

**PERFORMING ARTS CENTRE
LEASE**

**THE CITY OF FREDERICTON
("Landlord")**

And

**FREDERICTON PLAYHOUSE INC.
("Tenant")**

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LEASE

Made as of and with effect from the [day] day of [month], 2024.

BETWEEN:

THE CITY OF FREDERICTON, a local government under the *Local Governance Act*, SNB 2017, c.18, having its municipal office located at 397 Queen Street, Fredericton, NB E3B 4Y7

(hereinafter called the "**Landlord**")

OF THE FIRST PART;

–and–

FREDERICTON PLAYHOUSE INC., a company incorporated under the *Companies Act*, RSNB 1973, c. C-13, having registered office at 686 Queen Street, Fredericton, NB E3B IC2

(hereinafter called the "**Tenant**")

OF THE SECOND PART.

In consideration of the mutual covenants contained in this Lease, it is agreed by the parties hereto as follows:

ARTICLE I DEFINITIONS

1.1 Definitions. As used herein:

- (a) "**Additional Rent**" means all amounts other than Minimum Rent required to be paid by the Tenant to the Landlord hereunder but excluding any taxes payable pursuant to section 4.2;
- (b) "**Ancillary Improvements**" means loading platforms, bays and related parking areas, a trash compactor, a trash and garbage storage area, waste oil tanks and related equipment, machinery, lighting, concrete pads, supports, bases and all such other improvements related thereto as the Tenant may consider necessary from time to time for, or in connection with, the use of the Leased Premises, including such security or screening devices or constructions as may be required by Applicable Laws;

- (c) "**Applicable Laws**" means all statutes, laws, by-laws, regulations, ordinances, orders and requirements of governmental or other public authorities having jurisdiction, and all amendments thereto, at any time and from time to time in force;
- (d) "**Business Day**" means any day which is not a Saturday, Sunday or statutory holiday in the Province of New Brunswick;
- (e) "**Commencement Date**" means the earliest:
 - (i) the date the Tenant opens for business to the public; or
 - (ii) the date on which the construction of the Tenant Improvements are substantially complete.

The actual Commencement Date will be confirmed as provided in section 2.2 hereof;

- (f) "**default**" shall mean any material breach or failure of a party to perform any of its obligations, duties, or covenants under this Lease. Such breach or failure shall include, but not be limited to, the following:
 - (i) Failure to make any payment due under this Lease within the specified timeframe;
 - (ii) Failure to meet any performance obligations or standards as set forth herein;
 - (iii) Violation of any applicable laws, regulations, or contractual provisions;
 - (iv) Insolvency, bankruptcy or other similar proceedings initiated against a party;
or
 - (v) Any other event or circumstance that would reasonably be considered a default based on the nature of the obligations or the context of this Lease.
- (g) "**Development**" means the development located on that part of the Lands outlined in blue on Schedule "B";
- (h) "**Extension Terms**" means the extension terms provided for in section 2.3 and "Extension Term" means any one of them;
- (i) "**Hazardous Substances**" means any contaminants, pollutants, dangerous or hazardous or toxic substances or materials and wastes as defined in or pursuant to any Applicable Laws;
- (j) "**Interest Rate**" means the Prime Rate plus five percent (5%);
- (k) "**Landlord**" means The City of Fredericton and its successors and assigns;

- (l) "**Landlord's Address**" means: 397 Queen Street, Fredericton, NB E3B 1B5, email address: clerk@fredericton.ca, or such other address as is designated by the Landlord by written notice to the Tenant;
- (m) "**Lands**" means the lands located in the City of Fredericton, in the Province of New Brunswick more particularly described in Schedule "A" and shown outlined in heavy blue outline on the Site Plan;
- (n) "**Leased Premises**" means that part of the Lands shown outlined in red on the Site Plan consisting of [specify] acres more or less together with all buildings and Ancillary Improvements from time to time constructed thereon by the Tenant at its cost;
- (o) "**Minimum Rent**" has the meaning ascribed thereto in section 3.2;
- (p) "**Prime Rate**" means the interest rate per annum as announced by the Bank of Montreal at its principal office in Toronto and reported by it to the Bank of Canada as its prime rate, which is one of its base rates and serves as the basis upon which effective rates of interest are calculated for Canadian dollar loans made in Canada with interest payable as a function of its prime rate as charged from time to time;
- (q) "**Real Property Taxes**" means any and all general taxes (which includes rates assessments, levies, charges and impositions, whether general or special, from time to time levied or imposed with respect to real property (including land, buildings, fixtures, and accessories and improvements to them by municipal or other governmental authorities having jurisdiction); interest, fines or penalties for nonpayment or late payment shall be excluded, unless the Tenant has a primary obligation to pay, and taxes which are primarily in the nature of taxes on income, capital, business, place of business or are otherwise personal to the taxpayer and not primarily in the nature of taxes on real property shall be excluded;
- (r) "**Rent**" means Minimum Rent and Additional Rent;
- (s) "**Site Plan**" means the plan attached as Schedule "B" to this Lease;
- (t) "**Tenant**" means Fredericton Playhouse Inc. and its permitted successors and assigns;
- (u) "**Tenant's Address**" means 686 Queen Street, Fredericton, NB E3B 1C2, email address: tim@theplayhouse.ca, or such other address as is designated by the Tenant by written notice to the Landlord;
- (v) "**Tenant's Business**" has the meaning ascribed thereto in section 4.7;
- (w) "**Tenant's Facility**" means the improvement constructed or to be constructed on the Leased Premises;

- (x) **"Tenant's Improvements"** means all improvements constructed by or on behalf of the Tenant from time to time on the Lands including the Tenant's Facility, and Ancillary Improvements;
- (y) **"Term"** means the period of Sixty-One (61) years commencing on the Commencement Date, plus the part of a month, if any, from the Commencement Date to and including the last day of the month in which the Term commences, together with any renewal or extension thereof;
- (ab) **"Unavoidable Delay"** has the meaning ascribed thereto in section 22.12.

1.2 Interpretation. For all purposes of this Lease, except as otherwise expressly provided or as the context otherwise requires:

- (a) the terms "this Lease" or "the within Lease" mean this agreement as from time to time supplemented or amended together with all Schedules and other attachments, as from time to time supplemented or amended;
- (b) the headings are for convenience only and are not intended as a guide to interpretation of this Lease;
- (c) the words "including" or "includes", when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as permitting the general term or statement to refer to all other items or matters that could reasonably fall within its broadest possible scope;
- (d) a reference to an entity includes a successor to that entity;
- (e) a reference to a time or date is to the local time or date at the City of Fredericton, New Brunswick; and
- (f) words importing the masculine gender include the feminine or neuter, words in the singular include the plural, words importing a corporate entity include individuals, and *vice versa*.

1.3 Schedules. The following Schedules are attached hereto and form a part of this Lease as if incorporated herein:

Schedule "A" — Legal Description of the Lands

Schedule "B" — Site Plan showing Lands outlined in heavy black outline, the Development outlined in blue, and the Leased Premises outlined in red, Building Envelopes identified and entrances and exits to adjacent public roads

Schedule "C" — Trade Fixtures

Schedule "D" — Acknowledgement of Commencement Date

ARTICLE II
DEMISE, TERM AND EXTENSION

2.1 Demise and Term. In consideration of the rents reserved and the covenants and agreements on the part of the Tenant contained herein, the Landlord hereby demises and leases the Leased Premises to the Tenant, to have and to hold during the Term upon the conditions contained in this Lease.

The parties hereto agree that a portion of the Leased Premises shall include an access way for the benefit of the neighbouring lands and/or remaining lands of the Landlord. The Tenant agrees that at no time shall the Tenant block the access granted to other parties over such parcel. In addition, the Tenant agrees that the Landlord may grant easements across or above the Leased Premises and the Tenant shall not interfere in any way with such easements.

2.2 Acknowledgement of Commencement Date. The Landlord and Tenant shall, within thirty (30) days after the Commencement Date, execute an acknowledgement confirming the Commencement Date, substantially in the form attached as Schedule "D".

