises, it can be seen with certainty that the project will not cause a substantial adverse change in the significance of an historical resource.

**BE IT FURTHER RESOLVED** that the City Council hereby approves a Sublease Agreement with Onstage Repertory Theater, to sublease the Premises located at 636 Ward Street, Martinez California, in the form substantially as set forth in Attachment 1, attached hereto and as approved by the Master Lessor and further authorizes the City Manager to execute same.

\* \* \* \* \*

**I HEREBY CERTIFY** that the foregoing is a true and correct copy of a resolution duly adopted by the City council of the City of Martinez at a Regular Meeting of said Council held on the 16<sup>th</sup> day of October, 2013, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK  
CITY OF MARTINEZ

ATTACHMENT 1

**RECORDING REQUESTED BY AND  
AFTER RECORDATION, MAIL TO:**

City of Martinez  
Attn: City Clerk  
525 Henrietta Street  
Martinez, CA 94553

**NO FEE RECORDING PURSUANT  
TO GOVERNMENT CODE §27383**

APN#

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**COMMERCIAL SUBLEASE AGREEMENT**

THIS SUBLEASE AGREEMENT ("Agreement") is entered into on October 17, 2013, by and between the City of Martinez, a municipal corporation ("City"), and the Onstage Repertory Theater ("Onstage"), a non-profit corporation.

**RECITALS**

WHEREAS, the City entered into a lease on January 1, 2005 ("Master Lease") for a building consisting of approximately 5,700 square feet of space ("Campbell Theater") on a lot of approximately 10,000 square feet with 12 parking spaces located at 636 Ward Street, Martinez, California ("Premises") from the Bart and Jane Bisio Revocable Trust ("Lessor"). The Term of said Master Lease expires on December 31, 2014. A true and correct Copy of the Master Lease is attached hereto as Exhibit A and incorporated herein by reference; and

WHEREAS, the City has ownership of all personal property within the Campbell Theater, including, but not limited to various sound, lighting, stage and concessionaire equipment ("City Personal Property") essential to the operation of the Premises; and

WHEREAS, the City is desirous of having a performing arts theater available to the public at the Premises; and

WHEREAS, the City released an initial Request for Qualifications ("RFQ") for management of the Campbell Theater on July 22, 2013, and having received no viable proposals at the conclusion of the initial RFQ period, released a second RFQ on August 28, 2013; and

WHEREAS, the City received four (4) responses to the second RFQ, and selected Onstage for sublease of the Premises including management of the Campbell Theater based on their 35 years of experience as a community-based non-profit theater company and established relationships with numerous other organizations representing culture and the arts; and

WHEREAS, Onstage's qualifications indicate it is well qualified to sublease the

Premises including management of the Campbell Theater in such a way as to provide a broader benefit to the downtown area and Martinez community as a whole; and

WHEREAS, the City has agreed to sublease the Premises to Onstage, and Onstage desires to sublease the Premises for a downtown performing arts venue for the community, as hereinafter provided.

NOW, THEREFORE, in consideration of the faithful performance of the terms and conditions set forth in this Agreement, the parties hereto mutually agree as follows:

1. Premises.

Onstage hereby subleases the Premises, as described above from the City subject to the terms and conditions of this Agreement and the terms and conditions of the Master Lease.

- A. Onstage acknowledges and represents: i) that Onstage takes the Premises in its “as is” condition without representation or warranty by City; ii) that Onstage is entering into this Agreement solely in reliance on its own investigation, and that no other representations or warranties of any kind whatsoever, express or implied, have been made by City, or City’s agents, officers, employees or representatives; iii) that Onstage has had ample opportunity and complete access to all parts of the Premises to inspect and ascertain, to its complete satisfaction, whether the Premises is suitable to its needs and can be improved, used, maintained and operated in accordance with this Agreement; and iv) that Onstage is entirely satisfied as to the Premises a) compliance or noncompliance with applicable laws, codes, rules and regulations, including but not limited to fire safety, health safety, hazardous materials and other code standards and all other applicable governmental and other requirements, and b) physical condition, environmental condition, title, and all other aspects of the Premises and each component thereof, have been investigated such that Onstage has determined the Premises suitable for the uses contemplated herein, including but not limited to investigation of the presence of any hazardous wastes, substances or materials as those terms may be defined by any law, ordinance and/or regulation of any regulatory agency with jurisdiction at and surrounding the Premises; investigation of conditions at, of and surrounding the Premises, including but not limited to drainage, flooding, stormwater, earthquake, parking, access, lighting, and utility availability; and investigation and determination of the costs and other financial considerations associated with this Agreement and the uses and improvements contemplated herein and/or the fitness of the Premises or any improvements located thereon, for Onstage’s intended use, and/or the compliance of the Premises and/or any improvements located thereon with any applicable laws, rules and regulations, including, without limitation, the Americans with Disabilities Act of 1990.
- B. Onstage specifically acknowledges that except as otherwise may be expressly provided in this Agreement, the City has made no representations concerning the condition of the Premises or any improvements located thereon, including, without limitation, investigation of the presence of any hazardous wastes, substances or materials as those terms may be defined by any law, ordinance

and/or regulation of any regulatory agency with jurisdiction at and surrounding the Premises; investigation of conditions at, of and surrounding the Premises, including but not limited to drainage, flooding, stormwater, earthquake, parking, access, lighting, and utility availability; investigation and determination of the costs and other financial considerations associated with this Agreement and the uses and improvements contemplated herein and/or the fitness of the Premises or any improvements located thereon, for Onstage's intended use, and/or the compliance of the Premises and/or any improvements located thereon with any applicable laws, rules and regulations, including, without limitation, the Americans with Disabilities Act of 1990, and Onstage expressly waives any duty which the City might have to make any disclosures in connection with the subject matter of this Section. Onstage further agrees that, in the event Onstage subleases or assigns its interest in this Agreement, Onstage shall protect, indemnify, defend and hold harmless the City for, from and against any matters which arise as a result of Onstage's failure to disclose any relevant information about the Premises and/or improvements located thereon to any subtenant or assignee. It is the intention of the City and Lessee that the provisions of this Section shall survive termination of this Agreement for any reason.

- C. Notwithstanding, the above, Onstage responsibility for any repair of the Premises shall be as set forth in Section 8 hereof.

2. Term.

The Term of this Agreement shall be for the period commencing on October 17, 2013, and ending on December 31, 2014, unless sooner terminated in accordance with this Agreement.

3. Rent.

Onstage shall pay to City as rent the following:

- A. For events or performances managed and ticketed through Onstage:
  - i. \$50 for the duration of each performance, or
  - ii. 50% of all net profits over operating expenses for the duration of each performance, whichever is greater
- B. For rentals of the Premises by Onstage to third parties for events or performances:
  - i. 25% of the rental fees charged by Onstage

Said payments shall be made monthly in arrears, based upon the events held in the previous calendar month. Payment shall be made no later than the 15<sup>th</sup> day of the month. Events exempt from the aforementioned payment terms include City uses of the Premises and those made through the City on behalf of other organizations (such as Martinez non-profit organizations and school districts), as set forth in Section 5 B below.

4. Records and Audit.

Onstage shall maintain and keep adequate and complete records showing the total gross

receipts and expenses associated with each event held at the Premises. Onstage, as a non-profit corporation, agrees to allow the City, at all reasonable times and with reasonable notice, to inspect all books and records of Onstage relating to the Premises.

5. Use of Premises.

- A. During the entire Agreement Term, Onstage shall use the Premises described herein for the purposes of live theatrical, musical, cultural and recreational performances, and the preparation for such live performances and pertinent food service, but for no other purpose or purposes without City's written consent, which consent may be withheld for any reason or no reason whatsoever in the City's sole discretion.
- B. The City shall have rights to use the Premises for its own purposes, or on behalf of other organizations (such as Martinez non-profit organizations and school districts), in such a manner so as not to encroach upon prior scheduling commitments or reservations made for the Premises through Onstage. Such City use shall be granted upon written consent of Onstage, which consent shall not be unreasonably withheld. City shall, at a minimum, have use of the Premises fourteen (14) times during the Term of this Agreement. The City understands that any existing sets, constructions, or other designs relating to an ongoing or upcoming production may not be moved or otherwise compromised during City use of the Premises.
- C. The City has supplied Onstage a list of City personal property located at or on the Premises, which includes various sound, lighting, stage and concessionaire equipment, located in the Campbell Theater. A copy of said list is attached hereto as Exhibit B and incorporated herein by reference ("City Personal Property"). Additionally, the City Personal Property shall be labeled to identify it as such, and Onstage shall ensure that any personal property it brings into the Campbell Theater is appropriately labeled to distinguish it as Onstage's property. Onstage may use the City Personal Property at its discretion, but shall be liable to the City for any loss of or damage to the City Personal Property during the Term of this Agreement, excepting therefrom loss or damage caused by the City or Martinez non-profit organizations and school districts using the Premises pursuant to subparagraph B above.
- D. Onstage shall promptly comply with all laws, ordinances, orders and regulations promulgated by any governmental agency now in force or that may later be in force and affecting the use of the Premises, the operation of the Campbell Theater, the use of City Personal Property or other equipment, and the cleanliness, safety, occupation and use of the Premises and City Personal Property. Onstage shall not perform any acts or carry on any practices that may damage the Premises, or any part thereof, or the City Personal Property or that may be a nuisance or menace to customers, nor shall it allow such acts or practices of others that may damage the Premises, any part thereof, or the City Personal Property or pose a nuisance or menace to customers.
- E. At all times Onstage shall maintain and operate the Premises, including but not limited to the Campbell Theater, in accordance with the highest standards of cleanliness and shall keep the Premises clean and free from rubbish. Onstage shall store all trash and garbage within the enclosure on the Premises.

6. Operation of Business.

Onstage shall furnish good, prompt and efficient service to its customers and shall conduct its operations and business in an orderly manner. The management, maintenance and operation of the Premises and the services offered shall be under the supervision and direction of a responsible person directly employed by Onstage. Employees, volunteers, and agents of Onstage who have contact with the public shall wear distinctive uniforms or name badges supplied by Onstage, and be clean, courteous and neat in appearance and demeanor at all times.

7. Alterations, Repairs and Improvements.

Onstage shall not construct or cause to be constructed any improvements, additions, alterations, repair or changes to or on the Premises without the prior written consent of the City, which consent is conditioned upon also obtaining the approval of the Lessor as set forth in the Master Lease. City may refuse permission for the construction of any proposed improvement, addition, alteration, repair or change, in its sole and absolute discretion. Any decision of City in such regard shall be final. The exception to this is the construction of temporary sets, props, or other material changes usual and customary to development and design of anticipated or scheduled performances which do not result in permanent changes to the Premises.

If City approves said proposed construction, Onstage shall file in orderly succession all plans, specifications and construction cost estimates with the City for review and approval. No construction shall begin until the final plans and specifications have been approved by City. Onstage shall comply with any and all conditions placed upon said construction by City, which may include but not be limited to, conditions relating to design, cost, bidding, insurance, improvement security, etc. Onstage further agrees to keep City apprised of the progress of the work to the end that City may provide timely inspection to assure proper safeguarding of such all improvements to be constructed and all City owned improvements occurring on or near the Premises.

In the event that any City or Lessor owned improvements may be damaged as a result of said construction, Onstage agrees to repair such damage immediately at no cost to City, or, in the event Onstage does not so repair said damage immediately and to City's satisfaction, City may enter upon the Premises to make such repairs, the cost of which shall be paid by Onstage immediately upon demand.

No construction shall be commenced upon the Premises by Onstage until City has approved such construction as set forth herein and until Onstage has secured and submitted to City an acceptable construction contract providing for indemnity and insurance in favor of the City and Lessor in a form acceptable to the City and performance bonds and labor and material bonds in the amount of the total estimated construction costs of improvements to be constructed by Onstage. Said bonds must be issued by a company qualified to do business in the State of California and be in a form acceptable to City.

8. Maintenance of the Premises.

All maintenance of the interior and exterior, including plumbing and electrical fixtures, walls and floor coverings, doors and windows, lights, plate glass and other door and window glass, electrical systems, fire sprinklers, and HVAC system of the Premises which

becomes necessary due to the acts, errors or omissions of Onstage or its officers, members, employees, agents, guests, invitees, contractors, subcontractors, patrons or other persons in present at or in possession of the Premises under or through Onstage will be assumed by Onstage. Onstage assumes all risks of theft and vandalism to the Premises, and any part thereof and the to the City Personal Property and shall pay all costs associated with such losses. Onstage shall at its sole cost and expense, keep the Premises and City Personal Property in good condition, repair damage, and upon the termination of this Agreement, surrender the Premises and City Personal Property to City in good condition, ordinary wear and tear excepted. City shall have no obligation whatsoever to alter, remodel, improve, repair, decorate or paint the Premises or repair or replace the City Personal Property.

It is understood that Onstage is expressly not obligated to pay for maintenance to the Premises or damages not caused by the acts, errors or omissions of Onstage or its officers, members, employees, agents, guests, invitees, contractors, subcontractors, patrons or other persons in present at or in possession of the Premises under or through Onstage including but not limited to roof, electrical, fire sprinklers, HVAC systems, plumbing, and sewer. Should any such repairs or replacements become necessary due to factors not the responsibility of Onstage, the parties will meet and confer to determine if and when repair or replacements shall be made and which entity shall bear the costs thereof, it being understood that neither the City nor Onstage shall be obligated to make such repairs or replacements unless mutually agreed between the parties. In the event that the parties do not mutually agree to such repairs, Onstage shall have the right to terminate this agreement and vacate the Premises.

9. Furnishing of Space.

The City shall furnish Onstage with use of the Premises, subject to City's rights as set forth in Section 5 B, provided that it is understood that Onstage accepts the Premises as is and acknowledges that the City makes no representation as to the fitness of the subject Premises for any particular use as set forth herein.

