



**CITY OF NEW BEDFORD**  
JONATHAN F. MITCHELL, MAYOR

July 13, 2023

Council President Linda Morad  
And Honorable Members of the New Bedford City Council  
New Bedford City Hall  
133 William Street  
New Bedford, MA 02740

RE: Zeiterion Lease

Dear Council President Morad and Members of the City Council:

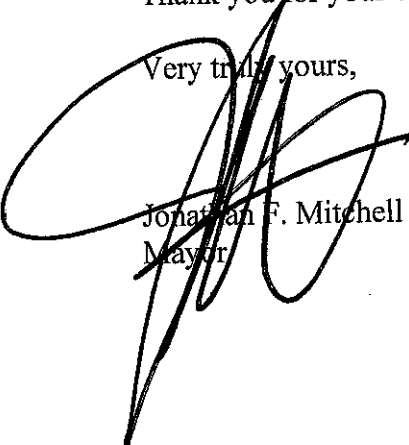
I am submitting to you for your consideration and approval, a proposed 99-year lease relative to the Zeiterion Theater property located at 684 Purchase Street in New Bedford. As you know, a Home Rule Petition was previously submitted to the Legislature for approval since the lease exceeds 30 years. That approval has been granted by the Legislature.

As you may also be aware, the financing for the lessee to perform the proposed rehabilitation and improvements to the Zeiterion is relatively complicated and involves both Federal and Massachusetts historic rehabilitation tax credits as well as funding of the project by a private tax credit investor, the public and other grants.

Therefore, the proposed lease, although in substantially final form, remains a draft subject to review by the tax credit investor and a determination as to whether or not the lessee will enter into a master lease between the lessee as landlord and a to be named entity, as tenant. The matter is being submitted to the Council at this time so that it may be forwarded by the Council, at the Council's discretion, to any appropriate subcommittees of the Council where a final version of the lease will be provided by Solicitors prior to consideration by the subcommittee(s) and full Council.

Thank you for your consideration in this matter.

Very truly yours,

  
Jonathan F. Mitchell  
Mayor



# CITY OF NEW BEDFORD

## CITY COUNCIL

July 20, 2023

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**ORDERED**, that the Mayor of the City of New Bedford is authorized, in accord with Chapter 98 of the Acts of 2019, to enter into a ninety-nine (99) year lease relative to the property located at 684 Purchase Street, New Bedford, upon the terms set forth in the lease attached.

## CITY OF NEW BEDFORD

### LEASE AGREEMENT - ZEITERION THEATER

THIS LEASE AGREEMENT (this "Lease") is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2023 (the "Effective Date"), by and between the CITY OF NEW BEDFORD (the "City"), a Massachusetts municipality duly chartered under Massachusetts General Laws Chapter 43 § 1, et seq., acting by and through its City Council and Mayor, and [ZEITERION LLC] ("Lessee"), a Massachusetts limited liability company, with an address c/o Zeiterion Theatre, Inc., 684 Purchase Street, New Bedford, Massachusetts 02740. The City and Lessee are hereinafter referred to together as the "Parties" and the City or Lessee is referred to as a "Party."

WHEREAS, the City owns a parcel of land located at 674 Purchase Street, Units 1 and 2, in New Bedford, Bristol County, identified on City of New Bedford Assessor's Parcel 47-45A 1, containing 33,000 square feet, more or less, which is improved by a historic building, currently operated as a performing arts theater known as the Zeiterion Theatre Performing Arts Center (the "Theater"), which contains a 1,226-seat theatre, concessions area, lobby, offices, and adjacent space north of the main lobby, dressing rooms, and other backstage, technical and utility spaces, and other improvements thereon (collectively, the "Property"), which Property is described more particularly in Exhibit A, attached hereto and incorporated herein;

WHEREAS, Lessee intends to rehabilitate the Theater in a manner that will qualify for federal and state historic tax credits and plans to undertake significant repairs and/or improvements to the Theater (as defined more particularly below, the "Project"), and is required by its financing parties to enter into a long-term lease of the Property to secure the financing;

WHEREAS, Lessee has requested the City lease the Property, including the Theater, to Lessee for a term of ninety-nine (99) years to obtain and secure financing to fund said improvements; and

WHEREAS, the City is amenable to leasing the Property on the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

#### SECTION 1 - PREMISES

1.1 THE PREMISES. The City leases to Lessee, and Lessee leases from the City, the Property, including, without limitation, the Theater, all walkways, pathways, parking areas and access ways serving the Premises, together with any and all easements, rights, privileges, licenses, covenants and other matters that benefit or burden the Property (collectively, the "Premises").

1.2 **CONDITION OF PREMISES.** The Premises are delivered to Lessee, and Lessee accepts the Premises, in their present condition, "AS IS," it being agreed that Lessee has had an opportunity to examine and inspect the Premises, and accepts the Premises without any representation or warranty of any kind or nature, express or implied, in fact or by law, on the part of the City and without recourse to the City. The City shall have no obligation to do any work on or make any alterations and/or improvements to or with respect to the Premises or the condition thereof, except as otherwise expressly provided for in this Agreement.

1.3 **CITY'S ACCESS.** The City and/or its agents may, upon giving prior notice thereof to Lessee and without interfering with Lessee's operations, enter the Premises from time to time to inspect the Premises, to undertake any work required under Applicable Laws and/or the requirements of public authorities (provided that the City complies with the Secretary's Standards (defined below), if applicable), to abate any violations of the terms hereof, and for the purpose of exercising any other rights reserved to the City by this Lease, provided the same do not interfere unreasonably with Lessee's use and quiet enjoyment of the Premises. The City shall give Lessee a minimum of twenty-four (24) hours' notice of such visits, which may be oral notice, provided however that the City may enter the Premises at any hour and without prior notice in the case of an emergency threatening harm to the Premises or the safety of persons therein, in which case notice shall be given as soon as practicable.

## **SECTION 2 - TERM OF LEASE**

2.1 **TERM OF LEASE.** The term of this Lease shall be ninety-nine (99) years from the Effective Date (unless sooner terminated in accordance with this Lease, and subject to the provisions of Section 2.8, the "Term"), and consists of three (3) phases: the Permitting/Financing Period, the Construction Period, and the Operations Period. Each "Lease Year" shall be a twelve-month period commencing on the Effective Date and on each anniversary thereof during the Term.

2.2 **PERMITTING/FINANCING PERIOD.** The Permitting Period will begin on the Effective Date and will terminate on the earliest of: (a) the date on which Lessee has: (i) obtained any and all necessary permits, approvals, and licenses from federal, state and local authorities that are necessary or convenient to enable Lessee to undertake the Project, including, without limitation, special permits and building permits (collectively, the "Permits"), with appeal periods having expired without any appeal being filed, or if filed, the final adjudication of such appeal pursuant to a final court order without further appeal, and (ii) closed on financing in an amount sufficient in the reasonable judgment of Lessee to pay for the cost of the Project, which financing may include, but is not limited to, federal historic rehabilitation tax credits authorized under Section 47 of the Internal Revenue Code of 1986, as amended (the "Code"), and Massachusetts historic rehabilitation tax credits authorized under M.G.L. c. 63, Sec. 38R et. seq. (the "Financing"); and (b) five (5) years from the Effective Date (including any Extension Period (defined in Section 2.5), if permitted, the "Permitting/Financing Period"). The City agrees to cooperate in any reasonable manner in connection with the making of applications for any such Permits, all at Lessee's cost, but Lessee acknowledges that the City has no control over and cannot guarantee that Permits required from municipal boards or officers within their statutory or

regulatory authority will be granted or fees waived. Lessee shall inform the City promptly of the receipt of the Permits and Financing.

2.3 **CONSTRUCTION PERIOD.** The Construction Period shall commence at the expiration of the Permitting/Financing Period or the date on which Lessee has obtained the Permits and the Financing, and terminate on the earlier of the date on which: (a) the Project has been substantially completed, as evidenced by the issuance of a certificate of occupancy for the Project, and (b) three (3) years from the expiration of the Permitting/Financing Period (including any Extension Period (defined in Section 2.5), if permitted, the "Construction Period").