2.3 Extension Term(s)

- (a) Provided that the Parties have not earlier terminated this lease, the Tenant shall have the right upon written notice to the Landlord given at least six (6) months prior to the expiry of the initial Term, provided the Tenant is not at that time in material default hereunder beyond any applicable cure period provided for in this Lease, to extend the Lease for one (1) further term of five (5) years (the "**First Extension Term**"), upon the same terms and conditions as the initial Term, except as to Minimum Rent, which shall be as provided in section 3.2 hereof, and except for options to extend already exercised by the Tenant.
- (b) If the Tenant has exercised the right provided for in subsection 2.3((a)) hereof and the parties have not earlier terminated this Lease, the Tenant shall have the right upon written notice to the Landlord given at least six (6) months prior to the expiry of the First Extension Term, provided the Tenant is not at that time in material default hereunder beyond any applicable cure period provided for in this Lease, to further extend the Lease for one (1) further term of five (5) years (the "**Second Extension Term**") upon the same terms and conditions as the First Extension Term, except as to Minimum Rent, which shall be as provided in section 3.2 hereof, and except for options to extend already exercised by the Tenant.
- (c) If the Tenant has exercised the rights provided for in subsections 2.3((a)) and ((b)) hereof and the parties have not earlier terminated this Lease, the Tenant shall have the right upon written notice to the Landlord given at least six (6) months prior to the expiry of the Second Extension Term, provided the Tenant is not at that time in material default hereunder beyond any applicable cure period provided for in this

Lease, to further extend the Lease for one (1) further term of five (5) years less one (1) day upon the same terms and conditions as the Second Extension Term, except as to Minimum Rent, which shall be as provided in section 3.2 hereof, and except for options to extend already exercised by the Tenant.

- (d) Failing the giving of notice within the times set out above, there shall be no right of extension.
- (e) The terms and conditions of this Lease in effect at the end of each of the Term or an extension of the term described above shall continue for any renewal or extension of the term, in each case, subject to any amendment in accordance with this Lease.

ARTICLE III RENT

3.1 Rent. The Tenant covenants to pay to the Landlord during the Term the Rent herein reserved in the manner herein provided.

3.2 Minimum Rent

- (a) **Initial Term.** The Tenant covenants to pay to the Landlord as an annual minimum rent of \$1.00 (the "Minimum Rent") on the first day of each and every year of the Term. It is acknowledged that Minimum Rent has been calculated on the basis of land area only.
- (b) **Extension Term.** The Minimum Rent for each Extension Term shall be equal to the Minimum rent for the initial term set out in subsection 3.2(a) above.

3.3 Payment of Rent. Payment of Rent shall be made in Canadian currency at the Landlord's Address or at such other place within Canada as the Landlord may from time to time designate in writing to the Tenant.

ARTICLE IV TENANT'S COVENANTS

4.1 Taxes

- (a) **Payment of Real Property Taxes.** The Tenant covenants to pay and discharge all Real Property Taxes imposed during the Term in respect of the Leased Premises or any part or parts thereof or against any property on the Leased Premises owned or brought thereon by the Tenant, together with every tax and licence fee in respect of every business carried on thereon or in respect of the occupancy of the Leased Premises by the Tenant. Where no separate tax bill is issued for the Leased Premises, the Tenant shall pay to the Landlord the Real Property Taxes required by this section 4.1 to be paid by the Tenant within fourteen (14) days prior to the date by which the

payment is required to be made by the Landlord based on the tax bill received by the Landlord from the Province of New Brunswick.

- (b) **Assessment of Leased Premises.** For the purposes of establishing the amount of Real Property Taxes payable by the Tenant pursuant to subsection 4.1((a)) hereof, the parties recognize and acknowledge that it is necessary to establish the assessments upon which such Real Property Taxes are based, being the assessment in the first case of the Leased Premises, including the buildings, improvements, fixtures and equipment thereon and in the second case, the assessment of the remaining lands of the Landlord.

If such separate assessments or any of them are not made by the governmental authorities, or professional assessors hired by those authorities, responsible for the determination of assessments upon which Real Property Taxes are based, the Landlord shall use its continuing and diligent efforts (with the assistance of the Tenant if the Landlord or the Tenant considers such assistance necessary or desirable) to have such separate assessments made or, failing that, to obtain sufficient official information to determine such separate assessments.

In the event and to the extent that such separate assessments or such official information cannot be obtained from such municipal or other governmental authorities or the professional assessors hired by them, the Landlord and the Tenant shall allocate the total assessment of the Lands and the improvements thereon in a manner which is equitable and consistent with the basis of assessment in use by the governmental authorities having jurisdiction in the area in which the Lands is situate so as to arrive at such separate assessments. In so doing the parties shall have regard, as far as possible, to the method of assessment and applicable elements utilized in arriving at the assessment of the whole of the Lands by the governmental authorities having jurisdiction. If the Landlord and the Tenant cannot agree as to the required allocation of assessments, the parties agree to seek to resolve the allocation dispute through the dispute resolution provision contained in section 21 below. The allocation which is either agreed to or determined by dispute resolution shall, until such time as there is a change in assessments or methods of assessment or allocation of such assessments, be binding upon the parties and the separate assessments so arrived at shall be applied to determine the respective obligations of the parties with respect to Real Property Taxes. If any Real Property Taxes or installments thereof become due before such determination has been made, the Landlord may make a reasonable estimate of the allocation which shall not bind the parties but shall nevertheless be adopted for the basis of the interim payment of Real Property Taxes respectively payable by them, and when the allocation of assessments has been finally determined and the Real Property Taxes respectively payable by them finally computed, the parties shall promptly make the appropriate readjustment and additional payment by the Tenant or repayment to the Tenant, as the case may be, together with interest at the Prime Rate on such payment from the date of overpayment or underpayment to the date the adjustment payment is made.

- (c) **Real Property Taxes To Be Prorated.** The parties agree that any Real Property Taxes imposed in respect of the Leased Premises relating to a fiscal period of the taxing authority, a part of which is included within the Term and a part of which is included in a period of time prior to the commencement of the Term or after the termination of the Term shall be adjusted as between the Landlord and the Tenant as of the date of commencement of the Term or the termination of the Term, as the case may be, so that the Landlord shall pay the proportion of such Real Property Taxes which that part of such fiscal period prior to the commencement of the Term or included in the period of time after the termination of the Term bears to such fiscal period, and the Tenant shall pay the remainder thereof.
- (d) **Proof of Payment.** In the event that Real Property Taxes are payable by the Tenant directly to the taxing authority, the Tenant shall provide official receipts to the Landlord upon request.
- (e) **Right to Contest Taxes.** In the event that there is a separate assessment for the Leased Premises, the Tenant shall have the right to appeal or otherwise contest by appropriate legal proceedings the validity or amount of any Real Property Taxes and business taxes imposed in respect of the Leased Premises or the Tenant's business at the Leased Premises, and the assessments on which such Real Property Taxes or business taxes are based, and if the payment of any such Real Property or business taxes may legally be held in abeyance without subjecting the Landlord or Tenant to any liability of whatsoever nature for failure to so pay, the Tenant may postpone such payment until the final determination of any such proceedings, provided that all such proceedings shall be prosecuted with due diligence and dispatch. The Landlord, at no cost to the Landlord, shall cooperate with the Tenant, to the extent reasonably necessary, in any such proceedings commenced by the Tenant. In the event that there is no separate assessment of realty taxes, any appeal by the Tenant must be subject to the Landlord's prior consent, not to be unreasonably withheld.
- (f) **Copies of Assessments.** The Landlord shall provide the Tenant with a copy of all assessments and tax bills affecting the Leased Premises forthwith upon receipt by it and in any event at least ten (10) days prior to the expiry of any period for appeal or other contesting thereof. On written request from the Tenant the Landlord shall promptly provide to the taxing and assessing authorities such written authorizations as are necessary to enable the Tenant to obtaining from the taxing and assessing authorities such information as the Tenant requires for the purposes of determining the Real Property Taxes and assessment which are applicable or attributable to the Leased Premises.

4.2 Goods and Services Tax. The Tenant shall pay to the Landlord the amount of any Goods and Services Tax, Harmonized Sales Tax, value added tax, sales tax or other like tax payable by the Tenant on any Rent payable by the Tenant under this Lease and which the Landlord is obligated at law to collect from the Tenant.

4.3 Utilities. The Tenant shall pay, as the same become due, all charges for utilities including water, gas, electricity, light, heat or power, telephone or other telecommunication service used

on or in connection with the Leased Premises or for any signage owned and constructed by the Tenant and for connections, fittings, machines, apparatus, meters or other things leased in respect thereof and for all work or services performed by any corporation or commission in connection with such utilities or services.