10. Inspection of Premises.

The City Manager shall have the right as often as he or she deems necessary to inspect the Premises with the right to direct such repairs as may be necessary. Onstage shall notify the City of any leaks in roof and related water damage. Onstage shall be responsible for the security of the Premises and liable for any damages resulting from a breach of security.

11. Purchase of Equipment by City.

Upon termination of this Agreement by lapse of time or otherwise, the City shall have the option, by notice in writing to Onstage of at least thirty (30) days prior to the expiration of the term hereof, of purchasing from Onstage its equipment, furnishings and fixtures relating to the operation of the Campbell Theater. The purchase price shall be determined by mutual agreement of the parties hereto.

12. Removal of Property.

Upon termination of this Agreement by lapse of time or otherwise, Onstage shall promptly remove from the Premises all of Onstage's personal property, including, but not limited to its display signs, counters and other equipment and furnishings as may exist on the Premises

excepting therefrom such personal property to be purchased by the City in accordance with Paragraph 11 above, and shall promptly repair any damage to the Premises caused thereby. Onstage shall leave the Premises in a safe, sanitary and slightly condition, normal wear and tear excepted. Onstage's failure to remove such personal property shall not constitute a hold-over under this Agreement, except that such property not removed within twenty one) 21 days after termination of this Agreement shall be deemed abandoned and such personal property shall thereupon become the sole property of the City unless the City grants a further period in writing within which to remove such property from the Premises.

13. Reserved

14. Taxes.

The parties acknowledge that under the State of California Revenue and Taxation Code Section 107.6, a possessory interest subject to property taxation may be created whenever public property is rented to a private party, and that, unless otherwise exempt pursuant to Article XIII, Section 4(b) of the California Constitution or other provision of California law, the private party in whom possessory interest is vested may be subject to the payment of property taxes levied on that interest. Onstage shall pay all lawful taxes, assessments, or charges which at any time may be levied by any federal, state, county or any tax or assessment levying agency upon any interest in this Agreement, or any possessory interest which Onstage may have at the Premises by reason of this use or occupancy thereof or otherwise, as well as all taxes, assessments and charges on goods, merchandise, fixtures, appliances, equipment and property owned by it in or about the Premises. Onstage shall pay any additional property taxes assessed on the value of improvements installed by Onstage at the Premises. In the event Onstage desires to contest any tax which it is obligated to pay hereunder, Onstage shall have the right to do so provided that should Onstage be unsuccessful in any such contest, such taxes, together with any and all interest and penalties thereon, shall be forthwith discharged by Onstage. This Section is subject to the understanding that Onstage is not responsible for the payment of Owner's real estate property taxes to Contra Costa County and that an estimate of the possessory interest tax as outlined above shall be provided to Onstage prior to acceptance of this agreement.

15. No Liens.

Onstage shall pay for all labor done or materials furnished in the repair, replacement, development or improvement of the Premises after acceptance by Onstage, and shall keep said Premises and Onstage's possessory interest, if any, therein, free and clear of any lien or encumbrance of any kind whatsoever created by Onstage's acts or omissions. Onstage shall not be in breach hereunder should Onstage in good faith contest any lien or encumbrance which may be so created, and provided further that should Onstage be unsuccessful in any such contest, Onstage shall forthwith discharge same.

16. License and Permits.

Onstage shall obtain all permits and licenses required by any and all laws of any federal, state, or other governmental agency to allow Onstage to meet its obligations under this Agreement, and shall pay all fees therefor.

17. Utilities and Services.

Onstage shall pay for all utilities furnished to the Premises including, but not limited to, electricity, power, gas, sewer, garbage, water, telephone, cable, internet, satellite and janitorial services. Onstage shall also be responsible for connection and removal of said utilities.

18. Indemnification.

- A. Onstage shall indemnify, defend, protect, and save harmless, City and City's officials, officers, employees, and agents, from and against all liabilities, suits, obligations, fines, damages, penalties, demands, claims, costs, charges and expenses, including without limitation reasonable fees of attorneys, architects and consultants, which may be imposed upon or incurred by or asserted against City and arising directly or indirectly out of the activities of Onstage arising out of or relating to this Agreement, the possession and use of the Premises and City Personal Property by Onstage or any of its sublessees, invitees, employees, contractors or guests and any of the following, except to the extent caused by the gross negligence or willful misconduct of City or City's breach of any of its obligations under this Agreement:
- i. any work, act or event occurring on the Premises, or any part thereof, or any work, act or event occurring in any area adjacent to the Premises and related to the activities of Onstage or Onstage's agents;
  - ii. any use, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises, or any part thereof by any person or entity, except City;
  - iii. granting and performance of this Agreement or arising from the use and operation of the Premises or any defect in any part thereof;
  - iv. any act, error or omission on the part of Onstage or any of Onstage's subtenants, contractors, employees, agents, licensees or invitees;
  - v. any lien or claim which may be alleged to have arisen against or on the Premises under the laws of the State of California or of any other governmental authority arising out of the activities of Onstage;
  - vi. any breach by Onstage of any of its representations and/or obligations under this Agreement;
  - vii. any failure by Onstage to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in any contract or agreement affecting the Premises, including this Agreement, which Onstage is required to keep, observe or perform; and
  - viii. any violation of any Environmental Law, applicable fire safety, health safety, building code standard or any other standard, regulation or law by Onstage.
- B. Onstage acknowledges that work which may be performed at the Premises pursuant to the terms of this Agreement, may be subject to the prevailing wage requirements of the State of California ("State"), and particularly its Department of Industrial Relations. In the event that said prevailing wage requirements apply to work undertaken by Onstage upon the Premises pursuant to the terms hereof, Onstage agrees to comply with same. In the event claims arise relating to Onstage's provision or failure to provide prevailing wage rates for work upon the Premises or in the event that the State, a court or other authority with jurisdiction imposes any

prevailing wage requirements upon Onstage's work performed hereunder and, as a result, imposes fines, penalties and/or assessments upon Onstage and/or the City for alleged violations of such prevailing wage requirements, or as a result thereof Onstage suffers increased costs, expenses, attorneys' fees or other damages or liabilities, Onstage agrees to (i) indemnify, defend and hold the City harmless from any such claims, fines, damages, increased costs, fees, liabilities, penalties and/or assessments, as well as any costs, fees, and expenses incurred by the City in connection with any actions of the State taken in accordance with its prevailing wage laws, rules and/or regulations, and (ii) waive and release the City from any and all claims Onstage may have against the City for such fines, damages, increased costs, fees, liabilities, penalties and/or assessments, including claims Onstage may have under Cal.Labor Code §1781.

C. Environmental Provisions

Onstage shall comply with all Environmental Laws affecting or relating to the Premises and shall not perform, or suffer or permit to be performed, any acts, or omit or refuse to take any required actions, in violation of Environmental Laws. In addition to the foregoing, Onstage agrees as follows:

- i. Onstage will not use the Premises or any portion thereof, nor will Onstage permit the Premises or any portion thereof to be used, for the purpose of refining, producing, storing, handling, transferring, processing, transporting, generating, manufacturing, treating or disposing of any Hazardous Material except in material compliance with all Environmental Laws and as necessary for the operation of Onstage's business.
- ii. Onstage shall comply, and shall cause Onstage's employees, contractors, agents, affiliates, assigns, invitees and other persons using or occupying all or a portion of the Premises with Onstage's consent or knowledge, to comply, with all Environmental Laws affecting the Premises and shall notify City of any Release or violation of any Environmental Law affecting the Premises known to Onstage. Onstage shall be responsible for all liabilities arising out of violations of Environmental Laws ("Environmental Liabilities"), costs and all Remedial Actions associated with any Release or threatened Release in, over, on, under or about the Premises which is caused by Onstage or any Onstage employees, contractors, agents, affiliates, assigns, invitees and other persons using or occupying all or a portion of the Premises. For purposes of this Section, a "Release" shall include any Release occurring in the course of Onstage's construction activities, including any Release of pre-existing Hazardous Materials caused by such construction activities.
- iii. In the event that a document ("Environmental Lien") is recorded or filed against the Premises or any portion thereof as a result of any act or omission for which Onstage bears responsibility under this Section, Onstage shall immediately notify City thereof and, within thirty (30) days from the date that Onstage receives notice that said Environmental Lien has been placed against the Premises or within such shorter period of time as may be required to stay the enforcement of such Environmental Lien and to ensure that no portion of the Premises shall be sold pursuant to any foreclosure of any such Environmental Lien, Onstage shall either (i) pay the claim and remove the lien from the Premises or any portion thereof or (ii) institute at Onstage's sole cost and expense, and acting diligently and in good faith, an appropriate legal proceeding

to contest, object or appeal the validity of such Environmental Lien; provided, however, that the contest, objection or appeal with respect to the validity of an Environmental Lien shall suspend Onstage's obligation to eliminate such Environmental Lien under this subsection pending a final determination by appropriate administrative or judicial authority of the legality, enforceability or status of such Environmental Lien.

- iv. Onstage shall cause all of Onstage's employees, contractors, agents, affiliates, assigns, invitees and other persons using or occupying all or a portion of the Premises to comply in all material respects with the representations, warranties and covenants contained in subsections (i) through (iii) above.
- v. It is expressly understood that any environmental concerns not directly caused by Onstage's use of the Premises, including any heretofore known or unknown existing concerns, or any changes to current law, shall not be the responsibility of Onstage including any repairs, fines, attorney fees or other issues relating to compliance.

Onstage agrees to defend, indemnify and hold harmless City, its officials, officers, employees and agents, from and against any and all Environmental Liabilities, Remedial Actions and costs which result directly or indirectly from (i) any violation of any Environmental Law with respect to all or any portion of the Premises caused by Onstage or any of Onstage's employees, contractors, agents, affiliates, assigns, invitees and other persons using or occupying all or a portion of the Premises; (ii) any Environmental Liability or cost and any Remedial Action associated with any Release or threatened Release in, over, on, under or about the Premises which is caused by Onstage or any of Onstage's employees, contractors, agents, affiliates, assigns, invitees and other persons using or occupying all or a portion of the Premises; (iii) any breach of any warranty or representation regarding environmental matters made by Onstage hereunder; and (iv) the migration, seepage, leaching or other movement of any Hazardous Materials which have been Released onto the Premises by Onstage or any of Onstage's employees, contractors, agents, affiliates, assigns, invitees and other persons using or occupying all or a portion of the Premises or any portion thereof.

The provisions of this Section 18 shall survive the expiration or earlier termination of this Agreement.

19. Insurance.

Onstage shall obtain and maintain, and shall cause all sublessees and contractors or subcontractors performing work at the Premises to obtain and maintain insurance acceptable to City in full force and effect throughout the term of this Agreement. The initial policies for said insurance shall, as a minimum, provide the following forms of coverage:

**A. Comprehensive General Liability**

(Covering Premises, operations, products and completed operations.)

1. Two Million Dollars (\$2,000,000) per occurrence for personal injury or death and property damage combined, single limit with an annual aggregate of \$4,000,000 (four million)

Each such policy shall be endorsed with the following specific language:

- (i) The City is named as additional insured for all liability arising out of the work performed by or on behalf of the named insured, and this policy protects the additional insured, its officers, agents, and employees against liability for personal

and bodily injuries, deaths or property damage or destruction arising in any respect, directly, or indirectly, in the performance of this Agreement.

(ii) The insurance provided by Onstage is primary.

(iii) The coverage provided by this policy shall not be canceled without thirty (30) days prior written notice given to the City.

**B. Property Insurance**

Onstage shall, at Onstage's own cost and expense, secure and maintain special form insurance for builder's risk insurance during the course of any construction performed by or on behalf of Onstage coverage in an amount equal to 100% of the full replacement cost of the improvements located at the Premises (including all changes in building code requirements), the City Personal Property, plate, sky and door glass, and Onstage's personal property and materials and supplies used at the Premises (including all changes in code requirements) and covering course of construction exposure and all risks of direct physical loss Any loss payable under any policy described in this Section shall be used to rebuild and/or repair the damaged portions of the Premises, improvements located thereon, City Personal Property and Onstage's personal property. The insurer shall waive all rights of subrogation against City. The City shall be named a loss payee on all insurance policies covering casualty losses and builder's risk with the exception of Onstage's personal property.

**C. Automobile Insurance.**

Onstage shall, at Onstage's own cost and expense, secure and maintain during the entire term of this Agreement, automobile liability insurance insuring Onstage and Onstage's employees to an amount not less than One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage. This Section applies to any vehicles owned and operated by Onstage. Personal auto used by Onstage volunteers and vendors are exempt. However the Onstage insurance policy shall provided one million dollars (\$1,000,000) limits for liability arising out of Hired, or Non-owned Auto exposures.

**D. Worker's Compensation Coverage**

Onstage shall at Onstage's own cost and expense, secure, and maintain during the entire Term of this Agreement, Workers' Compensation Insurance to cover its employees, and Onstage shall require all sublessees, contractors and subcontractors using or doing work on or about the Premises to similarly to provide Workers' Compensation Insurance as required by the Labor Code of the State of California for all of the sublessee's contractor's or subcontractors' employees. Each Workers' Compensation policy shall be endorsed with the provision that it will not be canceled or altered without first giving thirty (30) days prior notice to the City.

Said Worker's Compensation policy shall have the following endorsement:

"All rights of subrogation are hereby waived against the City, its officers and employees when acting within the scope of their appointment or employment". In the event that Onstage has no employees, City will waive the requirement for such worker's compensation insurance upon receipt of a properly executed Acknowledgement of No Worker's Compensation, in the City's standard form.

Certificates and endorsements in a form acceptable to the City and evidencing the

existence of the necessary insurance policies shall be kept on file with City during the entire term of this Agreement.

City shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of City, the insurance provisions in this Agreement do not provide adequate protection for City and/or for members of the public using the Premises, City may require Onstage to obtain insurance sufficient in coverage, form and amount to provide adequate protection. City's requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of risk which exist at the time a change in insurance is required.