2.4 **OPERATIONS PERIOD.** The Operations Period shall commence upon the earlier to occur of expiration of the Construction Period and continue for the remainder of the Term (the "Operations Period").

2.5 **EXTENSIONS.** Lessee agrees to use good faith and diligent efforts to obtain the Permits and the Financing within the Permitting/Financing Period, and to construct and complete the Project within the Construction Period. Lessee may extend the Permitting/Financing Period and/or the Construction Period for a period of one (1) year each (each, as "Extension Period"), provided that (a) Lessee requests the same in writing sent to the City no later than ninety (90) days prior to the expiration of the applicable period, (b) Lessee is not then in default of this Lease beyond any applicable cure period, (c) Lessee has been using good faith and diligent efforts and needs additional time for reasons beyond the reasonable control of Lessee, and (d) Lessee meets with the City during the aforementioned ninety (90)-day period and obtains the City's prior written consent, which shall not be unreasonably delayed, conditioned, or withheld.

2.6 **TERMINATION.** If Lessee is unable to obtain the Permits and/or the Financing within the Permitting/Financing Period, the City and Lessee shall each have the right to terminate this Lease, without recourse. At the termination of this Lease, Lessee shall remove its personal property and restore the Premises, as set forth more particularly in Section 12.4. Further, Lessee shall prepare, at Lessee's sole cost and expense, and execute and deliver to the City any amendments to the Notice of Lease and/or other documents reasonably necessary to evidence the termination of this Lease. Termination in accordance with this Section 2.6 shall not release either Party from any obligations arising prior to the effective date of such termination, but neither Party shall have the obligation to perform any obligations hereunder which, but for such termination, would have arisen after the effective date of such termination.

2.7 **REDUCTION OF TERM.** In the event that Lessee is unable to obtain the Permits and/or Financing within the time set forth in this Section 2, and neither the City nor Lessee has elected to terminate this Lease as provided in Section 2.6, the Term of this Lease shall be reduced and expire fifteen (15) years from the Effective Date, or such other period of time as agreed to by the Parties, in each Party's discretion.

2.8 **STATUS UPDATES.** Lessee shall provide the City with written status of the Permits and Financing once every three (3) months from the Effective Date until the commencement of the Construction Period, and shall meet with the City at such times as the City

may reasonably request, to update the City of the specific steps taken by Lessee to obtain the Financing and shall provide such other information as the City may reasonably request.

### **SECTION 3 – RENT; UTILITIES**

3.1 **BASE RENT.** Lessee agrees to pay the City base rent in the amount of One Dollar (\$1.00) for the Term of this Lease, to be paid on the commencement of the Operations Period (the “Base Rent”).

3.2 **INSTALLATION OF UTILITIES.** Lessee acknowledges that the City shall have no obligation under this Lease to provide or pay for any facilities, utilities, or services of any kind to the Premises whatsoever during the Term of this Lease. Lessee shall be responsible for providing and paying for any additional utilities and/or equipment as Lessee may need for its use of the Premises, and installing, maintaining, repairing, and/or replacing the same. Before Lessee installs any additional utilities and/or makes any capital or structural changes to the Premises to accommodate any utilities, Lessee shall obtain the prior written consent of the City and shall install the same in conformity with plans and specifications provided by Lessee and approved by the City, in accordance with the terms of Section 4, said consent not to be unreasonably withheld, and all costs incurred in connection therewith, including installation, maintenance and repairs of the same, shall be Lessee’s sole obligation.

3.3 **UTILITY CHARGES.** Commencing on the Effective Date, Lessee shall pay or shall cause to be paid, as Additional Rent, directly to the utility provider, all charges, fees and other payments to be made, however called, for any and all utility services furnished to or used at the Premises, including, without limitation, water, sewer, electricity, gas, heat, steam, air conditioning, ventilating, lighting systems, telephone, internet and other utilities and/or services (“Utility Charges”).

3.4 **ADDITIONAL RENT.** Commencing on the Effective Date, Lessee shall pay any and all real estate taxes, personal property taxes, special assessments, duties, fees or charges, betterments, and any other fee, charge, or assessment, whether general or special, ordinary or extraordinary, of any and every kind and nature, including governmental or other impositions, levied, assessed, or imposed, whether by federal, state, local, or any other public authority during the Term hereof, that are attributable to the Premises, the Improvements (defined below), Lessee’s use and/or operation thereof, and/or Lessee’s personal property located on the Premises, including the Utility Charges, on or before the same shall be due (including any other sums to be paid by Lessee under this Lease, “Additional Rent”). Lessee shall pay the Additional Rent directly to the charging authority, as provided below. The Base Rent and the Additional Rent are referred to, together, as the “Rent.”

3.5 **GENERAL RENT PROVISIONS.** Rent shall be payable by Lessee to the City without counterclaim, notice, demand, abatement or offset. All Rent and other payments required to be made by Lessee to the City under this Lease shall be paid by check made payable to the “City of New Bedford” and delivered to the City at the address set forth above, or at such other place as the City may from time to time direct by written notice to Lessee, provided,

however, that any Additional Rent, including any Utility Charges, that are charged directly to Lessee shall be paid by Lessee directly to the authority, agency, party or entity charging such amounts, so long as Lessee makes such payment on or before the date such payment is due, and provides the City with proof of payment promptly upon request.

3.6 INTEREST. All payments becoming due under this Lease and not paid when due shall bear interest from the applicable due date until received by the City at an annual rate equal to the prime rate of interest charged from time to time by Bank of America or its successor.

3.7 TRIPLE NET LEASE. Lessee acknowledges and agrees that this is a triple net lease, and that all costs, expenses, liabilities and obligations of any kind relating to the Premises, including, without limitation all construction, alterations, maintenance, repairs, restoration, reconstruction and replacements of the Theater, which may arise or become due during the Term hereof, shall be paid by Lessee at Lessee's sole cost and expense. All payments of Rent shall be absolutely net to the City, so that this Lease shall yield to the City the Base Rent herein specified each year during the Term of this Agreement free of any taxes, assessments, charges, impositions or deductions of any kind charged, assessed or imposed on or against the Premises. The City shall not be expected or required to pay any such charge, assessment or imposition, or furnish any services to the Premises or be under any obligation or liability hereunder.

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#### **SECTION 4 - ALTERATIONS AND/OR IMPROVEMENTS**

4.1 THE PROJECT. Lessee intends, subject to obtaining the Permits and the Financing, to undertake certain major and capital repairs, improvements, and alterations to the Theater as are shown on the Approved Plans (defined below), all of which shall be designed to enhance the use of the Theater as a performing arts theater or center (the "Project").

4.2 APPROVED PLANS AND SPECIFICATIONS. Lessee shall not make any alterations, improvements, additions, replacements, relocations or other material changes to the Theater and/or the improvements thereon, including, without limitation, the Project (the "Alterations"), without the City's prior written consent, which shall not be unreasonably withheld. Lessee shall, at its cost, prepare and deliver to the City complete working drawings, plans and specifications specifying the location, size and specifications of the Alterations and such other items as the City may reasonably request, and specifically describe all proposed Alterations and include a construction schedule, and obtain the City's approval of Lessee's plans for such Alterations at least forty-five (45) days prior to undertaking the same. Lessee agrees to address reasonable safety and aesthetics issues raised by the City, provided that the Alterations shall comply with the Standards for Rehabilitation established by the Secretary of the Interior set forth at 36 C.F.R. 67.7 (the "Secretary's Standards") and the City acknowledges and agrees that any aesthetics issues raised by the City may not be accepted if such requested changes do not comply with the Secretary's Standards, to be determined by the Lessee's historic consultant (which consultant shall be reasonably acceptable to the City). If the City fails to disapprove the plans within said forty-five (45) day period, said plans for the Alterations shall be deemed to be

approved, provided that the deemed-approved provision is expressly set forth in the notice to the City. The plans and specifications, as approved by the City and or deemed approved, are referred to as the "Approved Plans". The review and approval by the City under this Lease shall be in addition to any other approvals required under all applicable federal, state and local laws, rules and regulations. Lessee agrees to reimburse the City for reasonable fees and costs incurred by the City in reviewing such Approved Plans and ensuring that all Alterations are made in material compliance with the Approved Plans, provided that the City submits to Lessee invoices showing such costs.