- 4.4 Garbage.** The Tenant will be responsible for its own garbage removal.
- 4.5 Nuisance.** The Tenant will not do or omit to be done on or upon the Leased Premises anything which shall result in a nuisance to the Landlord or parties located nearby provided that the use of the Leased Premises as a performing arts centre shall be deemed not to be a nuisance.
- 4.6 Use.** The Tenant may only use the Leased Premises for the business of a performing arts centre, save that the Leased Premises shall not be utilized, directly or indirectly, for the purpose of hosting, conducting, or facilitating striptease performances. This restriction encompasses any activities involving the removal of clothing or other such action intended to sexually arouse or entertain patrons. Any violation of this provision shall constitute a material breach of this Lease, subject to immediate termination at the discretion of the Landlord, without prejudice to any other rights or remedies available under law. The Landlord warrants and represents to the Tenant that as of the Commencement Date, the Applicable Laws relating to the Leased Premises will be such as to permit the Tenant to use the Leased Premises for a performing arts centre (collectively, the "Tenant's Business") and as of the date thereof, the Tenant has satisfied itself in this regard.
- 4.7 Covenant to Operate.** The Tenant hereby covenants and agrees to continuously operate the Tenant's Business on the Leased Premises through the term of the Lease. This obligation includes, but is not limited to, maintaining regular business hours, actively marketing and promoting the business, and ensuring sufficient services are available to meet customer demand. The Tenant further agrees not to abandon, close, or suspend operations of the Tenant's Business without prior written consent of the Landlord, except in cases of force majeure or circumstances beyond the Tenant's control, which must be promptly communicated to the Landlord. Failure to comply with this covenant shall constitute a material breach of the Lease, entitling the Landlord to pursue remedies including, but not limited to, termination of the Lease, damages, or injunctive relief.
- 4.8 Surrender on Termination.** The Tenant will, at the expiration or sooner termination of the Term, peaceably surrender and yield up to the Landlord the Leased Premises.

The title to and ownership of the Tenant's Facility are at all times during the Term and extension period deemed to be vested in the Tenant notwithstanding any rule of law as to immediate vesting of the title to and ownership of the Tenant's Facility in the Landlord as owner of the freehold. Title to and ownership of the Tenant's Facility other than those items which the Tenant is entitled to remove in accordance with this Lease will become vested in the Landlord upon the expiry of or sooner termination of the Term free of all encumbrances.

At any time and from time to time throughout the Term, subject to section 22.1, and upon the expiry or sooner termination of the Term, the Tenant may remove its trade fixtures and

those items set out in Schedule "C", whether or not such items are deemed in law to be fixtures.

4.9 Compliance with Environmental Laws. Any Hazardous Substance brought onto or used on the Leased Premises by the Tenant or any person for whom the Tenant is responsible at law shall be transported, used and stored only in accordance with all Applicable Laws. The Tenant will not do or permit or omit to be done on the Leased Premises anything which may cause or increase the likelihood of the escape, seepage, leakage, spillage, release or discharge of any Hazardous Substance or other adverse environmental conditions on, from or under the Leased Premises. The Tenant will promptly notify the Landlord upon becoming aware of any actual, threatened or potential escape, seepage, leakage, spillage, release or discharge of any Hazardous Substance or other adverse environmental conditions on, from or under the Leased Premises.

4.10 Compliance with Green Building Guidelines. The Tenant shall take such steps as are necessary to remain up to date on the City of Fredericton Green Building Guidelines, and any amendments thereto, and shall at all times complete construction, any renovations and its operations in compliance with such guidelines consistent with the steps taken by the Landlord for its buildings and operations.

ARTICLE V ASSIGNMENT AND SUBLETTING

5.1 Assignment and Subletting. The Tenant acknowledges and agrees that it shall not, without the prior written consent of the Landlord, which consent may be withheld in the Landlord's sole and absolute discretion, assign, transfer, sublet, or otherwise part with possession of the Leased Premises or any part thereof, either voluntarily or by operation of law. Any attempted assignment, transfer, subletting, or other disposition of the Lease or the Leased Premises without the Landlord's prior written consent shall be null and void, and shall constitute a material breach of the Lease. Because the Landlord is only entering into this Lease so provide for a performing arts centre (and is providing the tenant very favourable terms for that reason), the Landlord shall have the right to withhold consent to any proposed assignment, transfer, or subletting for any reason, and shall not be obligated to provide any reason for such withholding of consent to the Tenant.

ARTICLE VI INSURANCE

6.1 Tenant's Insurance. The Tenant shall take out and at all times during the Term keep in force, at its own expense, the following insurance:

- (a) comprehensive general liability and auto liability insurance with respect to their business and the business carried on at the Leased Premises, including bodily injury,

death, damage to property with a limit of not less than ten million dollars (\$10,000,000) for any one accident or occurrence. Such minimum insurance amount shall be increased by the Tenant to be equivalent to the amount maintained by the Landlord for similar liability when so notified by the Landlord to the Tenant from time to time. Such policy shall be primary and non-contributing with, and not in excess of, any other insurance obtained by the Landlord, and shall include severability of interests and cross liability clauses;

- (b) “all risks” property insurance in respect of the Leased Premises and the Tenant’s leasehold improvements situated thereon and such other property in or forming part of the Leased Premises for the full replacement cost thereof, with no co-insurance penalties;
- (c) comprehensive boiler and machinery insurance in respect of boilers, pressure vessels, air-conditioning equipment and miscellaneous electrical apparatus installed in, relating to or serving the Leased Premises or any part thereof and operated by the Tenant or by others on behalf of the Tenant, on a repair and replacement basis;
- (d) business interruption insurance including loss of profits with explicit coverage for losses attributable to an infectious disease outbreak or in the context of a pandemic (either as a specialty stand-alone policy or as an endorsement to the existing business interruption coverage);
- (e) cybersecurity insurance providing comprehensive coverage for a variety of cyber-related incidents, including data breaches, cyber theft, ransomware attacks, and business interruption with a limit of not less than two million dollars (\$2,000,000.00);
- (f) environmental impact liability insurance covering all liabilities arising out of or in connection with the environmental impact of the Tenant’s use of the Leased Premises, with a limit of not less than two million dollars (\$2,000,000.00); and
- (g) any such other insurance as the Landlord may reasonably require.

The insurance described in subsections 6.1(b), (c) and (f) above shall be procured from an insurance company licensed to do business in the Province of New Brunswick and shall provide that the insurers specifically waive subrogation rights against the Landlord and its employees, officers and directors, with respect to loss, damage or destruction to the insured property.

The insurance described in this section 6.1 shall name the Landlord as an additional insured.

Upon execution of this Lease, the Tenant shall provide a certificate of insurance to the Landlord to evidence the insurance has been put in place and, thereafter, the Tenant shall from time to time, whenever reasonably requested, furnish to the Landlord certificates of insurance to evidence the insurance to be kept in force by the Tenant hereunder.

6.2 Landlord Release

- (a) The Tenant each hereby releases and forever discharges the Landlord from all actions, causes of action, claims, suits and obligations which it has or may hereafter have against the Landlord for or concerning or by reason of, or in any way connected with or arising out of, or in consequence of, an occurrence in respect of which the Tenant has insurance. For greater certainty, it is hereby stipulated that the within release shall apply whether or not the claim being released was a result of the negligence of the Landlord or of any person for whom it is responsible in law.

ARTICLE VII LANDLORD'S COVENANTS

7.1 Quiet Enjoyment. The Landlord covenants, warrants and represents that it has full right and power to execute this Lease and to perform the covenants hereof on its part to be performed and to grant the estate demised herein, and covenants that the Tenant, subject to the right of the Landlord to grant rights to others described in section 2.1 above, shall peaceably and quietly have, hold and enjoy the Leased Premises and all rights, easements, appurtenances and privileges belonging or in any way pertaining thereto during the Term.

7.2 Hazardous Substances

- (a) **Landlord's Representations.** Notwithstanding any other provisions in this Lease, the Landlord represents that as of the date on which the Tenant takes possession of the lands outlined in red on the Site Plan, to the best of its knowledge, there are no Hazardous Substances or other adverse environmental conditions at, on, below, or within the Development. If any Hazardous Substances are discharged or otherwise released into the natural environment causing any adverse environmental effect or if any adverse environmental conditions or Hazardous Substances which may be considered to be dangerous to the health of any person are at any time during the Term or any renewal thereof found at, on, below, or within the Development or if any condition exists at, on, below or within the Development which may result in the Tenant or the Landlord being in breach of its obligations under the applicable occupational health and safety legislation or other Applicable Laws other than as a result of (i) the acts of the Tenant, or those for whom the Tenant may in law be responsible, or (ii) the installation of any improvements in the Leased Premises by or on behalf of the Tenant, the Landlord shall as soon as reasonably possible at no cost to the Tenant correct or cause to be corrected such condition in order that the Tenant and Landlord shall be in compliance with the provisions of the Applicable Laws, and shall remove or take such investigatory, remedial or clean-up action respecting such Hazardous Substances or other adverse environmental condition as may be required by Applicable Laws and governmental authorities.

The Landlord and the Tenant acknowledge and agree that the Tenant shall assume all liability and responsibility for any environmental or health and safety liabilities

(whether accrued, actual, contingent or otherwise) including, without limitation, any liabilities pertaining to remediation work or correction of any condition arising out of or in any way connected to the existence of Hazardous Substances or other adverse environmental condition at, on, below or within the Development from the Commencement Date onwards which the Tenant, or those for whom the Tenant may in law be responsible did not cause or permit, and the Tenant shall remain at all times responsible for any such liabilities. The Tenant shall indemnify and save harmless the Landlord from and against any and all environmental and health and safety liabilities (whether accrued, actual, contingent or otherwise), losses damages, claims, costs and expenses directly or indirectly suffered by the Tenant and/or Landlord resulting from or in any way connected to remediation work or correction of any adverse environmental condition at, on, below or within the Development from the Commencement Date onwards and which the Tenant, or those for whom it is responsible at law, did not cause or permit.

