

LEASE

This lease is made by and between the **City of Portsmouth**, a municipal corporation organized and existing under the laws of the State of New Hampshire and having a usual place of business at 1 Junkins Avenue in said Portsmouth, hereinafter CITY, and the **Players' Ring Company**, organized and existing under the laws of the State of New Hampshire and having a principal place of business at 99-105 Marcy Street, Portsmouth, New Hampshire, hereinafter PLAYER'S RING.

1. **PREMISES:**

CITY leases to PLAYER'S RING a certain structure formerly known as the Heritage Museum located at 105 Marcy Street, Portsmouth, New Hampshire.

2. **LEASE PAYMENTS:**

The PLAYER'S RING shall compensate the CITY for the use of the premise by maintaining strict compliance with a schedule of capital improvements to the premises as described in Schedule A attached hereto. In performing the capital improvements attached hereto on Schedule A the PLAYER'S RING shall comply with the following terms and conditions:

- A. All labor, material and other costs of every kind shall be solely borne by the PLAYER'S RING.
- B. The design, engineering and materials to be utilized in connection with the performance of the capital improvements shall all be approved in advance in writing by the Public Works Director of the City of Portsmouth.
- C. All capital improvements performed by PLAYER'S RING shall be performed to the reasonable satisfaction of the Public Works Director of the City.
- D. PLAYER'S RING shall be responsible for any taxes assessed on the building pursuant to RSA 72:23. However, PLAYER'S RING shall be entitled to apply for a charitable exemption pursuant to RSA 72:23 V. To the extent that such an exemption is granted by the City Assessor no taxes shall be due. To the extent that taxes are due, the tax obligation of PLAYER'S RING may be satisfied by the provision of in-kind services to the City as follows:

In any given calendar year commencing with the first effective date of this lease the PLAYER'S RING shall expend no less on the performance of capital improvements to the premise than would otherwise be due to the City in real estate taxes with respect to building. PLAYER'S RING shall provide CITY with labor and material receipts demonstrating that the required amount has been paid by PLAYER'S RING. In the event that PLAYER'S RING fails to expend at least the amount which would have

been due as real estate taxes, then PLAYER'S RING shall make up the difference by a cash payment to CITY on each anniversary date of this lease.

- E. Notwithstanding any other provision of this lease, failure to maintain the capital improvement schedule attached as Exhibit A shall constitute grounds for termination of the lease by CITY.

3. **TERM:**

The term of this lease shall commence on **September 4, 2013** and shall end **September 3, 2023**. Notwithstanding any other provision in this lease, this lease may be terminated by the PLAYER'S RING upon thirty days (30) written notice to the CITY.

4. **PARKING:**

PLAYER'S RING shall use only such portion of the surrounding grounds as CITY may specifically designate for parking by PLAYER'S RING.

5. **WASTE AND REPAIRS:**

PLAYER'S RING shall not allow any waste, rubbish or other objectionable materials to accumulate within the premises or upon the surrounding grounds. PLAYER'S RING shall arrange and pay for proper solid waste receptacles. PLAYER'S RING agrees to maintain the interior and the exterior of the premises in good repair at all times.

PLAYER'S RING shall at its own cost, and without expense to the CITY perform other maintenance or repair necessary to keep and maintain the premises and its equipment in good, sanitary and neat order, condition and repair.

6. **COMPLIANCE WITH LAWS:**

PLAYER'S RING shall comply with all Federal, State and Municipal laws, ordinances and regulations affecting the leased premises, the improvements thereon, or any activity or condition on or in the premises.

7. **UTILITIES AND MAINTENANCE:**

All costs and expenses of every kind whatsoever of or in connection with the use, operation and maintenance of the premises and all activities conducted therein shall be the sole responsibility of the PLAYER'S RING.