City shall notify Onstage in writing of changes in the insurance requirements and, if Onstage does not deposit certificates and endorsements evidencing acceptable insurance policies with City incorporating such changes within sixty (60) calendar days of receipt of such notice, Onstage shall be in default without any further notice to Onstage, and City shall be entitled to terminate the lease.

The procuring of such required policies of insurance shall not be construed to limit Onstage's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Agreement. Notwithstanding said policies of insurance, Onstage shall be obligated for the full and total amount of any damage, injury, or loss caused by acts, errors, omissions, negligence or neglect arising out of or related to this Agreement or with the use or occupancy of the Premises or any portion thereof.

20. Partnership not Created.

The parties acknowledge that the relationship is contractual only and does not create, and shall not be construed to create, either a partnership or a joint venture, and neither party shall represent otherwise to third parties. Neither party shall have the right to obligate the other party to third parties in any manner.

21. Notice.

All notices, accounting statements, and payments required herein shall be sent by registered mail, return receipt requested, or by personal delivery and shall be deemed to have been fully given when deposited in the United States or personally delivered. Unless later amended, the addresses are as follows:

To City: City of Martinez  
c/o City Manager  
525 Henrietta Street  
Martinez, CA 94553

To Onstage: Mark Hinds  
2349 Willow Pass Road  
Concord, CA 94520

22. Termination.

- A. City's Right to Terminate this Agreement. The City shall have the right to terminate this Agreement for any reason or no reason whatsoever upon giving Onstage ninety (90) calendar days prior written notice. Additionally, the City shall have the right to terminate this Agreement in its entirety upon the occurrence of one or more of the following circumstances:
- i. Upon the filing by Onstage of any voluntary petition in bankruptcy, or a petition seeking to reorganize, or the readjustment of its indebtedness under federal Bankruptcy laws, or under any similar state laws, or if Onstage shall make a general assignment for the benefit of creditors, the City shall have the right to immediately terminate this Agreement.
  - ii. Upon the filing of any involuntary petition in bankruptcy against Onstage in which the appointment of a receiver, trustee or liquidator of property of Onstage is ordered by a court of competent jurisdiction, the City shall have the right to terminate this Agreement in its entirety ninety (90) days after the filing. Said right shall be revoked if appointment is vacated within ninety (90) days of said occurrence.
  - iii. Upon thirty (30) calendar days advance written notice, if the use of the Premises, the method of operation of Onstage's business, or the service rendered by Onstage are not in accordance with the requirements of this Agreement and are not cured by Onstage within such thirty (30) calendar day period.
  - iv. Upon thirty (30) calendar days advance written notice, if Onstage violates any terms of this Agreement and said violations are not cured by Onstage within such thirty (30) calendar day period.
  - v. If Rent owed the City as described in Section 3 becomes fifteen (15) days past due.
- B. Onstage's Power of Termination. Onstage shall have the right to terminate this Agreement upon giving City written notice ninety (90) calendar days prior to the desired date of termination.

23. Attorney's Fees.

If any litigation is commenced between the parties to this Agreement relating to this Agreement or the rights and duties of either in relation to the Premises or the Agreement, the party prevailing in that litigation shall be entitled, in addition to any other relief granted, to a reasonable sum as and for its attorney fees in the litigation which shall be determined by the court in that litigation.

24. Independent Contractor.

Onstage is an independent contractor under this Agreement and no relationship of principal agent or employer-employee is created herein.

25. Non-Assignment.

Onstage shall not assign this Agreement, nor assign or sublet any rights hereunder, without the prior written consent of the City Manager, and any such assignment without such consent shall be null and void, and if the City so elects, it may terminate the Agreement upon such unauthorized assignment or subletting. Rentals of the Premises to third parties for individual events or performances are approved, subject to the requirements of this Agreement relating to indemnification and insurance.

26. Administration of Agreement.

Except where otherwise provided, the City Manager shall be the officer to administer the provisions of this Agreement on the City's behalf.

27. Binding to Successors.

This Agreement is binding on the heirs, successors, and assigns of the parties hereto.

28. Amendment.

This Agreement may be amended, modified, or changed by the parties provided that said amendment, modification, or change is in writing and approved by both parties.

29. Governing Law.

The validity, effect and construction of this Agreement and all subsequent modifications or amendments, shall be construed in accordance with California law applicable to agreements to be performed in California. Venue shall be in Contra Costa County.

30. Miscellaneous.

This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof, and no modification, amendment, waiver, termination, or discharge of this Agreement, or any provisions thereof, shall be binding or effective unless confirmed by a written instrument signed by both parties. In the event any provision of this Agreement is found to be void or unenforceable by a court of competent jurisdiction, the balance of the Agreement shall remain in full force and effect as written.

31. Authority to Sign.

The individual or individuals signing this Agreement on behalf of the parties represent and warrant that each has full power and authority to enter into this Agreement and that the execution and delivery of this Agreement has been duly and validly authorized by all necessary action on the part of the respective parties and all required consents and approvals have been duly obtained.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year set forth below:

Dated: \_\_\_\_\_

Onstage Repertory Theater

By: \_\_\_\_\_  
Mark G. Hinds, Managing Director

Dated: \_\_\_\_\_

City of Martinez

By: \_\_\_\_\_  
Philip A. Vince, City Manager

EXHIBIT A

9.12.07

COMMERCIAL LEASE

Dated: January 1, 2005

Between BART A BISIO and JANE L BISIO Trustees of the Bart and Jane Bisio Revocable Trust, Lessor  
and CITY OF MARTINEZ, Lessee

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## COMMERCIAL LEASE

### 1. PARTIES

This Lease, prepared in duplicate originals, is made this 1st day of January, 2005, between BART A. BISIO and JANE L. BISIO Trustees of the Bart and Jane Bisio Revocable Trust, hereinafter called "Lessor" and, CITY OF MARTINEZ hereinafter called "Lessee".

### 2. PREMISES

(a) Lessor, for and in consideration of the rents, covenants and agreements hereinafter contained on the part and on behalf of the Lessee to be paid, kept and performed, does hereby lease and demise unto said Lessee, and said Lessee does hereby hire and rent for the uses specified in Paragraph 15. below from said Lessor, the following described premises situated at 636 Ward Street, in the City of Martinez, County of Contra Costa, State of California, consisting of approximately 5700 square feet of warehouse space on an approximately 10,000 square foot lot with 12 parking spaces, collectively referred to herein as the "premises", as shown on the plot plan attached hereto marked **Exhibit "A"** and made a part hereof, the whole of said premises being situated upon Contra Costa County Assessor's Parcel No. 373-201-002.

(b) Lessee understands that the upstairs areas of the building are only designed to hold light storage. They are not for human occupancy. Lessee agrees that if it intends to use any upstairs area for any use other than light storage, it will first consult with a structural engineer to insure that the structure is compatible for the intended use. In the event of any sublease, Lessee agrees to advise-sublessee of this limitation.

### 3.1. TERM

The term of this Lease shall be for five ( 5) years, commencing January 1, 2005 ("commencement date"), and ending at the expiration of sixty (60) full consecutive months following thereafter (namely, December 31, 2009).

### 3.2 OPTION TO EXTEND

Lessor grants to Lessee the right and option to extend the term of this Lease for one (1) additional period of five years, commencing on January 1, 2010 and ending at the expiration of sixty (60) full consecutive months thereafter, subject to all the provisions of this Lease, including but not limited to provisions for determination of the amount of rent to be paid during said extended term as provided for by Paragraph 6. below. This option to extend is conditioned upon the following:

(a) The Lease shall be in effect at the time notice of exercise of the option is given and shall be in effect on the last day of the original term.

(b) Lessee shall not be in default under any provision of this Lease at the time the notice of exercise is given or on the last day of the original term;

(c) On or before July 1, 2009, Lessee shall give Lessor written notice in accordance with Paragraph 39. below irrevocably exercising the option.

4. **DELAY IN POSSESSION**

Notwithstanding said commencement date, if for any reason Lessor cannot deliver possession of the premises to Lessee on said date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or the obligations of Lessee or Lessor hereunder or extend the term hereof, provided Lessor delivers possession of the premises to Lessee within ninety (90) days after said commencement date, but in such case, Lessee shall not be obligated to pay rent or other sums which may be due under this Lease until possession of the premises is tendered to Lessee.

If Lessor shall not have delivered possession of the premises to Lessee within ninety (90) days from said commencement date, then Lessee may, at Lessee's option, by notice in writing to Lessor within ten (10) days thereafter, cancel this Lease, in which event the parties shall be discharged from all obligations hereunder

If such written notice of Lessee is not received by Lessor within said ten (10) day period, Lessee's right to cancel this Lease hereunder shall terminate and be of no further force

5. **EARLY POSSESSION**

If Lessee occupies the premises prior to said commencement date (except for purposes of investigating, measuring, testing or otherwise determining the suitability of the premises for Lessee's intended use), such occupancy shall be subject to all provisions hereof. Such occupancy shall not advance the termination date.

6. **MONTHLY RENT**

(a) **Minimum Monthly Rent.** Lessee shall pay to Lessor as monthly rent, without deduction, setoff, prior notice or demand, except as hereinafter provided, the sum of Three Thousand Six Hundred Forty-five Dollars (\$3,645.00) per month for each month of years one and two of the Lease term. Year three rent shall be at a monthly rate of Three Thousand Seven Hundred Sixty dollars (\$3,760.00) per month for each month of said year. Year four rent shall be at a monthly rate of Three Thousand Eight Hundred Eighty Dollars (\$3,880.00) per month for each month of said year. Year five monthly rent shall be at the monthly rate of Four Thousand Dollars (\$4,000.00) per month for each month of said year. The monthly rent due for the first month of the first year of the lease term is payable upon execution of this Lease. All remaining rents shall be paid on the first day of each month of the Lease term. All rents shall be paid to Lessor at the address to which notices to Lessor are given in accordance with Paragraph 39

below. Rent for any period during the term hereof which is for less than one month shall be a prorata portion of the monthly installment.

(b) **Monthly Rent During the Option Period.** The minimum monthly rent provided for in year five shall be subject to adjustment at the commencement of the first option year and at the expiration of every option year thereafter (hereinafter "Adjustment Date") as follows:

(1) The base for computing the adjustment is the United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers for the San Francisco-Oakland, California area (hereinafter "Index") which is in effect on the date of the commencement of the term ("Beginning Index"). The Index most immediately preceding the Adjustment Date in question ("Extension Index") is to be used in determining the amount of the adjustment. If the Extension Index has increased over the Beginning Index, the minimum monthly rent for the following twelve month period (until the next rent adjustment) shall be set by multiplying the minimum monthly rent of \$4,000.00 by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. The minimum monthly rent shall, at each adjustment date, be increased regardless of the Index no less than three percent (3%) nor more than six percent (6%) per year.

(2) If the Index has changed so that the base year differs from that in effect when the term commences, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

7. **INTENTIONALLY LEFT BLANK.**

8. **REAL PROPERTY TAXES AND ASSESSMENTS**

(a) Lessee shall pay to Lessor, within thirty (30) days after written request therefore, the increase in all real property taxes and assessments of any kind whatsoever levied or assessed for a full fiscal year or portion thereof while the Lease is in effect, upon the demised premises by the City of Martinez and/or the County of Contra Costa, or by any other taxing agency having jurisdiction to tax or levy assessments upon real property. The increase shall be computed using the fiscal year 2004-2005 as the base year.

(b) If any general or special assessment is levied and assessed against the premises during the term, under which Lessor shall have the option to either pay the assessment in full or allow the assessment to go to bond, if Lessor elects to pay the assessment in full, Lessee shall pay to Lessor each time payment of taxes is made a sum equal to that which would have been payable (as both principal and interest) had Lessor allowed the assessment to go to bond. Any assessment levied against the premises as a result of the Lessee's activities such as CCCSD sewer charge shall be paid and discharged in full solely by the Lessee.

(c) Lessee shall not be required to pay any municipal, county, state or federal income or franchise taxes of Lessor, or any municipal, county, state, or federal estate, succession, inheritance, or transfer taxes of Lessor. If at any time during the term, the State of California or any political subdivision of the state, including any county, city, city and county, public corporation, district, or any other political entity or public corporation of this state, levies or assesses against Lessor a tax, fee, or excise on (1) rents, (2) the square footage of the premises, (3) the act of entering into this Lease, or (4) the occupancy of Lessee, or levies or assessed against Lessor any other tax, fee, or excise, however described, including, without limitation, a so-called value added tax, as a direct substitution in whole or in part for, or in addition to, any real property taxes, Lessee shall pay before delinquency that tax, fee, or excise.

9. **LATE CHARGES**

Lessee hereby acknowledges that late payment by Lessee to Lessor of rent and other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult and impractical to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed on Lessor by the terms of any mortgage or trust deed covering the premises. Accordingly, if any installment of rent or any other sum due from Lessee shall not be received by Lessor or Lessor's designee with five (5) days after such amount shall be due then without any requirement for notice to Lessee, Lessee shall pay to Lessor a late charge equal to 5% of such overdue amount which may be treated as additional rent. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of late payment by Lessee. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent Lessor from exercising any of the other rights and remedies granted hereunder. The five (5) day period is **not** a grace period. Lessor may make written demand for any rent unpaid on the second day of the month. The late charge shall be in addition to all other remedies available to Lessor. In the event that a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of rent, then rent shall, in the discretion of Lessor, become due and payable upon written advance notice to Lessee quarterly in advance rather than monthly notwithstanding any other provision of this Lease to the contrary.

with  
five  
days  
BB  
JB

10. **BAD CHECK CHARGE**

In the event rent is tendered by check which is, for any reason, dishonored by the maker's financial institution, Lessee shall pay to Lessor \$50.00 as reimbursement to Lessor for administrative expense in processing such dishonored check. This charge shall be deemed additional rent and shall be in addition to all other remedies available to Lessor.