- (b) **Tenant's Representations.** The Tenant covenants that if any Hazardous Substances are discharged or otherwise released from the Leased Premises into the natural environment causing any adverse environmental effect or if any adverse environmental condition or Hazardous Substances which may be considered to be dangerous to the health of any person are at any time during the Term found at on or below the Leased Premises for which the Tenant, or those for whom the Tenant in law is responsible, the Tenant shall immediately notify the Landlord and, as soon as reasonably possible, at no cost to the Landlord, correct or cause to be corrected such condition in order that the Tenant and Landlord shall be in compliance with the provisions of the Applicable Laws and shall remove or take such investigatory remedial or clean up action respecting such Hazardous Substances or other adverse environmental condition as may be required by Applicable Laws and governmental authorities.

- 7.3 No Special Rights.** The Landlord agrees not to enter into and that it has not prior to the Commencement Date entered into any lease or other agreement with any other tenant or occupant of the Development, whereby that party is given exclusive rights of use or any other privileges unless the Leased Premises are specifically exempted from the application of those exclusive rights and privileges.

ARTICLE VIII MAINTENANCE AND REPAIR

- 8.1 Tenant to Maintain and Repair.** The Tenant covenants throughout the Term, at the Tenant's sole cost and expense, to maintain and keep in a good and substantial state of repair the Leased Premises and the Tenant's equipment and fixtures on the Leased Premises in accordance with good commercial practice, and the Tenant shall promptly at the Tenant's own cost and expense make all necessary repairs thereto, but excluding reasonable wear and tear which does not affect the proper use of the Leased Premises for the purposes intended.

**ARTICLE IX
COMPLIANCE WITH LAWS**

9.1 Covenants to Comply

- (a) The Tenant covenants that it will throughout the Term, at the Tenant's sole expense, promptly comply with all Applicable Laws from time to time affecting the condition, equipment, maintenance, use and occupation of the Leased Premises as well as those affecting the health and safety of the public or those relating to the control of infectious disease outbreaks.
- (b) The Tenant shall have the right to contest by appropriate legal proceedings, without cost or expense to the Landlord, the validity of any such Applicable Laws referred to in subsection 9.1((a)) and if by the terms of any such Applicable Laws compliance therewith may legally be held in abeyance without subjecting the Tenant or the Landlord to any liability of whatsoever nature for failure so to comply therewith, the party responsible may postpone compliance therewith until the final determination of any such proceedings, provided that all such proceedings shall be prosecuted with all due diligence and dispatch.

**ARTICLE X
ALTERATIONS, ADDITIONS AND FIXTURES**

10.1 Alterations and Additions. The Tenant may at any time and from time to time, at its own expense, make alterations and/or improvements to and upon the Leased Premises, place such exterior or interior signs as it desires, and construct Ancillary Improvements provided that all such alterations and/or improvements shall be made in conformity with all Applicable Laws and are previously approved in writing by the Chief Administrative Officer of the Landlord. Where approval has been given, the Landlord will cooperate with the Tenant and will execute and deliver promptly upon request any applications, consents or other documents required by the Tenant to obtain permits or otherwise carry out any such alterations and/or improvements. Following completion of any such alterations and/or improvements, the Tenant will provide the Landlord with "as built" plans thereof.

10.2 Rooftop Systems. Subject to Applicable Laws, the Tenant shall have the right to install (including installation prior to the commencement of the Term), maintain, repair, operate and replace on the roof of the Leased Premises such mechanical, electrical, plumbing, telecommunication, satellite, heating, ventilation and air-conditioning equipment and facilities and such other systems as are required by the Tenant in the operation of its business at the Leased Premises. The Tenant acknowledges and agrees that the Tenant shall not alter the height or location of any rooftop systems where such modification would interfere with the airspace rights or sightline rights of any other party.

10.3 Trade Fixtures, Machinery and Equipment. The Landlord agrees that all trade fixtures, chattels and other personal property on the Leased Premises or forming part of the Tenant's Improvements from time to time may be removed by the Tenant, in its discretion, whether or not same are or are deemed at law to be fixtures, at any time and from time to time during the Term, provided the Tenant repairs any damage caused to the Leased Premises by such removal.

ARTICLE XI DAMAGE AND DESTRUCTION

11.1 Damage and Destruction. In the event that the Leased Premises or any part thereof is damaged or destroyed by fire or other casualty, the tenant covenants and agrees to diligently and promptly commence and complete the repair, restoration, or rebuilding of the Leased Premises to a condition substantially similar to its condition immediately prior to such damage or destruction, at the Tenant's sole cost and expense. The Tenant shall proceed with such repair, restoration, or rebuilding with all due diligence and shall use commercially reasonable efforts to expedite the process. The Tenant shall obtain all necessary permits, approvals, and licenses required for such repair, restoration, or rebuilding, and shall comply with all applicable laws, regulations, and building codes. The Landlord and Tenant may agree to not repair, restore or rebuild the Leased Premises, and in such case, if the damage or destruction is covered by insurance, the Tenant shall promptly notify its insurer and shall assign to the Landlord any insurance proceeds payable in respect of such damage or destruction, to the extent necessary to cover the costs of repair, restoration, or rebuilding. Failure of the Tenant to comply with this covenant shall constitute a material breach of the Lease, entitling the Landlord to pursue remedies including, but not limited to, termination of the Lease, damages, or injunctive relief.

ARTICLE XII DEFAULT OF TENANT AND REMEDIES OF LANDLORD

12.1 Bankruptcy or Insolvency of Tenant. If during the Term the Tenant shall make an assignment for the benefit of creditors or shall become bankrupt or take advantage in respect of its own affairs of any statute for relief or protection of bankrupt or insolvent debtors, or if a receiving order is made against the Tenant, or if the Tenant is adjudged bankrupt or insolvent, or if a liquidator or receiver of any property of the Tenant is appointed by reason of any actual or alleged insolvency or any default of the Tenant under any mortgage or other obligation, or if the interest of the Tenant in the Leased Premises shall become liable to be taken under any writ of execution or other like process which shall remain undischarged for thirty (30) days, then the occurrence of any such event shall be deemed to be a breach of this Lease, and the then current month's Rent, together with the Rent for the three months next ensuing shall immediately become due and payable, and at the option of the Landlord the Term shall become forfeited and void, and the Landlord may without notice or any form of legal process whatever, forthwith re-enter the Leased

Premises or any part thereof in the name of the whole and repossess and enjoy the same as of its former estate, anything contained in any statute or law to the contrary notwithstanding; provided that such forfeiture shall be wholly without prejudice to the right of the Landlord to recover arrears of Rent or damages for any antecedent breach of the Tenant's covenants, obligations and agreements under this Lease, and provided that notwithstanding any such forfeiture, the Landlord may subsequently recover from the Tenant damages for loss of Rent suffered by reason of this Lease having been prematurely terminated.

12.2 Re-Entry on Certain Defaults by Tenant. If:

- (a) the Tenant shall be in default in the payment of Rent and such default shall continue for fifteen (15) days after notice thereof given by the Landlord to the Tenant; or
- (b) the Tenant shall be in default in the performance or observance of any of its other covenants or obligations under this Lease and the Landlord shall have given to the Tenant notice of such default, and at the expiration of thirty (30) days after the giving of such notice the default shall continue to exist or, if the default cannot be cured with due diligence within such thirty (30) day period, the Tenant has not commenced to cure such default and is not proceeding diligently to cure such default with reasonable dispatch; or
- (c) this Lease shall expire or be forfeited or be terminated pursuant to any other provision hereof;

the Landlord or the Landlord's agents or employees authorized by it may immediately or at any time thereafter re-enter the Leased Premises, may remove all persons and their property therefrom either by summary eviction proceedings or by any other suitable action or proceedings at law, equity or otherwise without being liable to any prosecution or damages therefor, and may repossess and enjoy the Leased Premises and all fixtures and improvements upon the Leased Premises without such entry and repossession working a forfeiture or waiver of the Rents to be paid and the covenants to be performed by the Tenant up to the date of such re-entry and repossession and without prejudice to the Landlord's rights to claim damages for the loss of future rentals.