8. **REPAIRS AND MAINTENANCE:**

CITY shall not be obligated to make any repairs, replacements or renewals to the leased premises exclusively occupied by PLAYER'S RING caused by the PLAYER'S RING use thereof. No alteration of the premises which is visible from the exterior thereof and no alteration of the interior which exceeds Two Thousand Five Hundred (\$2,500) Dollars in cost shall be made without the prior written approval of the CITY'S City Manager. PLAYER'S RING shall, insure that their operations shall in no way affect or damage, impair or impact the

grounds immediately adjacent to said building, including mowing of grass, clipping the shrubbery and keeping the area free of litter.

9. **LEASE ADMINISTRATION:**

Except when otherwise specified, the Trustees of the Trust Funds for the City of Portsmouth shall oversee and administer this Lease jointly with the City Manager on behalf of the City.

10. **CITY'S RIGHT OF ENTRY**

PLAYER'S RING shall permit CITY and the agents and employees of CITY to enter into and upon the premises at all reasonable times to inspect the same, or to make repairs or improvements called for in this Agreement.

11. **SUBLETTING AND ASSIGNMENT:**

PLAYER'S RING shall not assign this Lease or sublet any portion of the premises.

12. **PRODUCTION SCHEDULE:**

The PLAYER'S RING shall provide a schedule of proposed productions one month in advance to the Trustees of Trust Funds and the PLAYER'S RING shall remain responsible for all provisions in this lease whether or not the PLAYER'S RING is in charge of the actual production or is acting as production manager. Such programs and schedules shall not be inconsistent with the terms, conditions and spirit of the Prescott Will.

13. **ACCEPTANCE OF PREMISES:**

PLAYER'S RING by acceptance of the premises, acknowledge that they are fit for the uses of the PLAYER'S RING.

14. **LIENS:**

CITY shall keep all of the premises free and clear of all liens arising out of PLAYER'S RING'S occupancy of the premises and at all times promptly and fully pay or discharge any claims on which any lien could be based.

15. **INDEMNIFICATION OF CITY:**

The Players' Ring Company agrees to defend, hold harmless and indemnify the City of Portsmouth and it's officers, agents and employees against any and all liability for bodily injury, death, and property damage arising from the existence of this lease or any activity conducted hereunder or any person or entity operating under its authority. This provision shall survive termination or expiration of the lease.

16. **TERMINATION AT CITY'S OPTION:**

The City of Portsmouth, in its sole and unfettered discretion, may terminate this lease upon ninety days written notice delivered to the PLAYER'S RING.

17. **TERMINATION FOR CAUSE:**

In the event of any breach of this Lease by the PLAYER'S RING or failure to perform any condition herein, the CITY may in addition to all rights and remedies each has at law,

CITY shall give a written notice to the PLAYER'S RING of a claimed breach. If such breach is not cured within 30 days, the CITY shall have the right of reentry and may remove all persons and property from the premises to be stored at the expense of the PLAYER'S RING. CITY, after reentry, may terminate this Lease and in addition to its other rights, may recover from PLAYER'S RING, its reasonable costs and damages occasioned by PLAYER'S RING'S breach.

18. **TERMINATION OR SURRENDER OF LEASE:**

Upon termination of this Lease, or mutual cancellation thereof, the PLAYER'S RING shall immediately surrender the premises.

19. **IMPROVEMENTS:**

All alterations, additions and improvements made in or to the premises in the nature of fixtures shall unless otherwise provided by written Agreement or by the terms hereof, be the property of CITY and remain and surrendered with the premises and PLAYER'S RING hereby waives all claim for damages to a loss of any property belonging to PLAYER'S RING that may be in or upon the premises.

20. **NOTICE:**

Any notice required under this Lease or other writing which may be given by either party hereto to the other shall be deemed to have been given when made in writing and deposited in the U.S. MAIL, registered and prepaid and addressed as follows:

TO CITY:

City Manager
City of Portsmouth
1 Junkins Avenue
Portsmouth, N.H. 03801

Trustees of Trust Funds
Sheafe Warehouse
P.O. Box 1103
Portsmouth, NH 03801

TO PLAYER'S RING:

Barbara L. Newton, Exec. Dir.
Players' Ring Company
105 Marcy Street
Portsmouth, N.H. 03801

Michael E. Chubrich, Esq.
230 Lafayette Road
Building D
Portsmouth, N.H. 03801

21. **USE OF PREMISES:**

The premises shall be used solely for the purposes of production of theatrical presentations and associated activities, and no other purposes without prior written approval by the CITY. PLAYER'S RING accepts the premises with the understanding that they shall be restricted to said use of those operations and services provided by the PLAYER'S RING as stated herein. No alcoholic beverages shall be used, consumed or possessed upon the premises.