**11. PERSONAL PROPERTY TAXES**

Lessee shall pay, before delinquency, all taxes, assessments, license fees, and other charges that are levied and assessed on Lessee's personal property installed or located in and on the premises that become payable during the term hereof. On demand by Lessor, Lessee shall furnish Lessor with satisfactory evidence of such payment. If any of Lessee's said personal property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee within ten (10) days after receipt of a written statement setting forth the taxes applicable to Lessee's property. Such payment shall be deemed additional rent, payable as such on the next date upon which rent becomes due.

**12. UTILITY AND ALLIED SERVICES**

Lessee shall promptly pay when due for all heat, electric light and power, telephone, gas, water, garbage, cable-vision and all other utilities and/or services of whatsoever kind or nature furnished to or used or consumed in or about the demised premises by Lessee during the term hereof.

**13. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE COSTS**

Lessee shall promptly pay all premiums or other costs and expenses for maintaining public liability and property damage insurance as required under the provisions of Paragraph 32 hereof.

**14. INTEREST ON DELINQUENT RENT, PERSONAL PROPERTY TAXES AND PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE COSTS**

Any rent, personal property taxes and insurance charges owing by Lessee to Lessor hereunder not paid when the same shall become due, shall bear interest from the date the same becomes due until paid to Lessor at the rate of ten percent (10%) per annum.

**15. USE OF PREMISES**

(a) The demised premises are leased to Lessee for any lawful purpose. Lessee shall not do, bring or keep anything in or about the premises that will cause a cancellation of any insurance covering the building in which the premises are located.

(b) If the rate of insurance carried by Lessor is increased solely as a result of Lessee's use, Lessee shall pay to Lessor within ten (10) days before the date Lessor is obligated to pay an increased premium on the insurance, or within ten (10) days after Lessor delivers to Lessee a certified statement from Lessor's insurance carrier stating that the rate increase was caused solely by an activity of Lessee in the premises, whichever date is later, a sum equal to the difference between the original premium and the increased premium. Such payment shall be deemed additional rent, payable as such on the dates specified in the immediately preceding sentence or on the next date upon which rent becomes due, whichever date is the latest.

(c) Lessee agrees not to use or permit to be used, stored, transported to, or maintained on, for however briefly, any "hazardous waste" or "hazardous substance" as defined in accordance with the California Health and Safety Code and/or any federal statute as well as any state or federal judicial decision (hereinafter sometimes referred to as "hazardous substances"), other than such limited amounts of material or substances as may be customarily and ordinarily used in the uses to which Lessee puts the premises.

(d) Lessee shall not perform any act or carry on any practices that may injure the premises or be a nuisance as defined in Section 1.13.020 of the City of Martinez Code; provided, however, that notwithstanding the foregoing, Lessor recognizes that the noises, smells, installations, sights and activities at reasonable levels that normally accompany the use(s) to which Lessee may put the premises shall not constitute a nuisance under this subparagraph or this Lease (for example, but not by way of limitation. Should the Lessee use the premises as a theater, cars coming and going honking of car horns, the heralding of cabs, crowds, crowd noises, clapping, shouting, erecting sets, delivering or tearing down sets, search lights, grand opening events, and people queuing up for tickets or entrance into the premises shall not constitute nuisances.)

**16. CONDITION OF PREMISES**

(a) Lessee has thoroughly inspected the entire premises. Except as otherwise provided in this Lease, Lessee hereby accepts the premises "AS IS" in their condition existing as of the Lease commencement date subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the premises, and any covenants or restrictions of record and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Lessee acknowledges that except as expressly set forth herein, neither Lessor nor Lessor's agent have made any representation or warranty as to the present or future suitability of the premises for the conduct of Lessee's business or any other use to which Lessee is permitted to put the premises. Lessee deems the premises to be fully acceptable to it for purposes of this Lease. Lessee acknowledges being informed that the leasehold premises are subject to possible flooding during periods of heavy rainfall and high tides.

(b) Notwithstanding the foregoing, Lessor warrants and represents that as of the date of Lessor's execution of this Lease and as of the commencement date that Lessor is not aware of any: (i) presence on or under the premises or the building of any hazardous substances in violation of any statute, ordinance and/or regulation that relates to the public health and safety and protection of the environment ("environmental law"); (ii) PCBs, PCB-contaminated electrical equipment, or asbestos-containing materials in the building which in its present condition poses a health hazard to Lessee's employees, agents or officers. Lessor further warrants that lessor has not received any notice that the premises or the building is in violation of any environmental law.

(c) Subject to the terms and conditions of this Lease, Lessor covenants that the Lessee shall have the right to quietly enjoy and possess the premises during the term of this Lease.

17. **IMPROVEMENTS TO BE MADE BY LESSOR**

NONE

18. **IMPROVEMENTS TO BE MADE BY LESSEE**

All proposed improvements shall be submitted to Lessor for Lessor's written approval and shall be approved by Lessor in writing before work commences. All improvements shall be in accordance with all applicable requirements of all governmental agencies having jurisdiction over the premises. With regard to such work Lessee must first have the plans and specifications for such work approved in writing by Lessor and give Lessor at least ten (10) days prior written notice of the commencement of such work in which to post the premises with Notices of Nonresponsibility pursuant to Civil Code Section 3094. Lessor's prior written approval shall also be required as to the general contractor to perform the work, financing arrangements Lessee has made for paying for the improvements, and method of disbursing such payments. Lessor may require that the contractor selected by Lessee and approved by Lessor be bonded both as to faithful performance and payment of all labor and materials. Depending upon the financing arrangements made by Lessee for paying for the work, Lessor may require a separate construction fund disbursement agreement with selection of an escrow agent to disburse such funds pursuant to the terms of the agreement and/or provisions for lien releases as payments for said work are made with reasonable retentions to be paid after expiration of lien period following recordation of notice of completion. In all cases, Lessor's approval shall not be withheld unreasonably.

19. **REPAIRS AND MAINTENANCE**

(a) Lessee acknowledges that it has inspected the demised premises and knows the condition thereof and that said premises are in a good and tenantable condition and state of repair. Except as set forth hereafter, the Lessor shall keep and maintain the foundation, exterior roof and structural integrity of the exterior walls of the building on the premises in good order and repair, except as to any damages done thereto by reason of any negligence, willful act or omission of Lessee, its agents, servants, employees and contractors. Lessor shall not be required to maintain the interior surface of any walls, or any part of any windows, doors or plate glass. Lessor shall have no obligation to make repairs under this paragraph until a reasonable time after receipt of written notice of the need for such repairs. Lessee expressly waives the benefits of any statute now or hereafter in effect which would otherwise afford Lessee the right to make repairs at Lessor's expense or to terminate this Lease because of Lessor's failure to keep the premises in good order, condition and repair.

(b) Lessor at Lessor's cost shall repair any malfunctions noted during the first 90 days after the lease commencement date or the commencement of any construction, whichever is earlier, in the HVAC, plumbing, and electrical systems located on the premises. Thereafter,

Lessor shall have no further obligation with regard to the aforementioned systems and Lessee's obligation shall be governed by Paragraph 19 (c) below.

(c) Except as provided in Paragraphs 19(a) and (b), Lessee at its cost shall maintain and keep in good condition, order and repair all of the premises, inside and outside, including without limitation, all interior and exterior doors, lights, plate glass and other door and window glass, all plumbing including lateral to the main line of CCCSD, electrical systems including the fire sprinkler, if any, system and junction boxes/power panel. Lessee shall also maintain, repair, and replace if necessary any air-conditioning and heating system serving the premises, including no less than semi-annual filter servicing, such maintenance or replacement to be performed only by a licensed air conditioning and heating service company, with all such maintenance or replacement to be in full compliance with the manufacturer's requirements Lessee shall procure and maintain at Lessee's expense an air conditioning and heating system maintenance contract to be approved by Lessor. Lessee at its own cost and expense shall keep and maintain the Parking Lot as set forth on Exhibit "A" of the demised premises in good condition. If Lessee fails to perform Lessee's obligations under this paragraph or under any other paragraph of this Lease, Lessor may at Lessor's option enter upon the premises after ten (10) days prior written notice to Lessee (except in the case of emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf and put the premises in good order, condition and repair, and the cost thereof together with interest thereon at the maximum rate then allowable by law shall be due and payable as additional rent to Lessor together with Lessee's next rental installment. On the last day of the term hereof, or on any sooner termination, except as otherwise provided herein Lessee shall surrender the premises together with any improvements placed thereon by Lessee, to Lessor in as good a condition as received, ordinary wear and tear excepted, clean and free of debris. Lessee shall have the right to install and remove and shall repair any damage to the premises occasioned by the installation or removal of its trade fixtures, furnishings, machinery and equipment. Notwithstanding anything to the contrary otherwise stated in this Lease, Lessee shall leave the junction box/power panels, electrical distribution systems, lighting fixtures, space heaters, air conditioning, refrigeration and plumbing on the premises in good operating condition at expiration of the Lease or Lessee's earlier vacating the premises.

**20. PERSONAL PROPERTY OF LESSOR ON PREMISES**

NONE

**21. ALTERATIONS AND ADDITIONS**

(a) Lessee shall not, without Lessor's prior written consent, make any alterations, improvements, additions or utility installations in, on or about the premises, except for nonstructural alterations not exceeding \$2,000.00 in value. In any event whether or not in excess of \$2,000 in cumulative cost, Lessee shall make no change or alteration to the exterior of the premises nor the exterior of the building(s) on the premises without Lessor's prior written consent. As used in this paragraph the term "Utility Installation" shall mean carpeting, window coverings, junction box/power panels, electrical distribution systems, lighting fixtures, space heaters, air conditioning and plumbing. Subject to paragraph 21(d), Lessor may require that Lessee remove any or all of said alterations, improvements, additions or Utility Installations at

the expiration of the term, and restore the premises to their prior condition. Lessor may require Lessee to provide Lessor at Lessee's sole cost and expense a lien and completion bond in an amount equal to one and one-half times the estimated cost of such improvements to insure Lessor against any liability for mechanic's and materialmen's liens and to insure completion of the work. Should Lessee make any alterations, improvements, additions or Utility Installations without the prior written approval of Lessor, Lessor may require that Lessee remove any or all of the same.

(b) Any alterations, improvements, additions or Utility Installations in or about the premises that Lessee shall desire to make and which requires the consent of the Lessor shall be presented to Lessor in written form with proposed detailed plans. If Lessor shall give its consent, the consent shall be deemed conditioned upon Lessee acquiring a permit to do so from appropriate governmental agencies, the furnishings of a copy thereof to Lessor prior to the commencement of the work and the compliance by Lessee of all conditions of said permit in a prompt and expeditious manner. Should Lessee make any alterations, improvements, additions or Utility Installations pursuant to Lessor's consent, subject to paragraph 21(d), Lessor may require that Lessee remove any and all of same upon the termination of this Lease.

(c) Lessee shall pay when due all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use in the premises, which claims are or may be secured by any mechanics' or materialmen's lien against the premises or any interest therein. Lessee shall give Lessor not less than ten (10) days, notice prior to the commencement of any work in the premise and Lessor shall have the right to post notices of non-responsibility in or on the premises as provided by law. If Lessee shall, in good faith, contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend itself and Lessor against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against the Lessor or the premises upon the condition that if Lessor shall require, Lessee shall furnish to Lessor a surety bond satisfactory to Lessor in an amount equal to such contested lien claim or demand indemnifying Lessor against liability for the same and holding the premises free from the effect of such lien or claim. In addition, Lessor may require Lessee to pay Lessor's attorneys fees and costs in participating in such action if Lessor shall decide it is to its best interest to do so.

(d) Unless Lessor requires their removal as set forth above, all alterations, improvements, additions and Utility Installations (whether or not such Utility Installations constitute trade fixtures of Lessee) which may be made on the premises shall become the property of Lessor and remain upon and be surrendered with the premises at the expiration of this lease. Notwithstanding the provisions of this Lease, Lessee's machinery, trade fixtures, furnishings and equipment other than that which is affixed to the premises so that it cannot be removed without material damage to the premises shall remain the property of Lessee and may be removed by Lessee subject to the provisions of this Lease

## **22. LESSOR'S ACCESS**

(a) Lessor and Lessor's agents shall have the right to enter the premises without notice in case of an emergency, upon court order or when Lessee has abandoned or surrendered the premises. Lessor and Lessor's agents shall have the right to enter the premises upon

reasonable notice, with entrance during normal business hours from 8:00 a.m., to 6:00 p.m., Monday through Saturday, holidays excepted, to make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services or exhibit the premises to prospective or actual purchasers, mortgagees, tenants, workmen or contractors, or for the purpose of inspecting the premises for compliance with the lease. Twenty-four hours shall be presumed to be reasonable notice.

(b) Lessor may at any time place on or about the premises any ordinary "For Sale" signs and Lessor may at any time during the last 120 days of the term hereof place on or about the premises any ordinary "For Lease" signs, all without rebate of rent or liability to Lessee.

### **23. SIGNS**

Lessee may, at its option, install its own signs and advertising for its business on the premises provided said signs are approved under the municipal sign ordinance of the City of Martinez or other applicable regulations and Lessor has previously approved the style and location of the sign. These signs and improvements installed by Lessee shall remain Lessee's property and Lessee shall maintain them in good order and repair during the term of the Lease. At termination of the Lease Lessee may remove its signs provided Lessee shall restore and repair any damage to the premises caused by such sign removal.