4.3 HISTORIC REHABILITATION. The City acknowledges that Lessee is seeking federal historic rehabilitation tax credits and Massachusetts historic rehabilitation tax credits (together, the "Credits") and the City agrees to use reasonable efforts to comply with the requirements of the Credits, at Lessee's sole cost and expense. All Alterations to the Premises, including, without, the Project, shall be performed in compliance with the Secretary's Standards, and will qualify for the Credits available in connection with such rehabilitation work. The Credits will provide an important economic benefit to Lessee; therefore, any alterations to the Premises must be performed with great care to comply with the Secretary's Standards, and may only be performed after consultation with and approval by Lessee's historic consultant. Lessee will bear the cost and expense associated with performing the Alterations as well as the fee associated with retaining its historic consultant.

4.4 CONSTRUCTION COSTS. Except as provided otherwise, Lessee will pay all costs and expenses incurred in connection with the construction, maintenance and operation of the improvements or any other Alterations made or done to or at the Premises. Lessee shall repair, at its sole cost and expense, any damage caused to the Premises or any improvements thereon arising out of or caused by the act or omission of Lessee or its employees, agents, representatives, contractors, subcontractors, invitees and others acting by or through Lessee (with Lessee, the "Lessee Parties").

4.5 INSURANCE FOR ALTERATIONS. Lessee shall have and maintain in force general liability insurance, property insurance, builder's risk insurance, and workmen's compensation insurance affording applicable statutory coverage and containing statutory limits. All such policies shall comply with the provisions of Sections 9 and 10 hereof.

4.6 COMPLIANCE WITH LAWS. Lessee shall procure all necessary permits before undertaking any Alterations on the Premises and shall cause all such work to be performed in a good and first-class workmanlike manner and in accordance with the requirements of insurers, employing new materials of good quality and shall defend, hold harmless, exonerate and indemnify the City from all injury, loss or damage to any person or property occasioned by such work. Lessee shall at all times comply with any and all applicable federal, state, and/or local laws, codes, ordinances, rules and regulations, including, without limitation, the Environmental Laws (defined below), Massachusetts public bidding laws, if applicable, any rules and regulations of the Board of Fire Underwriters, or any other body hereafter constituted exercising similar functions, and governing insurance rating bureaus (collectively, the "Applicable Laws"). Lessee agrees to employ responsible contractors for such Alterations and shall cause such contractors to carry the insurance required under Section 10 and agrees to submit certificates



evidencing such coverage to the City prior to the commencement of and during the continuance of any such work.

4.7 **PERFORMANCE AND PAYMENT BONDS.** Prior to the commencement of any Alterations, Lessee shall, at the City's request, provide the City with copies of a performance and a labor and materials payment bond provided by Lessee's contractor, in the amount of 100% of the value of the contract, ensuring the completion of the work and payment for labor and materials, which bonds shall name Lessee and the City as co-obligees under said bond (the "Bond"), which Bond may also name any or all Financing Parties.

4.8 **LIENS AND ENCUMBRANCES.** Lessee shall not permit any mechanic's liens, or similar liens to remain upon the Premises for labor and material furnished to Lessee or claimed to have been furnished to Lessee in connection with work of any character performed or claimed to have been performed at the direction of Lessee, and shall cause any such lien to be released of record without cost to the City within thirty (30) days after Lessee receives notice of filing of same. All materialmen, contractors, artisans, mechanics, laborers and any other persons now or hereafter who contract with Lessee for the furnishing of any labor, services, materials, supplies or equipment with respect to any portion of the Premises are hereby charged with notice that they must look exclusively to Lessee to obtain payment for same. Lessee agrees that it will, on request from the City, comply with any and all reasonable requirements of the City with respect to the work performed or materials furnished by Lessee or its agents, contractors, and sub-contractors in the Premises.

4.9 **OWNERSHIP OF IMPROVEMENTS.** The City has and shall retain legal title to the Premises; however, the City agrees that Lessee shall be treated as the owner of the Premises for federal and state income tax purposes and shall be entitled to depreciation and any Credits with respect thereto. The City agrees that it will not claim tax credits, depreciation or any other federal or state income tax benefits with respect to the Premises, or take any action that is inconsistent with this provision. All Alterations and/or additions made by Lessee and fixtures installed by Lessee shall be owned by Lessee during the Term of this Lease, but will become the exclusive property of the City upon the expiration or earlier termination of this Lease, without any payment by the City therefor.

4.10 **INSPECTION OF IMPROVEMENTS.** The City's representatives may enter upon the Premises from time to time on reasonable notice to Lessee for the purpose of inspecting any repairs, Alterations or other work being done on or to the Premises, and such entry shall not be construed to be a violation of Lessee's right to possession of the Premises. At final completion of any Alterations, the City shall have the right to inspect the work to determine material conformity with the Approved Plans and may direct Lessee to perform such additional work as may be necessary to materially conform to the same. Further, within sixty (60) days after final completion of the Alterations or the completion of other major improvements on or to the Premises, Lessee shall prepare at its expense and deliver to the City one complete, legible and reproducible full-sized set of as-built plans or their equivalent showing the Alterations and/or other improvements, as the case may be, and, if reasonably requested by the City, a certified ALTA survey plan.

## SECTION 5 - USE OF PREMISES

5.1 PERMITTED USES. Lessee agrees that the Premises shall be used solely as a performing arts center for members of the public, offering enhanced cultural activities and educational and/or artistic opportunities, programs, and events (the "Permitted Uses"). In no event shall the Premises be used for any purpose other than the Permitted Uses.

5.2 COMPLIANCE WITH THE CITY'S REGULATIONS. Lessee shall comply and shall cause its employees, agents, and invitees to comply with such reasonable rules and regulations as the City shall from time to time establish governing the Premises and/or Lessee's use thereof, provided that the City gives Lessee reasonable advance notice thereof.

5.3 COMPLIANCE WITH LAWS, RULES, REGULATIONS AND CODES. Lessee acknowledges that it shall use and maintain the Premises in compliance with all Applicable Laws. Lessee shall not permit the Premises to be overloaded, damaged, stripped, or defaced, nor suffer any waste.

5.4 HAZARDOUS SUBSTANCES. Lessee shall not bring or permit to be brought or kept on the Premises, or release and/or otherwise dispose of any hazardous, toxic, inflammable, combustible or explosive fluid, material, chemical, or substance, including without limitation any item defined as hazardous pursuant to any of the Environmental Laws or any other materials that are included under or regulated by any Environmental Law, except for those ordinary and customary cleaning products, pesticides and other chemicals and compounds used in connection with property management and Lessee's Permitted Uses, provided the same are used in compliance with all Environmental Laws ("Hazardous Substances"). "Environmental Laws" means, collectively, any federal, state, or local law, rule or regulation, codes and/or ordinances (whether now existing or hereafter enacted or promulgated, as they may be amended from time to time) pertaining to environmental regulations, contamination, clean-up or disclosures, and any judicial or administrative interpretation thereof, including any judicial or administrative orders or judgments, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq. ("CERCLA"), the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, G.L. c. 21E §§ 1 et seq., and/or any other applicable federal or state statute or city or county ordinance regulating the generation, storage, containment or disposal of any Hazardous Substances or providing for the protection, preservation or enhancement of the natural environment, and any rules or regulations promulgated pursuant to any of the foregoing statutes or ordinances, including but not limited to laws relating to groundwater and surface water pollution, air pollution, transportation, storage and disposal of oil and hazardous wastes, substances and materials, stormwater drainage, and underground and above ground storage tanks.