12.3 Landlord's Rights to Cure Defaults. Without limiting any other remedy which the Landlord may have, the Landlord shall have the right at all times to enter the Leased Premises for the purpose of curing any default, and the Tenant shall permit such entry. The Landlord shall give not less than seven days' notice to the Tenant of its intention to enter for such purpose but may enter upon a shorter period of notice or without notice where in the Landlord's reasonable judgment there is real or apprehended emergency or danger to persons or property. The Tenant shall reimburse the Landlord upon demand for all reasonable expenses incurred by the Landlord in remedying any default. All such expenses incurred by the Landlord shall bear interest at the Interest Rate from the date of demand to the date of repayment. The Landlord shall be under no obligation to remedy any default of the Tenant, and shall not incur any liability to the Tenant for any action or omission in the

course of its remedying or attempting to remedy any such default unless such act or omission amounts to intentional misconduct or negligence of the Landlord.

- 12.4 Landlord's Additional Remedies.** In addition to any other right or remedy the Landlord may have, if the Landlord shall have the right to re-enter the Leased Premises pursuant to section 12.2, the Landlord may re-let the Leased Premises or any part thereof for a term or terms which may be less or greater than the balance of the Term and may grant reasonable concessions in connection therewith and the Tenant shall pay to the Landlord on demand all expenses the Landlord incurs or may incur in connection with such re-letting including, without limitation, brokerage fees, marketing fees, legal fees and disbursements, the expenses of keeping the Leased Premises in good order, any tenant improvement allowance, and expenses of repairing the same and preparing them for re-letting.
- 12.5 Remedies Cumulative.** The remedies of the Landlord specified in this Lease are cumulative and are in addition to any remedies of the Landlord at law or equity.
- 12.6 Effect of Waiver by Landlord.** The failure of the Landlord to insist upon the strict performance of any covenant of this Lease shall not be deemed to constitute a waiver of such covenant, and the waiver by the Landlord of any breach of this Lease shall not be deemed a waiver of any future or other breach. The receipt and acceptance by the Landlord of Rent or other monies due hereunder with knowledge of any breach of this Lease by the Tenant shall not be deemed a waiver of such breach. No waiver by the Landlord shall be effective unless made in writing.

ARTICLE XIII INDEMNITY

Indemnity. To the extent not released under section 6.2, each of the Landlord and the Tenant will protect, defend, indemnify and save harmless the other including the other's current and former directors, officers, shareholders, employees, agents, contractors and their heirs, executors, administrators and estates (collectively the "indemnified party") in respect of all damages, awards, settlements, liabilities, fines, penalties, statutory obligations, professional fees (including legal fees), costs, losses, charges and expenses whatsoever which the indemnified party shall or may become liable for or suffer by reason of any breach, violation or non-performance by the party so indemnifying of any covenant, term or provision of this Lease or by reason of any damage, injury or death occasioned to or suffered by any person or persons (including the Landlord or the Tenant, as the case may be) or damage to any property, resulting from any wrongful act, neglect or default on the part of the party so indemnifying or any of its current and former directors, agents, employees, officers or contractors. For greater certainty, it is agreed by each of the parties that, notwithstanding anything else contained in this Lease, the obligations contained in this section 13.1 shall survive the expiration or earlier termination of this Lease.

**ARTICLE XIV
ASSIGNMENT AND OTHER DEALINGS BY LANDLORD**

- 14.1 Right of Landlord to Assign or Encumber.** The Landlord may assign, mortgage, encumber or otherwise deal with its reversionary interest in the Lands including the Leased Premises subject always to this Lease and all the rights of the Tenant hereunder. To the extent that any purchaser or assignee agrees in writing with the Tenant to assume and be bound by all of the terms, covenants and conditions of the Lease, and if the Landlord is not in default hereunder, the Landlord shall without further written agreement be released from liability hereunder.
- 14.2 Certificate by Tenant.** The Tenant shall, within a reasonable time after receipt of written request from the Landlord, execute an acknowledgment or certificate in favour of any actual or prospective purchaser, mortgagee or encumbrancer of the Landlord's interest in the Lands, acknowledging or certifying as to the status of this Lease, as to any modifications thereof, as to any breaches of covenant known to the Tenant and as to the state of the Rent account, with the intent that any such acknowledgment or certificate may be relied upon by the person to whom it is addressed.

**ARTICLE XV
PRIORITY OF LEASE**

- 15.1 Priority of Lease.** The Tenant shall be entitled to register a Notice of Lease or a short form of the Lease, on title to the Leased Premises in priority to all hypothecs, mortgages, charges or other encumbrances, except where a non-disturbance agreement has been provided by the encumbrancer in a form satisfactory to the Tenant acting reasonably.

**ARTICLE XVI
MORTGAGING OF LEASEHOLD ESTATE**

- 16.1 Mortgaging of Leasehold Estate.** The Tenant hereby expressly agrees that it shall not, without the prior written consent of the Landlord, which consent may be withheld in the Landlord's sole discretion, grant, create, or allow to exist any security interest, lien, encumbrance, or other third-party interest in or upon the Lease, the Leased Premises, or any Tenant improvements made thereon. This prohibition includes, but is not limited to, any assignment of rents, collateral assignment of lease, mortgage, deed of trust, security agreement, or any other form of security interest or encumbrance. Any attempt by the tenant to grant or create a security interest in violation of this provision shall be null and void, and shall constitute a material breach of the Lease. The Tenant acknowledges and agrees that any security interest granted in violation of this provision shall be subordinate and inferior to the Landlord's interest in the Lease and the Leased Premises.

ARTICLE XVII SIGNS

- 17.1 Pylon Sign.** The Tenant shall not have the right to construct or operate any free standing illuminated pylon sign on the Leased Premises.
- 17.2 Other Signs.** The Tenant shall at all times, subject to prior written Landlord approval, be entitled to erect its normal fascia signs on the exterior of the Leased Premises subject to compliance with all Applicable Laws. The Landlord will cooperate with the Tenant and will execute and deliver promptly upon request any applications, consents or other documents which may be required by the Tenant to obtain permits or approvals for the Tenant's signs. Notwithstanding any commitment to cooperate by the Landlord, the Tenant acknowledges that it shall be obligated to complete the same application process with the local government, and the fact that the local government is the Landlord shall have no effect on such application process, requirements or whether such application will be approved. No changes to any signs shall be made by the Tenant without prior written Landlord approval.

ARTICLE XVIII ACCESS AND PARKING AREAS

- 18.1 Access.** The Landlord covenants and agrees with the Tenant that throughout the Term, the customers, prospective customers and invitees of the Tenant and all other persons having business with the Tenant, its sub-tenants, licensees and other occupants of the Leased Premises shall have the free and uninterrupted right of ingress and egress over, along and upon all driveways and vehicular passage ways and entrance ways and exits as shown on the Site Plan or as otherwise agreed upon by the Landlord and Tenant from time to time. With respect to the Access Lane, as depicted on the Site Plan, the Tenant, nor any of its agents, guests or invitees, shall be permitted to park on, or in any way block, such Access Lane. For greater certainty, the Access Lane shall only be used for delivery and drop-off purposes, and even in such cases, the Tenant shall at no time interfere with any other party's rights to cross and use the Access Lane.
- 18.2 No Change in Entrances and Exits.** The Tenant will not, unless required by lawful authority, move or alter the existing entrances and exits between the Leased Premises and the adjacent public roads, streets or highways as shown on the Site Plan without prior approval of the Landlord.

ARTICLE XIX
CONSTRUCTION OF IMPROVEMENTS BY THE TENANT

19.1 Construction of Improvements by the Tenant. The Tenant shall be entitled to enter upon the Lands for the purpose of constructing the Building and all necessary grading, paving, internal services and other improvements (the "Site Work") in which event:

- (a) The Tenant shall construct or cause to be constructed the Building and the Site Work in accordance with all municipal and provincial by-laws, laws and regulations and all other applicable legal requirements and of first-class workmanship and construction, and in a diligent manner and without disruption to either parking or access with respect to the Lands.
- (b) The Tenant shall ensure that the Tenant, all contractors, subcontractors and others involved in the construction of the Building and the Tenant's Site Work shall provide and maintain comprehensive liability insurance with inclusive limits of not less than \$5,000,000.00 for bodily injury to any one or more persons. The policies of insurance shall be written to include the Landlord as a named insured. The Tenant shall provide proof of insurance from all such contractors, subcontractors and others involved in the construction of the Building and the Tenant's Site Work to the Landlord prior to such party commencing work at the Leased Premises.
- (c) Prior to entering upon the Lands for the purposes of construction as aforesaid, the Tenant shall provide a site plan to the landlord for its approval, not to be unreasonably withheld, which will indicate the location of entrances and exits, parking area, lighting and signage. The Landlord shall approve the site plan within ten (10) days of receipt and in the event that the site plan has not been approved or objected to by the Landlord within the said ten (10) day period, it shall be deemed to have been approved. In the event that the Landlord expresses any reasonable objection to the plan in writing within the ten (10) day period, the Tenant and the Landlord, both acting reasonably, will work together to finalize a mutually acceptable site plan. On completion of construction the Tenant will provide the Landlord with verification by the architect or engineer on the project that the building had been built in accordance with the plans and specifications together with such other reasonable documentation that may be required by Landlord.
- (d) The Tenant will indemnify and save harmless the Landlord with respect to any construction liens that may be filed against the Lands, and all legal expenses associated therewith, as a consequence of the construction of the Leased Premises and should any such construction lien be filed against the Lands, the Tenant will take all necessary steps to have the lien removed within ten (10) business days.