### **24. COVENANT AGAINST ASSIGNMENT AND SUBLETTING**

(a) Lessee agrees not to assign, transfer, mortgage or hypothecate this Lease in whole or in part or any interest therein, except as set forth below. Lessee agrees not to sublease or sublet the herein demised premises or any part of portion thereof, either voluntarily or by operation of law without the written consent of Lessor which shall not be unreasonably withheld. The acceptance of rent by Lessor from Lessee or from any other person or entity after a purported assignment or subletting, in violation of this provisions, shall not be deemed a waiver by Lessor of any provision hereof. In the event Lessee assigns, transfers, mortgages, hypothecates, or sublets the whole or any part of the herein demised premises, in violation of this provision, and without the written consent of the Lessor, its successors or assigns, theretofore first had and obtained, or in the event that any interest in this Lease shall be affected or transferred by operation of law, or by judgment, voluntary or involuntary proceedings in bankruptcy, or otherwise, that at the option of Lessor, its successors and assigns, this Lease shall immediately terminate. In consideration for this covenant against assignment and subletting, Lessor has agreed to accept a lower monthly rent from Lessee than Lessor would otherwise require. An assignment or sublease to a joint powers authority of which the Lessee is a member shall be permitted upon prior notification of same to Lessor provided Lessee remains a guarantor of the Lease. In the event that the premises or any part thereof are subleased, the terms of the sublease shall require the sublessee to perform all the covenants set forth in this Lease that are the Lessee's to perform, unless Lessor agrees in writing otherwise Lessor shall be provided with a copy of said sublease.

(b) In the event Lessee shall assign or sublet the premises or request the consent of Lessor to any assignment or subletting or if Lessee shall request the consent of Lessor for any act

Lessee proposes to do then Lessee shall pay Lessor's reasonable attorneys' fees incurred in connection therewith, such attorneys' fees not to exceed \$2,000.00 for each such request. Notwithstanding the foregoing to the contrary, the parties acknowledge and agree that Lessee is negotiating with and may enter a sublease for the premises with The Benefactors Incorporated, a non-profit corporation, doing business as the Willows Theatre Company. By executing this Lease, Lessor consents to said sublease so long as it complies with Paragraph 24 (a) herein and agrees that Lessee is not liable to Lessor for any attorneys' fees incurred by Lessor in reviewing said sublease.

**25. EXEMPTION OF LESSOR FROM LIABILITY**

Excluding injury or loss arising from Lessor's, Lessor's employees', contractors', and/or agents' fraud, willful injury to person or property or violation of the law, or solely arising from Lessor's, Lessor's employees', contractors', and/or agents' negligence, or Lessor's failure to fulfill its obligations as set forth elsewhere in this Lease, Lessee hereby agrees that Lessor shall not be liable for injury to Lessee's business or any loss of income therefrom or for damage to the equipment, goods, wares, merchandise or other property of Lessee, Lessee's employees, invitees, customers, or any other person in or about the premises, nor shall Lessor be liable for injury to the person of Lessee, Lessee's employees, agents or contractors whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether the said damage or injury results from conditions arising upon the premises or upon other portions of the building of which the premises are a part or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Lessee.

**26. GENERAL INDEMNITY**

(a) Excluding claims solely arising from Lessor's, Lessor's employees, contractors and/or agents negligence, or Lessor's Lessor's employees', contractors', and/or agents' fraud, willful injury to person or property or violation of the law, or Lessor's failure to fulfill its obligations as set forth elsewhere in this Lease, Lessee shall indemnify and hold harmless Lessor from and against any and all claims arising from Lessee's use of the premises, or from the conduct of Lessee's business or from any activity, work or things done, permitted or suffered by Lessee in or about the premises or elsewhere and shall further indemnify and hold harmless Lessor from and against any and all claims arising from any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Lease, or arising from any negligence of the Lessee, or any of Lessee's agents, contractors, or employees, and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon and in case any action or proceeding be brought against Lessor by reason of any such claim, Lessee upon notice from Lessor shall defend the same at Lessee's expense by counsel satisfactory to Lessor. Lessee, as a material part of the consideration to Lessor, hereby assumes all risk of damage to property or injury to persons, in, upon or about the premises arising from any negligence or willful misconduct of Lessee, Lessee's agents, employees, guests and invitees, and Lessee hereby waives all claims in respect thereof against Lessor. In the event that Lessee enters into a sublease, the sublease shall contain an

indemnity provision requiring the Sublessee to indemnify the Lessor herein under the same terms and conditions as set forth in Paragraphs 26 and 27 of this Lease.

(b) To the fullest extent permitted under the law, Lessor shall, with counsel reasonably acceptable to Lessee, indemnify, defend and hold Lessee, Lessee's agents, officers and employees harmless from and against any and all damages, claims, injuries, expenses and liabilities of any sort arising solely from Lessor, Lessor's employees, contractors and/or agents negligence, or Lessors' employees, contractors, and/or agents fraud, willful injury to person or property or violation of the law, or Lessors' failure to fulfill its obligations as set forth elsewhere in this Lease.

(c) The prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs incurred in enforcing the indemnification clauses set forth in this Lease.

(d) The indemnification clauses of this Lease shall survive its termination.

## 27. ENVIRONMENTAL INDEMNITY AND REMEDIATION

In addition to the indemnity obligations set forth in Paragraph 26, Lessee undertakes the following obligations.

(a) Solvent Contamination means tetrachloroethylene, also known as perchloroethylene or PCS which is caused to become present on the leased premises as a result of Lessee's operations on the leased premises or by the operations on the leased premises conducted by Lessee's agents, sublessees, successors or assigns or those acting on Lessee's behalf and which violate applicable federal, state or local laws as in effect during the term of this Lease or any extension thereof. "Covered Contamination" means Solvent Contamination or other environmental contamination which violates applicable federal, state or local laws as in effect during the term of this Lease or any extension thereof, and which becomes present on the leased premises as a result of Lessee's operation on the leased premises or by the operations on the leased premises conducted by Lessee's agents, sublessees, successors or assigns or those acting on Lessee's behalf.

(b) Lessee shall defend, indemnify and hold Lessor harmless from and against any and all claims, losses, damages, costs (including reasonable attorneys' fees), expenses, liabilities, fines, penalties, administrative and judicial proceedings, judgments and enforcement actions of any kind to the extent that they arise from or are attributable to (i) the presence, or release of Covered Contamination in or from the leased premises, (ii) the use, generation, storage or treatment of Covered Contamination on or under the leased premises, (iii) the presence of tanks or other receptacles on or under the leased premises placed there by Lessee, its agents, successors, assigns or those acting on Lessee's behalf, and (iv) the migration of Covered Contamination from the leased premises. Notwithstanding the foregoing, Lessee shall not be required to indemnify, hold harmless or defend Lessor for any release of, any use, generation storage or treatment or migration of, or the presence upon the leased premises of any environmental contamination if any of the above be caused by persons/entities other than Lessee, any sublessee, their respective agents, successors, assigns or those acting on their behalf. The

foregoing indemnity includes the costs of preparing plans to remediate and remediating (as hereinafter described) any Covered Contamination in full compliance with all applicable laws and regulations within such time period as the appropriate governmental agency having jurisdiction thereover shall require. Lessee shall also defend, indemnify and hold harmless Lessor for any liabilities, damages, losses, claims, costs and expenses (including reasonable attorneys' fees) incurred by Lessor as a result of injury to or death of any person or damage to or destruction of property arising out of Lessee's remediation activities.

(c) In the event that during the term of this Lease, or any extension thereof, any investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work of any kind or nature (hereinafter "Remedial Work") is required by any appropriate governmental authority having jurisdiction on account of a release of Covered Contamination in or from the leased premises, by Lessee, Lessee shall forthwith commence and thereafter diligently prosecute to completion within such time period as the appropriate governmental agency having jurisdiction thereover shall require, all such Remedial Work in the compliance with the requirements of any applicable law, regulation or order. All Remedial Work shall be performed by licensed personnel when any governmental regulation or law so requires. All costs and expenses of such Remedial Work shall be paid by Lessee. Lessee shall give Lessor copies of all reports and other information developed during investigation and performance of Remedial Work of any covered Contamination.

(d) If Lessor or Lessee receives notice of a claim, demand, or complaint from any third party or from any government agency with jurisdiction for the payment of damages, costs, or expenses for the presence of or the escape, leakage, spillage, discharge, emission or release from the leased premises into or onto the leased premises, adjacent land, or any watercourse, of any Covered Contamination, the party receiving said notice shall promptly notify the other. If Lessor first receives notice, Lessor shall notify Lessee of the claim, demand or complaint, and in the event of such release by Lessee, Lessee will proceed diligently after receipt of notice of the Claim to assess and to remediate the Covered Contamination as set forth herein. If Lessee, in good faith, believes that the claimed contamination is not a Covered Contamination as defined in Paragraph 27(a), Lessee shall have the right to challenge such claim, demand or complaint in an appropriate forum.

(e) In the event action is taken against Lessor regarding such a claim, demand or complaint, or commenced by Lessee to challenge such a claim, demand or complaint, Lessor shall, at no cost or expense to Lessor, cooperate with Lessee in the defense thereof.

(f) Lessee shall upon expiration of the term of this Lease or any extension thereof, or upon earlier termination hereof, at Lessee's expense, monitor and/or remediate any Covered Contamination as defined in Paragraph 27(a), to the extent validly required by governmental agencies having jurisdiction. In order for Lessee to perform such remediation, Lessor hereby grants Lessee an irrevocable license, commencing on the first day after expiration or earlier termination of this Lease, or any extension thereof, and ending when such Covered Contamination is monitored or cleaned up to the extent validly required by governmental agencies having jurisdiction. In conducting such remediation, Lessee shall use its best efforts not to unnecessarily interfere with Lessor's use of the premises. Lessor shall not, during the term of

the license, conduct or allow to be conducted activities on the premises that interfere with such remediation.

(g) For any cause in which Lessee is otherwise deemed responsible with respect to this paragraph, Lessee shall defend, indemnify, and hold harmless Lessor from any liabilities, damages, losses, claims, costs and expenses (including reasonable attorneys' fees) incurred by Lessor as a result of injury to or death of any person or damage to or destruction of property arising out of such remediation activities.

(h) In the event that Lessee enters into a sublease, the sublease shall contain an indemnity provision requiring the Sublessee to indemnify the Lessor herein under the same terms and conditions as set forth in Paragraph 26. and 27. of this Lease.

(i) Lessor shall, at Lessor's sole expense and with counsel reasonably acceptable to Lessee, indemnify, defend, and hold harmless the Lessee and Lessee's officers, employees, and agents, with respect to all losses arising out of or resulting from the release, use, presence, discharge, migration, generation, storage, and/or treatment (collectively "release") of any hazardous substances in or about the premises or the building, or the violation of any environmental law, if caused by Lessor or Lessor's agents, assignees, sublessees, contractors, or invitees. This indemnification includes all losses, costs of characterization, costs of removal, remedial actions, repairs, liabilities, obligations, penalties, fines, claims, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders, or judgments), damages (including consequential and punitive damages), and costs (including attorney, consultant, and expert fees and expenses) resulting from the release or violation.

(j) If the presence of any hazardous substances brought onto or released on or in the premises or the building by Lessor or Lessor's employees, agents, contractors, or invitees results in contamination of the premises or the building or poses a threat of liability, Lessor shall promptly take all necessary actions, at the Lessor's sole expense, to return the premises or the building to the condition that existed before the introduction of such hazardous substances, whichever the case may be. This provision does not limit the indemnification obligations set forth in Paragraph 27 (i).

(k) If Lessor undertakes any cleanup, detoxification, or similar action, whether or not required by any government or quasi-government agency, as a result of the presence, release, or disposal in or about the premises or building of any hazardous substances, and that action requires that Lessee be denied access to the premises or Lessee is otherwise unable to conduct its business on the premises for a period of greater than 24 hours, the rent payable under this Lease shall be abated for the period that Lessee is unable to conduct its business on the premises.

## **28. EARTHQUAKE AND WATER DAMAGE**

It is understood and agreed that the Lessor shall not be held liable for any damages to any equipment, goods, property, or effects in, or upon, the herein demised premises during the term of this Lease caused by earthquake or by water from any source whatsoever, provided, however, that if Lessee shall notify Lessor that the roof is leaking or causing water damage which is not

the result of installation of the HVAC by Lessee or any sublessee and if Lessor shall fail to repair or cause said roof to be repaired within a reasonable period of time, the foregoing provision exonerating the Lessor from liability to Lessee for water damage shall not apply. Lessee acknowledges that the building is listed on the City of Martinez list of brick buildings in need of some seismic retrofitting repair work per SB 547. In 1992 and 1993, seismic work was performed at the premises pursuant to Permit No. 15907 issued by Lessee City of Martinez's Building Department. The work was completed and the Permit was signed off. Lessor shall have the right, but not the obligation, to make any seismic retrofitting improvements to ~~of~~ the premises in accordance with any applicable city, state, or federal regulations at any time during the term of this Lease. Lessor shall give Lessee at least sixty (60) days prior written notice of the commencement of such work and shall make every effort to minimize any disruption to Lessee's business operation while such work is progressing. Abatement or partial abatement of rent shall be negotiated dependent upon the use of the premises available to Lessee during such repair work.

**29. SECURITY MEASURES**

(a) Lessee hereby acknowledges that the rental payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of Lessee, its agents and invitees from acts of third parties.

(b) Lessee shall be solely and exclusively responsible for the security of the premises and shall be solely and exclusively liable to Lessor for any and all damages resulting from any breach of security including property damage and personal liability, whether caused by burglary, robbery or such other breaches of security and specifically including any damage due to any break-ins through the roof. Lessee further agrees to waive any rights against Lessor by way of subrogation on behalf of Lessee's insurance carrier in the event of any such security breach, such waiver to extend to Lessor's insurance carrier.

**30. COMPLIANCE WITH ALL LAWS AND REGULATIONS – NUISANCES**

Subject to paragraph 15 (d), Lessee shall not maintain or suffer or permit to be maintained on the demised premises any nuisances nor permit the demised premises to be used in whole or in part, during the term of this lease, for any purpose or use in violation of any laws, ordinances, rules or regulations of any public authority applicable thereto; and Lessee agrees at all times during the term hereof, to keep and maintain the demised premises in a clean, tidy and sanitary manner and condition and in compliance with any and all statutes, laws, rules, regulations and ordinances applicable thereto.

**31. LESSEE NOT TO SUFFER LIENS**

Lessee agrees not to permit or suffer any lien to attach to or encumber the demised premises or any part or portion thereof during the term hereof.