5.5 HAZARDOUS SUBSTANCES INDEMNITY. Lessee shall indemnify, defend with counsel acceptable to the City and save harmless the City from and against any and all claims (including, without limitation reasonable attorneys' and experts' fees and expenses, clean-up costs, waste disposal costs and those costs, expenses, penalties and fines within the meaning of any Environmental Law) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against any of the City and/or its agents, employees,

representatives, boards, and/or commissions (with the City, the "City Parties") arising from or related to the failure of the Lessee or any of the other Lessee Parties to comply with the Environmental Laws, the presence, use, discharge or release or threatened release of any Hazardous Materials on or from the Premises, and/or for contributing to and/or exacerbating any environmental condition existing on the Premises. The City shall have no responsibility to Lessee or any of the other Lessee Parties for the presence of Hazardous Substances on the Premises or be required to abate or remediate the same; if Hazardous Substances are present on the Premises and materially interfere with Lessee's use of the Premises for the Permitted Use, Lessee sole and exclusive remedy is to terminate this Lease without recourse. The provisions of this Section shall survive the expiration or earlier termination of the Lease.

**5.6 ABANDONMENT OF USE.** Subject to fire or other casualty and/or other Force Majeure (defined below) event outside the control of Lessee, and except during the Construction Period, Lessee covenants and agrees to continuously and uninterruptedly use the Premises for the Permitted Use. Subject to Section 9.8 hereof, if the Premises are not used for the Permitted Uses for a continuous period of one (1) year, the Premises shall be deemed abandoned, deserted, or vacated by Lessee, and the City shall have the right to terminate this Lease and recover exclusive possession of the Premises by written notice to Lessee. In the event the City exercises its right to terminate this Lease under this Section, this Lease shall terminate as of the date that is sixty (60) days after the date of the City's notice to Lessee thereof, and Lessee's rights with respect to this Lease shall terminate as of such date, except for those provisions stated herein to survive the termination hereof.

## **SECTION 6 - ASSIGNMENT AND SUBLETTING**

Lessee shall not assign, sublet, underlet, mortgage, pledge and/or encumber (collectively referred to as "Transfer") this Lease without the City's prior written consent, which may be withheld in the City's sole reasonable discretion. Consent by the City to any permitted Transfer shall not constitute a waiver of the City's right to prohibit any subsequent Transfer; nor shall such consent be deemed a waiver of the City's right to terminate this Lease upon any subsequent Transfer. As used herein, the term "assign" or "assignment" shall be deemed to include, without limitation, any transfer of Lessee's interest in the Lease by operation of law.

Notwithstanding the foregoing, Lessee shall have the right to assign or transfer its rights under this Lease to any entity that Lessee controls, provided that (a) Lessee is not then in material default of its obligations under this Lease beyond any applicable cure period, (b) sends written notice to the City at least thirty (30) days prior to any such transfer, notifying the City of the transferee's name and evidence of the control that Lessee exercises over such transferee, and obtains the City's written consent, not to be unreasonably withheld, and (c) any such transferee enters into an Assumption Agreement, expressly agreeing to perform all of Lessee's obligations under this Lease. The City hereby acknowledges and agrees that Lessee may sublease the Theater to [Zeiterion MT, LLC] for a term of 32 years pursuant to that certain Master Lease by and between Lessee, as landlord, and [Zeiterion MT, LLC], as tenant, dated on or about the date hereof.

## **SECTION 7 - REPAIRS AND MAINTENANCE**

**7.1 LESSEE'S RESPONSIBILITY.** Lessee shall keep the Premises, including the Theater, in good, safe and clean order, condition and repair, including, without limitation, all electrical fixtures, windows, halls, stairwells, lavatories and all other areas of the Premises, the landscaping (including, without limitation, keeping the grass neat and cut and trimming of trees and bushes), the parking areas of the Premises, all pipes, wiring and lighting, all plumbing and utility lines serving the Premises, the boilers and the heating and ventilating system, and the fire protection equipment and systems serving the Premises, reasonable use and wear and damage by fire or other casualty excepted. Lessee shall also, at its sole expense, keep and maintain the Premises and all sidewalks, curbs and drives on or adjoining the same in a clean and orderly condition, free of dirt, rubbish, and unlawful obstructions. Lessee shall be responsible for removing snow and ice from the Premises, including all sidewalks, walkways, and parking areas. Lessee shall be responsible for removing trash from the Premises and the collection and disposal thereof. Lessee shall not allow rubbish or trash to accumulate on or about the Premises. Lessee agrees to keep, operate, use and maintain every part of the Premises in conformity with all requirements of the law and applicable fire underwriting and related regulations, and to do all other work necessary to comply with the foregoing covenant. Lessee acknowledges that the City shall have no obligation to maintain the Premises hereunder, or to pay for the same, except to the extent expressly provided in this Lease.

**7.2 ANNUAL INSPECTIONS, BUDGET.** Without limiting the City's rights to access the Premises under other provisions of this Lease, the City hereby specifically reserves the right to conduct an annual inspection of the Premises, and Lessee shall allow entry and access to the New Bedford Fire Chief, Inspector, and such other persons as the Mayor may designate, for the purpose of investigating the condition of the Premises. The City shall provide Lessee with a minimum notice of twenty-four (24) hours, and not interfere unreasonably with Lessee's use of the Premises. The City may provide Lessee with an annual report of such assessments and list of repairs or maintenance that the City reasonably determines need to be made.

**7.3 LESSEE'S FAILURE TO MAINTAIN.** If Lessee shall fail to keep the Premises in the condition required herein, or if repairs are required to be made by Lessee pursuant to the terms hereof, within thirty (30) days after notice by the City (or without notice in any emergency, immediately threatening life or property), the City shall have the right (but shall not be obligated) to make such repairs, replacements or perform maintenance work or any other work required of Lessee pursuant to this Lease and charge the reasonable cost thereof to Lessee, with interest. Notwithstanding anything to the contrary herein, any repairs, replacements or maintenance work performed by the City pursuant to this Section 7.3 shall comply with the Secretary's Standards, if applicable.

## **SECTION 8 - TRANSFER OF LESSEE'S INTERESTS**

**8.1 TRANSFER.** Notwithstanding the provisions of Section 6, Lessee may, upon prior written notice to the City, from time to time, encumber, hypothecate or mortgage its interest in the Premises with one or more leasehold mortgages, assignments of leasehold interest or any other security instruments in favor of a lender or lenders as partial security for a loan or loans for

the Alterations to be made to the Premises (a "Permitted Mortgage" and the holder of such Permitted Mortgage, a "Permitted Mortgagee"). Each such Permitted Mortgage shall mature no later than the last day of the term of this Lease, be a leasehold mortgage only, and be expressly subject and subordinate to the terms and conditions of this Lease. It is expressly understood and agreed that Lessee has no right to mortgage or otherwise encumber the fee title to the Premises, except that Lessee may encumber the Improvements that Lessee constructs on the Premises. Lessee shall promptly deliver to the City a true copy of the Permitted Mortgage and any assignment thereof. Lessee shall notify the City of the address of the Permitted Mortgagee to which notices may be sent, it being understood and agreed that the City shall have no obligation to notify a Permitted Mortgagee of any default under this Lease until and unless the then-current address of such Permitted Mortgagee shall have been provided to the City in writing. The City and Lessee hereby agree that there shall be no modification of this Lease that would materially and adversely affect such Permitted Mortgagee's rights hereunder without the prior consent in writing of the Permitted Mortgagee.

**8.2 PERMITTED MORTGAGES NOT A TRANSFER.** For the purpose of this Section 8, the making of a Permitted Mortgage shall not be deemed to constitute a Transfer of this Lease, nor shall any Permitted Mortgagee, as such, be deemed an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such Permitted Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Lessee to be performed hereunder; but the purchaser at any sale of the leasehold interest created by this Lease in any proceedings for the foreclosure of any Permitted Mortgage, or the assignee or transferee of such leasehold interest under any instrument of assignment or transfer in lieu of the foreclosure of any Permitted Mortgage, shall be deemed to be an assignee or transferee (without requiring the consent of the City pursuant to Section 6) and shall be deemed to have assumed the performance of all of the terms, covenants and conditions on the part of Lessee to be performed hereunder from and after the date of such purchase and assignment, and shall execute a written instrument assuming Lessee's obligations hereunder promptly upon request by the City.