ARTICLE XX
DEFAULT BY LANDLORD

- 20.1 Payments.** The Landlord hereby covenants and agrees that, in the event the Landlord shall fail to make payments of any Real Property Taxes on the Lands which the Landlord is required to pay, except in the case of an appeal or contestation of such Real Property Taxes in circumstances where the title to the Lands will not be adversely affected and which appeal the Landlord is continuing to pursue as contemplated herein, the Tenant may, but shall not be required to, make such payments of Real Property Taxes or such other payments or do such acts and things as may be necessary to keep the Real Property Taxes on the Lands from being in default, and all such sums expended by the Tenant shall become immediately due and payable to the Tenant by the Landlord. Said sums shall bear interest at the Interest Rate from the date paid by the Tenant until the date of repayment by the Landlord and may be offset by the Tenant against future rentals. The Tenant shall only make such payments or undertake other actions after fifteen (15) days' prior written notice of its intention to do so.
- 20.2 Default by Landlord.** Subject to section 20.1, if the Landlord shall breach any warranty or fail to perform any covenant, agreement or obligation required to be performed by the Landlord under the terms of this Lease and such breach or failure shall continue for a period of fifteen (15) days after receipt by the Landlord of written notice thereof from the Tenant (except in the case of an emergency when no notice or such shorter period of notice as is reasonable in the circumstances shall be sufficient) or if the Landlord shall fail to pay any sums due the Tenant hereunder, and such failure shall continue for a period of fifteen (15) days after receipt by the Landlord of written notice thereof from the Tenant, then the Tenant may, in addition to any of the Tenant's other rights set forth in this Lease cure any default or breach of warranty of the Landlord hereunder, and perform any covenant, agreement or obligation which the Landlord has failed to perform, and any sums expended by the Tenant in curing such default or breach of warranty and performing such covenant shall be paid by the Landlord to the Tenant upon fifteen (15) days written notice, together with interest thereon at the Interest Rate from the date incurred by the Tenant until repaid by the Landlord; provided that if the default or contingency cannot be cured with due diligence within such fifteen (15) day period and the Landlord has commenced to cure such default or contingency and proceeds diligently to cure such default with reasonable dispatch, then the Landlord shall be entitled to such longer period as may be necessary to cure such default or contingency.
- 20.3 Rent Offset.** If the Landlord shall fail to make any payment due to the Tenant within the time periods set forth in sections 20.1 and 20.2, as applicable, the Tenant may, at its option, offset the amount or amounts due to it by the Landlord from Rent payments.

**ARTICLE XXI
DISPUTES, MEDIATION AND ARBITRATION**

21.1 Disputes, Mediation and Arbitration. If a dispute arises between the Landlord and Tenant arising out of or relating to this Lease, or the subject matter hereof, the Landlord and Tenant agree that they shall each make all reasonable efforts to resolve any such dispute on a timely basis through amicable negotiations. Disputes shall promptly be referred by each Party to their respective senior management representatives who have the authority to resolve and settle any such disputes on their behalf. In the event that such representatives cannot resolve the dispute within ten (10) days or such longer period as the Parties may agree in writing, either Party may elect, upon given prior written notice to the other Party, to resolve the matter through mediation or arbitration by a mutually acceptable mediator or arbitrator in accordance with the *Arbitration Act*, SNB, 2014, c.100, as amended, or litigation proceedings in the courts of the Province of New Brunswick. Notwithstanding the foregoing, nothing in this section shall prevent the Landlord from exercising its rights of termination set out under this Lease in the circumstances described therein. It is further agreed by the Parties that they shall pay their own legal costs of any mediation, arbitration or litigation.

Neither party may refer a dispute in respect of the following provisions of this Lease to mediation or arbitration:

- (a) section 5.1 — Assignment and Subletting
- (b) section 16.1 — Mortgaging of Leasehold Estate;

**ARTICLE XXII
MISCELLANEOUS**

22.1 Termination. Upon termination of the Lease through effluxion of time or otherwise, but so long as the Tenant is not otherwise in default, the Tenant shall be entitled to remove its trade fixtures, inventory and those items set out in Schedule "C", whether or not such items may be deemed in law to be fixtures. The Leased Premises shall be surrendered to the Landlord in an "as is" state, free of encumbrance and without compensation therefor upon expiry of the Term and any extensions, save that the Tenant shall be responsible for the removal of buried gas tanks and gas pumps whether underground or above ground and shall remedy any damage caused to the Leased Premises or adjacent lands as a consequence of Hazardous Substances introduced to the Leased Premises by the Tenant. Notwithstanding the generality of the foregoing, the Tenant shall be fully and completely liable for any and all clean up costs and any and all other charges arising with respect to any Hazardous Substances which have been introduced by the Tenant. The Tenant shall deliver to the Landlord within a reasonable time of vacating the Leased Premises a report from an environmental consultant confirming the remediation of the Leased Premises as a consequence of any Hazardous Substances introduced by the Tenant.

- 22.2 Hours of Business.** The Tenant shall have the right but not the obligation to keep the Leased Premises open for business the maximum number of hours permitted by law.
- 22.3 Holding over.** In the event the Tenant shall hold over in possession of the Leased Premises after the expiry of the Term, such holding over shall not be deemed to extend the Term or renew the Lease but the tenancy thereafter shall continue as a monthly tenancy upon the covenants and conditions herein set forth and at the rent in effect during the last month of the Term, until termination by either party by notice designating the date of termination, provided that said notice shall be given not less than sixty (60) days before said date of termination.
- 22.4 No Liens**
- (a) The Tenant covenants that it will not permit or cause anything to be done on the Leased Premises or with respect to the Leased Premises which may result in any liens, construction liens, lis pendens or judgments being imposed upon either the Leased Premises or the Development. If any lien or encumbrance is registered against the Leased Premises or Development by reason of things done or permitted to be done by the Tenant, then the Tenant shall forthwith at its own expense cause the same to be removed by payment to the lien claimant or posting security in an appropriate court or any other like proceeding.
 - (b) The Landlord covenants that it will not permit or cause anything to be done on the Leased Premises which may result in any liens, construction liens, lis pendens or judgments being imposed upon the Leased Premises. If any lien or encumbrance is registered against the Leased Premises or Development which may result in a sale thereof or which causes harm to the Tenant then the Landlord shall forthwith at its own expense cause the same to be removed by payment to the lien claimant or posting security in an appropriate court or any other like proceeding.
- 22.5 Net Lease.** Except as specifically provided in this Lease, it is the intent of the Landlord and Tenant that the Rent shall be net and carefree to the Landlord, provided however that nothing in this Lease shall require the Tenant to pay any franchise, estate, inheritance, succession, capital levy or transfer tax, capital tax, large corporations tax of the Landlord, or any income, excess profits or revenue tax upon the rent payable by the Tenant under this Lease or any debt service obligations of the Landlord.
- 22.6 Time of the Essence.** Time shall be of the essence of this Lease.
- 22.7 Severability.** If any covenant, obligation or agreement in this Lease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such covenant, obligation or agreement to persons or circumstances other than those to which it is invalid or unenforceable shall not be affected thereby and each covenant, obligation and agreement in this Lease shall be separately valid and enforceable to the fullest extent permitted.
- 22.8 Notices.** Any notice, demand, request, consent or objection required or contemplated to be given or made by any provisions of this Lease shall be given or made in writing and either

delivered personally or transmitted to the email address of such Party by electronic communication means addressed to the Landlord at the Landlord's Address and to the Tenant at the Tenant's Address and shall be deemed to have been given on the next Business Day following the date of delivery or transmission to the email address of such Party by electronic communication, as the case may be.

22.9 Binding Effect and Interpretation. This Lease shall enure to the benefit of and be binding upon the parties hereto, the successors and assigns of the Landlord, and the successors and permitted assigns of the Tenant.

22.10 Entire Agreement and Non-Merger. Save for the provisions contained in a Performing Arts Centre Replacement Agreement and an Operating Agreement entered into between the parties, no prior stipulation, agreement or undertaking, verbal or otherwise of the parties or their agents with respect to the lease of the Leased Premises shall be valid or enforceable unless embodied in the provisions of this Lease or made in writing and signed by both parties. The Landlord and Tenant agree that any provision in the Performing Arts Centre Replacement Agreement and the Operating Agreement pertaining to the lease of the Leased Premises not included in this Lease shall in any event survive the execution of this Lease and shall not merge on the execution hereof. All provisions in the Performing Arts Centre Replacement Agreement and the Operating Agreement pertaining to matters outside the lease of the Leased Premises shall be determined by the terms and conditions of such agreements. If there is an inconsistency between the provisions of this Lease and the Performing Arts Centre Replacement Agreement or the Operating Agreement, the provisions of this Lease shall prevail.