**32. PUBLIC LIABILITY, PROPERTY DAMAGE, PLATE, DOOR AND WINDOW GLASS AND WORKERS' COMPENSATION INSURANCE TO BE MAINTAINED BY LESSEE**

Lessee shall at its own cost and expense take out, maintain, keep in full force and effect throughout the term hereof, with an insurance company admitted to do business in California and/or the Contra Costa County Municipal Risk Management Pool, as applicable the following insurance:

(a) A comprehensive general liability policy covering bodily injury and property damage providing limits of not less than \$7,000,000.00 each occurrence and in the aggregate insuring against all liability of Lessee and its authorized representatives arising out of and in connection with Lessee's use or occupancy of the leasehold premises. All general liability insurance shall insure performance by Lessee of the indemnity provisions of Paragraph 26 and Lessor shall be named as an additional insured. Not more frequently than each year throughout the term and any extended term hereof, if in the considered opinion of Lessor's insurance broker the amount of such coverage is not adequate, Lessee shall increase the coverage to such amount as Lessor's insurance broker shall deem adequate. Coverage hereunder shall include, but not necessarily be limited to, premises/operations liability coverage, personal injury liability coverage, contractual liability coverage and broad form property damage liability coverage.

(b) Glass Insurance - Jointly insuring Lessor and Lessee against all loss or damage to plate, window, skylights and door glass.

(c) Workers' Compensation Insurance insuring the Lessee as employer against liability for injury or death to employees of Lessee.

All such policies shall be nonassessable and shall contain language, to the extent obtainable, to the effect that: (i) any loss be payable notwithstanding any act or negligence of Lessor that might otherwise result in the forfeiture of the insurance; (ii) the insurer waives the right of subrogation against Lessor and against Lessor's agents and representatives; (iii) the policies are primary and noncontributing with any insurance that may be carried by Lessor; and (iv) they cannot be cancelled or materially changed except after-thirty (30) days' written notice by the insurer to the Lessor or Lessor's designated representative. Lessee shall furnish Lessor with copies of all such required insurance policies promptly upon receipt of them or with certificates evidencing such insurance. Lessee agrees that if for any reason such insurance is not in full force and effect, then, in such event, Lessor may obtain the necessary insurance, pay the premium thereon and the repayment thereof shall be deemed additional rent payable as such on the next date upon which rent becomes due.

(d) Lessee shall, prior to occupying the premises, furnish to Lessor from the insurers providing the above referred to coverage, certificates of such coverage evidencing the existence and amounts of such insurance. Lessee shall, upon Lessor's request, furnish Lessor a copy of the insurance policy or policies meeting the requirements set forth herein.

33. **FIRE, CASUALTY AND EXTENDED COVERAGE INSURANCE**

(a) **Lessee's Obligations To Insure Its Fixtures And Equipment.** On the commencement of and throughout the term hereof Lessee shall take out and maintain on all of its trade fixtures, appliances and equipment in and on the premises, a policy or policies of fire insurance with standard extended coverage and vandalism and malicious mischief endorsements to the extent of at least ninety percent (90%) of their full replacement value. In event of loss or damage, the proceeds from any such policy or policies shall be used by Lessee for the replacement of the Lessee's personal property and/or the repair or replacement of the Lessee's trade fixtures, machinery and equipment so insured, in the event this lease is to continue in existence under the provisions of Paragraph 34, otherwise if said lease is terminated, to be paid to Lessee.

(b) **Lessee to Reimburse Lessor for the Cost of Insuring Lessor's Building On the Premises.** Lessor shall maintain a policy of standard fire and extended coverage insurance covering the premises and building with vandalism and malicious mischief endorsements to the extent of 100% of full replacement value. Lessee shall promptly reimburse Lessor for any increase in premiums resulting from any improvements made to the premises after commencement of this Lease. Notwithstanding the foregoing, the coverage and amounts of insurance carried by Lessor in connection with the premises and building shall at a minimum be comparable to the coverage and amounts of insurance that are carried by reasonably prudent landlords of comparable buildings and workers' compensation coverage as required by applicable law.

The "full replacement value" of the building to be insured under this section shall be determined by the company issuing the insurance policy at the time the policy is initially obtained.

(c) **Waiver of Subrogation.** Lessee hereby releases and relieves and waives its entire right of recovery against the Lessor for loss or damage arising out of or incident to the perils insured against under paragraph (a) above which perils occur in, on or about the premises, whether due to the negligence of Lessor or Lessee or their agents, employees, contractors and/or invitees. Lessee shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier or carriers that the foregoing waiver of subrogation is contained in this Lease. Notwithstanding anything to the contrary in this Lease, Lessor waives and releases any and all right of recovery, whether arising in contract or tort, against Lessee, for any and all (i) loss or damage to any property located within or constituting a part of the premises or building, which loss or damage arises from the perils that could be insured against under the ISO Causes of Loss—Special Form Coverage, including any deductible (whether or not the party suffering the loss or damage actually carries such insurance, recovers under such insurance, or self-insures the loss or damage) and/or (ii) loss of earnings or rents resulting from any such perils. This waiver shall be in addition to any other waiver or release contained in this Lease, and Lessor shall have its applicable insurance policies issued in such form as to waive any right of subrogation that might otherwise exist.

34. **DAMAGE OR DESTRUCTION - OBLIGATIONS TO RESTORE, ETC.**

(a) **Loss Due to Risk Covered by Insurance.** In the event of damage or destruction of the premises by an insured fire or casualty loss, Lessor shall forthwith repair, rebuild and/or restore the same, provided such repairs, rebuilding and/or restoration can be made and completed within Sixty (60) calendar days from the date construction of repairs, rebuilding and/or restoration begins, and can be done under the then laws and regulations of state, federal, county or municipal authorities, but such damage or destruction shall in no way annul or void this Lease, except that Lessee shall be entitled to an abatement of or a proportionate reduction, as the case may be, of the monthly rental while such repairs, rebuilding and/or reconstruction are being made, such proportionate reduction to be based on the extent to which the damage or destruction shall interfere with Lessee's business and operations on the premises. Within thirty (30) days of the casualty or loss, Lessor shall deliver to Lessee written notice of Lessor's determination to restore or not to restore, explaining the reasons therefor. If such repairs, rebuilding and/or restoration cannot be made in the period of time stated above or cannot be done under the then laws and regulations, Lessee may by written notice to Lessor given within thirty (30) days after receipt of Lessor's notice of its restoration decision terminate this Lease and if Lessee fails to so terminate (by stating in its notice that it does not desire to terminate or fails to timely deliver said written termination notice), then Lessors may, at their option within fifteen (15) days after delivery of Lessee's said notice (or within fifteen (15) days after the last day that Lessee was entitled to submit its notice terminating this Lease), by written notice to Lessee, either terminate this Lease or make the repairs or restoration within a reasonable time, in which latter event this Lease shall continue in full force and effect with the monthly rental and other sums due hereunder proportionately reduced as provided in this paragraph. If Lessor undertakes to repair or restore the premises, Lessee shall make available to Lessor for such purpose any insurance proceeds received by Lessee for damage or destruction to leasehold improvements made by Lessee to the premises and Lessor's work shall restore the leasehold improvements to the extent that there are insurance proceeds available for such purpose. Lessor shall not be required to restore Lessee's trade fixtures and personal property, such excluded items being the sole responsibility of Lessee to restore.

(b) **Loss Due to Risk Not Covered By Insurance.** If the premises shall be damaged or destroyed by a risk not covered and insured against by fire and casualty insurance Lessor shall forthwith and with due diligence repair, rebuild and/or restore the same unless the then cost of such repairs and/or reconstruction shall amount to five percent (5%) or more of the then replacement value of the building and/or improvement damaged or destroyed, in which latter event Lessor shall have the option (giving notice thereof to Lessee within fifteen (15) days after ascertaining the repairs, rebuilding and/or restoration costs and replacement value) whether to terminate this Lease or to proceed with the reconstruction; provided, however, should Lessor elect to terminate this Lease, Lessee shall have the option within fifteen (15) days after Lessor's notice to terminate this Lease, to elect to pay to Lessor at the time Lessee notifies Lessor of its election herein the difference between five percent (5%) of the then replacement value of the building and/or improvement damaged or destroyed and the actual cost to Lessor in repairing, rebuilding and/or restoring the building and other improvements, in which event Lessor shall forthwith commence said repairs, rebuilding and reconstruction. It is agreed that the amount payable by Lessor under these provisions shall be the only monies to be paid by Lessor with

respect to such work of restoration, and shall not be payable by Lessor until Lessee shall have paid to Lessor its required contribution to the costs and expenses thereof. If Lessor elects to terminate this Lease, and if Lessee does not elect to contribute toward the cost of reconstruction within the time and manner provided herein, this Lease shall forthwith terminate and the parties shall be relieved of further liability hereunder.

(c) **Waiver of Civil Code Sections.** In respect to any damage or destruction to the premises under the terms of this paragraph, the provisions of Section 1932, Subdivision 2, and of Section 1933, Subdivision 4 of the Civil Code of the State of California are waived by Lessee.

(d) **Loss During Last Part of Term.** In the event damage or destruction to the premises shall occur during the last six (6) months of the term of this Lease or of any extended term, Lessor may terminate this Lease by notice to the Lessee given not more than fifteen (15) days after the damage or destruction, provided, however, in the event the damage or destruction shall occur during the last six (6) months of the term, and if Lessee is given by the terms hereof an option to extend this lease and exercises said option within fifteen (15) days following the damage or destruction, then Lessor shall repair, rebuild and/or restore the premises as provided in subparagraphs (a) and (b) of this paragraph. Should this Lease not be terminated as provided in this subparagraph, then this Lease shall continue in full force and effect.

### **35. SURRENDER UPON TERMINATION**

At the expiration of the term of this Lease, or upon the earlier termination thereof for any reason, the Lessee shall quit and surrender said leased premises to the Lessor in as good state and condition as said premises were when possession thereof was given to the Lessee, reasonable wear and tear and damage by the elements excepted, and the Lessor shall thereupon have the right to enter upon and take possession of said premises.

### **36. HOLDING OVER**

Should the Lessee hold over said demised premises with Lessor's consent after this Lease is terminated, or upon the expiration of the term thereof, such holding over shall be deemed merely a tenancy from month to month and at a monthly rental equal to the rental in effect just prior to expiration of the lease term increased by twenty percent (20%), payable monthly in advance, but otherwise on the same terms and conditions as herein provided.

### **37. DEFAULT**

(a) **Lessee's Default.** The occurrence of any of the following shall constitute a default by Lessee:

(1) Failure to pay rent or any other payment required of Lessee when due, if the failure continues for three (3) days after notice has been given to Lessee.

(2) Abandonment and vacation of the premises (failure to occupy and operate the premises for two hundred and seventy (270) consecutive days shall be deemed an abandonment and vacation.).

(3) Failure to perform any other provision of this Lease if the failure to perform is not cured within thirty (30) days after notice has been given to Lessee. If the default cannot reasonably be cured within thirty (30) days, Lessee shall not be in default of this Lease if Lessee commences to cure the default within the 30-day period and diligently and in good faith continues to cure the default.

Notices given under this paragraph shall specify the alleged default and shall demand that Lessee perform the provisions of this Lease or pay the rent that is in arrears, as the case may be, within the applicable period of time, or quit the premises. No such notice shall be deemed a forfeiture or a termination of this Lease unless Lessor so elects in the notice.

**(b) Lessor's Remedies.** Lessor shall have the following remedies if Lessee commits a default. These remedies are not exclusive; they are cumulative in addition to any remedies now or later allowed by law:

(1) Lessor can continue this Lease in full force and effect, and the Lease will continue in effect as long as Lessor does not terminate Lessee's right to possession, and Lessor shall have the right to collect rent when due. During the period Lessee is in default, Lessor can enter the premises and relet them, or any part of them, to third parties for Lessee's account. Lessee shall be liable immediately to Lessor for all costs Lessor incurs in reletting the premises, including without limitation, broker's commissions, expense of remodeling the premises required by the reletting, and like costs. Reletting can be for a period shorter or longer than the remaining term of this Lease. Lessee shall pay to Lessor the rent due under this Lease on the dates the rent is due, less the rent Lessor receives from any reletting. No act by Lessor allowed by this paragraph shall terminate this Lease unless Lessor notifies Lessee that Lessor elects to terminate this Lease. After Lessee's default and for as long as Lessor does not terminate Lessee's right to possession of the premises, if Lessee obtains Lessor's consent, Lessee shall have the right to assign or sublet its interest in this Lease, but Lessee shall not be released from liability. Lessor's consent to a proposed assignment or subletting shall not be unreasonably withheld.

(2) Lessor can terminate Lessee's right to possession of the premises at any time. No act by Lessor other than giving notice to Lessee shall terminate this Lease. Act of maintenance, efforts to relet the premises, or the appointment of a receiver on Lessor's initiative to protect Lessor's interest under this Lease shall not constitute a termination of Lessee's right to possession. On termination, Lessor, has the right to recover from Lessee:

(i) The worth, at the time of the award, of the unpaid rent that had been earned at the time of termination of this Lease;

(ii) The worth, at the time of the award, of the amount by which the unpaid rent that would have been earned after the date of termination of this Lease until the time

of award exceeds the amount of the loss of rent that Lessee proves could have been reasonably avoided;

(iii) The worth, at the time of the award, of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of the loss of rent that Lessee proves could have been reasonably avoided; and

(iv) Any other amount, the court costs, necessary to compensate Lessor for all detriment proximately caused by Lessee's default.

"The worth, at the time of the award," as used in (i) and (ii) of this paragraph, is to be computed by allowing interest at the maximum rate an individual is permitted by law to charge. "The worth, at the time of the award," as referred to in (iii) of this paragraph, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

(c) **Intentionally left blank.**

(d) **Lessor's Right to Cure Lessee's Default.** Lessor, at any time after Lessee commits a default, can cure the default at Lessee's cost. If Lessor at any time, by reason of Lessee's default, pays any sum or does any act that requires the payment of any sum, the sum paid by Lessor shall be due immediately from Lessee to Lessor at the time the sum is paid, and if paid at a later date shall bear interest at the maximum rate an individual is permitted by law to charge from the date the sum is paid by Lessor until Lessor is reimbursed by Lessee. The sum, together with interest on it, shall be additional rent.