**8.3 PERMITTED MORTGAGE CURE RIGHTS.** In the event Lessee defaults in the payment of Rent or fails to perform any other Lease obligation that can be cured by a payment of money, including, without limitation, Lessee's obligation to obtain and maintain the insurance required hereunder (any, a "Monetary Default"), the City shall not have the right to terminate this Lease unless the City shall have given a copy of the Monetary Termination Notice (defined in Section 9.2) to Lessee and the Permitted Mortgagees, and Tenant and such Permitted Mortgagees (without being under any obligation to do so), shall have failed to cure such Monetary Default within the sixty (60)-day notice period set forth in the Monetary Termination Notice (defined in Section 9.2). In the case of any default by the Lessee not curable by the payment of money hereunder (a "Non-Monetary Default"), the City shall not have the right to terminate this Lease by reason of any such default unless the City shall have given a copy of the Non-Monetary Termination Notice (defined in Section 9.2) to Lessee and the Permitted Mortgagees and such Permitted Mortgagees, without being under any obligation to do so, shall have failed to cure such Non-Monetary Default with the ninety (90) day-period set forth in Section 9.2, or, if such Non-Monetary Default cannot reasonably be cured within such ninety (90) days, within such longer period as is reasonably required for Permitted Mortgagee to obtain possession of the Premises or title to the Lessee's leasehold estate created hereby, provided that

the Permitted Mortgagee shall have commenced cure or appropriate measures to obtain possession of the Premises or title to the Lessee's leasehold estate created hereby within such ninety (90)-day period and thereafter continues diligently to effect such cure or obtain such possession or title. The Permitted Mortgagee shall not be required to continue such foreclosure proceedings if the default shall be cured by Lessee. Upon the expiration of any applicable cure period, the City shall notify the Permitted Mortgagee whether or not Lessee has effectuated a cure within said cure period.

The provisions of this Section are conditioned on the following provisions:

(a) The Permitted Mortgagee shall, within forty-five (45) days after notice of such Lessee Non-Monetary Default, notify the City of its election to proceed with due diligence promptly to acquire possession of the Premises or to foreclose the Permitted Mortgage or otherwise to obtain ownership of Lessee's interest in this Lease. Such notice from the Permitted Mortgagee shall be accompanied by an instrument in writing wherein such Permitted Mortgagee agrees that:

- (i) during the period that such Permitted-Mortgagee shall be in possession of the Premises and so long as it remains in possession and/or during the pendency of any such foreclosure or other proceedings and until the interest of Lessee in this Lease shall terminate or such proceeding shall be discontinued, it will pay or cause to be paid to the City and to others all sums from time to time becoming due hereunder during such period; and
- (ii) if delivery of possession of the Premises shall be made to such Permitted Mortgagee, whether voluntarily or pursuant to any foreclosure or other proceedings or otherwise, such Permitted Mortgagee shall, promptly following such delivery of possession, perform all the covenants and agreements thereafter arising and herein contained on Lessee's part to be performed (including, but not limited to, the use of the Premises for the Permitted Use and the payment of Rent and Additional Rent) except such covenants and agreements which cannot with the exercise of due diligence be performed by such Permitted-Mortgagee (such as a default under Section 9.1(e)). Nothing in this subclause (ii) shall be construed to require such Permitted Mortgagee to perform any of the Lessee's obligations hereunder accruing after such Permitted-Mortgagee ceases to be in possession.

## **SECTION 9 - DEFAULT AND TERMINATION**

9.1 **EVENT OF DEFAULT.** Each of the following events shall be deemed an "Event of Default" hereunder:

(a) if Lessee shall fail to pay, as and when due, any payment of Rent or other sums payable under this Lease or to observe any provision that is curable by a payment of money, including Lessee's obligation to maintain the insurance required under this Lease and such failure shall continue for a period of fifteen (15) days after notice from the City to Lessee;

(b) if Lessee fails to perform or comply with any other of the other terms or conditions of this Lease, other than those referred to in subsections (a) and (c) of this Section 9.1, for a period of sixty (60) days after notice from the City to Lessee specifying the items in default; and/or

(c) if Lessee shall initiate the appointment of a receiver to take possession of all or any portion of the Premises or Lessee's leasehold estate for whatever reason, or Lessee shall make an assignment for the benefit of creditors, or Lessee shall initiate voluntary proceedings under any bankruptcy or insolvency law or law for the relief of debtors; or if there shall be initiated against Lessee any such proceedings which are not dismissed or stayed on appeal or otherwise within ninety (90) days, or if, within ninety (90) days after the expiration of any such stay, such appointment shall not be vacated or stayed on appeal.

Notwithstanding the foregoing, if there is an Event of Default under Subsections 9.1(b) and such Event of Default is caused primarily because of a Force Majeure event, then such Event of Default shall be excused only for the period of delay caused by the Force Majeure event.

9.2 REMEDIES. Upon an Event of Default, the City at any time thereafter may give written notice to Lessee specifying such Event or Events of Default and stating that this Lease and the Term hereby demised shall expire and terminate on the date specified in such notice, which shall be least sixty (60) days after the giving of such notice if the Event of Default is a Monetary Default (the "Monetary Termination Notice"), and which shall be at least ninety (90) days for Non-Monetary Defaults (the "Non-Monetary Termination Notice"), subject to the rights for notice and cure for the Permitted Mortgagees as set forth in Section 9.2(c). Upon the date specified in such Monetary Termination Notice or the Non-Monetary Termination Notice, as the case may be, this Lease and the Term hereby demised and all rights of Lessee under this Lease shall expire and terminate (unless prior to the date specified for termination the Event or Events of Default shall have been cured, in which case this Lease shall remain in full force and effect), and Lessee shall remain liable as hereinafter provided. In the event that Lessee and the Permitted Mortgagees elect not to remove the Improvements, as provided in Section 4.9, all Improvements shall become the property of the City without the necessity of any deed or conveyance from Lessee to the City. Lessee agrees upon request of the City to immediately execute and deliver to the City any deeds, releases or other documents deemed necessary by the City to evidence the vesting in the City of the ownership of all Improvements. Upon such termination, the City may re-enter the Premises and dispossess Lessee and anyone claiming by, through or under Lessee by summary proceedings or other lawful process.

9.3 RIGHT TO PERFORM LESSEE'S OBLIGATIONS. (a) Upon any Event of Default, the City may, but shall be under no obligation to, cure such default. The City may enter upon the Premises (after five (5) days' written notice to Lessee except in the event of emergency) for any such purpose, and take all such action thereon, as may be necessary.

(b) The City shall not be liable for inconvenience, annoyance, disturbance or other damage to Lessee or any operator or occupant thereof by reason of making such repairs or the performance of any such work, or on account of bringing materials, tools, supplies and equipment onto the Premises during the course thereof, and the obligations of Lessee under this

Lease shall not be affected thereby. The City shall minimize interference with the use of the Premises for the Permitted Use.

(c) All reasonable sums so paid by the City and all reasonable costs and expenses incurred by the City, including reasonable attorneys' fees and expenses, in connection with the performance of any such act, together with interest at the Default Rate from the date of such payment or incurrence by the City of such cost and expense until the date paid in full, shall be paid by Lessee to the City, as Additional Rent, on demand. If the City shall exercise its rights under this Section to cure a default of Lessee, Lessee shall not be relieved from the obligation to make such payment or perform such act in the future, and the City shall be entitled to exercise any remedy contained in this Lease if Lessee shall fail to pay such obligation to the City upon demand.

9.4 NO WAIVER. No failure by either the City or Lessee to insist upon the strict performance of any agreement, term, covenant or condition hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such agreement, term, covenant or condition. No agreement, term, covenant or condition hereof to be performed or complied with by either the City or Lessee, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver by the City or Lessee of any breach shall affect or alter this Lease, but each and every agreement, term, covenant and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

9.5 INJUNCTIVE RELIEF. In the event of any breach by Lessee of any of the agreements, terms, covenants or conditions contained in this Lease, the City shall be entitled to enjoin such breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease.