22. **REGULATIONS:**

PLAYER'S RING agrees that it shall abide by and enforce among its staff any reasonable rules and regulations established by the CITY.

23. **EXTENSION OR RENEWAL:**

There is no automatic extension or renewal of this lease and no further notice is required on the part of the CITY prior to its expiration.

24. **INSURANCE:**
LIABILITY AND PROPERTY DAMAGE

- A. PLAYER'S RING shall bear all risk of loss to the premises and risk of personal injury or property damage arising out of the use or existence of this lease. PLAYER'S RING shall indemnify and hold CITY harmless from all suits, claims or actions arising out of the existence or use of this lease or the termination of the lease for any reason or at any time PLAYER'S RING shall return the premises to the CITY OF PORTSMOUTH in as good or better condition than it was at the execution of this lease.
- B. PLAYER'S RING shall, at all times during the term of this Lease, maintain in effect at its expense the following insurance coverages:
1. Comprehensive General Liability protection in a coverage amount not less than Two Million (\$2,000,000) Dollars per occurrence.
 2. Property damage coverage protecting the building and its contents in an amount to be determined by the Public Works Director of the City of Portsmouth to represent full replacement cost.

The above insurance coverages shall be provided by an insurer and written in a form satisfactory to the CITY. Each policy shall name the City of Portsmouth as an additional insured. PLAYER'S RING shall maintain with the City Attorney of the CITY certificates of insurance providing evidence of the required coverages and requiring the insurer to notify the CITY of any cancellation of the policies.

25. **ADA COMPLIANCE:**

The CITY and PLAYER'S RING agree that the PLAYER'S RING shall be solely responsible for making the services and/or programs which it offers accessible to the handicapped as this term is recognized in the Americans with Disabilities Act. Where it is necessary to make structural modifications to the building and/or property in order to achieve the goal of accessibility for the unique services and programs offered by the PLAYER'S RING, then PLAYER'S RING shall be solely responsible for making such structural modifications. Prior to making any structural modifications, the CITY shall obtain the consent of the PLAYER'S RING.

PLAYER'S RING agrees to indemnify and hold harmless the CITY from any claims brought against the PLAYER'S RING for failure to provide accessible services and programs under the Americans with Disabilities Act or to otherwise fail to comply with the

responsibilities under the Americans with Disabilities Act as a provider of public accommodations.

IN WITNESS WHEREOF, the parties have executed this Lease on September 18, 2013.

WITNESS:

[Handwritten Signature]

CITY OF PORTSMOUTH

[Handwritten Signature]

John P. Bohenko
City Manager

Pursuant to vote by the City Council on **September 3, 2013.**

WITNESS

[Handwritten Signature]

PLAYERS' RING COMPANY

[Handwritten Signature]

Barbara L. Newton
Executive Director

SCHEDULE A

The Players' Ring

Proposed Benchmarks for Ten-Year Lease

<u>Capital Improvements</u>	<u>Completed no Later Than</u>	<u>Estimates</u>
Furnace Replacement and Related Work	December 31, 2013	\$18,000
East Side: Windows, Doors and Masonry Work	December 31, 2015	\$42,200
West Side: Windows, Doors and Masonry Work	December 31, 2017	\$45,080
South and North Sides: Windows, Masonry Work	December 31, 2018	\$18,060
Air Conditioning	December 31, 2019	\$9,000
Bathroom with Work Sink – Second Floor	December 31, 2020	\$6,500
Stage Lighting Upgrade	December 31, 2021	\$15,000
Theatre Seating	December 31, 2022	\$15,000