### 38. CONDEMNATION

(a) **Effective Total Condemnation.**

(1) In the event that there shall be a total taking of the leased premises during the Lease term, or any extension thereof, under the power of eminent domain, the leasehold estate hereby created shall cease and terminate as of the date actual physical possession of the leased premises is taken by the condemnor.

(2) All compensation and damages awarded for such total taking shall belong to and be the sole property of Lessor, and Lessee shall have no claim thereto and hereby irrevocably assigns and transfers to Lessor any right they might have to compensation or damages to which they may become entitled; provided, however, that Lessee shall be entitled to receive any award made for the taking of or damage to Lessee's trade fixtures and any improvements made by Lessee to the leased premises which Lessee would have had, but for the condemnation, the right to remove on expiration or sooner termination of this Lease.

(3) On termination of this Lease by a total taking of the leased premises under the power of eminent domain, all rentals and other charges payable by Lessee to or on behalf of Lessor under the provisions of this Lease shall be paid up to the date on which actual physical

possession of the leased premises shall be taken by the condemnor, and the parties hereto shall thereafter be released from any further liability in relation thereto.

**(b) Effective Partial Condemnation.**

(1) In the event that there shall be a partial taking of the leased premises during the Lease term or any extension thereof under the power of eminent domain, this Lease shall terminate as to the portion of the leased premises so taken on the date when actual physical possession of said portion is taken by the condemnor, but this Lease shall, at Lessor's option, continue in force and effect as to the remainder of the leased premises provided the remainder is suitable for Lessee's purposes, and provided further that the rental payable by Lessee for the balance of said term shall be abated in the ratio that the square footage of floor space of the leased premises taken bears to the total floor space of the leased premises occupied by Lessee at the time of such taking.

(2) On such partial condemnation as in this subparagraph provided, all compensation and damages awarded for such partial taking shall belong to and be the sole property of Lessor, and Lessee shall have no claim thereto and hereby irrevocably assigns and transfers to Lessor any right they may have to compensation or damages for property condemned; provided, however, that Lessee shall be entitled to receive any award made for the taking of or damage to Lessee's trade fixtures and any improvements made by Lessee to the leased premises which Lessee would have, but for the condemnation, the right to remove on expiration or sooner termination of this Lease.

(3) On termination of this Lease in whole or in part as herein provided, all rentals and other charges payable by Lessee to or on behalf of Lessor hereunder shall be paid up to the date on which actual physical possession shall be taken by the condemnor and in the event that the Lease is totally terminated, the parties hereto shall thereafter be released from all further liability in relation thereto, and in the event that the Lease is only partially terminated, Lessee shall thereafter be liable only for that portion of rent required for the balance of the Lease term as in this subparagraph provided.

(4) Under no circumstances shall this Lease or the fact that Lessee has entered same constitute or be deemed to constitute a waiver of Lessee's power and authority to acquire the premises or building by eminent domain.

**39. NOTICES**

In the event that any notice is to be given under this Lease by either party hereto to the other, either expressly required to be given in writing, or such notice as such party may desire to give, such notice may be given by either personally delivering the same to the other or by



be disturbed if Lessee is not in default and so long as Lessee shall pay the rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. If any mortgagee, trustee or ground lessor shall elect to have this Lease prior to the lien of its mortgage, deed of trust or ground lease, and shall give written notice thereof to Lessee, this Lease shall be deemed prior to such mortgage, deed of trust, or ground lease, whether this Lease is dated prior or subsequent to the date of said mortgage, deed of trust or ground lease or the date of recording thereof.

(b) Lessee agrees to execute any documents required to effectuate an attornment, a subordination or to make this Lease prior to the lien of any mortgage, deed of trust or ground lease, as the case may be. Lessee's failure to execute such documents within 10 days after written demand shall constitute a material default by Lessee hereunder, or, at Lessor's option, Lessor shall execute such documents on behalf of Lessee as Lessee's attorney-in-fact. Lessee does hereby make, constitute and irrevocably appoint Lessor as Lessee's attorney-in-fact and in Lessee's name, place and stead, to execute such documents in accordance with this paragraph.

(c) Lessor warrants and represents that as of the date of Lessor's execution of this Lease and as of the commencement date, there is and there shall be no ground lease, mortgage, deed of trust, or any other hypothecation or security placed upon the real property of which the premises are part to which this Lease is to be made subordinate.

#### **42. PERSONAL PROPERTY LEFT ON PREMISES AT LEASE TERMINATION**

On expiration of the term of this Lease, or upon the earlier termination thereof for any reason, Lessor can elect to retain or dispose of in any manner, any of the machinery, furnishings, trade fixtures, personal property or equipment (herein "personal property") that Lessee does not remove from the premises by giving at least fifteen (15) days notice to Lessee. Title to any such personal property that Lessor elects to retain or dispose of shall vest in Lessor. Lessee waives any and all claims against Lessor for any damage resulting from Lessor's retention or disposition of such personal property items. Lessee shall be liable to Lessor for all of Lessor's costs and expenses for storing, removing, and disposing of any of Lessee's personal property left on the premises. Lessor shall be entitled to charge reasonable rental for the storage of any personal property and equipment left on the premises by Lessee whether claimed to be the property of Lessee or others. It is agreed that the reasonable rental shall be equal to the rent in effect just prior to the termination prorated by the number of days the personal property remains on the premises.

#### **43. BREACH OF SECURITY**

Lessee shall be solely and exclusively responsible for the security of the premises and shall be solely and exclusively liable to Lessor for any and all damages resulting from any breach of security including property damage and personal liability, whether caused by burglary, robbery or such other breaches of security and specifically including any damage due to any break-ins through the roof. Lessee further agrees to waive any rights against Lessor by way of subrogation on behalf of Lessee's insurance carrier in the event of any such security breach, such waiver to extend to Lessor's insurance carrier.

**44. ATTORNEY'S FEES AND COSTS**

In addition to the provisions set forth in Paragraph 24. herein, if Lessor is required to employ the services of an attorney to enforce any of the terms and conditions of this Lease, Lessor shall be entitled to recover from Lessee all Lessor's costs and fees incurred in connection with the employment of such attorney including, but not limited to, all costs incurred in connection with any action or proceeding or any post judgment proceeding.

**45. GARBAGE DISPOSAL**

Lessee will be responsible for keeping whatever garbage storage facility which serves the leasehold premises in a clean and sanitary condition at all times. Should Lessee fail to do so, Lessor may make arrangements to have the area kept clean and sanitary and bill Lessee for the cost thereof. Lessee shall also be responsible for making all necessary arrangements with the local garbage collection company for servicing any dumpster and/or garbage cans.

**46. MISCELLANEOUS PROVISIONS**

(a) **Paragraph Headings.** The paragraph and subparagraph headings of this lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease.

(b) **Integrated Agreement; Modification.** This Lease contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any other manner than by an agreement in writing signed by all of the parties to this Lease or their respective successors in interest.

(c) **Time of Essence.** Time is of the essence of each term and provision of this Lease.

(d) **All Required Payments Are Additional Rent.** Except as otherwise expressly stated, each payment required to be made by Lessee shall be in addition to and not in substitution for other payments to be made by Lessee and all such payments shall be deemed to be additional rental.

(e) **Separability.** The invalidity or illegality of any provision shall not affect the remainder of this Lease.

(f) **Duration of Obligations.** Unless otherwise stated in particular provisions of this Lease, an obligation resulting from the Lease or from the relationship created by the Lease, is coterminal with the Lease, except that defaults occurring during the term of this Lease are actionable until the expiration of the period of limitations.

(g) **Intentionally left blank.**

**(h) WAIVER OF RIGHT TO TRIAL BY JURY.** LESSOR AND LESSEE HEREBY WAIVE THEIR RESPECTIVE RIGHT TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, COUNTERCLAIM OR CROSS-COMPLAINT IN ANY ACTION, PROCEEDING AND/OR HEARING BROUGHT BY EITHER LESSOR AGAINST LESSEE OR LESSEE AGAINST LESSOR ON ANY MATTER WHATSOEVER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS LEASE, THE RELATIONSHIP OF LESSOR AND LESSEE, LESSEE'S USE OR OCCUPANCY OF THE PREMISES, OR ANY CLAIM OF INJURY OR DAMAGE, OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY LAW, STATUTE OR REGULATION, EMERGENCY OR OTHERWISE, NOW OR HEREAFTER IN EFFECT.

**(i) Joint and Several Liability.** In the event two or more persons or entities execute this Lease as "Lessee", then the obligation of each such person shall be joint and several.

**(j) Guarantor.** In the event that there is a guarantor of this Lease, said guarantor shall have the same obligations as Lessee under this Lease. In the event the guarantor files a petition in bankruptcy in any court, Lessor, in Lessor's sole discretion, may terminate this Lease unless Lessee, within ten days after notification from Lessor, provides a new guarantor satisfactory to Lessor.

**(k) Covenants or Conditions.** All the agreements in this Lease upon the part of Lessee, whether technically covenants or conditions, shall be deemed conditions for the purpose hereof.

**(l) Authority.** If Lessee is an entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said entity.

**(m) Waivers.** No waiver by Lessor of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Lessee of the same or any other provision. Lessor's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to or approval of any subsequent act by Lessee. The acceptance of rent hereunder by Lessor shall not be a waiver of any preceding breach by Lessee of any provision hereof, other than the failure of Lessee to pay the particular rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

**(n) Words.** Whenever the singular is used in this Lease, the same shall include the plural when required by the context, and the masculine gender shall include the feminine and neuter genders, and the word "person" shall include corporation, firm and association. If there is more than one Lessee, the obligations of this Lease shall be joint and several.

**(o) California Law.** This Lease shall be governed and Interpreted solely by the laws of the State of California.

**(p) Heirs, Etc.** This Lease shall be binding upon the successors, administrators and assigns of the respective parties hereto.

(q) **Exhibits.** All exhibits, if any, that are attached to this Lease are hereby incorporated into the body of this Lease.

(r) **No Real Estate Brokers or Finders' Fees.** Lessor has not had any dealings with any real estate broker, finder, or other person with respect to this Lease in any manner and owes no commissions or fees in such regard. Lessee is solely responsible for any compensation due its agent. Lessee shall hold harmless Lessor from all damages resulting from any claims that may be asserted against Lessor by any broker, finder, or other person regarding this Lease.

(s) **Approvals to be Reasonable.** Whenever in this Lease a party is granted the power to approve or consent to the other's actions, said approval or consent may not be withheld unreasonably, unless the Lease expressly provides to the contrary.

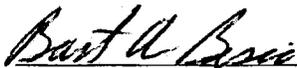
IN WITNESS WHEREOF the Lessor and Lessee have hereunto executed this Lease in duplicate the day and year first above written.

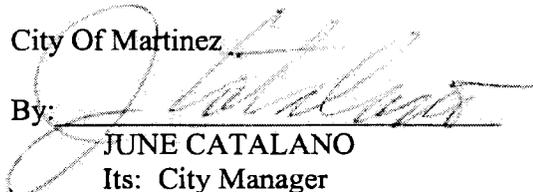
LESSOR:

LESSEE:

Bart and Jane Bisio Revocable Trust by:

City Of Martinez

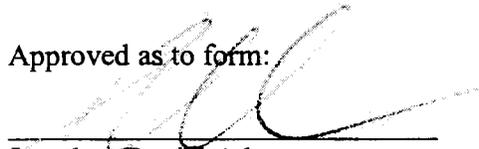
  
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BART A. BISIO, Trustee

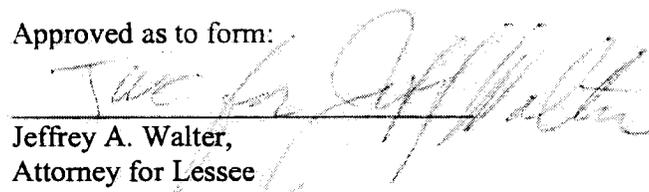
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JUNE CATALANO  
Its: City Manager