22.11 Unavoidable Delay. If either party shall be prevented or delayed from punctually performing any obligation or satisfying any condition under this Lease by any strike, labour dispute, inability to obtain labour or material, Act of God, outbreak, epidemic, pandemic, governmental restriction, regulation or control, insurrection, sabotage, fire or other casualty or by any other event beyond the control of such party (herein called "Unavoidable Delay") then the time to perform such obligation or satisfy such condition shall be postponed by the period of time consumed by the delay. If either party shall, as a result of any such event, be unable to exercise any right or option within any time limit provided therefor in this offer, the time for exercise thereof shall be postponed for the period of time consumed by such delay. Financial inability, inconvenience or embarrassment shall not be considered an event causing unavoidable delay. Nothing in this section 22.12 affects in any way the obligation of the Tenant to pay rent at the times and in the manner required hereunder.

22.12 Governing Law. This Lease shall be governed by, construed, interpreted and enforced in accordance with the laws of the Province of New Brunswick and the federal laws of Canada applicable therein. The Parties submit to the exclusive jurisdiction of the courts of the Province of New Brunswick, that is, any claim or dispute with respect to or in relation to this Lease shall be determined by a court of competent jurisdiction within the Province of New Brunswick.

22.13 No Partnership. Nothing contained in this Lease nor any acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of landlord and tenant.

22.14 Planning Legislation. This Lease is expressly conditional upon compliance with the subdivision control provisions of the *Community Planning Act*, SNB 2017, c. 19,. The Landlord will, at its sole cost and expense, do all acts and things which may be required to effect such compliance prior to the Commencement Date.

22.15 Non-Disclosure of Terms of Lease. Subject to section 22.17, both parties hereto will maintain in confidence and not disclose to any third-party the specific terms of this Lease, except (i) to such party's legal counsel; (ii) to such party's auditors or lenders; (iii) as required in order to enforce such party's rights under the Lease; (iv) as provided for under this Lease; (v) as specifically authorized to do so in writing by the other party; or (vi) as otherwise required by any Applicable Laws.

22.16 RTIPPA. The Tenant acknowledges that the Landlord is subject to the Right to Information and Protection of Privacy Act, SNB 2009, c. R-10.6 (“**RTIPPA**”), as amended, with respect to the Personal Information, as defined thereunder, in its custody and control and has a duty to protect Personal Information by making reasonable security arrangements against unauthorized access, use, disclosure or disposal, in accordance with RTIPPA regulations. The Tenant agrees that the Landlord may disclose this Lease or portions thereof as may be required pursuant to RTIPPA or a City Council approval process, if required, and that no such disclosure constitutes a breach of confidentiality.

The Tenant represents, warrants and undertakes to the Landlord that it, and any subcontractor, shall comply with the RTIPPA, the terms and conditions contained in the Privacy Protection Schedule, attached as Schedule “E” to this Agreement, and protect Personal Information collected by the Landlord as if it were a public body under the RTIPPA.

22.17 Counterparts. This Lease may be executed by the different Parties in separate counterparts and each such counterpart shall be an original and when taken together with the other counterparts shall constitute one and the same agreement; however, this Lease will be of no force or effect until executed by all Parties. A counterpart of this Lease delivered by facsimile or by electronic transmission in portable document format (PDF) is effective delivery of the Lease and such counterpart shall be an originally executed counterpart of this Lease for all purposes. A counterpart of this Lease executed by an electronic signature and/or electronic imaging and transmission of a handwritten signature agreement is a reliable signature method and is binding on the Parties, will have the same force and effect as an original handwritten signature, and will be deemed an original for all purposes.

[signature page follows]

**ARTICLE XXIII
EXECUTION**

23.1 Execution. IN WITNESS WHEREOF the parties hereto have executed this Lease as of the day and year first above written.

Signed, Sealed and Delivered	)	FREDERICTON PLAYHOUSE INC.
)	
)	
)	
	)	Per: _____
	)	Craig Leonard
	)	President
)	
)	
	)	Per: _____
	)	Tim Yerxa
	)	Executive Director
)	
)	
	)	THE CITY OF FREDERICTON
)	
)	
)	
	)	Per: _____
	)	Kate Rogers
	)	Mayor
)	
)	
	)	Per: _____
	)	Jennifer Lawson
	)	City Clerk

**PROVINCE OF NEW BRUNSWICK
COUNTY OF YORK**

AFFIDAVIT OF CORPORATE EXECUTION

I, Jennifer Lawson, of the City of Fredericton, in the County of York and Province of New Brunswick, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the City Clerk of the City of Fredericton, one of the parties named in the foregoing instrument and as such I have personal knowledge of the matters herein deposed to.
2. The seal affixed to the foregoing instrument purporting to be the seal of the City of Fredericton is the Corporate Seal of the City of Fredericton and was so affixed by order of the City Council.
3. The signature "Kate Rogers" subscribed to the foregoing instrument is the signature of Kate Rogers, the Mayor of the City of Fredericton, and the signature "Jennifer Lawson" subscribed thereto is my signature.
4. The Mayor and City Clerk are the officers of the City of Fredericton duly authorized to execute the foregoing instrument.

SWORN TO BEFORE ME at the)
City of Fredericton, in the County)
of York and Province of New)
Brunswick, this ____ day of)
_____, 2024.)

_____)
A Commissioner of Oaths)
Being a Solicitor)

_____)
Jennifer Lawson

SCHEDULE "A"

LEGAL DESCRIPTION OF THE LANDS

SCHEDULE "B"

SITE PLAN

[Insert Site Plan with Lands outlined in heavy black outline, the Development outlined in blue, and the Leased Premises outlined in red, Building Envelopes identified and entrances and exits to adjacent public roads]

SCHEDULE "C"

TRADE FIXTURES, ETC. The following items will remain the property of the Tenant occupying the Leased Premises from time to time and may be removed by such party regardless of the degree of annexation and whether or not any such item shall be deemed to be in law a fixture:

- supply and installation of office furniture;
- internal signage;

The foregoing list is not intended to be exhaustive and additions will occur as approved by the Landlord in writing from time to time.

SCHEDULE "D"

ACKNOWLEDGEMENT OF COMMENCEMENT DATE. Re: Lease made as of [specify] ("Lease"), between The City of Fredericton ("**Landlord**") and Fredericton Playhouse Inc. ("**Tenant**") for premises at [address] ("**Leased Premises**").

The Landlord and Tenant hereby agree and acknowledge with and to the other as follows:

The Commencement Date of the Lease was [specify], [specify]

Executed by the Landlord and Tenant this [day] day of [month], [year].

Signed, Sealed and Delivered) **FREDERICTON PLAYHOUSE INC.**
)
)
)
)
) Per: _____
) Craig Leonard
) President
)
)
)
) Per: _____
) Tim Yerxa
) Executive Director
)
)
)
)
) **THE CITY OF FREDERICTON**
)
)
)
)
) Per: _____
) Kate Rogers
) Mayor
)
)
)
) Per: _____
) Jennifer Lawson
) City Clerk

SCHEDULE "E"

PRIVACY PROTECTION SCHEDULE

Purpose

1. The purpose of this Schedule is to:
 - (a) enable the Landlord to comply with the Landlord's statutory obligations under the RTIPPA with respect to Personal Information that is collected, retained, used, or disclosed as a result of the terms of this Agreement;
 - (b) ensure that the Tenant is aware of the obligations under the applicable legislation with respect to Personal Information that is collected, retained, used or disclosed as a result of this Agreement; and
 - (c) "Personal Information" means recorded information about an identifiable individual that comes into the custody or under the control of the Tenant as a result of this Agreement and has the meaning given in the RTIPPA (SNB 2009, c. R-10.6, as amended)

Under Section 1 of RTIPPA, definitions "Personal Information" means recorded information about an identifiable individual, including but not limited to (a) the individual's name, (b) the individual's home address or electronic mail address or home telephone or facsimile number, (c) information about the individual's age, gender, sexual orientation, marital status or family status, (d) information about the individual's ancestry, race, colour, nationality or national or ethnic origin, (e) information about the individual's religion or creed or religious belief, association or activity, (f) personal health information about the individual, (g) the individual's blood type, fingerprints or other hereditary characteristics, (h) information about the individual's political belief, association or activity, (i) information about the individual's education, employment or occupation or educational, employment or occupational history, (j) information about the individual's source of income or financial circumstances, activities or history, (k) information about the individual's criminal history, including regulatory offences, (l) the individual's own personal views or opinions, except if they are about another person, (m) the views or opinions expressed about the individual by another person, and (n) an identifying number, symbol or other particular assigned to the individual.