9.6 REMEDIES CUMULATIVE. Each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the City or Lessee of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

9.7 CITY DEFAULT. The City shall not be in default of any of its material obligations under this Lease unless and until Lessee shall have given written notice to the City specifying the nature of such default and the City shall have failed to cure the same within ninety (90) days from the date of said notice, provided that if such default cannot reasonably be cured within said ninety (90)-day period, if the City shall have failed to commence the cure within the ninety (90)-day period and thereafter completed the same within a reasonable period of time.



9.8 STANDSTILL. Notwithstanding anything to the contrary herein, the City shall not have the right to terminate this Lease during the historic rehabilitation credit compliance period commencing on the date the first qualified rehabilitation expenditure with respect to the Premises is incurred by Lessee and ending on the fifth anniversary the last qualified rehabilitation expenditure with respect to the Premises is placed in service.

9.9 SURRENDER. Lessee shall, prior to the expiration of this Lease or within thirty (30) days from its earlier termination, remove Lessee's personal property from the Premises and any improvements made by Lessee that can be removed without damage to the Premises, and shall surrender and deliver the Premises to the possession and use of the City without delay. The Premises shall be surrendered free and clear of all liens and encumbrances other than those existing on the Effective Date or those created or suffered by the City, and without any payment by the City on account of any Lessee Alterations and/or improvements. If, as a result of any removal of any Lessee property and/or improvements and/or the actions or omissions of any of the Lessee Parties, the Premises and/or any improvements thereon are damaged, Lessee shall fully repair such damage and shall restore the Premises to the condition they are required to be maintained in hereunder, at Lessee's sole cost and expense.

## **SECTION 10 - INDEMNIFICATION; RELEASE**

10.1 INDEMNIFICATION. Lessee shall defend, indemnify, and save harmless the City from and against any and all claims, actions, proceedings, damages, demands, losses, expenses, and/or liabilities of any kind or nature (the "Claims") arising from or relating to (a) Lessee's failure to comply with the terms of this Lease, including, without limitation, Lessee's failure to comply with the Applicable Laws, (b) the exercise of the rights granted hereunder, (c) the act, omission, negligence, willful misconduct or intentional conduct of Lessee or any of the other Lessee Parties, (d) any accident, injury, or damage whatsoever, however caused, to any person, or to the property of any person, in or about the Premises, or arising from any accident occurring outside the Premises but within the general area of the Premises, where such accident, injury or damage results or is claimed to have resulted from any act, omission or negligence on the part of any of the Lessee Parties, and/or (e) the construction of the Project and/or any work done on and about the Premises. The foregoing indemnity and hold harmless agreement shall include indemnity against all costs, expenses and liabilities incurred in or in connection with any such claim or proceeding brought thereon, including attorneys' fees, and the defense thereof with counsel acceptable to the City or counsel selected by an insurance company which has accepted liability for any such claim. Notwithstanding the foregoing, Lessee shall not be obligated to indemnify the City for any Claims arising out of or related to the negligence or willful misconduct of the City or any of the other City Parties. The foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the City which would exist at common law or under any other provision of this Lease, and the extent of the obligation of indemnification shall not be limited by any provision of insurance required under this Lease.

10.2 RELEASE. To the maximum extent this Lease may be made effective according to law, Lessee agrees to use and occupy the Premises at Lessee's own risk, and that the City shall not be liable for, or suffer loss by reason of, any damage or injury to any property, fixtures, buildings

or other improvements, or to any person or persons, at any time on the Premises, specifically including any damage or injury to the person or property of Lessee or any of the Lessee Parties, from whatever cause, in any way connected with the condition, use, occupational safety or occupancy of the Premises, except to the extent caused directly by the negligence or willful misconduct of the City Parties. Without limitation, Lessee agrees that the City shall not be responsible or liable to Lessee, or those claiming by, through or under Lessee, for any loss or damage resulting to Lessee or any of the other Lessee Parties its or their property from the breaking, bursting, stopping or leaking of electric cables and wires, and water, gas or steam pipes.

10.3 SURVIVAL. The provisions of this Section shall survive the expiration or termination of this Lease.

### **SECTION 11 - INSURANCE**

11.1 THE CITY'S INSURANCE. The Parties expressly agree and acknowledge that the City has no obligation to maintain property insurance or any other kind of insurance on the Premises.

11.2 LESSEE'S INSURANCE. Lessee shall obtain and keep in force at its own expense, so long as this Lease remains in effect and thereafter so long as Lessee or anyone claiming by, through or under Lessee, uses or occupies the Premises or any part thereof, policies of insurance for the benefit of such parties, in the amounts, and in the manner and form set forth in this Section. Lessee shall furnish certificates evidencing each such insurance coverage to the City prior to the execution of this Lease, on each anniversary of the Effective Date, and at such other times as the City may reasonably request. Lessee shall require its insurer to give the City written notice at least thirty (30) days in advance of any termination, expiration or material changes in coverage. The kinds and amounts of such insurance coverage shall not be less than the kinds and amounts designated herein. The acceptance by the City of Certificates of Insurance indicating the kinds and limits of coverage shall in no way limit the liability of Lessee to any such kinds and amounts of insurance coverage.

(a) Property Insurance. Lessee shall, at its sole expense, obtain and keep in force during the Term, "all-risk" property insurance coverage insurance on the Premises, including the Theater and any fixtures and Improvements now or hereinafter made to the Premises, including, but not limited to, machinery and boilers, naming Lessee as the insured, and otherwise in the customary form for property insurance coverage of buildings of similar character in the Primary Metropolitan Statistical Area that includes the City of New Bedford, naming the City as an additional insured. The amount of such insurance will be set forth on an "agreed amount endorsement" to the policy of such insurance and will not be less than 100% of the full replacement value of the Theater and other improvements, as determined and increased from time to time;

(b) Builder's Risk. During the period of any construction, repair and/or replacement of the Improvements and/or any other work done by Lessee on or to the Premises, Lessee shall also keep in full force and effect, at its sole cost and expense, "Builder's All Risk" insurance against loss or damage on a completed value non-reporting basis from such hazards and in such amounts as the City may reasonably require;

(c) General Liability Insurance: A Comprehensive General Liability policy on an occurrence basis endorsed to include broad form comprehensive general liability with a combined single limit of liability of not less than \$2,000,000.00. The policy shall name the City, and the other City Parties as additional insured parties.

(d) Worker's Compensation Insurance: Lessee and the other Lessee Parties, as applicable, shall provide Workers' Compensation Insurance required by law and Employer's Liability insurance for at least the amounts of liability for bodily injury by accident of \$500,000.00 each accident; bodily injury by disease each employee of \$500,000.00; and bodily injury by disease policy limit of \$500,000.00, or such greater amount as may be required from time to time by the laws of the Commonwealth of Massachusetts.

(e) Umbrella/Excess Liability Insurance: An Umbrella/Excess Liability insurance policy on an occurrence basis "following form" of the primary coverage with a limit of liability of \$3,000,000.00. The Umbrella/Excess Liability insurance policy shall include but not be limited to the following coverages for bodily injury, property damage and personal injury: (i) Premises - Operations Liability; (ii) Contractual Liability; (iii) Automobile Liability for owned, non-owned and hired vehicles. The City, its officers, agents, servants and employees shall be named as additional insurers.

(f) Contractor's Insurance: Should Lessee undertake any work on or to the Premises, including any Alterations, Lessee will be required to provide the City with evidence that Lessee has required its contractors to maintain (i) worker's compensation insurance in the amounts required by law (or reasonably comparable insurance if such insurance is no longer available), (ii) builder's risk (or such reasonably comparable insurance) insurance on an "all risk" basis (including collapse) insuring against casualty to such construction for full replacement value of the work performed and the equipment supplies and materials furnished and stored, (iii) automobile liability insurance in the minimum amounts required by law with limits of liability not less than \$1,000,000 per occurrence for property damage and \$2,000,000 combined single limit, (iv) Employer's Liability Insurance affording protection in the amount of not less than \$500,000 per accident and \$500,000 for disease, (v) public liability insurance within limits in an amount not less than \$3,000,000 comprehensive general liability total with a limit of \$1,000,000 an occurrence, and (vi) Professional Impairment Liability Insurance providing coverage for bodily injury and/or property damage arising out of acts and omissions of Lessee or its contractors, employees or agents in the performance of any work or any other activities or failures to act at or with respect to the Premises in the amount of \$1,000,000 for each claim and \$2,000,000 in the aggregate (which insurance, unlike the other insurance noted above, may be made on a claims made basis). Lessee shall require that the City and the other City Parties be named as additional insurers on all contractors, subcontractor's and independent contractor's insurance, excluding Workers' Compensation.