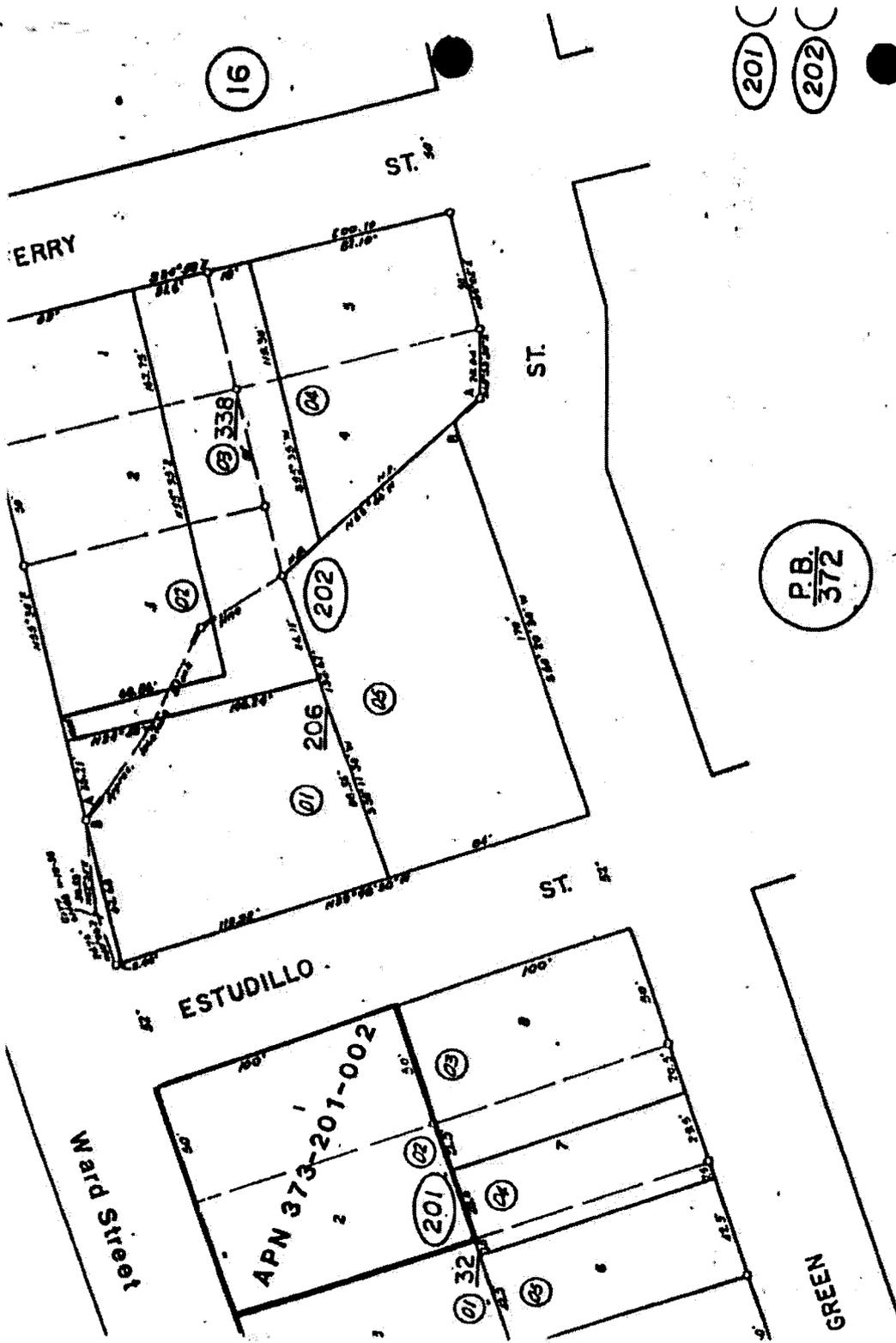
  
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JANE L. BISIO, Trustee

Approved as to form:

Approved as to form:

  
\_\_\_\_\_  
Jonathan Daniel Adams,  
Attorney for Lessor

  
\_\_\_\_\_  
Jeffrey A. Walter,  
Attorney for Lessee



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EXHIBIT "A"

Ward Street

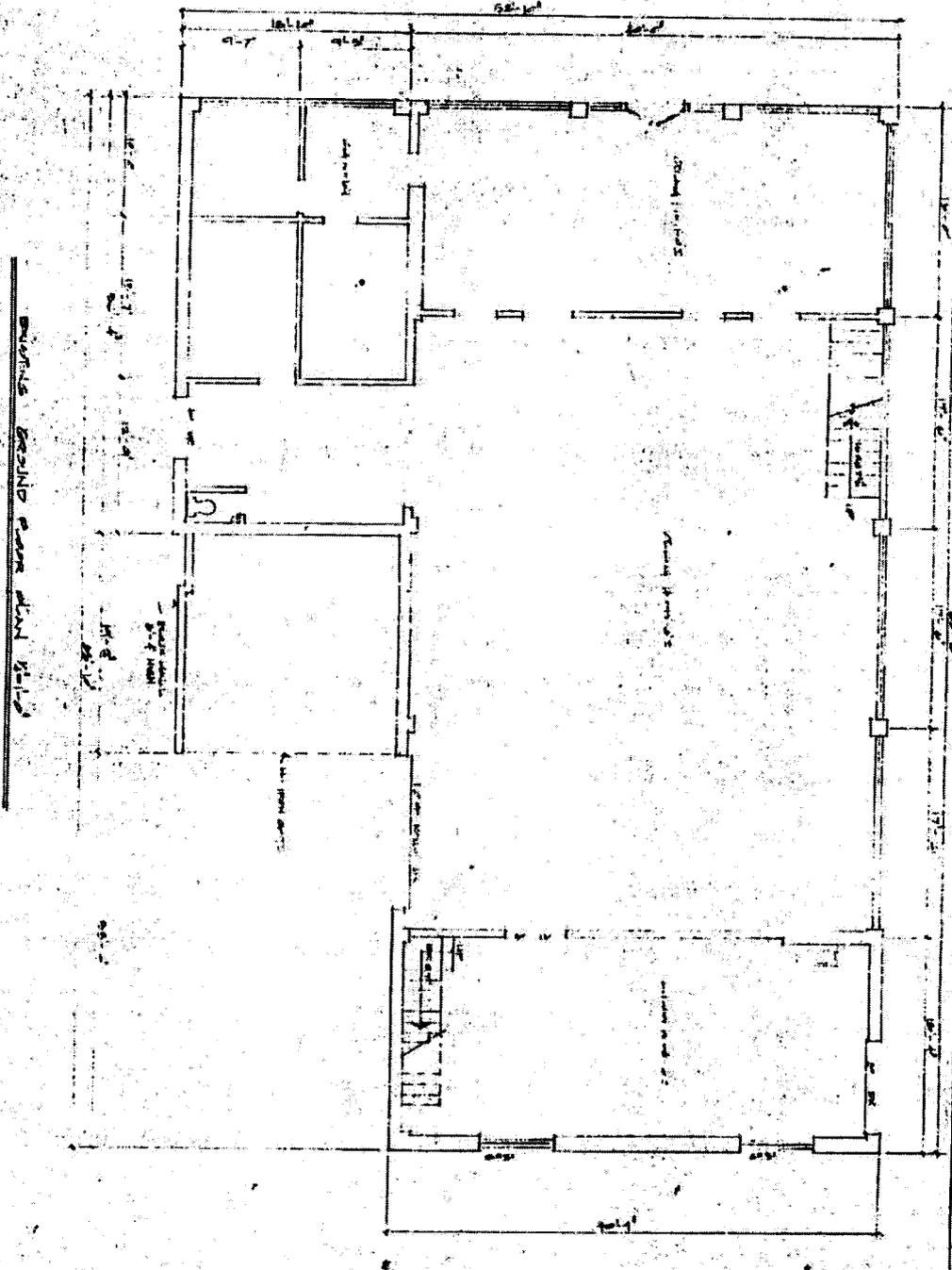


EXHIBIT "A"

Page 2 of 3

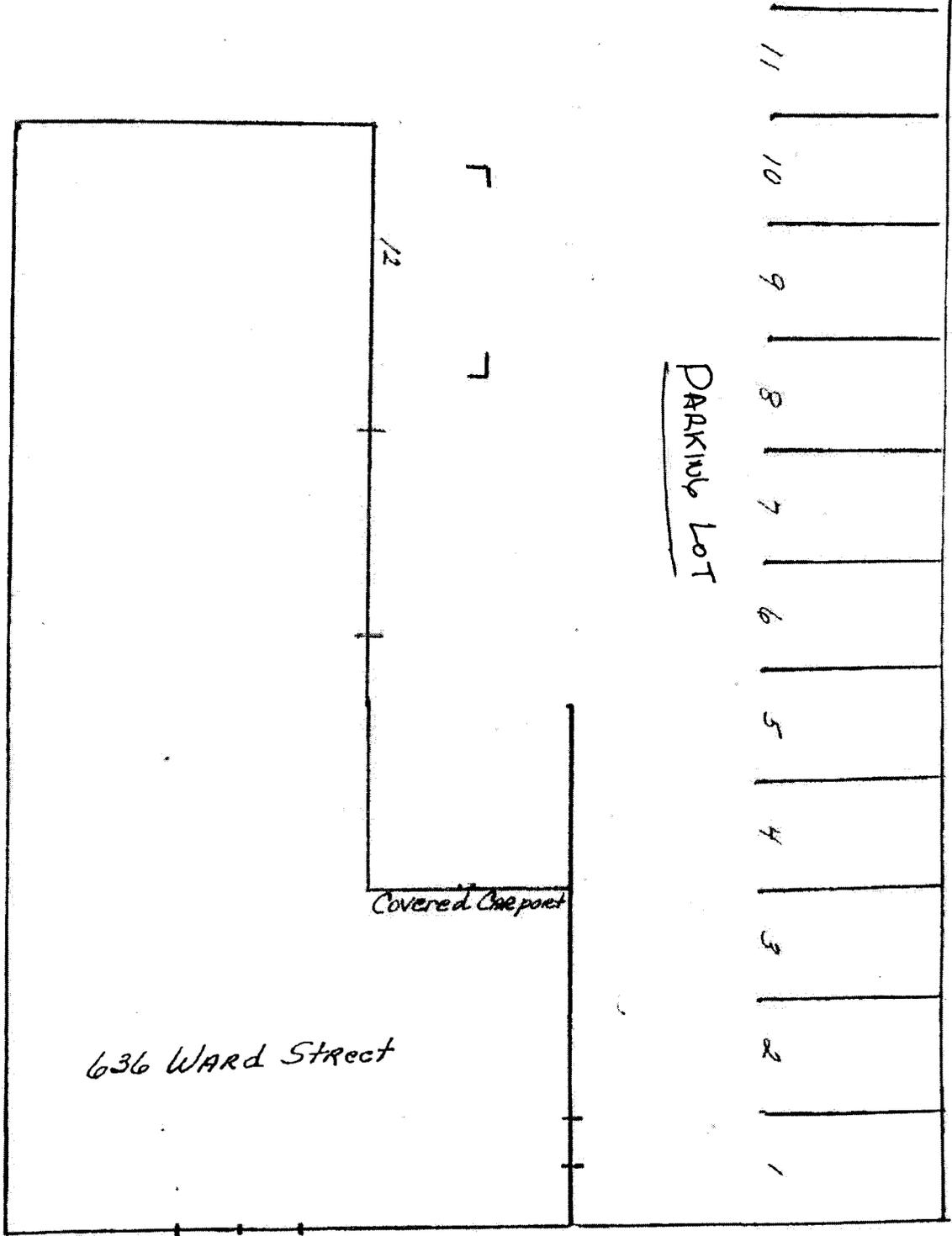
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GROUND FLOOR PLAN  
1000 WARD ST.  
MARTINEZ, CA.

PROVIDING GROUND FLOOR PLAN

FRITZWU

APN 373-201-002



WARD STREET

*This is not to Scale  
PARKING SPACES MAY VARY*

## EXHIBIT B

### Campbell Theater Personal Property Inventory

#### Lighting Equipment

1	Dimmer Rack	Sensor Dimming System	
48	Dimmers	Dual 20 Amp Dimmer Modules	
3	RaceWay	ETC	
1	Shakespeare	Altman 20	
13	Shakespeare	Altman 40	
4	Shakespeare	Altman 50	
9	Par cans	Source Four 750	
17	Par cans	Par 8"	Par-64L
4	Lights		F1
1	Light Board	ETC Express 24/48	44110A1005
1	Monitor	Sceptre LCD screen	S1901D
6	Shakespeare	Altman bodies (no barrel or lamp base)	
8	Barrels	Altman 2@50* 5@40* 1@20*	
5	Par cans	Missing misc parts	
4	Barndoors		
7	Top Hats	Source Four	
10	Gel Frames	Altman	
17	Gel Frames	Par can	
7	Gel Frames	Source Four	
4	GoBo		
	Misc Cables		

#### Sound Equipment

2	Speakers	Peavey PR-15	
2	Speakers	Peavey PR-10	
1	Speaker	Community Professional	CSX35-S2
2	Music stands		
2	Music stand clip lights		
1	Digital Keyboard	KORG	m50-88
1	Keyboard stand	PROLine	
2	Pedals	1@ M Gear, 1@ BOSS	
2	Amplifiers	Yamaha	P35005, P3200
5	Amplifiers	BBE, LOGIA, Crown, InterM, DIGI MAX	
1	Sound Board	Mackie 14 channel mixer	1402VL2 Pro
3	Corded Microhone	Digital Reference	DRV-100
1	Corded Mic	Unidyme III	545SD
1	Cordless Mic	TX (?)	
1	MIDI Filter	Yamaha	
1	CD player	Stanton Table Top style	
6	Wireless Mic Packs	Shure	
3	Wireless Receiver	2@ Shure, 1@ Nady	
1	Boom Box	Sony CD/cassette player	
	Misc Cables, adapters		
2	Sound racks (1 mobile, 1 fixed)		

### House Equipment

- 20 Tall Tables
- 26 Short Tables
- 79 Black Tall backed chairs
- 70 Wooden Bar chairs
- 37 Small Black Wooden chairs

### Misc Stage Equipment

- 1 Border Red 4'X 43'
- 2 Red Curtains RoseBrand (H16' X W18')
- 1 Black Leg H16' X W8'
- 1 Ladder 12' fiberglass
- 1 Ladder Metal extendable A-Frame Ladder
- 2 Folding Tables Plastic
- 1 Microwave Samsung MU3050W
- 1 Water Cooler Aquarius
- 1 Washer/ Dryer Frigidaire stacking combo

### Concession Equipment

- 1 Dell Inspiron CPU
- 1 Omni 3370 LE Credit Card Scanner
- 1 Bunn Coffee Maker CWTF13608
- 1 Ice Machine #QD021ZA, 115V
- 1 Beverage Soda System w/cooler model #C152201
- 1 TRUE stainless steel refrigerator 30" x 48"
- 1 TRUE stainless steel glass chiller 24" x 36"
- 1 STAR popcorn maker
- 1 STAR hot dog and bun warmer
- 1 Beverage Cooler 24"x24"x62" model #GDM-12 (Coca Cola)
- 1 Royal Cash Register model #435dx
- 1 30"x48" stainless steel work table
- 1 30"x29" stainless steel work table
- 1 24"x60" stainless steel work table
- 1 3 compartment stainless steel sink
- 3 Oxygen tanks (airgas) for soda system
- 2 Safes (1 Sentry and 1 SentrySafe)
- 1 Beverage Air Freezer Unit
- 1 Rolling Cart