Protection of Personal Information

2. The Tenant acknowledges that any Personal Information received by it from the Landlord or an individual or exposed to it in connection with this Agreement is done so solely for the purposes of this Agreement, and that the Tenant acquires no right to or interest in the Personal Information except as set out in the Agreement. The Tenant shall not collect, use or disclose any Personal Information other than as is necessary to carry out its obligations under this Agreement.
3. Unless this Agreement otherwise specifies, or the Landlord otherwise directs in writing, the Tenant shall collect Personal Information directly from the individual the information is about.
4. Unless this Agreement otherwise specifies or the Landlord otherwise directs in writing, the Tenant shall make provision to inform an individual (and obtain their consent) from whom Personal Information is collected:
 - (a) the purpose for collecting it;
 - (b) the legal authority for collecting it; and
 - (c) the title, business address and business telephone number of the person designated to answer questions about the collection of Personal Information.

No secondary use of Personal Information

5. The Tenant covenants and agrees that it will not use any Personal Information provided or disclosed by the Landlord or an individual for any purpose other than that for which it was provided or disclosed to the Tenant, and as authorized in this Agreement.

No Disclosure without authorization

6. Except as is necessary to fulfill its obligations under this Agreement, or as required by law, the Tenant shall not disclose any Personal Information to any third party. In the event the Tenant receives any request to disclose Personal Information, the Tenant will immediately notify the Landlord and the individual.

Integrity of Personal Information

7. The Tenant shall make every reasonable effort to ensure the integrity and completeness of any Personal Information that comes within the custody or control of the Tenant as a result of carrying out its obligations under this Agreement where that Personal Information is to be used by the Tenant or the Landlord to make a decision that directly affects the individual the information is about.

Requests for access to Personal Information

8. If the Tenant receives a request for access to Personal Information from a person other than the Landlord (or an individual who provided the Personal Information), the Tenant shall promptly advise the person to make the request to the Landlord unless the Agreement expressly requires the Tenant to provide such access and, if the Landlord has advised the Tenant of the name or title and contact information of an official of the Landlord to whom such requests are to be made, the Tenant shall also promptly provide that official's name or title and contact information to the person making the request.

Correction of Personal Information

9. Within five (5) business days of receiving a written direction or request from an individual or the Landlord to correct or annotate any Personal Information, the Tenant shall annotate or correct the information in accordance with the direction.
10. When issuing a written direction under Section 9 of this Schedule, the Landlord shall advise the Tenant the date the correction request to which the direction relates was received by the Landlord in order that the Tenant may comply with Section 12 of this Schedule.
11. Within five (5) business days of correcting or annotating any Personal Information under Section 9 of this Schedule, the Tenant shall provide the corrected or annotated information to any party whom, within one (1) year prior to the date the correction request was made to the Landlord, the Tenant disclosed the information being corrected or annotated.
12. If the Tenant receives a request for correction of Personal Information from a person other than the Landlord or the individual who provided the Personal Information, the Tenant shall promptly advise the person to make the request to the Landlord and, if the Landlord has advised the Tenant of the name or title and contact information of an official of the Landlord to whom such requests are to be made, the Tenant shall also promptly provide that official's name or title and contact information to the person making the request.

Security safeguards

13. The Tenant shall protect Personal Information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal, including any expressly set out in the Agreement.

Storage and access to Personal Information

14. The Tenant shall not store Personal Information outside Canada or permit access to Personal Information from outside Canada without written authorization from the individual or the Landlord. Where Personal Information will be stored or accessed from outside of Canada, the Tenant shall comply with all terms and conditions of such storage and/or access as outlined by the Landlord in writing.

Retention of Personal Information

15. The Tenant shall only retain Personal Information for as long as reasonably necessary for the purposes for which it is disclosed to the Tenant. Following such time, the Tenant shall return or destroy any Personal Information that it has received from the Landlord. At the Landlord's request, the Tenant shall forthwith provide the Landlord with a statutory declaration, sworn by an officer or director of the Tenant, certifying whether its obligations under this Section have been fulfilled. Unless the Agreement otherwise specifies or unless the Landlord directs otherwise in writing, the Tenant shall retain Personal Information for at least one (1) year following the date of its use and securely dispose of Personal Information no later than three (3) years after its use.

Compelled Disclosure

16. In the event that the Tenant or anyone to whom it transmits the Personal Information becomes legally required to disclose any such Personal Information, the Tenant shall provide the Landlord with prompt notice so that the Landlord may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. In the event that such protective order or other remedy is not obtained, the Tenant shall furnish only that portion of the Personal Information which is legally required to be furnished in the opinion of the Landlord's counsel.

Notice of unauthorized disclosure

17. If the Tenant knows that there has been an unauthorized disclosure of Personal Information in the custody or under the control of the Tenant, the Tenant shall immediately notify the individual and the Landlord and take all necessary steps to mitigate and remediate. If the Tenant becomes aware of a security breach or any other

event that compromises the security, confidentiality or integrity of any Personal Information (an "Incident"), the Tenant shall take appropriate actions to contain, investigate and mitigate the Incident. The Tenant shall also notify the individual and the Landlord and any individual of each and every Incident as soon as reasonably possible.

Inspection of Personal Information

18. In addition to any other rights of inspection the Landlord may have under the Agreement or under statute, the Landlord may, at any reasonable time during normal business hours and on reasonable notice to the Tenant, enter on the Tenant's premises to inspect any Personal Information in the custody or control of the Tenant as a result of its performing its obligations under this Agreement, and any of the Tenant's information management policies or practices relevant to the Tenant's management of Personal Information in connection with this Agreement or the Tenant's compliance with this Schedule, and the Tenant must permit, and provide reasonable assistance to, any such inspection. The inspection will be conducted in a manner as not to interfere unreasonably with the Tenant's business operations, and is subject to the Tenant's reasonable confidentiality and security policies, procedures and requirements.

Compliance with the applicable legislation and directions

19. The Tenant will comply with the requirements of the applicable legislation, in relation to Personal Information including RTIPPA and any relevant and applicable similar legislation, including any applicable order under the applicable legislation, and any direction given by the Landlord that is permitted or required to be given under this Agreement or pursuant to legislation.
20. The Tenant acknowledges that it is familiar with the requirements of the applicable legislation governing Personal Information that are applicable to it.

Irreparable Harm

21. The Tenant acknowledges that all Personal Information disclosed or provided to it under this Agreement by an individual or the Landlord is held by the Tenant in trust for the sole benefit of the individual or the Landlord. The Tenant acknowledges that any disclosure or misappropriation of any of the Personal Information in violation of this Agreement or this Schedule may cause the individual or the Landlord irreparable harm and/or harm that is impossible to quantify, and therefore agrees that the Landlord shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief as the Landlord shall deem appropriate. Such right of Landlord is to be in addition to the remedies otherwise available to the Landlord at law or in equity. The

Tenant expressly waives the defence that a remedy in damages will be adequate and any requirement in an action for specific performance or injunction for the posting of a bond by the Landlord.

Notice of non-compliance

22. If for any reason the Tenant does not comply, or anticipates that it will be unable to comply, with a provision in this Schedule in any respect, the Tenant shall promptly notify the Landlord of the particulars of the non-compliance or anticipated non-compliance and what steps it proposes to take to address, or prevent recurrence of, the non-compliance or anticipated non-compliance.

Termination of Agreement

23. In addition to any other rights or remedies which the Landlord may have under the Agreement or otherwise at law, the Landlord may, upon any failure of the Tenant to comply with this Schedule in a material respect, declare such non-compliance to be an Event of Default and terminate the Agreement, or a component thereof, in accordance with terms of the Agreement.

Interpretation

24. In this Schedule, references to sections by number are to sections of this Schedule unless otherwise specified in this Schedule.
25. Any reference to the "Tenant" in this Schedule includes any subcontractor or agent retained by the Tenant to perform obligations under the Agreement and the Tenant shall ensure that any such subcontractors and agents comply with this Schedule.
26. The obligations of the Tenant in this Schedule will survive the termination of the Agreement and will only expire when the Tenant no longer has any Personal Information generated as a result of this Agreement in its custody or control.
27. If a provision of the Agreement (including any direction given by the Landlord under this Schedule) conflicts with a requirement of the applicable legislation or an applicable order under the applicable legislation, the conflicting provision of the Agreement (or direction) will be inoperative to the extent of the conflict.
28. The Tenant shall comply with the provisions of this Schedule despite any conflicting provision of this Agreement or, subject to Section 29 of this Schedule, the law of any jurisdiction outside Canada.

29. Nothing in this Schedule requires the Tenant to contravene the law of any jurisdiction outside Canada unless such contravention is required to comply with the applicable legislation.