11.3 INCREASES IN COVERAGE. The City shall have the right to require Lessee to increase such limits when, during the Term of this Lease, minimum limits of liability insurance commonly and customarily carried on properties comparable to the Premises by responsible owners or lessees are more or less generally increased, it being the intention of this sentence to

require Lessee to take account of inflation in establishing minimum limits of insurance maintained from time to time on the Premises, which shall occur no more than once every three (3) years.

11.4 **PERSONAL PROPERTY.** Lessee agrees that the City shall have no responsibility or liability for any loss or damage or injury from any cause whatsoever, including theft or otherwise of fixtures, improvements, or other personal property of Lessee. Lessee agrees that it shall continuously keep its fixtures, equipment and other personal property from time to time located in, on or about the Premises, and all leasehold improvements to the Premises constructed or installed by Lessee insured by reputable, duly licensed insurance companies against loss or damage by fire with the usual extended coverage endorsements. Lessee shall furnish to the City evidence of such continuous insurance coverage satisfactory to the City at the Effective Date and each anniversary thereof. It is understood and agreed that Lessee assumes all risk of damage to its own property arising from any cause whatsoever, including, without limitation, loss by theft or otherwise.

Lessee hereby waives any and all rights of recovery which it might otherwise have against the City, its agents, employees and other persons for whom the City may be responsible for any loss or damage to Lessee's property or improvements in the Premises which are either required to be insured under the terms of this Lease or which Lessee, in the absence of any such requirement, elects to insure, notwithstanding that the loss or damage may result from the negligence, willful act or default under the terms of this Lease by the City or any of the other City Parties.

10.5 **GENERAL REQUIREMENTS.** The City shall be named as an additional insured on all insurance policies (except Worker's Compensation). All required insurance shall be written with recognized insurers, licensed and doing business in Massachusetts and having a so-called Best's Rating of "A" or better, or, if such rating is no longer issued, an equal or better rating by a successor insurance carrier rating service reasonably acceptable to the City. Without limiting the City's other rights under any other provisions of this Lease, if Lessee shall fail to keep the Premises insured as provided herein, and if such failure shall continue to a period of ten (10) days following written notice by the City to Lessee thereof, then the City, without further notice to Lessee, may take out and pay for such insurance, and the amount of such payment shall become due and payable as Additional Rent on demand.

#### **SECTION 11 - CASUALTY; EMINENT DOMAIN**

(a) For the purposes of this Section 11, "material part" shall be defined as that portion of the Premises which if damaged or taken by eminent domain would materially affect the use of the Premises for the Permitted Uses.

(b) If all or a material part of the Premises shall be destroyed or damaged by fire or other casualty, or if all or a material part of the Premises shall be taken by any public or quasi-public agency or authority other than the City for any public or quasi-public use under governmental law or by right of eminent domain, and the taking would materially interfere with the use of the Premises for the Permitted Uses, then this Lease shall terminate at the election of

either the City or Lessee. Any such termination shall be effective thirty (30) days after the date of notice thereof.

(c) If any part of the Premises is damaged by fire or other casualty or is taken by a public authority and this Lease is not terminated by the City or Lessee as provided above, the City may, at its sole discretion, repair and restore the Premises, or what remains thereof in the case of a partial taking, to their condition prior to such damage, destruction, or taking, subject to appropriation of funds and compliance with applicable procurement and bidding laws. If the City elects to make any repairs, the City shall use good faith efforts to repair the Premises within a reasonable time, subject to the City's budgetary, appropriation and borrowing requirements and its obligation to comply with legal requirements relating to public building projects and public procurement.

(d) In the event of a taking by eminent domain, the City shall have, and hereby reserves and excepts, and Lessee hereby grants and assigns to the City, all rights to recover for damages to the Premises and the leasehold interest hereby created, and to compensation accrued or hereafter to accrue by reason of such taking or damage. Lessee covenants to deliver such further assignments and assurances thereof as the City may from time to time request, hereby irrevocably designating and appointing the City as its attorney-in-fact to execute and deliver in Lessee's name and behalf all such further assignments thereof. Nothing contained herein shall be construed to prevent Lessee from prosecuting in any condemnation proceedings a claim for the value of any of Lessee's usual trade fixtures installed in the Premises by Lessee at Lessee's expense and for relocation expenses, provided that such action shall not affect the amount of compensation otherwise recoverable hereunder by the City from the taking authority.

(e) If during the Lease term the Premises shall be damaged by fire or casualty, and if such damage shall materially interfere with Lessee's use of the Premises as contemplated by this Lease but this Lease is not terminated by the Parties, a just portion of the Base Rent payable by Lessee hereunder may be abated or reduced, but such abatement or reduction shall end when the City shall have substantially restored the Premises or so much thereof as shall have been originally constructed by the City (exclusive of any of Lessee's Alterations, fixtures, furnishings, equipment and the like or work performed therein by Lessee) to substantially the condition in which the Premises were prior to such damage.

#### **SECTION 12 - [INTENTIONALLY OMITTED]**

12.1  
12.4

#### **SECTION 13 - PURCHASE OPTION**

13.1 **OPTION TO PURCHASE.** The Parties agree that Lessee shall have an option to purchase the Premises (the "Option") at the expiration of this Lease (the "Expiration Date") for consideration of One Dollar (\$1.00), provided that (a) Lessee is not then in default under this Lease, and (b) Lessee delivers written notice of its intent to exercise said Option ("Notice of

Exercise”) at least sixty (60) days prior to the Expiration Date, with the closing to occur on the Expiration Date in compliance with the terms hereof. In the event that Lessee wants to exercise the Option and close prior to the Lease Expiration Date, Lessee shall deliver the Notice of Exercise to the City at least sixty (60) days prior to the closing date and, provided that Lessee does not exercise the Option any sooner than fifteen (15) years from the Effective Date, the City will convey the Premises to Lessee for consideration of One Dollar, the payment of the Closing Fee and any other sums owed to the City hereunder, with all such sums to be paid at closing. Lessee’s failure to pay such consideration shall result in the termination of the Option.

13.2 EXERCISE OF OPTION. The Notice of Exercise shall be delivered to the City within the time period set forth above by certified mail, return receipt requested, with the closing to occur sixty (60) days from the date of mailing of the Notice of Exercise. If said sixty (60)-day closing period expires on a legal holiday, Saturday or Sunday, then the closing shall occur on the next day that the Registry of Deeds is open to the public. When the Notice to Exercise is mailed as provided herein, this Option shall be deemed exercised and this Option shall become a contract for the sale of the Premises at the price and upon the terms and conditions set forth herein, including the payment of the Closing Fee, if any.

13.3 TITLE DEED UNDER OPTION. If this Option is exercised by Lessee, the City shall execute a quitclaim deed sufficient to transfer good and clear record and marketable title in the Premises to Lessee, free of all liens but subject to any and all encumbrances affecting the Premises as of the date the Effective Date and subject to all encumbrances affecting the Premises by or on behalf of the Lessee or arising out of or related to Lessee’s use of the Premises.

Any matter or practice arising under or relating to this Agreement which is the subject of a title standard or a practice standard of the Real Estate Bar Association shall be covered by said title standard or practice standard to the extent applicable.

13.4 EXTENSION OF TIME FOR CLOSING UNDER OPTION. If the City shall be unable to give title to, or to make conveyance of, or to deliver possession of the Premises, all as herein stipulated, the City shall use good faith efforts to remove any defects in title or to deliver possession as provided herein, as the case may be, in which event the City’s time for performance hereunder shall be automatically extended for a period of up to sixty (60) days but the purchase price shall remain unchanged, but in no event shall good faith efforts require the City to expend more than \$2,500, inclusive of attorneys’ fees. If at the expiration of the extended time the City is unable to convey good marketable fee simple title or deliver possession, Lessee may terminate this Lease, including the Option, whereupon all obligations of the parties hereto shall cease and this Lease shall terminate without recourse to the parties hereto, subject to Lessee’s right to make an election pursuant to Section 13.5.

13.5 ELECTION TO ACCEPT TITLE UNDER OPTION. Lessee shall have the election, at either the original or any extended time for performance, to accept the Premises and such title to the Premises as the City can deliver in its then condition and to pay therefore the purchase price without deduction, in which case the City shall convey such title.

13.6 INSPECTION OF PREMISES.

(a) Investigations. Lessee hereby acknowledges that it was given the opportunity, prior to the Commencement Date, to conduct such surveys, investigations, inspections and studies of the Premises and such other due diligence activities that it deemed necessary or desirable, that it has conducted to its satisfaction a complete and thorough inspection, analysis and evaluation of the Premises, including but not limited to environmental issues, and agrees that it has satisfied itself with the results of such inspections. Lessee will accept the Premises at the closing in an "AS IS" condition and with "ALL FAULTS" without any warranty or representation by the City whatsoever relating to the Premises, and Lessee shall be deemed to have acknowledged and confirmed that Lessee has not relied on any representation or inducement which was or may have been made or implied by City or any other party acting on behalf of City with respect to the Premises or any circumstances or conditions affecting the Premises. Lessee further agrees that, to the extent that the City provided Lessee with any information from any inspection, engineering or environmental reports or copies of any documents relating to the Premises, the City made no representations or warranties with respect to the accuracy or completeness of same or otherwise concerning the contents of such reports or documents relating to the Premises.

(b) Release. Lessee, for itself and its successors and assigns, hereby forever releases the City and its officers, agents and employees, successors and assigns from any and all claims, demands, obligations, costs, loss or damage, causes of action, legal or administrative proceedings, liabilities, penalties, fines, liens, judgments, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, arising out of or in any way connected with the condition of the Premises, including without limitation, the environmental and sub-surface condition of the Premises. Lessee agrees that it shall not commence, aid or support in any way, seek contribution from and/or prosecute against the City, its officers, directors, agents and employees and its and their respective successors and assigns, any action or other proceeding based upon any Claims covered in this section, and shall defend, indemnify, and hold harmless the City from any and all Claims related to the environmental condition of the Premises. Lessee, on behalf of itself, the Lessee Parties, and Lessee's successors and assigns, expressly waives any rights or benefits available to it with respect to the above release under any provision of applicable law which provides that a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time the release is agreed to, which, if known to such creditor, would materially affect a settlement. Lessee, by the execution of this Lease, acknowledges that it fully understands the foregoing release, and with this understanding, nonetheless elects to and does assume all risk for claims known or unknown, described in this Section.

(c) Survival. The provisions of this Section shall survive the closing (and shall be incorporated into the deed from the City to Lessee) or the termination of this Lease.

**13.7 POSSESSION AND CONDITION OF PROPERTY UNDER OPTION.** The City shall deliver the Premises at the time of delivery of the deed in their AS-IS condition, it being agreed that Lessee will have had exclusive use and possession of the Premises during the Term of the Lease, and the City makes no representation or warranty as to the condition of the Premises or their suitability for any use.

13.8 ADJUSTMENTS UNDER OPTION. At closing, Lessee shall pay the City: (a) the purchase price for the Premises and (b) any and all other sums owed by Lessee to the City under the terms of this Lease, including, without limitation, the Closing Fee, if applicable. Lessee's failure to make such payments to City at closing shall constitute a material default hereunder, and the City shall be entitled to terminate this Lease (if it has not already expired) and/or to terminate Lessee's Option rights under this Lease without recourse. Any Additional Rent or other sums owed by Lessee under this Lease as of the date of the closing shall be paid in full by Lessee.

#### **SECTION 14 - MISCELLANEOUS PROVISIONS**

14.1 AMENDMENTS. None of the covenants, agreements, provisions, terms and conditions of this Lease shall in any manner be changed, amended, altered, waived or abandoned except by a written instrument signed, sealed and mutually agreed upon by all the parties hereto, and approved as required by law. Such instrument shall not be void for want of consideration.

14.2 QUIET ENJOYMENT. The City hereby warrants and covenants that, so long as Lessee is in compliance with the terms of this Lease, Lessee shall have peaceful and quiet use and possession of the Premises without hindrance or interruption on the part of the City, or by any other person(s) for whose actions the City is legally responsible, or by any person claiming by, through or under the City, subject to the City's reserved rights.

14.3 HOLDING OVER. If Lessee or anyone claiming under Lessee shall remain in possession of the Premises or any part thereof after the termination thereof, without any agreement in writing between the City and Lessee with respect thereto, the person remaining in possession shall be deemed a Lessee at sufferance. After acceptance by the City of any payments made for such occupancy, the person remaining in possession shall be deemed a Lessee from month-to-month, subject to the provisions of this Lease insofar as the same may be made applicable to the occupant from month-to-month, which occupancy or use may at any time be terminated by either party by thirty (30) days' prior written notice to the other party.

14.5 SEVERABILITY. If any provision of this Lease is declared to be illegal, unenforceable, or void, then both parties shall be relieved of all obligations under that provision provided, however, that the remainder of the Lease shall be enforced to the fullest extent permitted by law.

14.6 NO PERSONAL LIABILITY. No official, employee or consultant of the City of New Bedford shall be personally liable to Lessee or any partner thereof, or any successor in interest or person claiming through or under Lessee or any such partner, in the event of any default or breach, or for or on account of any amount which may be or become due, or on any claim, cause or obligation whatsoever under the terms of this Lease or any amendment or extension entered into pursuant hereto.

14.7 NOTICE. Any notice relating to the Premises and/or required to be given hereunder shall be in writing and shall be deemed duly served when mailed by registered or



certified mail, postage prepaid, sent by recognized overnight courier, or hand-delivered, addressed to the other party at the addresses set forth below:

Lessee:

City: Mayor  
City of New Bedford  
New Bedford City Hall  
133 William Street  
New Bedford, MA 02740

With a copy to: City Solicitor  
City of New Bedford  
New Bedford City Hall  
133 William Street  
New Bedford, MA 02740,

or at such other addresses as the parties may from time to time designate by written notice to the other party in the manner set forth herein.

**14.8 LIMITATION ON CITY'S LIABILITY.** Notwithstanding anything contained in this Lease to the contrary and notwithstanding any equitable rights and remedies available to Lessee, the City's liability under this Lease shall be enforceable only out of the City's interest in the Premises; and there shall be no other recourse against, or right to seek a deficiency judgment against the City, nor shall there be any personal liability with respect to any obligations to be performed hereunder. In no event shall the City or Lessee be liable to the other for any indirect, special or consequential or punitive damages or loss of profits or business income arising out of or in connection with this Lease.

**14.9 CAPTIONS.** The captions of this Lease are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

**14.10 BINDING AGREEMENT; AGREEMENTS; GOVERNING LAW.** This Lease shall bind and inure to the benefit of the parties hereto and their respective representatives, successors and assigns. This Lease shall be governed by the laws of the Commonwealth of Massachusetts and any disputes regarding this Lease shall be brought in the courts of the Commonwealth of Massachusetts. The provisions of those laws shall not be deemed waived by any provision of this Lease.

**14.11 COUNTERPARTS.** This Lease may be executed in any number of counterparts, each copy of which shall be identical, and any one of which shall be deemed to be complete in itself and may be introduced in evidence or used for any purpose without the production of the other copies.

14.12 WHEN LEASE BECOMES BINDING. This Lease shall become effective and binding only upon the execution and delivery hereof by both the City and Lessee.

[signature page follows]

Draft

IN WITNESS WHEREOF, the parties hereto have executed this instrument under seal as of this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

The City: City of New Bedford

Lessee:

\_\_\_\_\_  
Jonathan F. Mitchell, Mayor

Approved as to Form and Legality:

\_\_\_\_\_  
Eric Jaikes, City Solicitor

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EXHIBIT A

Legal Description of Premises

Draft

EXHIBIT B

Management Agreement

Draft